REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.831 OF 2020
(@ SLP(C)No. 20585 of 2015)

MOHANDAS AND OTHERS ... APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ... RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. Leave granted.

2. Appellants are the petitioners before the High Court of Bombay. By the impugned Judgment, the Writ Petition filed by them stands dismissed.

3. **The prayers sought by the appellants are as follows:**

> **“(A) Quash and set aside the Reservation No.S-169 in the Final Development Plan of Gondia (Second Revised), whereby the land bearing Survey Nos. 405/1, 406/2, 407/2, 410/2 and 411 of Mouza-Gondia (Bk.), Tehsil & District-Gondia, belonging to the petitioners is reserved for Shopping Complex and Vegetable Market (Annexure “J”).**
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> **(B) Hold and declare that the land bearing Survey Nos. 405/1, 406/2, 407/2, 410/2 and 411 of Mouza-Gondia (Bk.), Tehsil & District-Gondia, are not reserved for the development of Shopping Complex and Vegetable market vide Reservation No.S-169 in the Final Development Plan of Gondia (Second Revised) and that the petitioners are free to use and develop the said land as true lawful and absolute owners thereof as per the user for the adjacent land provided under the Final Development Plan of Gondia (Second Revised) {Annexure “J”}.”**

4. **Briefly, their case, before the High Court, is as follows:**

Appellants are the owners of different plots of land totally admeasuring 0.52 hectares. They purchased the land on 02.01.2006. A Development Plan was issued under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'the Act', for short). Under the Development Plan issued, the entire land owned by the appellants was reserved for construction of shopping complex. First respondent and the fourth respondent (State of Maharashtra and the Municipal Council, Gondia), however, did not take any steps. The Plan was enforced from 1984. The erstwhile owners of the property issued a notice dated 09.06.2004 under Section 127 of the Act calling upon the fourth respondent to initiate necessary steps for acquiring the land. The Municipal Council held a meeting on 15.02.2005. It was alleged that the fourth respondent decided, by Resolution, not to acquire the land. Reference is placed on letters of 07.04.2005 and 08.04.2005 intimating that the land

was free to be used and developed in accordance with the user of adjacent lands. Though a draft Award was made by the Special Land Acquisition Officer, it was dropped on account of non-availability of funds. It is the further case of the appellant that appellant had submitted proposal for regularization of the layout carved out Plan over the said land. In the meantime, a revision of the Development Plan was contemplated and a Draft Plan was published followed by public notice. Again, the revised draft Plan showed that the appellants property was reserved for shopping complex and vegetable market. Appellants objected to the same. Appellants were called for hearing by the fourth respondent. Appellants immediately thereafter approached the first respondent with detailed representation. On 15.05.2012, the final Development Plan of Gondia (Second Revised Scheme) came into effect. The appellants property is shown as reserved for shopping complex and vegetable

market. It is essentially on these facts and complaining of inaction on the notice given by their predecessors in the interest under Section 127 of the Act and contending that the reservation in the Development Plan has ceased to exist, the Writ Petition was filed seeking reliefs, as noted by us. The Writ Petition was opposed. The High Court, by the impugned Order, dismissed the Writ Petition.

5. We have heard the learned Senior Counsel for the appellants Shri Shekhar Naphade. We also heard the learned Counsel for the first respondent-State of Maharashtra. There was no representation on behalf of the fourth respondent-Municipal Council.

6. Shri Naphade, learned Senior Counsel pointed out that the Development Plan, reserving the property of the appellants, was made way back in the year 1984. A notice was given within the meaning of Section 127 of

the Act. As there was no appropriate action as contemplated under Section 127, the inevitable consequence is that the property of the appellants must be freed from the reservation it is subjected to in the Development Plan.

7. Section 127 of the Act must be noticed at once. It reads as follows:

> **"127. (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, alongwith 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 twelve 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.]"

