PETITIONER:
MUNICIPAL CORPORATION OF GREATERBOMBAY

Vs.

RESPONDENT:
THE INDUSTRIAL DEVELOPMENT &INVESTMENT CO. PVT. LTD. & ORS.

DATE OF JUDGMENT: 06/09/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MAJMUDAR S.B. (J)

CITATION:
JT 1996 (8) 16

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Ramaswamy, J.

This appeal by Special leave arises from the judgment and order dated July 14, 1988 in Appeal No. 120 of 1988 of the Bombay High Court reversing the judgement and order of the learned Single Judge and quashing the award passed under Section 11 of the Land Acquisition Act, 1894 (for short 'the Act') and the notification dated 6th September 1972 issued under Section 6 of the Act read with Section 126(2) of the Maharashtra Regional and Town Planning Act (for short, the MRTP Act') as inoperative. It was held that the land in question could not be acquired under the Act. It was also further declared that all steps taken for taking possession and vesting of plot of land bearing CS No. 503, Dharavi Division, Bombay, in pursuance of the said award were illegal.

A few relevant facts leading to these proceedings deserve to be noted at the outset. On 6th January 1967 a draft development plan for "G" Ward of the Bombay Municipal Corporation was sanctioned by the State of Maharashtra in exercise of its powers under Section 31 sub-section (1) of the MRTP Act. The said draft development plan was earlier prepared by the then planning authority, namely, the Municipal Corporation of Bombay as per the provisions found in Chapter III of the MRTP Act dealing with the preparation, submission and sanction to development plan. It is not in dispute between the parties that necessary gamut enjoined by Sections 21 to 30 of the MRTP Act was gone through by the then planning authority functioning under the Act and that ultimately culminated into the sanctioned draft development plan by the State Government under Section 31(1) of the MRTP Act as aforesaid. This sanctioned draft development plan for "G" Ward of the Municipal Corporation of Bombay came into force on 7th February, 1967. It is also not in dispute between the parties that city survey No. 503 Dharvi with which we are concerned in the present proceedings formed

part of the said Ward "G" and, therefore, was naturally covered by the aforesaid sanctioned development plan. The said city survey plot No. 503 Dharvi is a large piece of land owned by the 6th respondent, the Provident Investment Co. Ltd. which belongs to the Government of Madhya Pradesh. Some portion of the said land, to be precise an area admeasuring 20,397 sq. yds. was leased out by the 5th respondent to 1st respondent herein. It was using the same for the business of manufacture of art silk and rayon textiles and processing of textiles. The appellant, Municipal Corporation of Greater Bombay which was original 3rd respondent in the writ petition has a Sewage Purification Plant at Dharavi. With the increase in the population and the area under control of the appellant-Corporation it became necessary to extend the Dharavi Sewage Purification Works. In the year 1963, it was decided at a meeting of the Standing Committee of the appellant-Corporation to acquire City Survey No. 503. The said requisite proposal was taken note of in the aforesaid Development Plan prepared under the MRTP Act. In the said plan, City Survey No. 503 was designated and shown as reserved for extension of the Dharavi Sewage Purification Works. As noted above, the said plan came into force w.e.f. February 7, 1967. On the basis of the aforesaid reservation of this land in the said plan for the extension of Dharavi Sewage Purification Works belonging to the appellant-Corporation, the appellant-Corporation, being the then planning authority sought to acquire the said land for the purpose of extension of Dharavi Sewage Purification Plant as per Section 126(1) of the MRTP Act and the State Government of Maharashtra being satisfied that the land specified in the application was needed for the public purpose therein specified, issued the requisite notification dated July 6, 1972 under Section 126(2) of the MRTP Act read with Section 6 of the Act. The said provisions of Section 126 read as under :

> "126 (1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purpose 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] either by agreement or make an application to the State Government for acquiring such land under the Land Acquisition Act, 1894.
>
> (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 113A itself is of opinion] that any land included in any such plan is needed declaration to that effect in the Official Gazette, in the manner provided in

section 6 of the Land Acquisition Act, 1894, in respect of the said land. The declaration so published shall, the said Act, be deemed to be a declaration duly made under the said section :

Provided that, no such declaration 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."

