REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5929 OF 2022

[ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.13754 OF 2022]

Dr. Abraham Patani of Mumbai & Anr. ..... Appellants

VERSUS

The State of Maharashtra & Ors. ..... Respondents

JUDGMENT

Surya Kant, J:

1. Leave Granted.

2. This appeal arises from the judgment dated 30.05.2022 passed by the Bombay High Court dismissing the Appellants' Writ Petition in which they had sought to quash a series of resolutions passed by Respondent No. 2, as well as notifications and a final award of compensation under the Land Acquisition Act, 1894 ("LAA") issued by

Respondent Nos. 10 & 11, which cumulatively resulted in acquisition of parts of the Appellants' property for construction of a new road.

A. FACTS

3. The genesis and course of the present dispute spans several decades and includes one prior round of litigation before this Court. The crux of the matter arises from the opposition by Appellants to the construction of a road through their property by Respondent No. 2, the Municipal Corporation of Mumbai. The property in question was acquired by the Appellants in 1959, and a building known as the "INGA Building" was constructed on it in 1965.

4. The possibility of having a road through the Appellants' land was floated initially in a Development Plan ("DP") of 1976. After this, the road was realigned in 1984 in order to secure smooth passage through Appellants' land. Appellants raised objections in this regard in 1992 and the planned road was deleted from the DP via notification dated 12.11.1992 issued by Respondent No. 1.

5. During this period, various complaints were allegedly received from residents in surrounding areas regarding the need for a road in order to connect the Mahakali Caves with the Central Industrial District. Respondent No. 1 issued a directive under Section 37(1) of the Maharashtra Regional Town Planning Act, 1966 ("MRTP Act") on

07.06.1993, acknowledging the need for a connecting road but stating that it was "not feasible" to pursue construction of an 18.30 metre road through the Appellants' land. Thus, Respondent No. 2 was instructed to analyse the legal and technical aspects of the project before submitting a proposal for setting up the road with minor modifications in the DP under Section 37 of the MRTP Act.

6. Meanwhile, Appellants completed construction of a bungalow on their land in 1994. However, subsequent sanctions sought by the Appellants for further buildings were rejected by the Municipal Corporation on the ground that a proposal for creation of a link road through the property was under consideration.

7. Respondent No. 2 eventually passed Resolution No. 651 on 10.09.1996 that renewed the proposal to have the link road constructed through Appellants' land. Two further resolutions were then passed: a) Resolution No. 39 dated 18.08.1998 by the Improvement Committee affirming the proposal for the link road; b) Resolution No. 536 on 08.12.1998 by Respondent No. 2 under Sec. 126 of the MRTP Act and Secs. 90(1) & (3) of the Mumbai Municipal Corporation Act ("MMC Act") for the acquisition of land in order to build the new road line.

8. The Office of the Chief Engineer (Development Plan) forwarded an application to Respondent No. 1 on 05.02.1999 seeking to initiate proceedings under the LAA. Appellants filed protestations before the state authorities claiming that the dimensions and route for the link road would touch the buildings that had been constructed by them. Given these continuing disputes, Respondent No. 2 eventually passed Resolution No. 1167 on 09.03.2001 which noted that there were three other road lines that connected the Mahakali Caves with the Central MIDC. Consequently, it was concluded that an additional road through Appellants' property was redundant.

9. Private Respondents, Nos. 6-9, challenged this decision before the HC in WP No. 1072 of 2001. While this was pending, Respondent No. 2 proposed to reconsider Resolution No. 1167. Appellants filed a Notice of Motion in the already pending WP, seeking to restrain Respondent No. 2 from once again tabling the motion to have a link road through their land. This Notice was dismissed by the High Court on 18.10.2002 with liberty granted to Respondent No. 2 to reconsider the decision made on 09.03.2001 but with a caveat that any fresh resolution passed thereafter would only be given effect to after obtaining leave from the Court.

10. Respondent No. 2 proceeded to pass Resolution No. 1117 on 28.10.2002 which withdrew Resolution No. 1167, and partially modified the earlier resolution passed on 08.12.1998. The net result of this was that the acquisition of Appellants' land was sanctioned for building an 18.30 metre new road line. Appellants moved Writ Petition No. 3060 of 2002 challenging the renewal of the plan to construct the link road and seeking to quash three Resolutions: a) No. 651 on 10.09.1996; b) No. 536 on 08.12.1998; c) No. 1117 on 28.10.2002.

11. Meanwhile, the High Court disposed of WP No. 1072 of 2001 with the observation that after the passage of Resolution No. 1117, the WP in question had become infructuous and the validity and legality of the Resolution would be decided by the High Court in the proceedings initiated by Appellants.

12. During pendency of the Appellants' WP, and pursuant to the application of 05.02.1999, the acquisition exercise under the LAA was put in motion. Respondent No. 10 and 11 issued notifications under Sections 4 and 6 of the LAA directing that Appellants' land be acquired in public interest. The award of compensation under Section 11 was declared on 26.11.2007. Appellants consequently incorporated a challenge to the notification under Sec. 6 and the award of compensation, into their prayer in the pending Writ Petition.

13. Appellants' interim prayer for status quo vis-à-vis the property was rejected by the High Court and, being aggrieved by this denial, they instituted SLP (Civil) No. 22849 of 2008 in which the Supreme Court ordered that status quo be maintained as on 22.09.2008. The SLP remained pending for over a decade until it was disposed of vide order dated 05.12.2019 with a request to the High Court to finally decide the matter. The order of status quo was extended till the final judgment by the High Court.

14. Before the High Court, the Appellants assailed the entire land acquisition process on broadly three grounds: **a)** The MRTP Act formed a complete code for the purpose of town planning and development, and hence, Respondent No. 2 could not resort to the provisions of the MMC Act to circumvent a DP that is approved under the MRTP Act. Instead, it was mandatory to seek permission from Respondent No. 1 for effectuating minor modifications in the DP under Section 37 of the MRTP Act; **b)** In arguendo, the procedure under the MMC Act for land acquisition had not been followed. Section 91 of the MMC Act required Respondent No. 3 to initiate the process of acquiring land under Section 296 for laying down a new road under Section 291. However, in this case, the Office of the Chief Engineer had been the authority which took the first step which was an incurable defect. Additionally, no authorization had been granted by Respondent No. 1, as required

under Section 91 of the MMC Act; **c)** Appellants had not been given sufficient opportunity to voice their grievances in respect of Respondent No. 2's plan to build the link road through their land.

15. The Appellants' Writ Petition was eventually dismissed vide the impugned judgment whereby the High Court declined to quash the various resolutions passed by Respondent No. 2, and the notification and award of compensation under the LAA. Thus, the High Court affirmed the need to acquire Appellants' land for construction of the link road in public interest.