8. When the Court pointed out the fact that the High Court has found that there is a declaration under Section 126(4) of the Act within ten years from 1984, i.e., on 03.09.1992, the learned Senior Counsel would point out that even proceeding on the basis of the same, it is wholly unjust to keep under captivity, as it were, the valuable properties of the appellants seemingly eternally. He further complained that it is not as if any public purpose is going to be sub-served. This is a case where the Municipal Council, which is the Authority, which must make available the funds for the acquisition of the property, is in dire financial

straits and is unable to finance the acquisition. The Municipal Council does not, in fact, want to acquire the land. The letters issued and referred to by us is referred to. The appellants are, thus, held hostage and are at the receiving end of the most unfair treatment by paying obeisance to the letter of the law as contained in Section 127 of the Act. He would further point out that the reasoning of the High Court about the effect of the revised Scheme coming into force under Section 38 of the Act is fallacious and goes against the view of this Court in Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others[1]. He also drew our attention to a recent judgment of this Court in Chhabildas v. State of Maharashtra and others[2]. He would, therefore, contend that this is a fit case where this Court may reach justice to the appellants who virtually stand deprived of their property within the meaning of Article 300A of the Constitution of India.

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1 **(2003) 2 SCC 111**

2 **(2018) 2 SCC 784**

9. ***Per contra,*** **the learned Counsel on behalf of the first respondent pointed out that the impugned judgment is premised soundly in law. Appellants, who sought to invoke the provisions of Section 127 of the Act, based on notice issued by their predecessor in interest, have, in the light of the finding that declaration has been made under Section 126(4) within a period of 10 years (1992) of the Plan, issued in 1984, stand deprived of any legal right to the consequences under Section 127 of the Act following non-compliance with such notice. He does not dispute the fact that there is considerable delay.**

10. The legal principles about the provisions which we are concerned with, is no longer *res integra*. The effect of the Act has been explained in the decisions reported in Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association and others[3], Girnar

3 **(1998) Supp. SCC 55**

Traders v. State of Maharashtra and others[4] [Girnar 2], Girnar Traders (3) v. State of Maharashtra[5] [Girnar 3] among other cases. We will advert to them in due course.

11. Undoubtedly, the scheme of the Act briefly put is as follows:

> **The Act contemplates planned development. Chapter II deals with provisions relating to regional plans. Regional Plan is defined in Section 2(25) as meaning a plan for development or redevelopment of a region approved by the State Government and which has come into operation under the Act. Region is in turn defined as an area established to be a region under Section 3 of the Act. Development Plan falls under Chapter III of the Act. The Act contemplates that every Planning Authority is to prepare the development authority.**

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4 **(2007) 7 SCC 555**

5 **2011 (3) SCC 1**

Development Plan is defined under Section 2(9) as a Plan for the development or redevelopment of the area within jurisdiction of a Planning Authority. It also includes revision of a development plan and proposals of the Special Planning Authority for development of land within its jurisdiction. Development is defined in Section 2(7) in a very comprehensive way. Planning Authority is defined in Section 2(19), and after its substitution by Act 5 of 1992, it means a Local Authority and includes a Special Planning Authority under Section 40 as also the Slum Rehabilitation Authority under Section 3(a) of the Maharashtra Slum Areas Improvement, Clearance and Regional Act, 1971. Spread over the various Sections of Chapter III, are elaborate provisions including preparation of draft Development Plans and finalizing the same, implementation, revision and variation of the Plan. Section 43 of the Act speaks about restrictions on the development of land upon the declaration of

intention to prepare a Development Plan. Section 45 speaks about the power to grant or refuse permission for the Application under Section 44 to develop the land.

Chapter V deals with Town Planning Schemes. The word 'Scheme' has been defined as including a Plan relating to Town Planning Scheme.