Pursuant to the said notification notices under Section 9 of the Act were issued on March 14, 1973 to the concerned interested parties inviting claims for compensation. As the respondents 1 and 2 were in possession of the land as tenants, they naturally put forward their claims for compensation. It is in evidence that in 1979, respondents 1 & 2 were also heard in support of their claim petition seeking appropriate compensation for acquisition of their rights over the land sought to be acquired.

In the meantime, two important events took place which have a direct bearing on the result these proceedings. On January 26, 1975 an Act called the Bombay Metropolitan Region Development Authority Act, 1974 (hereinafter referred to as "BMRDA Act") came into force. That was an Act for forming Greater Bombay and certain areas round about Bombay Metropolitan Region, to provide for the establishment of an Authority for the purpose of planning, co-ordinating and supervising the proper, orderly and rapid development of the area in that Region and of executing plans, projects and schemes for such development, and to provide for matters connected therewith. As per schedule 1 of the said Act, the Bombay Metropolitan Region consisted of the whole of the area of the Greater Bombay in the parts of Thane and Colaba Districts within the specified boundaries. It is not again in dispute between the parties that the aforesaid City Survey No. 503. Dharavi got covered by the Bombay Metropolitan Regions indicated in the said schedule. Under the BMRDA Act, as per Section 3, the State of Maharashtra Region as indicated in the said schedule. Under the BMRDA Act, as per Section 3, the State of Maharashtra constituted an authority named as Bombay Metropolitan Region Development Authority (hereinafter referred to as 'BMRDA'). As per Section 3, sub-section (3) of the said Act, the said Metropolitan Authority was to be deemed to be a local authority within the meaning of the term 'local authority' as defined by Bombay General Clauses Act, 1904. As per Chapter IV of the BMRDA Act, diverse functions were to be performed by the said authority. The said BMRDA had, under Section 12(1)(c), to formulate and sanction scheme for the development of the Metropolitan Region or any part thereof. Under MRTP Act, the term 'planning authority' was defined by Section 2 sub-section (19) to mean a local authority and it included a Special Planning Authority constituted or appointed under Section 40 of that Act. On coming into force of BMRDA Act, the State Government exercising its power under Section 40 sub-section (1)(c) of the MRTP Act had appointed BMRDA as a Special Planning Authority for development of the notified area, namely, the metropolitan area notified under BMRDA Act. The said notification was issued by the State Maharashtra on January 26, 1975.

As per sub-section (3) of Section 40 of the MRTP Act, on the constitution of the aforesaid planning authority for

the metropolitan area of Bombay the provisions of Chapter VI of MRTP Act dealing with 'New Towns' got attracted for operation by the said Special Planning Authority, i.e. BMRDA by a notification dated March 31, 1977 issued by the Urban Development and Housing Department of the Maharashtra Government the State Government appointed BMRDA to be the Special Planning Authority for Kurla Taluq in Bombay sub-district and Dharavi area of the Bombay city as they were in a neglected condition and needed to be planned and developed in a comprehensive manner. In exercise of its powers under Section 40 sub-section 3(d) read with Section 115 of the MRTP Act, it submitted to the State Government its proposals for the development of the area put under its planning jurisdiction, after following the procedure prescribed therein on March 7, 1977 for the approval. It is again not in dispute between the parties that City Survey No. 503 Dharavi was covered by the said notification. Once these proposals for development of the area known as Bandra Kurla complex were received by the State Government after the Special Planning Authority had followed the procedure of Section 115 sub-section (2) of the MRTP Act read with Section 40 sub-section 3(d) of the said Act, after the due consideration given by the State Government, the said proposals were approved by the State Government as per Section 115 sub-section 3(d) on April 19, 1979 and they were published as per Schedule 40 sub-section (5) of the MRTP Act in Government Gazette on May 3, 1979 and according they became final.