16. The Division Bench held: -

i) The acquisition of Appellants' land and decision to lay a new road through it was taken pursuant to Sections 91, 291(a) and 296, of the MMC Act. The MMC Act conferred Respondent No. 2 with the power to acquire land and build a new road which required neither prior permission from the State Govt., nor for the road itself to be reflected in the DP;

ii) The MMC Act and MRTP Act are distinct, and the powers granted to Respondent No. 2 under the former would not be impliedly repealed by the latter merely because it was a subsequent statute. Rather, they would exist side-by-side and supplement each other in the areas where there was an

overlap of powers. Thus, Respondent No. 2 had the option of either going through the MRTP Act or the MMC Act and it had used its discretion to exercise the latter option;

iii) While it was true that the link road was not included in the DP after its deletion in 1992, this did not prevent Respondent No. 2 from acting under the MMC Act. The MRTP Act dealt with crafting of development plans at the macro level, while Respondent No. 2 was at liberty to exercise its powers under the MMC Act to iron out minute details and carry out work that would be in furtherance of such a plan, such as the construction of a link road;

iv) Sec. 37 of the MRTP Act which laid out a rigorous process for making minor adjustments to a DP would not be relevant, as Respondent No. 2 had acted under the MMC Act and not the MRTP Act to facilitate the acquisition of land and setting up of the road;

v) The requirements under Section 91 of the MMC Act had been complied with. Even though the Office of the Chief Engineer rather than Respondent No. 3 had forwarded the letter to Respondent No. 10 seeking to initiate the land acquisition proceedings, this was only a minor defect that would not invalidate the process;

vi) Respondent No. 1 had acceded to the steps taken by Respondent Nos. 2 & 3 to acquire the Appellants' land by initiating the land acquisition proceedings under the LAA through Respondent Nos. 10 & 11, which showed that it was in agreement with the need for obtaining the property for the link road;

vii) There was a clear and urgent need for building the road to alleviate traffic congestion in the area caused by the lack of a connector from the Mahakali Caves to the Central MIDC. Thus, public interest would have to trump the private interests of Appellants.

It is in this context that Appellants have approached this Court for the second time.

B. <u>SUBMISSIONS</u>

17. Mr. Shyam Divan & Mr. V. Giri, learned Senior Counsels for the Appellants, have raised the following contentions while assailing the impugned judgment: -

i) The DP under the MRTP Act holds a position of primacy. It is not possible for Respondent No. 2 to act on its own initiative in proposing construction of a road when the road itself is not reflected in the DP. Respondent No. 1 had

already made its opinion on the matter clear by deleting the road from the overall DP through a notification on 12.11.1992, and had then suggested that Respondent No. 2 re-examine the issue in its Directive under Section 37 of the MRTP Act, dated 07.06.1993;

ii) Section 31 of the MRTP Act provides the entire process by which a DP is finalized and sanctioned. The overall scheme under Section 31 envisages a consultative process with the general public whereby objections and suggestions are invited and considered. Respondent No. 2 has taken away the right accorded under Section 31 to object to aspects of the plan by circumventing it by way of a resolution under the MMC Act;

iii) The High Court's ruling permits a subordinate authority, the Municipal Corporation, to subvert the State Government's DP. This would cause violence to the mandate of the MRTP Act;

iv) Given the hierarchy established between the MRTP Act and the MMC Act, Respondent No. 2's usage of provisions of the latter to do what cannot be done under the former, is merely a colourable exercise of power;

v) The MRTP Act is a complete code that provides for every aspect of formulating, modifying, and finalizing a DP. Any actions taken under either the MCC Act or the LAA, to acquire land and use it for any purpose that is not expressly sanctioned in the DP, are illegal. Reliance is placed on ***Girnar Traders v. State of Maharashtra & Ors. ("Girnar Traders 2011")***[1] and ***Manohar Joshi v. State of Maharashtra & Ors.***[2]

vi) Permitting a Municipal Corporation to act outside of a DP will create a chaotic situation and facilitate unbridled usage of the powers under the relevant municipal corporation statute. Such discretion cannot be accorded to a municipal corporation to act outside the contours of the relevant DP;

vii) Even under the MMC Act, the requirement of Respondent No. 3 initiating the process under Section 91 has not been fulfilled. The minimum safeguard provided under Section 91 is for the municipal commissioner himself/herself to at least apply his/her mind to the proposal and then make an application to the State Govt. under Section 91. These are not minor defects but basic protections under the MMC Act

1 (2011) 3 SCC 1.
2 (2012) 3 SCC 619.

and must be construed strictly. The judgment in ***Girnar Traders v. State of Maharashtra ("Girnar Traders 2007")***[3] is cited in this regard;

viii) Notwithstanding the aforementioned defect, Section 91 of the MMC Act requires the State Govt., upon receipt of an application for the acquisition of land, to authorize the initiation of proceedings under the LAA. No such authorization has been granted in this case and the DP does not provide for the road in any case.

ix) Resolution No. 1167 had explicitly noted that the proposed road seemed to be for the benefit of private individuals, Respondent Nos. 4-9, and was not for any discernible public interest.

18. Arguing in support of the impugned judgment, learned Counsel Mr. Girish Godbole, appearing for Respondent Nos. 2 & 3, learned Senior Counsel, Mr. Shekhar Naphade, appearing for Respondent Nos. 6-9, alongside learned Counsel Mr. S.C. Dharmadhikari, appearing for Respondent Nos. 4 & 5, have placed the following submissions:

i) Sanction for construction of the link road was obtained via three resolutions: i) No. 651 on 10.09.1996; ii) Resolution

3 (2007) 7 SCC 555.

No. 39 by the Improvement Committee on 18.08.1998; iii) Resolution No. 536 of 08.12.1998 which was a composite resolution under Section 126 of the MRTP Act, and Section 90(1) & (3) of the MMC Act. Mr. Godbole clarifies that the third resolution was, in effect, under Section 91 of the MMC Act and the mention of Section 90 is merely a typographical error;

ii) In terms of authorization required from Respondent No. 1 for carrying out the acquisition process, Sections 4 & 6 of the LAA provide that the State Govt. is the party that initiates the process of issuing a notification and then declaring that a parcel of land is needed for a public purpose. Hence, the steps taken subsequently under the LAA demonstrate that the State Govt. was ad idem with the municipal corporation on the need to procure Appellants' land;

iii) Section 91 of the MMC has been complied with. The fact that the Office of the Chief Engineer forwarded the application to the State Govt. is inconsequential as the action is a formality. The Commissioner was part of the Ministerial Committee where the decision regarding Appellants' land was taken and the application was only

made after accruing the approval of the committee, including the Commissioner;

iv) The MMC Act and MRTP Act operate in completely different fields and co-exist simultaneously. If the State legislature intended to erode the powers under the MMC Act, it would have included provisions to that effect.

v) Resort to Sections 91, 291(a) and 296 of the MMC Act as the mode of acquisition was ideal for Appellants as they would receive compensation via the statutory mechanism under the LAA. Moreover, the plan for the road, as proposed by Respondent No. 2, does not impact the buildings constructed on the land. Hence, no substantial prejudice is caused to Appellants;

vi) The directive dated 07.06.1993 cannot be classified as coming under Section 37 of the MRTP Act. The State Govt. merely suggested that Respondent No. 2 reconsider the technical and legal aspects of the proposed link road after which no further steps were taken. There was no express modification directed to be made, and this was merely part of the process of revisions and consideration of the DP.

vii) Appellants' conduct and the manner in which they had the buildings on the land constructed in defiance of an

undertaking that was given to the state authorities, disentitles them to any relief on equitable grounds. Further, their repeated representations directly to the State authorities and attempts to manipulate the road construction show mala fide intent;

viii) The link road is in public interest, and such a consideration must override private interest.

19. Learned senior counsel, Mr. Divan, countered Respondents' submissions in his rejoinder by raising the following points:

i) The Resolution of 08.12.1998 was under Section 90 of the MMC Act which is for acquisition by consent. There was neither consent for acquisition nor any separate resolution under Section 91 of the MMC Act that was passed by Respondents. Even if the submission by Mr. Godbole that this was essentially a resolution under Section 91 is to be accepted, the subsequent Resolution No. 1167 of 09.03.2001, and letter dated 14.03.2001 by Respondent No. 2, expressly noted there was no need for a road to be built through Appellants' property. Hence, this nullified any purported decision that may have been taken under Section 91 in the resolution dated 08.12.1998.

ii) The argument regarding disentitlement to relief on equitable grounds is unfounded, since it is the municipal corporation that has repeatedly changed its stance on the need for the link road;

iii) The affidavit submitted by Vyaravali Village Development Assn. before the High Court in the WP filed by Respondent Nos. 6-9, shows that there was a clear application of mind to the issue of constructing the link road. Resolution No. 1167 was the product of these deliberations. Thus, no claim of manipulation and mala fides can be raised against Appellants.

iv) Having devoted our earnest attention to the submissions advanced by both sides, and after perusing the record, we now proceed to consider the issues that have been raised.