12. Bearing these provisions in mind, we come to Chapter VII. Provisions under the said Chapter relate to land acquisition. Section 125 of the Act provides that any land acquired, reserved or designated in Regional Plan or Development Plan or Town Planning Scheme, *inter alia*, shall be deemed to be land needed for public purpose, under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Settlement Act, 2013 (Prior to 29.08.2015, undoubtedly, the words were under the Land Acquisition Act, 1894, as far as the last part is

concerned). Sections 4 to 15 of the 2013 Act is not made applicable in respect of the said lands. Section 126 of the Act deals with the mode of applying the law relating to acquisition in regard to a draft Regional Plan or Development Plan or any other Plan or Town Planning Scheme. Sub-Section (1) contemplates acquiring land either by agreement or the basis of granting of other rights including Transferable Development Right (TDR). Lastly, the Authority can apply to the State Government for acquiring such land under the law relating to land acquisition. Sub-Section (2) contemplates action on the part of the State Government on receipt of application under Sub-Section (1). It contemplates a declaration by the State Government. It provided, *inter alia*, that the declaration was to be deemed to be a declaration under the Land Acquisition Act, 1894 and after the amendment, as it stands now, under Section 19 of the Right to Fair Compensation Act, 2013. After substitution by Act 10 of 1994, no declaration was to be made after expiry of one year

from the date of publication of the draft Regional Plan, Development Plan or any other Plan or Scheme. Sub-Section (3) of Section 126 of the Act provides for the Collector to proceed to take order for acquisition of the land. Sub-Section (4) of Section 126 of the Act, reads as follows:

> **"126(4)Notwithstanding anything contained in the proviso to sub-section (2) and subsection (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 5[(Amendment) Act, 1993)], the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, 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.]**

13. Then, there is Section 127 which deals with lapsing of reservation, *inter alia,* which we have already referred to above.

14. We may also notice Section 49 of the Act. Section 49 of the Act deals with a notice to acquire land in certain situations. The situations are set out in sub-Section (1). It includes a situation where any land, for the development of which permission is refused and owner falls under any of clauses in (a), (b), (c), claims that the land have become incapable of reasonably beneficial use in its existing state or where permission is granted subject to conditions which render the land not capable of reasonably beneficial use. Under sub-Section (4), the State Government to which the purchase notice under the Section is to be addressed is to take the decision either accepting or refusing the purchase notice. Sub-Section (5) deals with a deemed confirmation of a purchase notice failing

response within six months by the Government on the notice. Sub-Section (7) of Section 49 reads as follows:

> **"49(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed ; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan."**

15. In Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association and others[6], this Court, *inter alia*, held as follows:

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6 **(1998) Supp. SCC 55**

"11. Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely, for implementation of schemes of town planning. The statutory bar created by Section 127 providing that reservation of land under a development scheme shall lapse if no steps are taken for acquisition of land within a period of six months from the date of service of the purchase notice, is an integral part of the machinery created by which acquisition of land takes place. The word "aforesaid" in the collocation of the words "no steps as aforesaid are commenced for its acquisition" obviously refer to the steps contemplated by Section 126(1). The effect of a declaration by the State Government under sub-section (2) thereof, if it is satisfied that the land is required for the implementation of a regional plan, development plan or any other town planning scheme, followed by the requisite declaration to that effect in the official Gazette, in the manner provided by Section 6 of the Land Acquisition Act, is to freeze the prices of the lands affected. The Act lays down the principles of fixation by providing firstly, by the proviso to Section 126(2) that no such declaration under sub-section (2) shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, secondly, by enacting sub-section (4) of Section 126 that if a declaration is not made within the period

referred to in sub-section (2), the State Government may make a fresh declaration but, in that event, the market value of the land shall be the market value at the date of the declaration under Section 6 and not the market value at the date of the notification under Section 4, and thirdly, by Section 127 that if any land reserved, allotted or designated for any purpose in any development plan is not acquired by agreement within 10 years from the date on which a final regional plan or development plan comes into force or if proceedings for the acquisition of such land under the Land Acquisition Act are not commenced within such period, such land shall be deemed to be released from such reservation, allotment or designation and become available to the owner for the purpose of development on the failure of the Appropriate Authority to initiate any steps for its acquisition within a period of six months from the date of service of a notice by the owner or any person interested in the land. It cannot be doubted that a period of 10 years is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they

can be exercised must be strictly followed.”

