

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5798 OF 2023

1. Mr. Nilesh Prakashrao More,
Age : 37 years, Occ. Agriculturist,
Indian inhabitant,
Residing at “Shri Swami Samarth”
330, Gajanan chowk Phaltan,
District : Satara, Pin : 415523
....Petitioner

Versus

1. State of Maharashtra
Through its Urban Development
Department,

[Summons to be served on the Learned
Government Pleader appearing for
the State of Maharashtra under Order
XXVII,
Rule 4, of the Code of Civil
Procedure, 1908].
2. Regional Transport Office (RTO)
213, E Ward, Tarabai Park, Warna
Colony, Kolhapur District, Pin – 416003

[Summons to be served on the Learned
Government Pleader appearing for
the State of Maharashtra under Order
XXVII,
Rule 4, of the Code of Civil
Procedure, 1908].
3. Chief Executive Officer of the
Phaltan Nagar Parishad,
Phaltan, District : Satara.

[Summons to be served on the Learned
Government Pleader appearing for
the State of Maharashtra under Order

XXVII,
Rule 4, of the Code of Civil
Procedure, 1908]

4. District Collector Satara,
Satara.

[Summons to be served on the Learned
Government Pleader appearing for
the State of Maharashtra under Order
XXVII,
Rule 4, of the Code of Civil
Procedure, 1908]

....Respondents

Mr. Yatin Malvankar, Advocate for the Petitioner.

Mr. Milind Sathe, Advocate General a/w Smt. Neha Bhide, Government
Pleader, Mr. Jay Sanklecha, 'B' Panel Counsel, Smt. R.M. Shinde, AGP for
the Respondent/State.

Mr. Vishwanath Talkute, Advocate for Respondent No.3.

CORAM : **RAVINDRA V. GHUGE,**
SANDEEP V. MARNE &
ABHAY J. MANTRI, JJ.

RESERVED ON : **5th MARCH, 2026**

PRONOUNCED ON : 27th MARCH, 2026

JUDGMENT (PER : RAVINDRA V. GHUGE, J.)

1. Rule. Rule made returnable forthwith and heard finally by
consent of the parties.

2. By an order dated 29th July 2024, passed by the Division Bench of this Court, while hearing Writ Petition No.5180 of 2022, the Registry was directed to place that Petition before the Hon'ble The Chief Justice for directions under Rule 8 of Chapter I, of the Bombay High Court Appellate Side Rules, 1960. For ready reference, we deem it appropriate to reproduce the said order here under :

“1. Heard learned counsel for the parties.

2. The development plan for Pune was initially finalised on 8 July 1966, reserving the Petitioner's property for the public purpose of the Primary School. After following the necessary procedures, this plan was revised effective 5 January 1987, maintaining the same reservation.

3. On 28th March 2013, a notice was issued under Section 26(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short, “MRTP Act”) proposing to revise the above plan. However, before the revision could be finalised, the Petitioners issued a notice on 23rd May 2015, which the Planning Authority received on 26th May 2015 under Section 127(1) of the MRTP Act, urging the purchase of the said property.

4. Under the amendment to the MRTP Act, the 12-month period prescribed in Section 127(1) for taking steps to purchase was enhanced to 24 months, effective from 29 August 2015. There is no dispute that this 24-month notice period under the amendment would govern the present case.

5. The revisions to the development plan were finalised on 5 January 2017, before the expiry of the 24-month notice period, which was 22 May 2017.

6. The Petitioner's case is that the notice dated 23rd May 2015, issued by the Petitioner, neither lapses nor is rendered ineffective on account of the revision of the development plan effective from 5th January 2017. The

Petitioner contends that on the expiry of 24 months, i.e. on 22 May 2017, the reservation lapses because, in the meantime, the Planning Authority has failed to take steps to acquire the said property as contemplated under the scheme of Sections 126 and 127 of the MRTP Act.

*7. At least prima facie, the petitioner's contentions find support in the decisions of the Coordinate Division Bench in the case of **Santu Sukhdeo Jaibhave & Ors. Vs. Nashik Municipal Corporation & Ors.**¹ and **Sadashiv Tryambak Rajebahadur & Ors. Vs. State of Maharashtra & Ors.**² In similar facts, these decisions have held that the reservation lapses if no steps are taken by the planning authority to acquire the property.*

*8. However, Mr. Kulkarni, learned counsel for the Pune Municipal Corporation (PMC), which is the Planning Authority, relied upon the decisions of yet another Coordinate Bench in the case of **Salim Nizam Sanadi & Ors. Vs Municipal Corporation, Sangli, Miraj and Kupwad City & Ors.**³ and **Shri. Amuksidha Shrikant Majge and Anr. vs. Commissioner, Sangli, Miraj and Kupwad Municipal Corporation, Sangli and Ors.**⁴ to contend that once the revisions in the development plan are finalised, subsequent reservation of land by the revised Development Plan would be the fresh starting point for the period prescribed under Section 127 of the MRTP Act. This means that as long as the period of 10 years from the finalisation of the revised Development Plan has not expired, there was no question of lapsing the reservation provided in the finalised revised development plan.*

*9. Again, prima facie, the decisions in **Salim Nizam Sanadi (supra)** and **Shri. Amuksidha Shrikant Majge (supra)** support Mr. Kulkarni's submission.*

1 2022 SCC OnLine Bom. 5273

2 2023 SCC OnLine Bom. 999

3 2019(2) All MR 630

4 2018 SCC OnLine Bom. 2844

10. In the case of *Salim Nizam Sanadi (supra) and Shri. Amuksidha Shrikant Majge (supra)* considered the decision of the Division Bench of this Court in *Prafulla C. Dave & Ors. vs Municipal Commissioner, Pune and Ors.*⁵ However, the decisions in *Santu Sukhdeo Jaibhave (supra)* and *Sadashiv Tryambak Rajebahadur (supra)* considered the decision of the Hon'ble Supreme Court in *Prafulla C. Dave vs Municipal Corporation of Pune*⁶, affirming the decision of the Division Bench of this Court.

11. Mr Godbole argued that the facts in *Prafulla Dave* were entirely different because, in the said case, notice under Section 127 was served after the revised Development Plan had been finalised. He submitted that in the present case, the notice under section 127 was admittedly served before the finalisation of the revised plan. Therefore, the subsequent finalisation does not affect the notice.

12. The two sets of decisions that at least prima facie take conflicting views do not discuss the distinction now sought to be made by Mr Godbole. In almost similar material facts, the two sets of decisions of Co-equal Benches reach diametrically opposite conclusions. Based upon the first set, this petition may have to be allowed. But if the second set of decisions are to be followed, this petition would have to be dismissed.

13. Similarly, none of the judgments have had the benefit of considering some of the observations made by the Full Bench of this Court in *Vishwas Bajirao Patil Vs. State of Maharashtra & Ors.*⁷ The Full Bench, in the context of deciding whether the amendment to Section 127, which entered force on 29th August 2015 and enhanced the time limit from 12 months to 24 months, has observed that no

5 2008 (3) Mh.L.J. 120

6 2007(6) ALL MR 207

7 2019 SCC OnLine Bom. 1770

right is vested in a person having an interest in the land by merely serving notice as contemplated by Section 127 of the MRTP Act. The Full Bench observed that the right would have vested in the landowner upon the expiry of a period of one year from the date of issue of such notice had the MRTP Act not been amended in the meantime.

*14. Given the prima facie conflict between the two sets of judgments delivered by the Coordinate Co-equal Benches and the fact that certain observations made by the Full Bench in **Vishwas Bajirao Patil** (supra) were not considered, We think that this matter could be more advantageously heard by a Bench of more than two Judges. This conflict, according to us, could be best resolved by resorting to the provisions of Rule 8 of Chapter I of the Bombay High Court, Appellate Side Rules, 1960 (for short, “the said Rules”).*

15. Accordingly, we direct the Registry to place the matter before the Hon’ble Chief Justice, given the provisions of Chapter I Rule 8 of the said Rules.”