C. ANALYSIS

C.1. Interplay between the MRTP Act and the MMC Act

20. The primary issue that emerges from the arguments raised by the parties is with regard to the interaction between the MRTP Act and the MMC Act. Specifically, the Appellants posit that the procedure

under Section 37 of the MRTP Act for amendment of a DP is the sole method by which construction that is not provided for within the DP can subsequently be authorized.

21. Section 37 of the MRTP Act (relevant part) sets out the following process:

> ***37. Modification of final Development plan***
>
> ***(1) Where a modification of any part of or any proposal made in, a final Development plan * * *, the Planning Authority may, or when so directed by the State Government [shall, within ninety days from the date of such direction, publish a notice] in the Official Gazette [and in such other manner as may be determined by it] inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice ; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any,) [to the State Government for sanction within one year from the date of publication of notice in the Official Gazette. If such modification proposal is not submitted within the period stipulated above, the proposal of modification shall be deemed to have lapsed:***
>
> ***Provided that, such lapsing shall not bar the Planning Authority from making a fresh proposal.]***
>
> ***[(1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government shall issue the notice, and thereupon the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.]***
>
> ***[(1AA)(a) Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development plan of such a nature that it will not change the character of such Development plan, the State Government may, on its own, publish a notice in the Official Gazette, and in such other***

manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.

(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the Government.

(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modifications with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final Development plan shall be deemed to have been modified accordingly.]

22. As opposed to this, Respondents have attempted to make a case that the power vested in the municipal corporation under Sections 91, 291(a), and 296 of the MMC Act, are unaffected by Section 37 of the MRTP Act. The interpretation of the three provisions comprise the crux of the present case and they are reproduced below (relevant part):

91. Procedure when immoveable property cannot be acquired by agreement.

(1) Whenever the Commissioner is unable to acquire any immovable property under the last preceding section by agreement [the [State] Government] may, in their discretion, upon the application of the Commissioner, made with the approval of [the Improvements Committee] [and subject to the other provisions of this Act] order proceedings to be taken for acquiring the same on behalf of the corporation, as if such property were a land

needed for a public purpose within the meaning of the Land Acquisition Act, 1870.*

(2) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the corporation.

x----------x----------x

291. Power to make new public streets

The Commissioner, when authorised by the corporation in this behalf may at any time—

(a) lay out and make a new public street;

(b) agree with any person for the making of a street for public use through the land of such person, either entirely at the expense of such person or partly at the expense of such person and partly at the expense of the corporation, and that such street shall become, on completion, a public street;

[(c) declare any street made under an improvement scheme duly executed in pursuance of the provisions of the City of Bombay Improvement Act, 1898, or the City of Bombay Improvement Trust Transfer Act, 1925, to be a public street.]

x----------x----------x

296. Power to acquire premises for improvements of public street

(1) The Commissioner may, subject to the provisions of section 90, 91 and 92—

(a) acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street, and the buildings, if any standing upon such land;

(b) acquire in addition to the said land and the buildings, if any, standing, thereupon, all such land with the buildings, if any, standing thereupon, as it shall seem expedient for the corporation to acquire outside of the regular line, or of the intended regular line, of such street;

(c) lease, sell or otherwise dispose of any land or building purchased under clause (b).

(2) Any conveyance of land or of a building under clause (c) may comprise such conditions as the Commissioner

thinks fit, as to the removal of the existing building, the description of new building to be erected, the period within which such new building shall be completed and other such matters.

23. Under the MCC Act, the power to make a new public street is derived from Section 291. For the purpose of making a new street, Section 296 of the Act empowers the Commissioner to acquire land, subject to fulfilment of the conditions stipulated in Sections 90-92. For our purposes, Section 91 is the consequential provision since Appellants' land could not, evidently, be acquired by agreement and had to be procured under the terms of the procedure provided therein.

24. The entire scheme of land acquisition for the purpose of laying a new road line is provided within the contours of Sections 91, 291(a) and 296. There is undoubtedly a certain degree of overlap between these provisions, and Section 37 of the MRTP Act as they deal with procurement of land. However, the latter is relevant in the context of a DP whereas the MCC Act regulates the manner in which the Mumbai Municipal Corporation operates. Moreover, merely because both statutes are concerned with land acquisition, may not necessarily result in conflict between them.

25. Learned Senior Counsels for the Appellants urged that the interpretation of the provisions of the MRTP Act and MMC Act must be such that actions under the latter could only be taken if sanction and

approval for them had been obtained under the MRTP Act. While it is true that the respective provisions in both Statutes deal with the method for procuring land in public interest, there is nothing contained within them which explicitly or impliedly makes them subject to one another. A bare reading indicates that they operate in distinctive fields which may not always be co-dependent. Appellants' interpretation amounts to curtailing the power that Respondent No. 2 would have otherwise been able to exercise under the MMC Act, outside the contours of the MRTP Act.

26. It is well settled that provisions of one statute should not be construed or interpreted in a manner that they render redundant the provisions in another statute. The Court's endeavour shall always be to harmoniously construct such provisions so that the legislative intent underlying both statutes can be fulfilled.

27. In ***The Chief Inspector of Mines & Ors. v. Lala Karam Chand Thapar & Ors.***[4] the Court had reconciled a seeming contradiction between the Mines Act, 1923, and the General Clauses Act, through a harmonious construction of the provisions in the two Acts:

> ***"13. If the words of s. 31(4) are construed to mean that the regulations became part of the Act to the extent that when the Act is repealed, the regulations also stand repealed, a conflict at once arises between s. 31(4) and the provisions of s. 24 of the General Clauses Act. In***

4 (1962) 1 SCR 9.

other words, the Mines Act, 1923, while saying in s. 31(4) that the repeal of the Act will result in the repeal of the regulations, will be saying, in the provisions of s. 24 of the General Clauses Act as read into it, that on the repeal of the Act, when the Act is repealed and re-enacted, the regulations will not stand repealed but will continue in force till superseded by regulations made under the re-enacted Act. To solve this conflict the courts must apply the rule of harmonious construction... We have to seek therefore some other means of harmonising the two provisions. The reasonable way of harmonising that obviously suggests itself is to construe s. 31(4) to mean that the regulations on publication shall have for some purposes, say, for example, the purpose of deciding the validity of the regulations, the same effect as if they were part of the Act, but for the purpose of the continuity of existence, they will not be considered part of the Act, so that even though the Act is repealed, the regulations will continue to exist, in accordance with the provisions of s. 24 of the General Clauses Act. This construction will give reasonable effect to s. 31(4) of the Mines Act, 1923 and at the same time not frustrate the very salutary object of s. 24 of the General Clauses Act. One may pause here to remember that regulations framed under an Act are of the very greatest importance. Such regulations are framed for the successful operation of the Act. Without proper regulations, a statute will often be worse than useless. When an Act is repealed, but re-enacted, it is almost inevitable that there will be some time lag between the re-enacted statute coming into force, and regulations being framed under the re-enacted statute. However efficient the rule making authority may be it is impossible to avoid some hiatus between the coming into force of the re-enacted statute and the simultaneous repeal of the old Act and the making of regulations. Often, the time lag would be considerable. Is it conceivable that any legislature, in providing that regulations made under its statute will have effect as if enacted in the Act, could have intended by those words to say that if ever the Act is repealed and re-enacted (as is more than likely to happen sooner or later), the regulations will have no existence for the purpose of the re-enacted statute, and thus the re-enacted statute, for some time at least, will be in many respects, a dead letter. The answer must be in the negative. Whatever the purpose be which induced the draftsmen to adopt this legislative form as regards the rules and regulations that