Section 40 of the MRTP Act with its relevant sub-clauses reads as under :

> "40 (1) The State Government may, be notification in the Official Gazette, for any undeveloped area specified in the notification (in this Act referred to as "the notified area") either -
> (a) ... .
> (aa).... ....
> (b) ....
> or
> (c) appoint the Bombay Metropolitan Region Development Authority established under the Bombay Metropolitan Region Development Authority Act, 1974, to be the Special Planning Act, 1974, to be the Special Planning Authority for developing the notified area.
> (2) ... ...
> (3) On the constitution of the Special Planning Authority, the provisions of Chapter VI of this Act shall, subject to the provisions of this section and section 41, apply mutatis mutandis to the Special Planning Authority as they apply in relation to a Development Authority, as if the notified area were a new town, subject to the following modification, namely :-
> (a) ... ...
> (b) ... ...
> (c) ... ...

(d) for section 115 the following shall be substituted, namely :-

115. (1) A Special Planning Authority shall, from time to time submit to the State Government its proposals for the development of land (being land either belonging to, or vesting in, it or acquired or proposed to be acquired under section 116), and the State Government may, after consultation with the Director of Town Planning, approve such proposals either with or without modification.

(2) Before submitting the proposals to the State Government, the Special Planning Authority shall carry out a survey and prepare an existing land-use map of the area, and prepare and publish the draft proposals for the lands within its jurisdiction together with a notice in the Official Gazette and local newspapers in such manner as the Special Planning Authority may determine, inviting objections and suggestions from the public within a period of not more than 30 days from the date of notice in the Official Gazette. The Special Planning Authority may if it thinks fit, give individual notices to persons affected by the draft proposals.

(3) The Special Planning Authority may after duly considering the objections or suggestions, received by it, if any, and after giving an opportunity to persons affected by such draft proposals, if necessary, and then submit them to the State Government for its approval. The orders of the State Government approving such proposals shall be published in the Official Gazette.

(e) for section 116, the following shall be substituted, namely :-

116. Every Special Planning Authority shall have the powers of a Planning Authority under this Act as provided in Chapter VII for the purposes of acquisition of such land in the notified area as it considers to be necessary for the purpose of development in that area either by agreement or under the Land Acquisition Act, 1894, or any land adjacent to such area which is required for the development of the notified area and any land whether adjacent to that area or not which is required for provision for services or amenities for the purposes of the notified area.

(f) for section 117, the following

shall be substituted, namely :-

117. Where any land has not been acquired within a period of ten years from the date of notification under sub-section (1) of Section 40, any owner of the land may, be notice in writing served on the Special Planning Authority, require it to acquire his interest therein; and thereupon, the provisions of section 127 providing for lapsing of reservations shall apply in relation to such land as they apply in relation to land reserved under any plan under this Act.

(4) In preparing and submitting its proposals for developing any land under section 115 and in approving them under that section, the Special Planning Authority and the State Government shall take particular care to take into consideration the provisions of any draft or final Regional Plan, draft or final development plan, or any draft or final town planning scheme, r any may already be in force in the notified area or in any part thereof.

(5) Where any proposals for development of any land are approved by the State Government under section 115, the Provisions of the proposals approved by the State Government shall be final, and shall prevail, and be deemed to be in force, in such notified area; and to that extent the provisions of any such force in the notified area or any part thereof shall stand modified by proposals approved by the State Government."

A conjoint reading of the aforesaid provisions would show that by May 3, 1979 instead of the original sanctioned draft development special plan for 'G' Ward which was holding the field from February 7, 1967 a new development general plan for Bandra-Kurla area became operative. As noted earlier, City Survey No. 503 Dharavi which was earlier under the 'G' Ward of Bombay Municipal Corporation and was covered by Sanctioned Development Plan of January 6, 1966 now got covered by the Bandra-Kurla Complex, plans per the new Sanctioned Development Plan for Bandra-Kurla complex, the earlier reservation made in connection with City Survey No. 503 Dharavi which was earmarked to be utilised for locating the extended Dharavi Sewage Purification Work got altered and in its place a new area comprising Block 'A' was earmarked for location of a new sewage treatment plant. The said relevant proposal is found in the booklet captioned "Bandra Kurla Complex" in Chapter VI thereof containing the detailed proposals. So far as Block "A" is concerned, in paragraph 7.1 (v) it has been provided as under :

(v) The Bombay Municipal Corporation is planning to provide a sewage treatment plant to be located near 'A' Block as

recommended by their consultants. Al the sewage from Bandra east and Kurla etc. will be collected and pumped to this plant and after treatment it will be let into the deep-sea outfall sewer. The present sewage treatment plant at sion will be discontinued. The requirement for an area of 35 acres, including 5 acres to accommodate housing for essential staff, has been indicated. The purification plant proper will be located west of the 'A' Block by reclaiming at the southern end of the land strip at Bandra. But the five acres of land required for residential purpose for the essential staff is to be made available to the Municipal Corporation from the western portion of Block 'A'. Further reclamation on the west for locating the purification plant will be done by the Bombay Municipal Corporation in consultation with the Central Water & Power Research Station, Khadkvasla, as tentatively shown on the layout plan."