3. By the order of the Hon’ble The Chief Justice of the Bombay High Court, dated 17th December, 2024, Writ Petition Nos.5180 of 2022 and this Petition no.5798 of 2023, were clubbed and were referred to the Larger Bench under Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 (the ‘1960 Rules’).

4. Subsequently, Writ Petition No.5180 of 2022 was disposed off by our Bench, by an order dated 25th July 2025, which reads as under :

“1. Mr. Godbole, the learned Senior Counsel submits that the Petitioner, who is 86 years of age, has filed an affidavit dated 29th June, 2025. Vide the said affidavit, he has spelt out in paragraph 3 that considering the age of the Petitioner and other factors, including the fact that the Planning Authority has kept the land under reservation for 60 years, he may consider withdrawing the Writ Petition subject to appropriate directions/orders being passed by the Court, so as to facilitate an Award as regards the Notification dated 21st January, 2021 by following the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “**LARRA 2013**”) within a period of six months. The said affidavit has been marked as ‘**X-1**’ for identification.

2. In response to the said affidavit, Mr. Kulkarni, the learned Advocate for the Corporation, places on record a photostat copy of a communication dated 25th July, 2025, signed by the three officers of the Corporation and addressed to the Chief Law Officer of the Corporation’s Law Department dealing with the land acquisition. The same is marked as ‘**X-2**’ for identification. The said communication is indicative of the corporation’s intention in the proceedings with regard to the land acquisition, that the acquisition proceedings could be completed within a period of one year, considering that the land was reserved for a primary school, high school and 24 meters wide D.P. Road. The learned Advocate was instructed in the said communication to place the same before the Court.

3. Mr. Kulkarni further submits on instructions from the Corporation that an amount equivalent to 30% (approximately Rs. 12,49,93,329/-) on an approximate valuation of the land to be acquired as per the appropriate assessment of the SLAO, would be deposited with the SLAO, within 8 weeks.

4. Mr. Godbole submits that considering the advanced age of the Petitioner which is 86 years and considering his health status, it would be appropriate for this

Court to direct the Corporation to complete the acquisition within 9 months, instead of 1 year. Mr. Godbole further submits that since the suggestion of the Corporation is acceptable to the Petitioner, this Petition can be disposed off. He further submits that since the Corporation has made a statement before the Court, it will have to maintain the said statement and should not be resiled from the same.

5. *In view of the above, we do not find any scope for indulgence in the said arrangement, save and except that the Petitioner is 86 years of age and the land is under reservation for nearly 60 years. If the Petitioner makes a request for reducing the timeline for completing the acquisition from one year to 9 months, we do not find that this could be an unreasonable request. For the Petitioner, a reduction of three months also matters. If the Corporation acts proactively in this proceedings and initiates quick steps with promptitude, the acquisition could be completed even within 9 months. We, therefore, record that this Court would appreciate the gesture of the Corporation that the acquisition of the land would be completed with promptitude, within 9 months.*

6. *Needless to state that the statement that 30% amount would be deposited with the SLAO within 8 weeks is recorded.*

7. *With the aforesaid understanding and directions, **this Petition is disposed off** by consent of the Petitioner.”*

**PLEADINGS IN THE PETITION AND ORAL/WRITTEN SUBMISSIONS OF
THE LEARNED ADVOCATE FOR THE PETITIONER**

5. The Petitioner has put forth prayers at Clauses [A] and [B], which read as under :

“[A] That this Honourable Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, holding that the said reservation to the extent of the said land stands lapsed and in furtherance thereof direct the Respondents to notify the same by publishing in the Official Gazette under the provisions of section 127(2) of the Maharashtra Regional and Town Planning Act, 1966.

[B] That considering the issue involved in the present petition and considering the nature of reliefs sought the Petitioner most humbly prays that the present petition may be disposed of at the stage of admission and the rule be made absolute.”

6. The dates and events indicated by the Petitioner in Writ Petition No.5798 of 2023 and the submissions of the learned Advocate, can be summarized as under :

- a) Petitioner is the owner of land admeasuring 18 acres situated at Survey No.112/1A/1A/1/1A/1B, village Phaltan, taluka Phaltan, District : Satara. (‘said property’ for short)
- b) **18.12.1992** – The said property is under reservation bearing no.80 for the purpose of RTO pursuant to the coming into effect of the 2nd Revised Development Plan vide Gazette Notification dated 18/12/1992.

- c) **17.12.2002** – The prescribed period of 10 years post the Notification dated 18.12.1992 came to an end.
- d) **12.05.2010** – Phaltan Municipal Council, District : Satara, being the Planning Authority, declared its intention u/s 23 read with Sec.38 to prepare Draft Development Plan (3rd Revision), vide its Resolution no.37.
- e) **10.09.2010** – Phaltan Municipal Council, u/s 2(19) of the MRTP Act, 1966, declared its intention under Section 23 read Section 38 of the MRTP Act to prepare a Draft Revised Development Plan (3rd Revision) for the area within the limits of Phaltan Municipal Council by gazette notification.
- f) **05.03.2012** – Petitioner, by registered Sale Deed purchased the said land from the erstwhile owner.
- g) **26.09.2013** – Phaltan Municipal Council carried out the survey of the entire land within its jurisdiction as required u/s 25 of the MRTP Act and published a notice in the Official Gazette inviting suggestions and objections in respect of the Draft Development Plan (3rd Revision).

- h) **23.10.2013** – Petitioner raised objections to the reservation on the said land proposed in the Draft Development Plan (3rd Revision).
- i) **05.11.2014** – Phaltan Municipal Council vide its Resolution No.32, dated 19.08.2014, made certain modifications in the Draft Development Plan (3rd Revision) and published the said plan, so modified in the Official Gazette dated 05.11.2014.
- j) **25.11.2014** – Phaltan Municipal Council, submitted the Draft Development Plan (3rd Revision) to the Government of Maharashtra for its sanction.
- k) **17.11.2015** – Petitioner gave a purchase notice u/s 127 of the MRTP on to the Chief Office Phaltan Municipal Council.
- l) **23.05.2016** – Draft Development Plan (3rd Revision) was sanctioned.
- m) **22.06.2016** – Final Revised Development Plan (3rd Revision) came into effect in part.
- n) **28.06.2017** – The Petitioner preferred an application for obtaining development permission for the said land. However, the

said application was rejected by the Phaltan Municipal Council vide its letter dated 28.06.2017.

o) **16.11.2017** – The two years period as prescribed under the provisions of Section 127 of the MRTP Act was completed on 16.11.2017.

7. The contentions and the grounds of objection set out by the learned Advocate for the Petitioner are reproduced (verbatim), hereunder :-

(a) The Respondent Phaltan Municipal Council and the Director of Town Planning and the Government of Maharashtra has not proceeded with the acquisition of Petitioner's land. The Respondent Authorities are not even permitting the Petitioner to beneficially enjoy his property by refusing to grant development permission to the Petitioner.

(b) The State Government independently could have given the directions under the provision of Section 37, even that has also not been done by the Government of Maharashtra. The correspondence only shows that the Respondents are interested in continuing the reservation without actually acquiring the land of the

Petitioner and not making the payment and despite assurance from the correspondences no actual amount of compensation has ever been given to the Petitioner and the Petitioner is further being deprived of the beneficial use of his land.

(c) Whether after publishing of a Draft Revised Development Plan, a Purchase Notice given before and after the period of 24 months as contemplated by Section 127 of the Maharashtra Regional and Town Planning Act, 1966 is over, the Revised Development Plan comes into operation, then whether the clock for 10 years period provided in Section 127 of the MRTP Act, 1966 gets reset.