> ***they will have effect "as if enacted in the Act", it will be strange indeed if the result of the language used, be that by becoming part of the Act, they would stand repealed, when the Act is repealed. One can be certain that that could not have been the intention of the legislature. It is satisfactory that the words used do not produce that result. For, if we apply the rule of harmonious construction, as has been pointed out above, s. 31(4) does not stand in the way of the operation of s. 24 of the General Clauses Act."***

28. The primacy of taking a harmonious construction was affirmed in ***Anwar Hasan Khan v. Mohd. Shafi***[5] as well:

> ***"8. It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute has to be gathered from the text, the nature of the subject matter and the purpose and intention of the statute. It is cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding the conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduce one of the provisions to a "dead letter" is not harmonious construction."***

29. When the legislature knowingly allows two statutes to operate in the same space, it is a reasonable presumption that the legislative design would have been for both to remain operative without any overriding effect, save and except when a contrary intent is explicitly provided. In other words, the Court shall steer two statutes away from

5 (2001) 8 SCC 540.

a direct collision with each other, even if their areas of operation are broadly similar.

30. Learned Senior Counsel, Mr. Shyam Divan, has placed substantial reliance on decisions of this Court in ***Girnar Traders 2011*** and ***Manohar Joshi*** to advance the Appellants' argument. In ***Girnar Traders 2011*** the issue under consideration was whether Section 11A[6] of the LAA could be read into the MRTP Act's scheme for acquisition of land. Section 11A of the LAA provided a two-year time period within which an award under Section 11 had to be made to individuals claiming compensation under the Act. Failure to do so would lead to the entire land acquisition process lapsing.

31. It is in this context that the Constitution Bench of this Court held that the MRTP Act is a self-contained code. It elaborated that mere reference to certain provisions of the LAA would not result in the importation of the entire scheme of the said statute unto the MRTP Act. The Court thus held:

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6 **11A. Period shall be which an award within made. –**

The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]

> "***84. The MRTP Act besides being a code in itself has one pre- dominant purpose, i.e., planned development. Other matters are incidental and, therefore, should be construed to achieve that pre- dominant object. All the provisions of the Land Acquisition Act cannot be applied to the MRTP Act. The provisions of the MRTP Act have to be implemented in their own field. As far as the provisions relating to preparation, approval and execution of the development plans are concerned, there is hardly any dependency of the State Act on the provisions of the Land Acquisition Act. It may be necessary, sometimes, to acquire land which primarily would be for the purpose of planned development as contemplated under the MRTP Act. Some of the provisions of the State Act have specifically referred to some of the provisions of the Land Acquisition Act but for the limited purpose of acquiring land. Thus, the purpose of such reference is, obviously, to take aid of the provisions of the Central Act only for the purpose of acquiring a land in accordance with law stated therein rather than letting any provision of the Central Act hamper or obstruct the principal object of the State Act, i.e. execution of the planned development.***"
>
> (Emphasis Applied)

32. Unmistakably, the Constitution Bench's objective was safeguarding against the transposition of conditions under the LAA into the MRTP Act. Allowing this to happen would have made the task of achieving the object and purpose of the MRTP Act more onerous. The crucial factor that weighed with the Court in that instance was that it could not allow the LAA to "*hamper or obstruct*" the MRTP Act's primary goals.

33. A similar concern was deliberated upon by this Court in ***Manohar Joshi (Supra)***. The Court in that case was *inter alia* dealing

with a conflict that arose between a DP and an earlier Town Planning Scheme under Section 59[7] of the MRTP Act. The DP reserved the area in question for the construction of a primary school whereas the town planning scheme had marked it as a residential zone.

34. While noting the express provision under Section 39[8] that a town planning scheme would be subordinate to, and be suitably modified to bring it in congruence with the DP, this Court held:

> ***"84. As noted above, Section 39 specifically directs that the Planning Authority shall vary the TP Scheme to the extent necessary by the proposals made in the final development plan, and Section 59(1)(a) gives the purpose of the TP scheme viz. that it is for implementing the proposals contained in the final development plan. Under Section 31(6) of the Act, a development plan which has came into operation is binding on the Planning Authority. The Planning Authority cannot act contrary to the DP plan and grant development permission to defeat the provision of the DP plan. Besides, it cannot be ignored that a duty is cast on every Planning Authority specifically under Section 42 of the Act to take steps as may be necessary to carry out the provisions of the plan referred to in Chapter III of the Act, namely, the development plan."***
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> (Emphasis Applied)

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7 **59. Making of town planning schemes.**

[(1)] Subject to the provisions of this Act or any other law for the time being in force —

(a) a Planning Authority may for the purpose of implementing the proposals in the final Development plan 4[or in respect of any land which is likely to be in the course of development or which is already built upon], prepare one or more town planning schemes for the area within its jurisdiction, or any part thereof ;...

8 **39. Variation of town planning scheme by Development plan.**

Where a final Development plan contains proposals which are in variation, or modification of those made in a town planning scheme which has been sanctioned by the State Government before the commencement of this Act, the Planning Authority shall vary such scheme suitably under section 92 to the extent necessary by the proposals made in the final Development plan.

35. Upon a close examination of these judgments, we fail to see how they assist the Appellants' case. In both instances, the concern was regarding frustration of the DP by either importation of Section 11A of the LAA into the scheme of the MRTP Act (***Girnar Traders 2011***), or due to a conflict between the DP and the town planning scheme (***Manohar Joshi***). Neither of these eventualities have arisen in the present case.

36. Even apart from that, the principle on which this Court proceeded in the cases cited above is that external statutes or alternate schemes/plans under the MRTP Act or otherwise, should not be allowed to frustrate the DP or the overall objective of planned development under the MRTP Act. As the DP is the primary means of achieving the purpose of the MRTP Act, any violence done to the former would necessarily affect the latter. Conversely, if the former is left essentially undisturbed then it cannot be said that the spirit and scheme of the MRTP Act has not been honoured.

37. The construction of the link road in the present case does not, in any way, frustrate the DP or defeat the overall objective of the statute. The motivation for building the connector is to alleviate traffic congestion in the area caused due to the need for commuters to take a protracted detour around the boundaries of Appellants' property. It is

only in instances where a requirement of the DP is being abrogated that a conflict arises and the observations in ***Girnar Traders 2011 (Supra)*** and ***Manohar Joshi (Supra)*** become relevant.

38. Moreover, the decision in ***Manohar Joshi (Supra)*** contains a crucial distinguishing factor between the town planning scheme sought to be effectuated in that case, and the proposed link road in the present instance. Under Section 39 of the MRTP Act, the town planning scheme is expressly made subordinate to the DP. No such express provision has been placed in either the MRTP Act or the MMC Act, to curtail the powers of Respondent Nos. 2 & 3 under Sections 91, 291(a), and 296 of the MMC Act.

39. In fact, the MMC Act under Section 61(m)[9] mandates that Respondent No. 2 take any lawful measures possible to provide for the construction, maintenance, alteration, and improvement of public streets. The wording of this provision is mandatory, in contrast to Section 63[10] of the MMC Act which grants discretion to the Municipal

---

9 **61. Matters to be provided for by the corporation.**

It shall be incumbent on the corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for each of the following matters, namely :—

...