(Emphasis supplied)

16. In Girnar Traders v. State of Maharashtra and others[7], the majority view was that a literal interpretation of Section 127 of the Act would result in injustice. The question, which was posed, actually was what is required to be done by the Authority on receipt of a notice under Section 127 of the Act from the owner of land subjected to restrictions by way of a Development Plan, *inter alia*. The dissenting Judge, P.K. Balasubramanium, J., took the view that all that is required to be done when a notice is issued under Section 127 of the Act was that the Authority under the Act was to make an application for acquisition under the Land Acquisition Act and nothing more. The learned Judge went on to hold that the Authority cannot set in motion proceeding under the Land Acquisition Act while

7 **(2007) 7 SCC 555**

acting under Section 126 (1) of the Act. The majority view, however, was that resorting to the plain meaning of the words would cause palpable injustice. The Court took the view as follows:

> **"54. … If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the**

landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation."

(Emphasis supplied)

17. Thus, it was concluded that the steps towards acquisition would really commence when the State Government permits acquisition, and as a result thereof, publishes the declaration under Section 6 of the Act. The Constitution Bench of this Court in Girnar 3 (supra), has taken note of the view of the majority judgment in course of its judgment which, *inter alia*, dealt with the question as to whether Section 11A of the Land Acquisition Act applies to proceedings under the Act under the chapter relating to acquisition. This Court took the view that Section 11A does not apply.

18. In Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher[8], the question which was considered, before a Bench of three learned Judges was, whether reservation of lands would lapse if no steps were commenced within six months under Section 127 of the Act. This Court found no conflict between Municipal Corporation of Greater Bombay (supra) and Girnar 2 (supra). This Court held as follows:

> "29. The aforesaid judgment lays down that since more than 20 years had elapsed since the date of the purchase notice under Section 49 on the facts of that case, the land will have to be released from acquisition. No doubt this Court held that over 20 years is an inordinately long period of delay, and therefore, lapsing has taken place under Section 127 of the MRTP Act. However, on the facts of that case, no purchase notice under Section 127 was issued after 10 years had elapsed from the date of publication of the requisite plan. This being the case, we read the judgment as having allowed a lapse to take place, in view of the inordinately long delay of over 20 years, by really doing complete justice on the facts of that case

8 **(2013) 5 SCC 627**

under Article 142 of the Constitution of India.

30. In the present case, 15 years have passed since the date of publication of the development plan, and over 10 years have passed since the date of the purchase notice issued under Section 49. Considering the fact that there has been no stay at any stage by any court, it is clear that an inordinately long period of time has elapsed, both since the date of publication of the development plan, as well as the date of the purchase notice served under Section 49. No doubt, the letter of 26-9-2008 shows that an application was made within the requisite time period to acquire the aforesaid land. However, on the facts of this case, since after the aforesaid letter nothing has been done to acquire the appellant's property, we are of the view that the reservation contained in the development plan as well as acquisition proposal have lapsed. We make it clear that we hold this in order to do complete justice between the parties under Article 142 of the Constitution of India. However, in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed i.e. that after 10 years have elapsed from the date of publication of the relevant plan, a second purchase notice must be served in

accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section. With these observations, the appeal is disposed of."

19. Finally, the Court also held as follows:

> **"45. In our view, the observations contained in para 133 of Girnar Traders (3) [Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1] unequivocally support the majority judgment in Girnar Traders (2) [Girnar Traders (2) v. State of Maharashtra, (2007) 7 SCC 555] ."**

20. In Bhavnagar University (supra), the case arose under the Gujarat Town Planning and Urban Development Act, 1976. Therein, this Court considering the provision similar to the provisions of the Act (Section 20 of the Act in the said case corresponded to Section 127 of the Act), took the view that though under Section 21 of the Gujarat Act, a duty was cast to revise the Development Plan, the rights of the owners

under Section 20(2) of the Act would not be taken away. We need only refer to paragraph 38 of the judgment, which reads as follows:

> **"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 submission of the learned Solicitor-General is accepted the same would completely render the provisions of Section 20(2) otiose and redundant."**
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> **(Emphasis supplied)**