(d) The Petitioner contends that another aspect which requires consideration is that Section 38 uses the word 'At least once in 20 years...'. Thus, in a given case planning authority may propose Revision of Development Plan even before the period of 10 years, from the coming into force of Development Plan, gets over and may bring into force such Revised Development Plan before the said 10 years period is over. In such eventuality the land under reservation will remain land locked for another period of 10

years and the right u/s. 127 could never be invoked. This could not have been the intention of the legislation.

(e) The Petitioner further contends that in the present case the erstwhile 2nd Revised Development Plan the Petitioners land had a Reservation for RTO. The said reservation has continued in the 3rd Revised Development Plan. Thus, there can be two eventualities, either the said reservation of RTO was shown on the Petitioner's land or it was not shown on the Petitioner's land, in the Draft Revised Development Plan. In either of the eventualities the planning authority did have the intention, at the stage of Draft Revised Development Plan, to continue the reservation for RTO in the final Revised Development Plan.

(f) Thus, upon receipt of the Purchase Notice from the Petitioner after the publication of Draft Revised Development Plan, the planning authority was not prevented from acquiring the Petitioners property, if it so intended to reserve it further for RTO. However, the non-acquisition of the Petitioners land after the purchase notice and instead continuing the reservation and even till date not acquiring the Petitioners land clearly amounts to depriving

the Petitioner from his beneficial use of land and defeating his substantive right to property u/ Art. 300A. These aspects have not been dealt with in the case of *Prafulla Dave* (supra) and hence the said judgment is not applicable in the facts of the present case.

(g) It is further contended by the Petitioner that the option to invoke lapsing u/sec 127 of the MRTP Act is made available to the land owner upon expiry of 10 years from the date of coming into effect of the Development Plan. Similarly, the right u/s. 127 gets crystalized on the day the Purchase Notice is sent. The right is accrued pursuant to the Notice u/s 127, in spite of the draft revised development plan. Hence, grant of sanction to revised development plan cannot curtail the running of the said period of 24 months from expiring.

(h) It is further submitted by the Petitioner that there is no restriction on the landowner to issue notice u/s. 127 of the MRTP Act, 1966, when the revision of development plan is undertaken under Section 38 and as a necessary corollary time or waiting period is not suspended. In other words, the planning authority will have to take necessary steps as per Section 127 in the period of 24

months notwithstanding that the revision of development plan is undertaken. Therefore, upon expiry of 24 months from the date of notice under section 127 dated 17.11.2015, the reservation upon the subject property has lapsed and since then the property had become available to the Petitioner for the purpose of development.

(i) The learned Advocate for the Petitioner submits that it is required to be noted that the MRTP is a regulatory statute, primarily focused on planning and development of land in Maharashtra. Whereas, right to property guaranteed under Article 300A of the Constitution of India is a substantive and constitutional right. The MRTP Act being a regulatory statute, the provisions therein cannot be construed in a manner to take away substantive right, which is guaranteed under Article 300A.

SUBMISSIONS OF THE LEARNED ADVOCATE GENERAL

8. The learned Advocate General has extensively canvassed oral submissions and has tendered written notes as well. The same are summarized as under :-

(A) The reference needs to be answered by considering, whether in the light of the relevant provisions of the MRTP Act, 1966, any right that may have accrued to the owner of the land thereunder, by service of a purchase notice upon the relevant authority, is sought to be taken away by imposing a fresh reservation under the revised development plan sanctioned prior to the expiry of the prescribed period from the date of such service.

Conditions Precedent under Section 127 of the MRTP Act, 1966

(B) Section 127 of the MRTP Act, 1966, deals with lapsing of reservation. Under the said provision, broadly, if the land reserved, allotted or designated for any purpose specified in any plan under the MRTP Act, 1966 is not acquired by agreement within ten years from the date on which the final development plan has come into force or if a declaration under Section 126(2) or (4) is not published within the said period of ten years, the owner or any person interested in the land may serve notice along with documents, showing his title or interest to the authority concerned and if within 24 months from the date of service of such notice the land is not acquired or no steps are taken for its acquisition, the reservation, allotment or designation is deemed to have lapsed and the land is deemed to be

released from such reservation, allotment or designation and becomes available to the owner.

(C) It is pertinent to note that Section 127 of the MRTP Act, 1966 originally stipulated that reservations under a final development plan would lapse if no effective steps were taken within a period of 6 months from the date of service of the purchase notice. Section 127 of the MRTP Act, 1966 was amended vide the **Maharashtra Act XVI of 2009**, whereby the prescribed period was extended from 6 months to 12 months with effect from **24th June, 2009**. Thereafter, Section 127 of the MRTP Act, vide the **Maharashtra Act XLII of 2015**, was again amended to increase the prescribed period from 12 months to 24 months, with effect from **29th August, 2015**.

(D) Section 127 requires the following cumulative conditions to be satisfied in order for a reservation to be deemed to have lapsed.

(i) That the reserved/ designated land is not acquired by agreement within ten years from the date on which a final development plan comes into force. This circumstance is a peremptory condition for the operation of this provision.

(ii) That after satisfaction of the condition (i) above, the land owner or any person interested in the land serves a purchase notice along with the documents of title or interest in the said land upon the relevant authority; and

(iii) That after satisfaction of condition (i) above, if within the prescribed period from the date of service of the purchase notice in (ii) above, the relevant authority fails to acquire the land or takes steps for the commencement of its acquisition.

(E) It is only on the satisfaction of these three cumulative conditions that Section 127 of the MRTP Act, 1966 creates a legal fiction, i.e. that the reservation of the land is deemed to have lapsed. It is submitted that the satisfaction of any one of the above three conditions does not *per-se* result in automatic lapsing. Accordingly, the mere expiry of the period of ten years from the date on which a final development plan comes into force and/or the service of the purchase notice by the land owner or person interested in the land on the planning authority, does not result in the lapsing of the reservation.

(F) The observation of the Supreme Court in *Prafulla C. Dave* may be usefully referenced:

“21. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or proceedings for acquisition are not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the landowner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary, upon expiry of the said period of ten years, the landowner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the landowner or the person interested remains silent, and in the meantime, a revised plan under Section 38 comes into effect, is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation, etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan

under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the landowner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the landowner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the landowner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the landowner, that is, after the revised plan has been finalised and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan.

(Emphasis is supplied by the learned AG)

Prerogative to revise Development Plan

(G) Until and unless such reservation is deemed to have lapsed by operation of law under the provisions of the MRTP Act, 1966, the relevant authorities have complete liberty to revise the development plan in terms of the procedure under the Act and decide to continue the reservation for the concerned land either for the same purpose or for any other purpose. In fact, there is a statutory obligation cast upon the planning authority under Section 38 of the MRTP Act, 1966, to revise the development plan every

twenty years after carrying out a fresh survey, preparing the existing land use map, etc. It is submitted that by reading Section 127(1) of the MRTP Act, 1966 in the manner suggested by the Petitioners would be contrary to the avowed scheme and object of the MRTP Act, 1966, i.e. to provide for the planned development and control of land use.

No vested right after service of the Purchase Notice

(H) The Full Bench of this Hon'ble Court in *Vishwas Bajirao Patil*⁸ whilst considering the question of whether the amendment dated 29th August 2015 to Section 127(1) of the MRTP Act, 1966, enlarging the period available to the planning authority for taking effective steps for acquisition of the reserved land from 12 months to 24 months would apply in a case where a purchase notice contemplated under 127(1) of the MRTP Act, 1966 has been served on the authority before the said amendment came into force.