(m) the construction, maintenance, alteration and improvement of public streets, bridges, culverts, causeways and the like 1[and also other measures for ensuing the safe and orderly passage of vehicular and pedestrian traffic on streets];...

10 **63. Matters which may be provided for by the corporation at their discretion.**

The corporation may, in their discretion, provide from time to time, either wholly or partly, for all or any of the following matters, namely :—

...

Corporation to make arrangements for the subjects listed thereunder, if it so chooses.

40. This Court should not, therefore, unduly erode the powers vested in Respondent No. 2 to carry out its statutory duties under Section 61. This is especially true in a case where the object and purpose of the MRTP Act is left unaffected by the actions taken by the Municipal Corporation.

41. In this background, we find significant merit in learned Counsel, Mr. Godbole's argument, that the MRTP Act and the MMC Act exist in separate spheres without any preconceived hierarchy. There may be instances where there is overlap, such as when a DP is formulated for a municipal area where the municipal corporation also exercises jurisdiction. However, even in such a scenario the two statutes would exist side-by-side and supplement each other.

42. The exception to this, to borrow from ***Manohar Joshi (Supra)***, would be where the actions taken by the municipal corporation or any other external authority "*defeat the provision of the DP plan*". In such an eventuality the appropriate course of action would be to seek a modification of the DP under the MRTP Act.

43. For these reasons, we reject the contention of the Appellants that the only means by which the link road through their property could

have been constructed was through an amendment to the DP under Section 37 of the MRTP Act. Respondent No. 2 had the option to either follow the procedure under the MRTP Act, or to invoke the parallel process provided under Sections 91, 291(a) and 296 of the MMC Act. Respondent No. 2's recourse to the latter cannot be said to defeat any provision of the DP or be contrary to the scheme of the MRTP Act.

44. Having held as such, we also do not find merit in the argument that Respondent No. 2's resort to the MMC Act constitutes a colourable exercise of power. This Court in ***Sonapur Tea Co. Ltd. v. Must. Mazirunnessa***[11] had characterized the colourable exercise of powers as:

> "***9...The doctrine of colorable legislation really postulates that legislation attempts to do indirectly what it cannot do directly. In other words, though the letter of the law is within the limits of the powers of the Legislature, in substance the law has transgressed those powers and by doing so it has taken the precaution of concealing its real purpose under the cover of apparently legitimate and reasonable provisions...***"

45. Once we have ascertained that the two legislations in question, the MRTP Act and the MMC Act, exist in separate spheres with only incidental overlap, the possibility of a colourable exercise of power by Respondent No. 2 falls away. As elaborated above, there is no direct or indirect bar on the exercise of powers under Sections 91, 291(a), and 296 of the MMC Act which are all in furtherance of Respondent No. 2's

11 (1962) 1 SCR 724.

responsibilities under Section 61. The only exception to this would be in those cases where a provision of the DP itself is being abrogated.

46. Mr. Divan, learned Senior Counsel for the Appellants, had also raised an issue regarding the lack of appropriate safeguards under the MMC Act as compared to the MRTP Act. He urged that the existence of the right to object by interested parties to amendments in a DP under Section 37 of the MRTP Act was further backing for his contention that the MRTP Act was a complete code and is meant to control the entire field in regard to planned development. This, he argued, was in contrast to Section 91 of the MMC Act which contains no such right of objection prior to the municipal corporation passing a resolution.

47. In our considered opinion, this does not advance Appellants' case either. Merely because a right to object to a modification of a DP exists under Section 37 of the MRTP Act does not automatically give it an ascendant position in the hierarchy that Appellants seek to create between the MRTP Act and the MMC Act. It is up to the legislature to determine the amount of discretion that is accorded to the relevant authorities under each statute.

48. While it is true that this Court has previously read the requirement of giving affected persons an opportunity to be heard into statutes and provisions which did not provide for it, such a right was

held even in those cases to not be absolute.[12] However, we need not even go so far. A closer reading of the MMC Act and the LAA shows that there are adequate safeguards available and, in the facts of the case, Appellants were given ample opportunity to object to the proposed expropriation of their land.

49. When an application is made under Section 91 of the MMC Act, it is not the case that a notice for acquisition is issued immediately. The State Govt. must first satisfy itself that the land sought to be acquired is indeed required for a public purpose. Respondent No. 1 must scrutinize the application submitted before it and come to the conclusion that the property in question necessitates reservation in public interest before initiating the process under the LAA via notification under Section 4.

50. Thereafter, a mechanism for hearing objections is provided under the LAA. Section 5A of the LAA, as it was at the relevant time, is reproduced below:

> ***5A. Hearing of objections. –***
>
> ***(1) Any person interested in any land which has been notified under section 4, subsection (1), as being needed or likely to be needed for a public purpose or for a Company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.***

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12 ***Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*** *(1985) 3 SCC 545;* ***C.B. Gautam v. Union of India & Ors.*** *(1993) 1 SCC 78.*

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorized by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]

51. In light of this, the claim that adequate safeguards were not available under the route provided in Section 91 of the MMC Act cannot be countenanced. Not only does the State Govt. first evaluate the application under Section 91, but Section 5A of the LAA also permits the landowners themselves to air their grievances.

52. Notice under Section 4(1)[13] of the LAA was issued to Appellants on 24.03.2005 by the Special Land Acquisition Officer ("SLAO") regarding the proposed acquisition of land for constructing the link road and setting a deadline of 15.04.2005 for filing objections.

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13 **4. Publication of preliminary notification and power of officers thereupon. –**
(1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice , being hereinafter referred to as the date of the publication of the notification)].

Appellants responded on 11.04.2005, opposing the acquisition *inter alia* on the grounds that the matter was sub-judice before the High Court in WP No. 3060 of 2002, and that the order dated 18.10.2002 passed in WP No. 1072 of 2001 had directed that actions would not be taken pursuant to any subsequent resolution by Respondent No. 2 without leave being granted by the High Court. Their objections stated that:

> *10. Our clients submit that for the reasons mentioned in Writ Petition No.3060 of 2002 filed by our clients, the proposed acquisition of land out of our clients' property bearing CTS Nos.23, 24 and 26 of Mulgaon is not for any public purpose and the same is not in accordance with law. No portion of our clients' properties bearing CTS Nos.23, 24 and 26 of Mulgaon is or is likely to be needed for construction of any public road. Proposed acquisition is at the instance of and for serving the private purpose of Developers of properties lying to East of our clients' properties and is malafide and in colourable exercise of powers under the Land Acquisition Act, 1894 and Mumbai Municipal Corporation Act, 1888. Construction of a private road through the property of our clients is bound to destroy our clients' property and cause irreparable damage to our clients' property, without serving any public purpose.*
>
> x----------x----------x
>
> *12. In the circumstances, our clients object to the proposed acquisition on the ground that the same is in willful disobedience and breach of Order dated 18th October, 2002 passed by the Bombay High court in Writ Petition No. l072 of 2001 and amounts to interference with the proceedings in Writ Petition No.3060 of 2002 filed by our clients and pending before the Bombay High Court and contempt of the Bombay High Court as also on the ground that the same is not under authority of Appropriate Government and the ground that the same is malafide and in colourable exercise of powers and not in public interest, but merely to favour and confer largesse on Developers of*

property lying to the East of the property of our clients, by seeking to destroy the property of our clients and other grounds.

53. It appears from the record that Appellants sent several letters to this effect over the following months demanding that the acquisition process cease on the aforementioned grounds stated in their letter of 11.04.2005. Appellants had eventually filed a contempt petition against Respondent Nos. 2, 3 and 10, alleging violation of the order of 18.10.2002. This contempt petition was dismissed by the High Court on 18.08.2006.