21. In Prafulla C. Dave and others v. Municipal Commissioner and others[9], this Court, again, considered the provisions of Section 127 of the Act. The facts therein may be noticed briefly as follows:

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9 **(2015) 11 SCC 90**

There was a Development Plan notified on 08.07.1966. The land of the appellant was kept under reservation for a garden. The land was not acquired under any of the modes in Section 126 of the Act prior to the sanction of the revised Development Plan dated 05.01.1987. The finally revised Development Plan dated 05.01.1987 was preceded by a draft revised Plan published in 1982. No notice under Section 127 of the Act was issued by the owner or any person interested in the land prior to the purchase of the land by the appellants from the original owners in the year 1989. The appellant served notice dated 05.10.1989. On a direction by the High Court, the notice under Section 127 of the Act was found premature by the Authority as it was issued before completion of ten years from the date of the revised Development Plan. The contention of the respondent-Municipal Commissioner was that a revised Plan under Section 38 tantamounted to a complete Development Plan

under Sections 21 to 30 of the Act. The period of ten years under Section 127 of the Act would necessarily run from the date of coming into force of such revised Plan. The contention of the respondent also was that under the Gujarat Act, certain provisions found in the Act are absent and Bhavnagar University (supra) was distinguished, *inter alia*. This Court proceeded to hold in Prafulla C. Dave (supra), *inter alia*, as follows:

> **"21. … 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 supplied)

22. In a recent judgment, considering a case under Section 49 of the Act, a Bench of two learned Judges in Chhabildas (supra) has considered the interplay of Sections 49, 126 and 127 of the Act. The Court took the view as follows:

> **"14. A purchase notice may be served under Section 49, after the expiry of one year from the date of publication of the plan in question, in which case Section 126(2) of the Act will not apply. Under Section 126(4), the State Government may make a declaration under Section 6 subject to the modification that the market value of the land shall be the market value at the date of the declaration in the Official Gazette made for acquiring the land. But this does not mean that the State Government has *carte blanche* to do as it pleases. Ordinarily, the State Government is bound to act under Section**

126(4) within a reasonable time from the appropriate authority making an application to acquire the land. This should ordinarily be within a period of one year from the date such an application is made. However, if such declaration is not made within the aforesaid period, it will be open for the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

15. But the matter does not end here. Thereafter, Section 127 kicks in. If a declaration under Section 6 of the Land Acquisition Act is not made within a period of 10 years from the date on which a plan comes into force under sub-section (4) of Section 126, the owner or any person interested in the land may serve a purchase notice on the authorities, and if within one year from the date of service of such notice, the land is not acquired or no steps are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed."

23. This Court, however, noticed the judgment in Hasmukhrai V. Mehta v. State of Maharashtra and others[10] and held as follows:

> **"29. The aforesaid judgment lays down that since more than 20 years had elapsed since the date of the purchase notice under Section 49 on the facts of that case, the land will have to be released from acquisition. No doubt this Court held that over 20 years is an inordinately long period of delay, and therefore, lapsing has taken place under Section 127 of the MRTP Act. However, on the facts of that case, no purchase notice under Section 127 was issued after 10 years had elapsed from the date of publication of the requisite plan. This being the case, we read the judgment as having allowed a lapse to take place, in view of the inordinately long delay of over 20 years, by really doing complete justice on the facts of that case under Article 142 of the Constitution of India.**
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> **30. In the present case, 15 years have passed since the date of publication of the development plan, and over 10 years have passed since the date of the purchase notice issued under Section 49.**

10 **(2015) 3 SCC 154**

Considering the fact that there has been no stay at any stage by any court, it is clear that an inordinately long period of time has elapsed, both since the date of publication of the development plan, as well as the date of the purchase notice served under Section 49. No doubt, the letter of 26-9-2008 shows that an application was made within the requisite time period to acquire the aforesaid land. However, on the facts of this case, since after the aforesaid letter nothing has been done to acquire the appellant's property, we are of the view that the reservation contained in the development plan as well as acquisition proposal have lapsed. We make it clear that we hold this in order to do complete justice between the parties under Article 142 of the Constitution of India. However, in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed i.e. that after 10 years have elapsed from the date of publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section. With these observations, the appeal is disposed of."