(I) The Full Bench observed that under the law, an amendment is prospective, unless by express or necessary implication, it is made to have retrospective operation. A law, therefore, which takes away or impairs any vested right acquired under an existing law, is retrospective. In this

8 Vishwas Bajirao Patil v. State of Maharashtra 2019 SCC Online Bom. 1770

connection, the Full Bench examined the question of whether by the service of the purchase notice, any vested right was created in the land owner which was sought to be taken away by the amendment. The Full Bench held that a future interest is vested in a person if it meets the requirement of there being no condition precedent to the interest. Accordingly, as per the Full Bench, no right is vested in the person having a proprietary interest in the land upon serving the purchase notice, but that such right would have vested only upon expiry of 12 months from the date of service of such notice. Only upon expiry of such period would any right have vested in the land owner. Since in the facts before the Full Bench, the amendment was made prior to the expiry of the prescribed period, no vested right had been taken away and the case of the land owner therein would be governed by the amended provision of the MRTP Act, 1966 viz. 24 months from the service of the purchase notice.

(J) The decision of the Full Bench is illuminating in so far as it affirms that by the mere service of a purchase notice under Section 127(1) of the MRTP Act, 1966, upon the planning authority, does not by itself create any vested right in the land owner. It is only after the expiry of the prescribed period from the date of service of such purchase notice that any right is vested in the land owner. It may be possible to conceive of the

effect of Section 127 of the MRTP Act, 1966, in a different manner. Section 127 of the MRTP Act, 1966 prescribes two time periods. The two time periods are separated by an act of the land owner in serving the purchase notice. The first is a period of ten years from the date of the final development plan coming into force, within which the acquisition of the reserved land has to be completed or proceedings for acquisition ought to have commenced. The second time period is a period of two years from the date of service of the purchase notice upon the authority, within which the authority is required to take effective steps for acquisition. It is only after the elapse of the aforesaid two time periods, then the reservation of the land is deemed to have lapsed and any right is vested in the land owner.

(K) Reference may be made to the relevant observations of this Hon'ble Court in *Vishwas Bajirao Patil* as under:

23. The traditional vested rights Doctrine is based on the principle i.e. State has the power to prescribe the Rules of conduct for transaction or occurrences that take place on its own territory. Once the last event of the transaction or occurrence takes place on the territory of the State the parties to it acquire vested right under Law of that jurisdiction.

24. A future interest is vested if it meets the requirement of there being no condition precedent to the interest.

25. Before formally answering the reference in the instant

case, as noted above the development plan was notified on 18-12-1999. Ten years expired on 17-12-2009. Notice under section 127 was issued on 17-11-2014 and twelve months would come to an end on 16-11-2015, but before that the amendment was made on 29-8-2015 replacing the words 'twelve months' by 'twenty-four months'.

26. We thus answer the reference by holding that the amendment is prospective but no right is vested in the person having proprietary interest in the land upon serving the notice. The right would have vested upon expiry of one year of the notice had the statute not been amended on 29th August, 2015, and thus as on the date of the amendment i.e. 29th August, 2015 there was no vested right in favour of the noticee. The rights of the noticee would be governed by the statute as amended on 29th August, 2015.

(Emphasis is supplied by the learned AG)

(L) The aforesaid decision of the Full Bench is binding on this Hon'ble Court. The Full Bench decision has been consistently followed by this Hon'ble Court, including in *Atmaram Krishna Sawant v. Shaikh Abubakar Hassan*⁹

Decisions in Salim Sanadi & Amuksidha lay down the correct position of law

(M) The decisions of this Hon'ble Court in *Salim Nizam Sanadi* and *Amuksidha Srikant Majge* correctly interpret the law regarding the effect of a sanction to the revised development plan under Section 127 of the MRTP Act, 1966.

⁹ Pertinently, the decision of the Full Bench has been followed by this Hon'ble Court in *Atmaram Krishna Sawant v. Shaikh Abubakar Hassan* Writ Petition No. 2293 of 2018 (19th December, 2019)

(N) In *Salim Nizam Sanadi*, the original Development Plan had been notified on 26th October, 1995. Thereafter, on 27th March, 2012, a purchase notice was issued, and on 4th April, 2012 (before the expiry of one year of the purchase notice), a fresh revised Development Plan was sanctioned under Section 38 of the MRTP Act, 1966. The Division Bench of this Hon'ble Court, following the decision of the Hon'ble Supreme Court in *Prafulla C. Dave (supra)*, held that the notification sanctioning the revised Development Plan has to be given effect to and the period under Section 127 of the MRTP Act, 1966 would commence from the date of the said notification. The Court held that since the notification sanctioning the revised Development Plan was published prior to the expiry of the prescribed period of 12 months from the service of the purchase notice, the reservation on the said land continues to subsist. The Court further held that the notification sanctioning the revised Development Plan was to be treated as the final Development Plan and the prescribed period of 10 years would commence from the date of the notification sanctioning the revised Development Plan under Section 38 of the MRTP Act, 1966. This Hon'ble Court, therefore, held that the reservation on the Petitioners' land had not lapsed.

(O) This Hon'ble Court observed as under:

9. We have considered the submissions. We find that Respondent No. 3, by a notification issued on 4 April 2012, sanctioned the Revised Development Plan, and the said land was again reserved for public purpose, viz., for a primary school and playground under Reservation Site No. 378. The purchase notice had been issued on 27 March, 2012 by the Petitioners and served on the Respondent No. 1 on that date itself and prior to the expiry of the prescribed period of 12 months from the service of the purchase notice, the notification sanctioning the Revised Development Plan had been issued. Therefore, the reservation of the said land continued to subsist when the Revised Development Plan again reserving the said land for a public purpose come into force. It is clear from the Judgment of this Court in Prafulla C. Dave (supra) that the notification sanctioning the Revised Development Plan has to be given effect to and the period under Section 127 of the said Act would commence from the date of the notification. This Court in paragraph 16 to 18 held thus: ...

10. It is therefore, clear that from this Judgment that the notification sanctioning the Revised Development Plan is treated as final Development Plan and therefore, the prescribed period under Section 127 of the said Act would commence from the date of notification sanctioning the Revised Development Plan prepared under Section 38 of the said Act and notified under Section 31(6) of the said Act. In the present case, the subsequent reservation of the said land by the sanctioned Revised Development Plan would be the fresh starting point of the period prescribed under Section 127 of the said Act, particularly since the period had not expired from the service of the purchase notice. Therefore, in our view, since the period prescribed under Section 127 of the said Act from service of the

purchase notice dated 27 March, 2012 had not expired when the Revised Development Plan was sanctioned on 4 April, 2012, the reservation of the said land has not lapsed.

(P) In *Amuksidha Srikant Majge*, the original Development Plan was notified on 6th April, 1979 and was in force when a purchase notice was issued on 27th February, 2012. On 4th April, 2012, a revised Development Plan under Section 38 of the MRTP Act, 1966, was published. The Petitioner thereafter issued a further purchase notice on 28th December, 2012. It was sought to be contended by the Petitioner that the purchase notice having been issued on 27th February, 2012, prior to the issuance of the revised Development Plan, the revised Development Plan will not have an effect of providing of a fresh period of 10 years under Section 127 of the MRTP Act, 1966. The Division Bench of this Hon'ble Court, relying upon the observations of the Hon'ble Supreme Court in *Prafulla C. Dave*, held that as on the date of publication of the revised Development Plan, the period of 1 year from the date of issuance of statutory notice had not expired, and thereafter the reservation has not lapsed (**Para 12**). It was further held that from the decision of the Hon'ble Supreme Court in *Prafulla C. Dave*, it was apparent that the notification sanctioning the revised Development Plan is to be treated as the final Development Plan and the prescribed period under Section 127 of the

MRTP Act, 1966 would commence on the date of notification sanctioning a revised Development Plan.

(Q) This Hon'ble Court observed as under:

*12. In the facts of the present case, the reservation of the said property had not lapsed, as the prescribed period of one year from the issuance of the statutory purchase notice under Section 127 of the MRTP Act had not expired, when the revised part Development Plan had been sanctioned by the State Government. This Court has held that the notification sanctioning the revised Development Plan has to be given effect to and that the prescribed period under Section 127 of the MRTP Act would commence from the date of the notification. This has been held by this Court in *Prafulla C. Dave v. Municipal Corporation, Pune*². Paragraphs 16 to 18 of the decision read thus:—*

...