54. Indeed, the award of compensation under Section 11 of the LAA[14] passed on 26.11.2007 recorded at several instances that multiple hearings were fixed and sufficient opportunity had been given to

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14 **11. Enquiry and award by Collector. –**

[(1)] On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him :

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

...

interested parties to be heard. In terms of the inquiry under Section 5 of the LAA, the award noted:

> *After going through the objection raised by M/S Soloman & Co. Adv. Mentioned above and legal advice dt. 10/5/05 revived from M.C.G.M.: the S.L.A.O. came to the conclusion that he need not to wait till the decision of the Hon. High Court, Mumbai in writ. Petition No.3060/02 filed by the interested parties as asked for in the objection mentioned above and S.L.A.O. decided to [proceed] with proceedings under sec. 6 of L.A. Act. The detailed report in form 'D' as required under sec. 5A of L.A. Act and draft notification under sec. 6 of L.A. Act have been submitted to the Addl. Commissioner Konkan Division through the Addl. Collector M.S.D. on 16/6/05 for the approval and publication of notification under sec. 6 in Govt Gazette and newspaper etc.*

55. The award then goes on to note that no documentation had been submitted by any of the interested parties showing title/rights over the land and no claims for compensation had been filed under the LAA either:

> ***E. EVIDENCE IN SUPPORT OF CLAIM BY THE LAND OWNERS***
>
> *Nobody from owners or interested persons has filled their claims of compensation nor they have produced any documentary evidence of ownership of land under acquisition. Sufficient times were given them by fixing hearing from time to time and heard them. Finally letters dt. 12/5/06, 13/7/06 and 20/3/07 were issued to them asking to file their claims of compensation and documents of ownership. However, nobody came forward to file their claims of compensation or claims of ownership.*
>
> *Only one Shri Abraham Pattani through his advocate, filed every time his objection for acquisition of said lands and tried to stay acquisition proceedings.*

56. What emerges from this sequence of events is that Appellants appear to have been given sufficient opportunity to be heard and for their objections to be considered. However, the Appellants remained preoccupied with attempting to halt the acquisition proceedings on the ground that the matter was sub-judice before the High Court and, thus, no further steps under the LAA could be taken. After scrutinizing the legal situation, the SLAO dismissed their objections and continued to perform the various steps under the LAA. There was no stay granted during this time, and Appellants' contempt petition had been dismissed, as mentioned above.

57. The Appellants seemingly did not submit any documentation in support of their claim of title and neither did they seek quantification of compensation they may have been entitled to under the LAA. As a result, they cannot now claim that there was no opportunity given to them to voice their concerns with regard to the acquisition process. The decision by the Appellants to stick to their position in terms of the notification and award being non-est due to the pendency of their WP at the High Court cannot entitle them to now argue that they were treated unfairly in the proceedings under the LAA.

58. This also fortifies our earlier observation regarding the co-existence of the MMC Act alongside the MRTP Act. The contentions

raised by the Appellants have failed to persuade us and we see no reason to enact a hierarchy between the two Statutes. We affirm, once again, the position articulated by Respondents that it was open to Respondent No. 2 to act under the MMC Act to acquire Appellants' land for the public purpose of building the link road.

C.2. Compliance with the procedure under the MMC Act

59. Having held that Respondent No. 2 was entitled to exercise its powers under the MMC Act, it is now incumbent on us to examine whether the procedure under the Statute was properly followed. We refer to our earlier observations on the scheme of procurement under the MMC Act from a combined reading of Sections 91, 291(a), and 296 contained therein.

60. To begin with, it is necessary to recap the sequence of events that led to the land acquisition proceedings. Learned Counsel for the Municipal Corporation and the Municipal Commissioner, Mr. Godbole, has highlighted the initial trio of resolutions, Nos. 651, 39 & 536, by Respondent No. 2 that set the ball rolling in terms of land acquisition. Resolution No. 536 was a composite resolution under Section 126 of the MRTP Act and Section 90 of the MMC Act. According to him, this was in effect a resolution under Section 91 as the reference to Section 90 was merely a typographical error due to Section 90[15], acquisition

15 **90. Acquisition of immovable property by agreement.**

via consent, being the first option under the MMC Act. When that failed, the natural next step would be the second option under Section 91 of the MMC Act.

61. Subsequently the Office of the Chief Engineer had made an application to Respondent No. 1 on 05.02.1999 for procuring the Appellants' land. The link road proposal was then shelved via Resolution No. 1167, before being revived once again by Resolution No. 1117 dated 28.10.2002.

62. Following the renewal of the link road proposal, the land acquisition proceedings were recommenced under Section 91 and the necessary steps under the LAA were taken on the basis of the same application of 05.02.1999 that had been submitted by the Office of the Chief Engineer. This finally culminated in the passing of the award of compensation under Section 11 of the LAA on 26.11.2007.

63. In this backdrop, learned Senior Counsels for the Appellants have argued that there has been non-compliance with two requirements under Section 91 of the MCC Act: a) The application for acquisition of land was forwarded from the Office of the Chief Engineer (Development Plan) and not the Commissioner; b) There was no

(1) Wherever it is provided by this Act that the Commissioner may acquire or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the corporation by agreement 6[subject to the provisions of sub-section (3)].

...

authorization granted or order passed by Respondent No. 1 to proceed with such an acquisition.

64. Adverting to the first submission, we acknowledge the unambiguous language of Section 91 which contemplates an application being submitted by the Commissioner, Respondent No. 3. However, when dealing with such matters of procedure the old adage of procedural laws being the handmaid of justice must be kept in mind. As has been exhaustively and extensively reiterated by this Court in the past, procedural rules must not be allowed to defeat the basic purpose of a statute or hamper the pursuit of justice unless violation of the procedure would itself amount to grave injustice.

65. In ***Sangram Singh v. Election Tribunal, Kotah & Anr.***[16] this Court in the context of procedural rules held:

> ***"16...It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it."***
>
> (Emphasis Applied)

16 (1955) 2 SCR 1.

66. Similarly, in ***Ghanshyam Dass v. Dominion of India***[17] the ethos behind "adjective law" was elaborated upon while dealing with issuance of notice under Section 80 of the Civil Procedure Code:

> ***"12. In the ultimate analysis, the question as to whether a notice under Section 80 of the Code is valid or not is a question of judicial construction. The Privy Council and this Court have applied the rule of strict compliance in dealing with the question of identity of the person who issues the notice with the person who brings the suit. This Court has however adopted the rule of substantial compliance in dealing with the requirement that there must be identity between the cause of action and the reliefs claimed in the notice as well as in the plaint. As already stated, the Court has held that notice under this section should be held to be sufficient if it substantially fulfils its object of informing the parties concerned of the nature of the suit to be filed. On this principle, it has been held that though the terms of the section have to be strictly complied with, that does not mean that the notice should be scrutinized in a pedantic manner divorced from common sense. The point to be considered is whether the notice gives sufficient information as to the nature of the claim such as would the recipient to avert the litigation."***
>
> (Emphasis Applied)

67. In the same vein, ***Sugandhi v. P. Rajkumar***[18] promoted an approach that sought to achieve substantial justice when confronted with breaches of procedural law, especially when the other party did not suffer any significant prejudice. This Court opined:

> ***"9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts***

17 (1984) 3 SCC 46.
18 (2020) 10 SCC 706.