24. **Shri Naphade, learned Senior Counsel, inspired by the views expressed by this Court in Hasmukhrai V. Mehta (supra) Chhabildas (supra), would submit that this is a case where the Development Plan was finalized under Section 31 of the Act in the year 1984, more than 35 years. Neither is there any sign of land of the appellants being acquired nor are the appellants being extricated from the rigor of the reservation made of their lands. Under the Development Plan, the land of the appellants is reserved for use as a shopping complex and a vegetable market.**

25. **The right would accrue to the owner under Section 127 of the Act to serve notice thereunder only if a declaration is not published within ten years of the Development Plan under Section 126(4) of the Act, *inter alia*. The High Court has, undoubtedly, noticed that the final Development Plan came into force on 24.08.1984. It further noticed that there is a declaration or Notification under Section 126(4) of the Act on**

03.09.1992. This means, within ten years from 24.08.1984, there is action, as contemplated under Section 126(4) of the Act. Under Section 127 of the Act, therefore, any notice which was given may not hold good going by the letter of the law.

26. In this case, it is clear that the appellants are governed by the Act. There is no dispute that invoking Section 38 of the Act that a revised final Development Plan has come into effect from 15.05.2012. It is undoubtedly true that the reservation under the original Development Plan dated 24.08.1984 would cease to impact the appellants if the notice under Section 127 of the Act was issued on the passage of ten years from 24.08.1984 and, if action under Section 127 of the Act was not taken. It is true that notice dated 09.06.2004 was issued by the predecessor in title of the appellants. This is not a case where there was inaction on the part of the previous owners of the

property upon the expiry of ten years from the date of the final Development Plan in 1984. The problem for appellants, however, is the action on the part of the respondent issuing declaration under Section 126(4) of the Act on 03.09.1992. Lapsing of reservation contemplated under Section 127 of the Act will occur only if the conditions mentioned therein are fulfilled. The indispensable conditions is that after the reservation of the land, *inter alia*, under any Plan, for a period of ten years, the land is not acquired by agreement within that period or proceedings for acquisition under the Act, i.e., declaration under Section 126(4) of the Act, *inter alia*, is not published within the said period. If either of the two conditions exist, a notice is to be issued setting in motion the process for lapsing reservation. If, before issuance of notice, action is already taken by issuance of notification/declaration by the respondent within ten years of the final Development Plan, it will render the notice ineffective in law. The result is that the High

Court was right in finding that the appellant was not entitled to the relief based on lapsing of reservation under Section 127 of the Act. This is a case, therefore, where the Development Plan also stood revised under Section 38 of the Act, bringing in consequences, as noticed by this Court in Prafulla C. Dave (supra).

27. Therefore, this is a case where the reservation under the Plan dated 24.08.1984, which was the final Development Plan, had not lapsed and it was finally revised under Section 38 of the Act. It is not in dispute that the property of the appellants had been reserved originally for the purpose of shopping complex, and under the revised Development of 2012, for shopping complex and vegetable market.

28. The contention of the appellants is, however, that the draft revised Plan was prepared on 29.11.2007 which is after 20 years of the publication of the Development Plan and it was finalized in the year 2012.

29. **Proceeding on the basis of the contention of the appellant that since the revised Development Plan was issued more than 20 years from the issuance of the initial final Development Plan on 24.08.1984, and therefore, revised Plan issued on 24.09.2007, is not to have effect even then the original Development Plan issued on 24.08.1984 would continue to hold good. There is no dispute that reservation under both the Plans in respect of the appellants properties are the same. In such circumstances, there can be no merit in the contention.**

30. **The contention is not seen taken before the Court. Section 38 of the Act reads as follows:**

> **"38. Revision of Development plan:- At least once in 20 [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 4[twenty years] from the date on which the last part has come into operation, a Planning Authority may 3 [and shall at any time when so directed by**

the State Government], revise the Development plan 4 [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 5 [* * *] 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 shall, so far as they can be made applicable, apply in respect of such revision of the Development plan."