13. It is clear from the said decision that the notification sanctioning the revised Development Plan is treated as final Development Plan and the prescribed period under Section 127 of the MRTP Act would commence from the date of the notification sanctioning the revised Development Plan. In the present case, the reservation of the subject property by the sanctioned revised Development Plan would be the fresh starting point of the period prescribed under Section 127 of the MRTP Act. Hence, the period of ten years provided under Section 127 of the MRTP Act would start running from the sanctioning of the revised Development Plan on 4th April 2012 and only upon expiry of that period, purchase notice can be issued and upon expiry of one year from the issuance of

the purchase notice, reservation of the said property can be said to have lapsed. There is thus no lapsing of reservation in the present case.

(Emphasis is supplied by the learned AG)

Reliance on Decisions in Bhavnagar, Santo Jaibhave and Sadashiv Tryambak is misplaced

(R) The reliance placed on the decision of the Hon'ble Supreme Court in *Bhavnagar University*¹⁰ is misplaced. The case arose in the context of Sections 20 & 21 of the Gujarat Town Planning & Urban Development Act, 1976¹¹, which legislation is materially different and does not contain certain specific provisions embodied¹² in the MRTP Act, 1966.

(S) As would be evident from the said judgment, the case arose in a different factual situation. Under the Gujarat Act, revision of

10 *Bhavnagar University v. Palitana Sugar Mills* (2003) 2 SCC 111

11 “20. Acquisition of land. —(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), clause (f), clause (k), clause (n) or clause (o) of sub-section (2) of Section 12, may acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894.

(2) **If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisition, the designation of the land as aforesaid shall be deemed to have lapsed.**”

“21. Revision of development plan. —**At least once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if necessary, a fresh survey and the provisions of Sections 9 to 20, shall, so far as may be, apply to such revision.**”

12 See Section 37, 49 and 50 of the MRTP Act, 1966, which provisions are absent in the Gujarat Act.

development plan was mandatory every ten years, coinciding the period after which reservation would lapse, creating a unique statutory context not present in the instant case.

(T) In that case, the land owners contended that under Section 20(2) of the Gujarat Town Planning & Urban Development Act, 1976 upon the failure of the authorities to acquire the reserved land, after 6 months of the service of the purchase notice and the expiry of 10 years from the coming into force of the final development plan viz., the reservation in question had lapsed. The authorities contended that the sanction of revised development plan, which under Section 21 of said Act, was bound to take place at least once in 10 years from the coming in to force of the final development plan, arrested the lapsing of the reservation.

(U) In that case the Supreme Court held that if the contention of the Authorities were accepted, and that upon every revision of the development plan every 10 years from the date of coming into force of the final development plan under Section 21 of the said Act, would start a fresh period of 10 years, Section 20(2) of the said Act would be rendered completely otiose. It was in this specific context that the decision was rendered.

(V) Some of the observations of the Supreme Court in *Bhavnagar University*, which make this evident, are as under:

37. The said words indicate the intention of the legislature to the effect that by providing revision of the final development plan from time to time and at least once in ten years, only the procedure or preparation thereof as provided therein is required to be followed. Such procedural requirements must be followed so far as it is reasonably possible. Section 21 of the Act, in our opinion, does not and cannot mean that the substantial right conferred upon the owner of the land or the person interested therein shall be taken away. It is not and cannot be the intention of the legislature that what is given by one hand should be taken away by the other.

38. Section 21 does not envisage that despite the fact that in terms of sub-section (2) of Section 20, the designation of land shall lapse, the same, only because a draft revised plan is made, would automatically give rise to revival thereof. Section 20 does not manifest a legislative intent to curtail or take away the right acquired by a landowner under Section 22 of getting the land defreezed. In the event the learned Solicitor-General is accepted, the same would completely render the provisions of Section 20(2) otiose and redundant.

(Emphasis is supplied by the learned AG)

(W) That the decision in *Bhavnagar University (supra)* was confined to the factual context set out herein above is evident from some of the subsequent decisions of this Hon'ble Court.

(i) In *Manakini Ruprao Khangar v. State of Maharashtra 2023 SCC Online Bom. 1050*, this Hon'ble Court distinguished the decision in *Bhavnagar University* at paragraphs 19 to 22. This Court

noted that the Supreme Court was considering the provisions of the Gujarat Town Planning Act, wherein there was no opportunity available for the owner of land reserved under the development plan to issue a purchase notice in view of the fact that the revision in plan was mandated every ten years. In that contingency, the Supreme Court held that section 21 of the Gujarat Act, does not and cannot mean that the substantive right conferred upon the owner of the land or the person interested therein shall be taken away and it is not and cannot be the intention of the Legislature that which is given by one hand should be taken away by the other.

(ii) Similarly, in *Prafulla C. Dave vs. Municipal Commissioner 2008 (3)Mh. LJ 120*, this Hon'ble Court at para 11 distinguished the judgment in *Bhavnagar University* on the ground that it did not answer the question raised therein. Paragraph 11 of the judgment is quoted as under:

“In Bhavnagar University v. Palitna Sugar Mill Pvt. Ltd., reported in (2003) 2 SCC 111 : AIR 2003 SC 511 the question which arose for consideration was whether by reason of inaction on the part of the State and its authorities under the Town Planning Act to acquire the lands for a period of more than 10 years, in terms of the provisions of Land Acquisition Act, 1894 despite service of notice, the same stood dereserved/de-designated in view of issuance

of draft revised plan under section 21 thereof or the term of 10 years stood extended? The Supreme Court was pleased to hold that after the period of 10 years as required under the Gujarat Act had expired and if the land had not been acquired in the manner contemplated merely because the draft revised plan was issued would not automatically extend the period of reservation. Considering section 21 of the Gujarat Act, the Court held that section 21 of the Act, in their opinion, does not and cannot mean that the substantive right conferred upon the owner of the land or the person interested therein shall be taken away and it is not and cannot be the intention of the Legislature that which is given by one hand should be taken away by the other. This was in the context that the planning authority was bound to revise the plan on the expiry of ten years from the notification of the sanctioned draft plan and the notice to acquire could ordinarily be given and on the expiry of ten years from the notification of the sanctioned plan. In other words, the owners would have no opportunity of serving the notice if in the draft revised plan a further extension of reservation was provided for. This Judgment does not answer the issue which has been raised by the petitioners herein.

(Emphasis is supplied by the learned AG)

The aforesaid decision of this Hon'ble Court was confirmed by the Supreme Court.

(X) The reliance on the decision in *Sadashiv Tryambak Rajebahadur* is misplaced. In that case, a purchase notice was issued on 8th July, 2015. Thereafter, on 29th August, 2015, the prescribed period of 12

months after the issuance of the purchase notice was substituted by 24 months by an amendment to Section 127 of the MRTP Act, 1966. In the meanwhile, a revised Development Plan was partly sanctioned on 9th January, 2017. Opposing the grant of any relief, the Respondent contended that, in light of the period having been extended to 24 months, the period after the purchase notice had not expired on the date on which the revised Development Plan was notified, and as such, the reservation had not lapsed. The Division Bench of this Hon'ble Court proceeded on the basis that the amendment extending the period from 12 months to 24 months would not apply to the notices which had already been issued prior to the amendment. According to the Division Bench, the same would tantamount to giving retrospective effect to the amendment. This judgment proceeds on a premise which is contrary to the Full Bench judgment of this Hon'ble Court in *Vishwas Bajirao Patil (supra)*, and therefore, the said judgment is no longer good law.