(emphasis supplied)

This clearly shows that May 3, 1979 onwards this sewage treatment plant was to be located in 35 acres of land reserved under Block 'A' of the said planning proposals. It is, therefore, obvious that Dharavi Sewage Purification plan had to be dismantled and shifted to Block 'A' at the place indicated for it in the approved plan. So far as the City Survey No. 503, with which we are concerned, went in and was found located under the new proposals in Block 'H'. The existing purification plant of the Bombay Municipal Corporation was found covered by the said block 'H'. Consequently, the question of its extension no longer remained feasible or possible for the Municipal Corporation. On the contrary, the entire land of Block 'H' over a part of which the existing sewerage plant was situated was to be used for the purpose shown in the plan attached to the proposals. A mere look at the plan attached to the proposals would show that not only the existing Dharavi Sewage Plant was to be discontinued and shifted to Block 'A' but the land covered by that plan as well as the other lands of Block 'H' which also naturally covered the disputed City Survey No. 503 were to be utilised for residential, commercial, para-commercial and social facilities/purposes. No part of Block 'H' area was reserved for any special public purpose, unlike the earlier reservation of plot No. 503 Dharavi under 1977 Development Plan.

The result was that after May 3, 1979 City Survey No. 503 got de-reserved from the earlier public purpose of locating the extension of Dharavi Sewage Purification Plant and the entire Block 'H' was to be utilised under the new plan for residential, commercial, para-commercial and social facilities by its local residents without any special reservation for the Municipal Corporation. Normally, on its so happening, the earlier notification issued under Section 126 sub-section (2) read with Section 6 of the Act lost its

utility, vitality and necessity. As we have seen earlier, Section 126(2) read with Section 126(1) requires as a condition precedent to acquisition of any land which can be proposed under Section 126(1), that there must exist the fact situation that such land is earmarked, required or reserved for any of the public purposes specified in any plan or scheme under the Act. Section 125 of the MRTP Act states that any land required, reserved or designated in Regional plan, Development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Act, 1894. A conjoint reading of Sections 125 and 126(1), therefore, shows that a planning authority can propose acquisition of only that land which is required, reserved or designated in the development plan for any public purposes and it is such a proposal which can be accepted by the State Government under sub-section (2) of Section 126 on being satisfied with the land specified in the application as needed for public purpose specified therein. Consequently, any planning authority proposing action under Section 126(2) by the State Government must show that the land which it is proposing to acquire is required, reserved or designated in the concerned development plan for public purpose and if the land is not so required, reserved or designated in the plan for a public purpose it cannot be subjected to proceedings of acquisition under Section 126(10 read with Section 126(2). Once the specification of public purpose concerning the given land ceases to exist because of the de-reservation under the plan so far as that land is concerned, it cannot be acquired under Section 126(1) read with Section 126(2) for the planning authority by the State Government, without being required reserved or designated for any public purpose in the revised development plan.

It has to be kept in view that Section 126 sub-section (1) of the MRTP Act is a substitute for Section 4 notification under the Act. Once a proposal for acquisition of land earmarked in development plan for a specified public purpose is moved by the planning authority as per Section 126(1), on acceptance of such proposal by the Stage Government a notification under Section 126(2) read with Section 6 of the Act gets issued. It has to be appreciated that as there is no provision for notification under Section 4 of the Act for such acquisition under the MRTP Act no Section 5A enquiry under the Land Acquisition Act is contemplated under the MRTP Act. It is also not necessary to have such an enquiry made after the proposal for acquisition is moved under Section 126(1) of the MRTP Act by concerned planning authority, for the obvious reason that earmarking of the concerned land for specified public purpose under the development plan, which is the basis of proceedings under Section 126 sub-section (1) of the MRTP Act, is for public purpose and has already been done after hearing objections of persons concerned at the stage of preparation of the draft development plan.