> ***must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute."***
>
> (Emphasis Applied)

68. A Constitution Bench of this Court in ***State of U.P. & Ors. v. Babu Ram Upadhya***[19], while laying down the test for determining if the legislature intended for a provision to be directory or mandatory in nature, held as follows:

> ***"29...For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."***
>
> (Emphasis Applied)

69. It is with these time tested principles in mind that we must now analyse Appellants' contentions and consider whether the requirement of the Commissioner making the application under Section 91 is directory or mandatory in nature. While doing so, we avert to learned Counsel Mr. Godbole's argument that the Commissioner is, at all

19 (1961) 2 SCR 679.

times, involved in the decision making process and is an integral member of the Ministerial Committee that signs off on initiating a land acquisition process under the MMC Act.

70. Thus, a common sense approach would lead to the conclusion that rigid adherence to the notion that the Commissioner can be the only official to actually send an application under Section 91 may not be warranted in all scenarios. The construction of the provision that has been suggested by the Appellants would prevent the kind of "*reasonable elasticity of interpretation*" that was noted in ***Sangram Singh (Supra)*** to be vital when construing a statute.

71. Further, we are unable to ascertain what prejudice has been caused to the Appellants merely because it was the Office of the Chief Engineer which officially forwarded the application to the prescribed authority under Section 91. The consequence in both scenarios, whether the Commissioner or some other official acts under the provision, would be that land acquisition proceedings are commenced under the LAA. None of the Appellants' rights are abrogated by the Chief Engineer making the application under Section 91. This is further accentuated by the fact that, in any case, Respondent No. 3 was part of the decision-making process.

72. Appellants have placed reliance on ***Girnar Traders 2007 (Supra)*** to contend that the requirement of Respondent No. 3 being the specific official to make the application cannot be deviated from. The Court in that instance was dealing with lapsing of a reservation of land under the MRTP Act in terms of Section 127.[20] The area in question had been marked as part of a DP but no steps had been taken to acquire it for a full decade thereafter. The Commissioner was the designated authority authorized to act under Section 126 to initiate the steps for land acquisition. While analysing Sections 126 & 127 of the MRTP Act[21], the majority opined:

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20 **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 2[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.

...

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

(1) Where 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 purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, 1[any Appropriate Authority may, except as otherwise provided in section 113A] 2[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 lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894, 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

"54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corporation of Greater Bombay Case (supra). If the acquisition is left for a time immemorial in the hands of the concerned authority 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 land owner for his utilization as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for de-reservation 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 land owner for de-reservation. 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.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilization of his land as per the user permissible under the plan. When mandate is given in a Section requiring compliance within a particular period, the strict compliance is required

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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 an application to the State Government for acquiring such land under the Land Acquisition Act, 1894,

...

thereof as introduction of this Section is with legislative intent to balance the power of the State of 'eminent domain'..."

(Emphasis Applied)

73. It was in this context that the majority noted that the Executive Engineer, who was not authorized to act as the appropriate authority under Section 126, could not have taken on the mantle of making an application for initiating proceedings under the LAA. What weighed with the court was the legislative intent of Sections 126 and 127 which was to "*balance the power of the State of 'eminent domain'*". The consequence of not acting in an expeditious manner under Sections 126 & 127 was the automatic de-reservation of land that was meant to be part of the DP.

74. Thus, there are two important distinguishing factors between ***Girnar Traders 2007 (Supra)*** and our scenario. The first is the mandate and purpose of Sections 126 & 127 which are meant to ensure the DP is acted upon swiftly and efficiently. The prejudice caused to a private citizen if his land is reserved for a public purpose under the MRTP Act but then not acquired for years afterwards was eloquently elaborated upon by the majority. The individual would be deprived of the usage of his land due to the reservation, while not receiving compensation for it under the LAA. It was to safeguard against such an eventuality that strict adherence to Sections 126 &

127 of the MRTP Act was necessary. This rationale cannot be transplanted to Section 91 of the MMC Act.

75. The second is the lack of any penal provision or consequence attached to a failure to follow the exact procedure mentioned under Section 91. As observed in ***Babu Ram Upadhya (Supra)*** the existence of a penal mechanism attached to non-compliance is one of the means by which the nature of a provision can be ascertained. Under the MRTP Act the consequence of non-compliance with the designated procedure under Section 126 is the eventual de-reservation of the land in question under Section 127.

76. In this context, the Doctrine of Purposive Interpretation is also of assistance. This Court in ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Anr.***[22] referred to the need for interpretation of a statute to be based on the context and purpose behind it, in the following terms:

> ***"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then Section by section, Clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-***

22 (1987) 1 SCC 424.

> ***maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."***

77. Along similar lines, ***S. Gopal Reddy v. State of A.P.***[23] expounded on the approach to be taken while interpreting statutes and held:

> ***"12. It is a well-known Rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary. We are unable to persuade ourselves to agree with Mr. Rao that it is only the property or valuable security given at the time of marriage which would bring the same within the definition of 'dowry' punishable under the Act, as such an interpretation would be defeating the very object for which the Act was enacted. Keeping in view the object of the Act, "demand of dowry" as a consideration for a proposed marriage would also come within the meaning of the expression dowry under the Act."***

78. It appears to us that Section 91 imposes a statutory responsibility on Respondent No. 3, the Commissioner, to initiate the land acquisition process. The object behind the expression "***...upon the application of the Commissioner, made with the approval of***

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23 (1996) 4 SCC 596.

the..." unequivocally suggests that the Commissioner must apply his/her mind and take a conscious decision in favour of the acquisition proceedings being initiated under the LAA. Once the Commissioner is party to the Ministerial Committee and a determination is made by the Committee that a new public street must be laid and land must be acquired for this purpose under Section 91 of the MCC Act read with the LAA, it is no longer consequential which authority conveys this decision. The conclusion that the land is required for the construction of the road cannot be invalidated on this ground.

79. To the extent that Respondent No. 3 is required to forward the application under Section 91, we see no reason to consider this a mandatory condition. Nevertheless, even for such directory provisions substantial compliance is necessary. In ***Sharif-ud-din v. Abdul Gani Lone***[24] the level of compliance with directory rules, as well as the distinction between mandatory and directory requirements under a statute, was detailed and laid down in the following terms:

> *"**9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is***

24 (1980) 1 SCC 403.

directory or mandatory may be summarized thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to sub-serve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory."

(Emphasis Applied)

80. We are inclined to hold and affirm that there has been substantial compliance with Section 91 to the extent that it achieves the objective behind the provision. Learned Counsel, Mr. Godbole, has already pointed out the practicalities of the decision making process in Respondent No. 2. Undoubtedly, Respondent No. 3 would have been a participant in the deliberations on whether to initiate the process under Section 91 for procurement of land. The final application was made only after gaining approval from him and the rest of the Committee.

81. Appellants have urged that the need for Respondent No. 3 to personally take the first step under Section 91 is part of the minimal safeguards that exist under the MMC Act and must be adhered to. We feel that the purpose behind the provision of ensuring that the highest-ranking officer in the municipal corporation is privy and amenable to the acquisition proceedings is achieved by his

participation and sign off on the action, regardless of whether he personally sends the application.

82. In this respect, the holding of a Division Bench of the Bombay High Court in ***Harakchand Misirimal Solanki & Ors. v. The Collector & Ors.***[25] becomes relevant. The High Court was dealing with the Bombay Provincial Municipal Corporation Act, 1949, and efforts made by the Pune Municipal Corporation to set up a "Forest Garden". One of the several alleged defects in the process which arose for consideration before the High Court pertained to the fact that the Assistant Commissioner, instead of the Commissioner, had made the application for commencing proceedings under the LAA. It was urged that the Commissioner was the designated authority under Section 78 of the Act.[26] Rejecting this argument, the Division Bench observed:

> ***"24. We do not find any substance in the contention of the petitioner that it is not the Assistant Municipal Commissioner but the Commissioner himself who should have applied for initiation of proceedings under the said Act...Therefore, even if contention of the petitioner is accepted that the actual application sent to the Collector seeking to initiate proceedings under the said Act for compulsory acquisition of the lands in issue was signed***

25 2008 SCC OnLine Bom 1067.