(Y) The reliance on the decision in *Santo Sukhdeo Jaibhave* is misplaced. In that decision, the purchase notice was issued on 14th July, 2015 and prior to expiry of 24 months, a revised Development Plan came into force on 9th January, 2017. An argument made on behalf of the Respondent that a purchase notice under Section 127 could not have been

issued after the publication of the draft revised Development Plan under Section 26 of the MRTP Act, 1966 though admittedly not sanctioned. This was the question framed by this Hon'ble Court in paragraph 25 of the judgment which reads as under:

25. Question that arises for consideration of this Court is whether the purchase notice issued by the petitioners subsequent to the date of the Draft Revised Development Plan for the city of Nashik would be a valid notice or not or the petitioners were required to again wait for expiry of 10 years from the date of the Draft Revised Development Plan for the city of Nashik and then issue a fresh notice and then if no steps would be taken by the respondents within the time prescribed, the reservation in respect of the writ land would lapse at that stage or not.

(Z) This judgment at paragraph 41 proceeded on the basis that a statutory right had accrued in the Petitioners on the issuance of the notice which is contrary to the decision of the Full Bench in ***Vishwas Bajirao Patil (supra)***. This judgment did not deal with the effect of the issuance of the final notification prior to the expiry of the statutory period of 24 months and it was held as under:-

41. In the present case, the notification under Section 6, admittedly, has not been issued. The statutory notice viz. the Purchase Notice under Section 127 of the MRTP Act was issued on 14th July 2015 and it is evident that no steps as contemplated under Section 126(1)(c) read with Section 127 were taken before the expiry of the statutory period of 24 months. We are unable to agree with the submissions of Ms. Deshmukh

on the application of the judgment of Prafulla C. Dave (supra) as it would deprive the petitioners of their statutory rights. In this regard, the Apex Court in the case of Godrej And Boyce Manufacturing Company Limited (supra) has held that the statutory right accrued to the owners cannot be taken away by an attempt to impose fresh reservation. We are also unable to agree with the contention of Mr. Patil that the publication of the Draft Revised Plan having been published prior to the issuance of the Purchase Notice and the same would have an effect of continuing the reservation on account of the same being sanctioned subsequently.

(AA) The decision in ***Santo Sukhdeo Jaibhave*** has been clarified by the Hon'ble Bombay High Court subsequently in ***Babarrao Dattu***¹³. The Division Bench of the Hon'ble Bombay High Court has held that a right of de-reservation accrues to the landowner upon application of deeming fiction if he issues notice to the appropriate authority and the said authority fails to take steps for acquisition of the land in question within the period prescribed under Section 127 of the MRTP Act, 1996.

(BB) In relation to the decision in ***Santo Sukhdeo Jaibhave***, the Division Bench of this Hon'ble Court clarified as under:

“In the case of Santu Sukhdeo Jaibhave (Supra), a Coordinate Bench of this court has taken a view that in a case involving question of deemed lapsing of reservation, the draft revised development plan has no legal sanctity and it cannot be

¹³ Babarrao Dattu v. State of Maharashtra 2023 SCC Online Bom. 1590

considered as final. In other words, the Division Bench has taken a view that the question of deemed lapsing of reservation can be examined only in the context of final revised development plan and not in the context of draft revised development plan and if purchase notice has been issued after draft revised development plan is published but before it has received sanction so as to become a final revised development plan, the right shall accrue to the land owner to seek benefit of deemed lapsing of reservation, if other conditions of Section 127 of the MRTP Act are fulfilled.”

(CC) No conflict therefore arises between the decisions in the case of this Court in *Salim Nizam Sanadi* and *Amuksidha Majge* on the one hand and *Santu Sukhadeo Jaibhave* and *Sadashiv Tryambak Rajebahadur* on the other hand. On the consideration of the aforesaid, it is apparent that decision in *Salim Nizam Sanadi* and *Amuksidha Majge* which dealt directly with the issue of the effect of a revised Development Plan being notified prior to the expiry of the statutory period after issuance of the purchase notice. Neither the judgment in *Santu Jaibhave* nor the judgment in *Sadashiv Rajebahadur* dealt with this issue. Both these decisions dealt with the effect of draft Development Plan being issued prior to the expiry of the statutory period after the purchase notice.

(DD) The Petitioner has contended that Section 38 of the MRTP Act, 1966, requires the Planning Authority to revise the Development Plan “at least once in 20 years” and therefore, in a given case the Planning

Authority may propose the revision of the Development Plan even before the expiry of period of 10 years, thereby frustrating the purported rights of the landowner available under Section 127 of the MRTP Act, 1966. The Petitioner implies that the provision may be abused to deny the landowners of the rights conferred under Section 127 of the MRTP Act, 1966.

(EE) It is settled law that a mere possibility of the abuse of a provision does not affect its construction. The construction of a statutory provision cannot be determined on the assumption that the executive or authority will abuse the provision in an arbitrary manner in exercise of the discretion conferred on it.¹⁴ It is therefore submitted that the Petitioner's contention as to possibility of abuse cannot be accepted.

(FF) It is further submitted that the fact that in the Revised Development Plan sanctioned under Section 38 of the MRTP Act, 1966 the concerned land continues to be reserved for the same purpose is of no relevance. As set out herein above, under the provisions of the MRTP Act, 1966 the Planning Authority has complete liberty to revise the Development Plan in terms of the procedure under the Act and can decide to continue the reservation for the concerned land either for the same

¹⁴ See Generally *DK Trivedi & Sons v. State of Gujarat* 1986 SCC Online SC 374 at Pr. 50; *Collector of Customs v. State of Punjab* at Pr. 34

purpose or for any other purpose. The Petitioner's contentions in this regard are devoid of any merit.

(GG) In *Godrej & Boyce Manufacturing Company Ltd.*¹⁵, challenge was laid to the notification dated 5th August 2008, issued by the State Government under Section 37(1) of the MRTP Act, 1966, proposing to modify the development plan by deleting the reservation of the land in question from Railways and adding the reservation for Road. In that case, 10 years after the expiry of the development plan, the Appellant issued a purchase notice dated 04th September 2002 under section 127 of the MRTP Act, 1966. The period of six months prescribed at the relevant time under Section 127 of the MRTP Act, 1966, after issuance of the purchase notice had expired on 03rd March 2003. In this context, the Supreme Court set aside the notification dated 05th August 2008 modifying the reservation under the development plan, holding that upon the expiry of 10 years and 6 months' notice period, the Appellant acquired a statutory right over the land, and in view thereof, the notification could not be given effect to. The relevant extracts from the said judgment are reproduced as under :

¹⁵ *Godrej & Boyce Manufacturing Co. Ltd. v. State of Maharashtra* (2015) 11 SCC 554

17. *By a careful reading of the provisions of Sections 127 and 37(1) of the MRTP Act, which are extracted as above abundantly make it clear that the State Government is not empowered to delete the reservation of the land involved in this case from railway use and to modify the same for development plan of road in the development plan after expiry of 10 years and 6 months' notice period was over as the appellant has acquired the valuable statutory right upon the land and the reservation of the same for the proposed formation of railway track had lapsed long back. Further Respondent 2 vide its Letter dated 1-11-2004 has stated that there is no proposal for acquisition of land for the purpose for which it was reserved.*

20..... Therefore, we have to hold that the impugned notification is bad in law and liable to be quashed. The High Court has not examined the impugned notification from the viewpoint of Section 127 of the MRTP Act and interpretation of the abovesaid provision made in *Girnar Traders (2) [Girnar Traders (2) v. State of Maharashtra, (2007) 7 SCC 555]*, therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is a futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved for has not been utilised for that purpose and a valid statutory right is acquired by the landowner/interested person after expiry of 10 years from the date of reservation made in the development plan and 6 months' notice period has also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the development plan from deleting for the purpose of the Railways and adding to the development plan for the formation of development plan of road after lapse of 10 years and expiry of 6 months' notice served upon the State Government.