If we turn to Chapter III of the MRTP Act, we find the entire machinery is provided for preparation, submission and sanction of development plan proceeding from Section 21 and ending with Section 31. These provisions, in short, provide for preparation of draft development plan by the planning authority inviting objections of persons concerned against such proposals, hearing of objections (3) by the Planning Committee and then submitting its report to the planning authority which ultimately gets the proposals approved by

the State Government under Section 30. All these provisions do indicate that requirement, designation, reservation or earmarking of any land for acquisition for any specified public purpose as indicated in the plan has already undergone the process of hearing after the objections of the concerned persons were considered and then such land gets earmarked for public purpose in the plan. It is after that stage, therefore, when need to acquire such earmarked, designated or reserved land for public purpose under the plan arises, that Section 126(1) proposals gets issued by the concerned planning authority and which itself becomes a substitute for Section 4(1) notification under the Act. It would thus, appear that the scheme of acquisition of earmarked land under the plan for a specified public purpose thereunder, is a complete scheme or code under the MRTP Act. It is distinct and independent scheme as compared to general scheme of acquisition under the Land Acquisition Act.

In this connection, Section 128 of the MRTP Act also is worth noting. The said section provides that if the State Government wants to acquire lands for any purposes other the one for which the land is designated in any plan or scheme then it has to resort to notification under the Act which would naturally be followed by Section 5A enquiry as per the said Act subject to Section 17 of that Act, and then only the State can issue declaration under Section 6 of the said Act independtly of the provisions of the MRTP Act. In such cases, as acquisition has no nexus with object to such acquisition for the public purposes mentioned in the notification, as Section 5A of the Act would then get attracted to such objections. Thereafter, if Section 6 declaration is issued by the State Government and if ultimately the land gets vested in the State Government under Section 16 and 17 of the Act, then as provided by Section 128 sub-section (3) of the MRTP Act, the relevant plan or scheme which includes the land in question shall be deemed to suitably varied by reason of acquisition of the said land. This provision also would indicate that acquisition as per Section 126 stands on an entirely different footing as compared to acquisition of any land for any public purpose as per the general law of land acquisition, namely, the Act, 1894.

It is, therefore, clear that for the purpose of acquisition of any land under Section 126(2) of the MRTP Act, the land sought to be acquired must have a direct connection with its specification, earmarking or reservation plan itself. Such earmarking etc. is its charter. In other words, absence of public purpose would be a fetter on exercise of power of acquisition made under Section 126(2) of the MRTP Act or a truncated public purpose. An exercise of eminent domain derives its efficacy from the reservation, specification or designation for public purpose of the concerned land as found in the development plan itself. If this nexus or linkage between the specification etc. of public purpose in the plan and the concerned land which is sought to be acquired under the MRTP Act is snapped off, prior to the completion of acquisition proceedings as per Section 126(2) of the MRTP Act, the entire edifice of acquisition proceedings under Section 126 would crumble down and the acquisition under that section would become incompetent. Such is not the case of acquisition under the Act simplicitor, which has to start after the issue of Section 4 notification. Consequently, by considering the statutory scheme of acquisition under Section 126 of the MRTP Act, general principle of acquisition under the Act

cannot be applied wholesale for deciding the legality of such statutory acquisition under the special scheme of MRTP Act.

On the facts of present cases, it is not in dispute that on July 6, 1972 when the State of Maharashtra issued requisite notification for acquiring lease-hold land of respondent No.1, situated in City Survey No. 503 Dharavi, the said land was duly reserved for a public purpose for extension of Dharavi Water Sewage Plant of the Municipal Corporation as ear-marked in the then Operative Sanctioned Development Plan of February 6, 1967. Therefore, on July 6, 1972 was perfectly valid and operative. However, before acquisition proceedings qua that land pursuant to the said notification could culminate into the award, the said land got de-reserved for that specified public purpose and went out of earmarked purpose. Thus, May 3, 1979 onwards, City Survey NO. 503 which was then merged and comprised as Block 'H' of Bandra-Kurla Complex ceased to be reserved for the specified public purpose of being utilised for extension of Sewage Plant of the Bombay Municipal Corporation. Once that happened and it was marked in the approved plan under BMRDA Act for residential purposes etc, ordinarily efficacy of the notification under Section 126(2) qua this land got extinguished and the specified public purpose resultantly died down.