31. What is contemplated under the said provision is that the Planning Authority may at least once in 20 years from the date on which a Development Plan has come into operation, *inter alia*, (the period of 20 years been calculated from the date on which, it came into operation) revise the Development Plan. The provisions of Sections 22, 23, 24, 25, 26, 27, 28, 30 and 31 were to apply in this regard. The final Development Plan in this case came into force on 24.08.1984. The draft Revised Plan was issued on 24.09.2007 and the final revised Development Plan was issued with effect from 15.05.2012. The further provision in Section 38 of the Act is that if the

Government directs the revision of the Plan, the Planning Authority shall revise the Plan. It may be at any time. In other words, the scheme would appear to be that even before the completion of 20 years, it is open to the Government to direct the Planning Authority to undertake the revision of an existing Development Plan. In such a case, the word used is shall and there is no discretion and the Planning Authority is to revise the Plan. State Government can issue the direction at any time without waiting for the period of 20 years. AS far as the Planning Authority undertaking revision on its own, it is discretionary. As regards the time limit being breached, in the facts of this case, we are unable to agree. It is not stipulated in Section 38 of the Act that the revision must be undertaken and finalized immediately before the expiry of 20 years from the date of the original final Development Plan. A period of 20 years is to run out from original Development Plan in a case where the Planning Authority wishes to exercise power of revision of the Plan. That

is not the same thing as saying that the revised Plan is to be brought into force before the expiry of 20 years. In this case, it is also not clear whether the Planning Authority undertook the revision following the direction of the Government.

32. The only aspect which remains is whether this is a case which calls for the exercise of powers under Article 142 of the Constitution of India. The sheet anchor of the appellants case appears to be the decision of this Court in Chhabildas (supra), which we have already referred to above. In this case, the declaration has been issued under Section 126(4) of the Act on 03.09.1992. The effect of the declaration under Section 126(4) is that the value of the land was to be determined with reference to the date of the declaration. If declaration is made under Section 126(2) of the Act, the valuation is pushed back to the date of the draft Development Plan. What is actually contemplated would appear to be that after the

declaration under Section 126(4), the matter must be followed up with reasonable dispatch. In other words, under the law relating to land acquisition, further steps will be taken culminating in an Award. In this case, on the other hand it is not in dispute that no steps were taken for acquiring the land for more than two decades. It is in the meantime that the revised Development Plan has come into being on 15.05.2012. Since no declaration has been made under Section 126(2) of the Act under the revised Plan and the period has run out as contemplated in the proviso to Section 126(2), the only way out for the respondent would be to bring out a declaration under Section 126(4) of the Act. In such an eventuality, the value of the properties would have to be determined with reference to the date of such declaration under Section 126(4) of the Act. Therefore, if the property of the appellants is to be acquired, the appellants would have to be given the value of the property as on the date on which

any such declaration is made under Section 126(4) of the Act within ten years from 15.05.2012.

33. In Hasmukhrai V. Mehta (supra), the case was decided under the Act. In the impugned order, the High Court had dismissed the Writ Petition of the appellant, *inter alia*, finding that such Plan was finalized in March, 2003 and the period of ten years had not elapsed and no benefit could be given. The Court took note of the fact that in T. Vijayalakshmi and others v. Town Planning Member and another[11], this Court had declared that the right of a person to construct residential houses in a residential area is a valuable right and also considered that the appellant had been granted permission and commencement certificate on 03.04.1990 under the Development Plan under which the property of the appellant was included under the residential zone and the Plan was also sanctioned. It is thereafter, on 14.01.1999, the appellants were informed about the

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fresh development scheme including the appellants land as reserved for agricultural produce market yard. In these circumstances, *inter alia*, the Court, taking note of the fact that since no steps appear to have been taken till date for the last more than 20 years, either for acquiring land or purchasing land under the Act, the lands were to stand released under Section 127 of the Act.