(Emphasis is supplied by the learned AG)

(HH) In *Kesaranand Ginning & Pressing Factory v. State of Maharashtra (Aurangabad Bench) Writ Petition No. 8878 of 2015 (order dated 25th February 2016)*, the Respondent authority sought to resist a declaration of lapsing by the landowner, on the ground that upon the publication of the revised development plan, a fresh purchase notice under Section 127 of MRTP Act had not been issued. In that case, the revised development plan was published on 04th December 2012, more than 1 ½ years from the service of the purchase notice dated 09th March 2011 under Section 127 of the MRTP Act, 1966. Relying upon the decision in *Godrej and Boyce Manufacturing Company Limited vs. State of Maharashtra (2015) 11 SCC 554*, this Hon'ble Court held that upon the expiry of 1 ½ years from the date of service of the purchase notice, the rights of the Petitioners stood crystallised. It is pertinent to note that at the relevant time, the prescribed period under Section 127 of the MRTP Act, 1966 was 12 months from the date of service of the purchase notice.

(II) In *Natwarlal Dhanjibhai Vora v. State of Maharashtra (Aurangabad Bench) Writ Petition No. 8996 of 2018* (order dated 03rd May 2023), the Respondent authority sought to resist a declaration of lapsing by the landowner, on the ground that a revised development plan had been published. In that case, the final development plan came into effect on 31st

October 1981. After the expiry of 10 years therefrom, the Petitioner vide purchase notice dated 08th March 2011 called upon the planning authority to acquire the land. However, admittedly, the planning authority failed to do so within 1 year of the service of the purchase notice, which was the period prescribed at the relevant time. Relying upon the decision in *Kesaranand Ginning (supra)*, the High Court noted that the revised development plan came into effect after 1 ½ years of the service of the purchase notice under Section 127 of the MRTP Act, and the rights of the Petitioner stood crystalised. (Pr. 9).

(JJ) The SLP against the judgment of the Aurangabad Bench was dismissed by the Supreme Court, stating that it was not inclined to interfere with the impugned judgment. It is well settled that the doctrine of merger is inapplicable to the dismissal of SLPs by the Hon'ble Supreme Court. In other words, an order refusing special leave to appeal does not stand substituted in place of the order under challenge (*See Kunhayammed & Ors. v. State of Kerala 2000(6) SCC459*)

(KK) In *Leelabhai Champal Chajjed v. State of Maharashtra (Aurangabad Bench) Writ Petition No. 8355 of 2023* (order dated 02nd

February 2024) the petition seeking declaration of lapsing of reservation was sought to be resisted on the ground that a modified development plan with effect from 15th May 2012 had been sanctioned under Section 37 (1) of the MRTP Act, 1966 and therefore, the purchase notice dated 22nd June 2000 was premature. In this context the High Court citing the judgments in *Girnar Traders, Santu Sukhdeo Jaibhave* and *Natwarlal Dhanjibhai Vora* held that despite the expiry of a more than a decade after the issuance of the purchase notice dated 22nd June 2000, the authority had failed to take any effective steps as contemplated under Section 127 of the MRTP Act, 1966 and the Petitioner's rights stood crystalised as held by the Supreme Court in *Godrej Boyce*.

OUR ANALYSIS AND CONCLUSION

9. On considering the sequence of dates and events, on which there is no dispute, we find that the following aspects are decisive :-

- (a) The land at issue has been subjected to reservation bearing no.80 for the purpose of constructing the Regional Transport Office ('RTO') vide the second Revised Development Plan dated 18th December, 1992 under the provisions of the MRTP Act, 1966.

(b) The requisite period of 10 years for issuing a purchase notice expired on 18th December, 2002.

(c) The owner has not issued any purchase notice immediately after 18th December, 2002.

(d) On 10th September, 2010, the Planning Authority declared its intention in the Maharashtra Government Gazette, to prepare a Draft Development Plan (Third Revision) from the Area within the limits of Phaltan Municipal Council.

(e) On 5th March, 2012, a Registered Sale Deed was executed by Shrikrushna Ramchandra Damodare, by virtue of which, the present Petitioner, Nilesh Prakashrao More became the owner of the Writ Property.

(f) The Petitioner has raised objections on 23rd October, 2013 in respect of the Third Revised Draft Development Plan. Yet, a purchase notice was not issued.

(g) On 19th August, 2014, the Phaltan Municipal Council passed a Resolution No.32 and made certain modifications in the

Third Revised Draft Development Plan. Yet, a purchase notice was not issued.

(h) On 17th November, 2015, the Petitioner issued a purchase notice under Section 127 of the MRTP Act, 1966. This is undisputed.

(i) On 5th March, 2016, Reservation Notice was addressed by the Phaltan Municipal Council to the Collector Satara with a proposal to acquire the land under reservation.

(j) On 23rd May, 2016, the Government of Maharashtra issued a notification granting partial sanction with modification to the Third Revised Draft Development Plan.

(k) On 16th March, 2017, the Deputy Director Town Planning, Satara, addressed a letter to the RTO, Kolhapur bringing to his notice that Reservation No.80 was for the purpose of constructing a building for the RTO.

(l) The Petitioner preferred an application to the Phaltan Municipal Council for obtaining development permission for his

land (writ land under reservation), which was rejected by the Municipal Council on 28th June, 2017.

10. For ready reference, we are reproducing the relevant Sections 2(19), 31(1), 31(6), 38, 126 & 127 of the MRTP Act, 1966 hereunder, :-

“2(19). Definition

[(19) “Planning Authority” means a local authority; and includes,-

(a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40;

(b) in respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act;]”

Section 31 - Sanction to draft Development plan

*(1) Subject to the provisions of this section, and not later than [twelve months] from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, [* * *] the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper or return the draft Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan:*

[Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period as may be specified in the notification:]

[Provided further that, where the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 30 and proposed to be approved by the State Government without any further change are of a substitutional nature with respect to the draft Development plan published under Section 26, the Government shall publish a notice in the Official Gazette and also in not less than two local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of one months, from the date of such notice]:

.....

.....

“(6) A Development plan which has come into operation shall be called the “final Development plan” and shall, subject to the provisions of this Act, be binding on the Planning Authority.”

“38. Revision of Development Planning.

At least once in [twenty years] from the date on which a Development plan has come into operation, and where a Development plan is sanctioned in parts, then at least once in [twenty years] from the date on which the last part has come into operation, a Planning Authority may [and shall at any time when so directed by the State Government], revise the Development Plan [(either wholly, or the parts separately)] after carrying out, if necessary, a fresh survey and preparing an existing land-use map of the area within its jurisdiction, and the provisions of sections [* *] 22, 23, 24, 25, 26, 27, 28, [* * *], 30 and 31 shall, so far as they can be made applicable, apply in respect of such revision of the Development Plan.”*

“126. Acquisition of land required for public purposes specified in plans

(1) When after the publication of a draft Regional plan, [structure plan] a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, [any Appropriate Authority may, except as otherwise provided in section 113A] [acquire the land,-

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessors interest to be determined by any of the said Authorities concerned [on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making in application to the State Government for acquiring such land [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013],

and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section [or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], as the

case may be, shall vest absolutely free from all encumbrances in the Planning Authority. Development Authority, or as the case may be, any Appropriate Authority.]

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or [if the State Government (except in cases falling under section 49 [and except as provided in section 113A])] itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, [in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section :

[Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]

[(3) On publication of a declaration under the said [section 19], the Collector shall proceed to take an order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,-

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town ;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area ; and

(iii) in any other case, the market value on the date of publication of the interim development plan, the draft

development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft Town Planning Scheme :

***Provided that,** nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 :*

***Provided further that,** for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.]*

[(4) [Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration] is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning [(Amendment) Act, 1993], the State Government may make a fresh declaration for acquiring the land [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.]”