It would be necessary to emphasise that to implement the Scheme framed and approved by the state Government under the MRTP Act, the land was notified under Section 126 as it was for a public purpose. If the ear-marked, designated or reserved land in the subsequent plan prepared and approved under BMRDA Act, does not subserve any public purpose within the ear-marked, designated or reserved land in the subsequent plan prepared and approved under BMRDA Act, does not subserve any public purpose within the ear-marked, designated or reserved public purposes, necessarily, the public purpose envisaged under Section 126 outlives its purpose and gets eclipsed. Public purpose envisaged in original approved plan no longer survives and if the land sought to be acquired is diverted to or earmarked or designated to a private purpose, necessarily remedy must be either under Chapter 7 of the Act or any relevant law or Section 126 as per revised and approved scheme at which stage the owner gets opportunity to submit his objections for consideration before submitting the plan for approval by the State Government. Take, for instance, the self same land under the approved scheme under MRTP Act which was for purification of sewerage treatment plant. This was a special Scheme. In the general scheme, i.e., in Bandra-Kurla scheme, if the said land was earmarked for private purpose, necessarily the original public purpose was eclipsed. Further proceedings for acquisition becomes acquiring the land, in such circumstance, would not be public purpose but must be for any private purpose unless saved by the special law, i.e., MRTP Act, or BMRDA Act, which is not consistent with the revised plan would become necessary. It would, therefore, be necessary for the interested person to be vigilant and watchful to impugn such notification under Section 126 in the High Court under Article 226 before the acquisition becomes final and conclusive under Section 12(1) of the Act between the Collector (Land Acquisition Officer) and the interested person whether or not he appeared or represented before him and the lands stand vested in the State under Section 16 or 17 free from all encumbrances.

After the award under Section 11 of the Act was made by the Collector he is empowered under Section 16 to take

possession of the land, if the possession was not already taken, exercising power under Section 17(4). Thereupon, the land shall vest absolutely in the Government free from all encumbrances. It is well settled law that taking possession of the land is by means of a memorandum (panchnama) prepared by the Land Acquisition Officer and signed by Panch witnesses called for the purpose. Subsequently, the Collector hands over the same to the beneficiary by means of another memorandum or panchnama, as the case may be. But in this case Section 91 of the BMC Act statutorily comes into play which would indicate that the Land Acquisition Officer while making award should intimate to the Commissioner, Municipal Corporation of the amount of compensation determined and all other expenses. The Corporation shall pay over the same to the Land Acquisition Officer.

By operation of sub-section (2) thereof, the amount of compensation awarded and all other charges indicated in the acquisition of the property shall be paid by the Commissioner; "thereupon the said property shall vest in the Corporation". In other words, on payment of compensation by the Corporation to the Land Acquisition Officer, statutorily the Corporation gets transfer of possession from the State and the acquired property vests in the Corporation free from all encumbrances. Thereby the Corporation becomes the absolute owner of the land free from all encumbrances including tenancy rights, if any alleged to be held by the respondents.

From the facts of this case, it is clear that the owner, a public undertaking of the Madhya Pradesh Government, had received the compensation and handed over the possession to the Land Acquisition Officer on March 4, 1983. The Land Acquisition Officer, thereby had taken symbolic possession of the land of the 5th respondent owner. The owner and the respondents had reference under Section 18 which was pending.