34. In the judgment in Chhabildas (supra), this Court referred to the aforesaid judgment and holds that the said judgment lays down that since more than 20 years have elapsed since the date of purchase notice under Section 49 of the Act, on the facts of that case, the lands will have to be released from acquisition. Thereafter, this Court proceeds to notice that in the said case [Hasmukhrai V. Mehta (supra)], no purchase notice under Section 127 of the Act was issued after ten years had elapsed. Thereafter, this Court proceeded to hold that this being the case the judgment was

understood as one which was passed under Article 142 of the Constitution of India in view of the inordinate delay of over twenty years. Thereafter, Court took note of the facts of the case before it and found that fifteen years had passed since the publication of the Development Plan and over ten years passed since date of purchase notice under Section 49 of the Act. The Court proceeded to invoke Article 142 of the Constitution of India and found that the reservation and the acquisition proposals stood lapsed. However, it was made clear that in future cases that may arise under Section 49 of the Act, the procedure under Section 127 of the Act must be followed which means that after ten years had lapsed, a second purchase notice had to be served under Section 127 of the Act in order that lapsing could take place under the said Section.

35. Now, it is time to consider the impact of the letters dated 6/7.04.2005 issued by the Municipal

Council. Therein, it is stated by the Chief Executive Officer that in the Resolution dated 15.02.2005, the land reserved no. 137 for shopping complex in Khasra Nos. 406, 407, 410 and 411, total land measuring 4928 square meters in village Gondia shall not be purchased. Resolution dated 15.02.2005 also appears to suggest that the reservation under Section 127 of the Act is released. The appellants would appear to contend that this should by itself cannot decide the matter. As to whether there is a lapsing of reservation under Section 127 of the Act, would be a matter to be decided in terms of the said Statute. Also, after the Resolution in the revised Plan, the reservation is reiterated.

36. The only question is whether it is to be ignored in deciding whether we should invoke Article 142 of the Constitution of India. On 24.08.1984, the final Development Plan is published. On 03.09.1992, the declaration under Section 126(4) of the Act was published. After expiry of ten years from 24.08.1984, notice was given by the previous owners on 09.06.2004.

Thereafter, draft revised draft Plan publication was made on 29.11.2007. Still, thereafter, on 15.05.2012, a final revised Development Plan was published. Although, under the original final Development Plan dated 24.08.1984, the property of the appellants was reserved for shopping complex, and under the revised final Development Plan dated 15.05.2012, the appellants lands have been subjected to the reservation that it is meant for use as shopping complex and vegetable market, apart from issuing the declaration, under Section 126(4) of the Act in the year 1992, there is no declaration issued under the revised Plan dated 15.05.2015. While, it is true that the original final Development Plan came into force on 24.08.1984 and the revised Development Plan came into force in the year 2012, one crucial fact cannot be overlooked. Admittedly, the appellants purchased lands from the erstwhile owners only on 02.01.2006. Therefore, on the facts, particularly, having regard to the fact that they have purchased the property apparently knowing that the

property was subjected to reservation, and as also we have found that their case, based on the notice of previous owners, would not hold good in law and as the subsequent revision of the Plan has come into force with effect from 15.05.2012, we do not find that this is a case where we should exercise our powers under Article 142 of the Constitution. Appellants cannot be compared with the appellant in Hasmukhrai V. Mehta (supra) as the appellant therein was a person who was favoured with a permission to develop his land on the basis that the land was meant for residential purpose and it was he who went to court and the lapse of twenty years was in the context found to have a deep impact.

37. The appellants must wait for a period of ten years under Section 127 of the Act from 15.05.2012 and then can issue notice contemplated under the Act. That is, within a period of little over two years from now, appellants would have a cause of action to give notice under Section 127 of the Act unless action is already taken in the meantime. No doubt, we would expect that

the respondents would be alive to the object of the Statute and also the rights of the owners and will not act mechanically and unfairly in the matter in the future. As far as invoking Section 49 of the Act, we do not express any view. Leaving open all the remedies available to the appellants, the appeal shall stand dismissed.

38. There shall be no order as to costs.

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(K.M. JOSEPH)

NEW DELHI,
JANUARY 29, 2020.