127. Lapsing of reservations

“[(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the

documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [twenty-four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

[(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]”

11. The much debated question that falls for our consideration is framed as under :-

‘whether the sanction of the revised development plan, imposing a fresh reservation, after the receipt of the purchase notice, and before the expiry of the prescribed period of two years from the date of service of such notice, would continue the reservation for a further period of ten years?’

We have formulated the above issue, keeping in mind that the law on sanctioning a revised development plan, prior to the service of the purchase notice, and also after the expiry of the prescribed period from the date of service of such notice under Section 127(1) of the MRTP Act, 1966, is no longer res integra [*Prafulla C. Dave vs. Municipal Commissioner (2015)*

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12. It is, thus, well settled that there is no vested right in an owner of the land or a person interested in the land to seek lapsing of reservation. A claim for lapsing would get converted into a right, only after all the requisites u/s 127 are satisfied. In short, the said claim for lapsing of reservation would assume the character of a right, only after the requirements under section 127 are satisfied.

13. The Division Bench (herein after '**The Referring Bench**') had noticed a conflict of views between the Division Benches of this Court, and vide the order dated 29th July 2024, expressed a view that the Hon'ble The Chief Justice of the Bombay High Court may consider referring the matter to a bench of 3 Judges. Since no issues as such were framed, the proceedings have been referred to our Bench for a decision, under Chapter I, Rule 8 of the 1960 Rules.

14. On perusing of view of the Referring Bench and the judgments cited, We observe that the view of the Full Bench of this Court in **Vishwas Bajirao Patil** (supra), was never brought to the notice of the Division Benches, which observation is shared by the Referring Bench in it's reference order. Nevertheless, there is no dispute before us that the Petitioner admits that the period of 2 years (24 months) from the date of

the issuance of the purchase notice u/s 127, would have expired on 16th November, 2017.

15. In the above backdrop, the question is, what would be the fate of the purchase notice when the revised development plan was finalised by the State on 23/05/2016, which is after the amendment introducing the 24 months period instead of the 12 months. Even otherwise, the revised development plan was finalised within 12 months from the date of receipt of the purchase notice, which is 17/11/2015.

16. In *Prafulla C Dave* (supra), the Hon'ble Supreme Court has crystallised the law that, if the revised development plan is finalised u/s 38 before the issuance of the purchase notice, the reservation get a new lease of life of 10 years and the owner is precluded from issuing a purchase notice within 10 years from the date of the finalisation of the revised development plan. It is also crystallised that if the revised development plan is sanctioned after two years from the receipt of the purchase notice, the reservation would stand lapsed. It is also trite law that an owner of the land under reservation or any person having interest, would have no vested right towards lapsing of reservation, until the passage of 24 months from the receipt of the purchase notice.

17. Section 38 clearly permits revision in the development plan, once in 20 years. In the facts of the case before us, there was no revision in the 20 years preceding the revision on 23/05/2016. Section 38 of the MRTP Act, 1966 cannot be rendered nugatory or itiose. What is permissible in law cannot be obliterated. The Council had adhered to section 38 when the draft development plan was submitted to the State which finally revised the plan on 23/05/2016. This revision cannot be faulted, much less, legally. Under section 38, the Planning Authority has the freedom and liberty to revise the Development Plan by following the procedure under the Act. It can proceed to continue the reservation over the concerned land, either for the same purpose or for any other purpose, which change is not legally barred. The said land, therefore, continues to be under reservation and at no stage can such reservation be said to have auto-lapsed. In the present case, the purpose for the reservation is not changed, though any change would not have inured to the advantage of the Petitioner.

18. In Writ Petition No.9610 of 2019 (*Vinod Ramnarayan Agrawal And Others V/S. The State of Maharashtra And Others*) decided by the Aurangabad Bench on 24th April 2023, the issue of filing of a Writ Petition seeking issuance of the Writ of Mandamus to declare the lapsing

of reservation, was dealt with. Noticing that the Writ Petition was filed before the expiry of the two years from the issuance of the notice, it was held that such a Petition was premature and deserved to be dismissed. The relevant conclusions are found in paragraphs 15, 16 and 17, which read as under :-

“15. However, the notice under Section 127(1) was issued on 07.09.2017 and the petition has been filed on 04.07.2019 that is within 24 months of the date of notice. By virtue of the amendment in Section 127 which came into effect from 29.08.2015 vide Section 7 of the Maharashtra Act 42 of 2015 a period of 24 months from the date of service of the notice has been kept as a window for the planning authority to take steps towards acquisition. It is trite that this statutory period is mandatory and the decisions are in plenty.

16. In the matter of Prafulla C. Dave (Supra) which has been referred to and relied upon by a full bench of this Court in the matter of Madanlal Zumberlal Nahar and others Vs. The Chief Officer Municipal Council Beed and others, in Writ Petition 2260/2010 with WP 4232/2008 decided on 13.03.2023, though in a little different context, this period has been held to be mandatory.

17. Pertinently, in the matter of Hasmukhrai (supra), the period that was consumed by way of pendency of the petition was held to be entitled to be considered by way of tagging to this statutory period. However, in the matter of Chhabildas (supra), it has been emphatically held that the decision in the matter of Hasmukhrai and even a similar view taken by the Supreme Court in the matter of Chhabildas was in exercise of the powers under Article 142 of the Constitution which powers the High Courts does not

have. Therefore, when the petition has been filed on 04.07.2019, even before expiry of 24 months of service of notice under Section 127 on 07.09.2017 as is appearing on acknowledgment in the copy of the notice (Exh. 'D'), we are afraid, the petitioners are not entitled to seek any declaration regarding lapsing of reservation."

19. The Hon'ble Supreme Court has crystallised the law in ***Prafulla C Dave*** (refer to paragraph no. 21 of the said judgment reproduced herein above) that, if *'a revised plan under Section 38 comes into effect, before the issuance of the notice u/s 127, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan, otiose and nugatory. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated*

by Section 127 i.e. giving/service of notice by the landowner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the landowner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play.’

20. The decision of the Full Bench of this Court in ***Vishwas Bajirao Patil*** (placing reliance upon ***Prafulla C Dave***) clears all doubts about the creation of the right to seek lapsing of reservation. The Full Bench has concluded that no right is vested in a person having an interest in the land by merely serving a notice as contemplated under Section 127 of MRTP Act. Such right would vest in the landowner upon the expiry of the period of one year from the date of issuance of such notice. This period of one year is now amended and extended to two years. The Full Bench answered the reference by concluding that the right would have vested upon the expiry of one year (now read as two years) of the notice. As such, there is no right created in favour of the noticee till the expiry of two years.

21. Considering the law as it stands today, we conclude as under :-
- a) no right for lapsing of reservation is vested in the owner purely on the issuance of the purchase notice u/s 127, until the passage of 24 months from the date of service of the notice.
 - b) as a consequence of the above, a Writ Petition seeking issuance of a Writ of Mandamus or an order or direction to declare the lapsing of the reservation, cannot be filed until the expiry of 24 months from the date of receipt of the purchase notice u/s 127.
 - c) in view of the dictum of the Hon'ble Supreme Court in **Prafulla Dave** (supra), if the revised final development plan is effected by strict compliance of section 38, after the receipt of the purchase notice and prior to the expiry of 24 months, the reservation shall continue for a further period of 10 years and only after the expiry of the 10 years, can the owner or the interested party issue a fresh purchase notice u/s 127.

22. As a consequence of the above, we record that the view expressed by the Division Bench of this Court in *Salim Nizam Sanadi* (supra) and *Shri. Amuksidha Shrikant Majge* (supra), lay down the correct position of law.

23. Pursuant to our aforestated conclusion, the prayers put forth in this Petition by the Petitioner are devoid of merit and this **Writ Petition, therefore, dismissed.**

24. **Rule is discharged.**

[RAVINDRA V. GHUGE, J.]

[SANDEEP V. MARNE, J.]

[ABHAY J. MANTRI, J.]