It would be no function of the Collector (Land Acquisition Officer) to keep inquiring whether the notified public purpose remains in existence. His authority is to pass award under Section 11 after following the procedure under Sections 9 and 10; file the award in the office of the Collector under Section 12(1); issue notice to all interested persons under Section 12(2); pay compensation under Section 31 or deposit it in the Court and to make reference, if the application under Section 126 of the MRTP Act or declaration under Section 6 of the Act needs necessarily be impugned by interested person and have it quashed before the award proceedings become final and conclusive under Section 12(1). If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vested in the State free from all encumbrances, the slumbering interested person would be told off the gates of the Court that his grievance should not be entertained. On the other hand, if he enlists vigil and avails of the remedy of judicial review before the acquisition proceedings reach the finality, necessarily the High Court would enquire whether the public purpose under Section 126 of the MRTP Act was subsisting so as to enable the Land Acquisition Officer to take further steps under Sections 9 and 10 and to make the award under Section 11. This would be so because of the special scheme and special law. But the situation of the acquisition pursuant to a notification published under Section 4(1) of the Act and declaration under Section 6 in this perspective would be different and always stands on a

different perspective and is independent of the special scheme envisaged under MRTP Act or BMRDA Act, as the case may be of. One cannot be and should be confused with another. They stand poles apart. What is required is clarity in thinking process. The confusion would land in miscarriage of justice and avoidable frustration of public purpose. Only one exception in this behalf would be kept in mind, i.e., whether the public purpose envisaged under both the special Act and the General Act and the use of the acquired land always be for a public purpose. In this behalf, it is of relevance to note the law laid down by this Court on the diversion of the land acquired for one public purpose and its use thereof for another.

In Gulam Mustafa & Ors. Vs. The State of Maharashtra & Ors. [(1976) 1 SCC 800], a Bench of three Judges had held that "once the original acquisition is valid and title had vested in the municipality, how it used the excess land was no concern of the original owner and could not be basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other than one stated in the Section 6(3) declaration". The same view was reiterated by another Bench of three Judges in Mangal Oram & Ors Vs. State of Orissa & Anr. [(1977) 2 SCC 46] wherein it was held that "[U]se of land after a valid acquisition for a different public purpose will not be invalidate the acquisition."

In State of Maharashtra Vs. Mahadeo Deoman Rai & Kalal & Ors. [(1990) 3 SCC 579] yet another Bench of three Judges had held that requirement of public purpose may change from time to time but the change will not vitiate the acquisition proceeding. Concerned authority should review the requirement aspect periodically in the prevailing social context. In Collectors of 24 Paraganas & Ors. Vs. Lalit Mohan Mullick & Ors. [(1986) 2 SCC 138] a Bench of Judges had held that, "acquisition of the land for a public purpose, namely, the use of the land for rehabilitation of displaced persons, to be altered by subsequent development for another public purpose, namely, for construction of a hospital was as per Development & Planning Act" In Ram Lal Sethi & Anr. Vs. State of Haryana & Ors. [(1990) Supp. SCC 11] the land was acquired for public purpose of construction of road but exigencies of development necessitated allottee company was in possession for 17 years and was not made a party to the litigation; allotment was not shown to be an act of favoritism. It was held by the two-Judge Bench that the acquisition was not vitiated on account of change of the user.

It is thus well settled legal position that the land acquired for a public purpose may be used for another public purpose on account of change or surplus thereof. The acquisition validly made does not become invalid by change of the user or change of the user in the Scheme as per the approved plan. It is seen that the land in Block 'H' which was intended to be acquired for original public purpose, namely, the construction of Sewage Purification Plant, though was shifted to Block "A", the land was earmarked for residential, commercial-cum-residential purposes or partly for residential purpose etc. It is the case of appellant that the Corporation intends to use the land acquired for construction of the staff quarters for its employees. It is true that there was no specific plan is used by the Corporation for any designated public purpose, namely, residential-cum-commercial purpose for its employees, the later public purpose remains to be valid public purpose in

the light of the change of the user of the land as per the revised approved plan. It is true that in the original scheme the residential quarters for the staff working in Sewage Purification Plant were intended to be constructed and the same purpose is sought to be served by the acquisition of the land by using the land in Block "A". Nonetheless the acquired land could be used by the Corporation for residential-cum-commercial purpose for its employees other than those working in the Sewage Purification Plant. It would not, therefore, be necessary that the original public purpose should continue to exist till the award was made and possession taken. Nor is it he duty of the Land Acquisition Officer to see whether the pubic purpose continues to subsist. The award and possession taken do not become invalid or ultra vires the power of Land Acquisition Officer. On taking possession, it became vested in BMC free from all encumbrances including tenancy rights alleged to be held by the respondents. Possession and title validly vesting in the State becomes absolute under Section 10 of the Act and thereafter the proceedings under the Act do not owner. Only before taking possession, the Government can withdraw from inquiry under section 45 [1] of the Act or High Court under Article 226 of the Constitution may quash on legal and valid grounds. If the award under Section 11A was not made within two years from the date of the publication of the declaration under Section 6, as enjoined under Section 11 A of the Land Acquisition Act, whether the notification under Section 4(1) would lapse. This Court in Satendra Prasad Jain & Ors. v. State of U.P. & Ors. [(1993) 4 SCC 369] had held that after the land stood vested in the State, even if the authorities failed to comply with the statutory requirements, it does not have the effect on the vesting of land in the State. Thereby the notification under Section 4(1) and the declaration under Section 6 do not stand lapse. The same view was reiterated by another Bench in, Awadh Bihari Yadav & Ors. [(1995) 6 SCC 31]. The High Court, therefore, was not right in exercise of power under Article 226 of the Constitution in granting declarations as mentioned in the beginning or in making order of injunction against the appellants pending writ petitions. It is equally settled law that a tenant cannot challenge the notification under Section 4 and declaration under Section 6 of the Act when the landlord himself had accepted the award and received compensation.

The next question is : whether the High Court was right in issuing the writ after long lapse of time ? The respondents, admittedly, approached the High Court after a delay of 4 years; that too after award was made and possession was taken from the owner. It is seen that the declaration was published as long back as on May 3, 1979. Earlier to that after the draft plan was published, notice was given to all the parties. The respondents, who claim to be tenants, had not raised the little finger in making any objection to the proposed scheme or the revised plan. The award was made on February 24, 1983; possession was taken on March 4, 1983, and on the same day it stood transferred to the BMC. The writ petition came to be filed thereafter on July 4, 1983. The learned Single Judge dismissed the writ petition on the ground of laches.

In State of Tamil Nadu v. L. Krishnan [(1996) 1 SCC 250], a Bench of three Judges of this Court had held that "the delay in challenging notification was fatal and the writ petitions were liable to be dismissed on the ground of laches". Exercise of power under Article 226 of the Constitution, after award was made, was held to have been

wrongly made. Delay to make award was not a ground to quash the acquisition proceedings.

In State of Orissa v. Dhobei Sethi & Another [1995 (5) SCALE 1881], it was held that on account laches on the part of the petitioners, the writ petition was liable to be dismissed. It was also held therein that the subsequent purchaser cannot raise any objection for the validity of the acquisition. The High Court was, therefore, held unjustified in issuing the writ and quashing the notification and declaration under Sections 4(1) and 6 respectively.

In State of Maharashtra v. Digambar [1995 (4) SCALE 98], another Bench of three Judges directed dismissal of the writ petition on the ground of laches and held that the High Court had not judiciously and reasonably exercised its discretion in passing the notification under Section 4(1) of the Act.

In The Ramjas Foundation v. Union of India [AIR 1993 SC 852], a Bench of three Judges had held that mere retaining the possession or delay on the part of the authority to pass award are not grounds to challenge the notification under section 4(1) and declaration under Section 6, and the laches was held to be ground to dismiss the writ petition. Accordingly this Court allowed the appeal and dismissed the writ petition.

In Ramchand v. Union of India [(1994) 1 SCC 44], another Bench of three Judges of this Court had held that because of inordinate delay in approaching the court after entire process of acquisition was over pursuant to notification under Section 4(1) and declaration under Section 6, the court was not justified in quashing the same. Same view was reiterated in Bhoop Singh vs. Union of India & Ors. [AIR 1992 SC 1414], Aflatoon & Ors. v. Lt. Governor of Delhi & Ors. [AIR 1974 SC 2077], Indrapuri Griha Nirman Sahakari Samiti Ltd. v. The State of Rajasthan & Ors, [AIR 1974 SC 2085], H.D. Vora v. State of Maharashtra & Ors. [(1984) 2 SCC 337] and Pt. Girdharan Prasad Missir & Another v. State of Bihar & Another [(1980) 2 SCC 83]. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.

The appeal is allowed with costs quantified at Rs. 10,000/- (Rupees Ten Thousand only)