26 **78. Procedure when immovable property cannot be acquired by agreement**

(1) Whenever the Commissioner is unable under section 77 to acquire by agreement any immovable property or any easement affecting any immovable property vested in the Corporation or whenever any immovable property or any easement affecting any immovable property vested in the Corporation is required for the purposes of this Act, the1 [State] Government may in its discretion, upon the application of the Commissioner, made with the approval of the Standing Committee and subject to the other provisions of this Act, order proceedings to be taken for acquiring the same on behalf of the Corporation, as if such property or easement were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894[I of 1804].

and sent by the Assistant Municipal Commissioner and not by the Commissioner of the said Corporation himself, we do not find that this will constitute a gross illegality in the initiation of the acquisition proceeding in issue. In our view, once the proposal is shown to have been accepted by the Commissioner, processed by the Commissioner and sent to the Collector in terms of the directions of the Commissioner, only because the same was formally signed not by the Commissioner himself but by the Assistant Municipal Commissioner, in law, would not be so vital to warrant vitiating of the entire acquisition proceeding. In our view, if it is demonstrated that substantial compliance is done with the statutory requirement of Section 78 of the said Act, no fault can be found with these acquisition proceedings, on this ground as claimed by the petitioners."

(Emphasis Applied)

83. The High Court, thus, rebutted this particular contention raised by the Petitioners. However, the Petitioners' Writ Petitions were allowed overall due to certain other discrepancies that were discovered in the setting up of the Forest Garden. The Pune Municipal Corporation filed an SLP against this judgment assailing the High Court's final conclusion which is unrelated to the specific issue we are concerned with in the present case. Notwithstanding the fact that the matter remains sub-judice on other facets of the case, we find some prima facie merit in the reasoning by the Bombay High Court for repelling the argument that only the Commissioner may submit the application for reservation and acquisition of land under the LAA.

84. As submitted by learned Counsel, Mr. Godbole, Respondent No. 3's seal of approval was granted for the actions taken under Section

91 of the MMC Act. We, therefore, hold that once the proposal has been approved by the Commissioner, the lack of a formal signature from him on the eventual application is not a serious defect and cannot annul the entire process that followed.

85. Based on the discussion above, we are satisfied that Section 91 of the MMC Act has been substantially complied with in this case. We now turn our attention to the second contention by the Appellants on the issue of compliance with procedural requirements, which is the purported absence of an order by the State Govt. for initiating land acquisition proceedings under the LAA.

86. To ascertain the veracity of the Appellants' claim we may refer once again to the final award of compensation passed on 26.11.2007. Under the sub-heading "Introduction" under the main heading "Reasons for the Award", it is noted that the Office of the Chief Engineer sent the application to the Collector 05.02.1999 for procuring the land in question. Following the application, it was recorded that:

> *"The Addl. collector M.S.D. along with his letter dt. 21/7/99 sent the said proposal to this office directing this office to process acquisition proceeding."*

87. We are, therefore, unable to spot the infirmity in the actions of Respondent authorities. The Additional Collector, acting on behalf of

Respondent No. 1, forwarded the proposal from Respondent No. 2 to the SLAO for further processing and commencement of the procedure under the LAA. There is no indication in Section 91 of the MMC Act that the order of the State Govt. to carry out the land acquisition is supposed to be in a specific form. Keeping this in mind, we have no hesitation in taking a pragmatic and practical approach to this requirement. It is enough that the relevant office in Respondent No. 1 accepted the application from Respondent No. 2 and conveyed it to the authorities empowered to act under the LAA. The direction from the Additional Collector for the SLAO to process the request from Respondent No. 2 would be sufficient compliance with Section 91 of the MMC Act.

88. In any case, Respondent Nos. 10 & 11, in performing the steps under the LAA to procure the land, acted for and on behalf of Respondent No. 1. Thus, it is incontrovertible that Respondent No. 1 was fully on board with the initiative to acquire Appellants' land for constructing the link road. The fact that all the steps under the LAA were carried out is sufficient evidence that there has been adherence to the spirit and scheme of Section 91 regarding Respondent No. 1 being involved and sanctioning the actions of Respondent Nos. 10 & 11.

89. In summation, we conclude that the objections by the Appellants on the grounds of non-adherence to procedural requirements under Section 91 of the MMC Act are without merit. There has been substantial compliance with the provision and the objective underlying it has been honoured.

C.3. Public Interest v. Private Interest

90. It is important for us to take stock of the nature of the present dispute. The Appellants are private citizens who have valid title and ownership over the land in question. Without doubt, their personal and private rights are of great importance. In a democratic society governed by the rule of law, the rights of an individual carry immense importance and are the foundational blocks on which our legal, social, and political milieu thrives. Under no circumstances should the rights of individual citizens be trodden upon arbitrarily and any curtailment of them must be scrutinized with utmost care.

91. At the same time, we must not lose sight of the fact that in several situations, the needs of the many must outweigh that of the few. We say so not with any fervour nor as a mantra, but as a solemn acknowledgment of the realities of modern life. The question of what constitutes "public interest" has been contemplated upon multiple times and the history of this Court is full of musings by different

benches on the exact contours of this phrase in the context of various situations and statutes.

92. In ***Manimegalai v. Special Tehsildar***,[27] it was surmised that:

> "***14. Similarly, public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of a Section of the society may be public purpose when it is benefitted by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily."***

93. In ***B.P. Sharma v. Union of India & Ors.***[28] the nebulous nature of phrases such as "public interest" or "in the interest of the general public" was commented upon, with the Court stating:

> "***15. ...The phrase "in the interest of the general public" has come to be considered in several decisions and it has been held that it would comprise within its ambit interests like public health and morals, economic stability, stability of the country, equitable distribution of essential commodities at fair prices for maintenance of purity in public life, prevention of fraud and similar considerations..."***

27 (2018) 13 SCC 491.
28 (2003) 7 SCC 309.

94. This point was emphasized in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi & Anr.***[29] as well, which held that no strict definition for "public interest" existed:

> ***"22. The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake."***

95. It is unnecessary to belabour the point. The proposition is simply that the notion of public interest will necessarily reflect the specificities of the situation at hand. In the present case, the public interest which has been emphasized upon by Respondents is the urgent need for the creation of a connecting road through the Appellants' property. The need stems from the traffic congestion caused on the route from the Mahakali Caves to the Central MIDC. The lack of a direct linkage requires detours to be taken that significantly increase commuting time and cause inconvenience to the general public.

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29 (2012) 13 SCC 61.

96. When the public interest is so clearly articulated and is an urgent and pressing exigency, private interests must give way to the extent required. This Court has acknowledged this before, such as in ***Ramilila Maidan Incident v. Home Secretary, Union of India & Ors***.[30]:

> ***"119. The right to freedom in a democracy has to be exercised in terms of Article 19(1)(a) subject to public order. Public order and public tranquillity is a function of the State which duty is discharged by the State in the larger public interest. The private right is to be waived against public interest. The action of the State and the Police was in conformity with law. As a large number of persons were to assemble on the morning of 5th June, 2011 and considering the other attendant circumstances seen in light of the inputs received from the intelligence agencies, the permission was revoked and the persons attending the camp at Ramlila Maidan were dispersed."***
>
> (Emphasis Applied)

97. In ***K.T. Plantation Pvt. Ltd. & Ors. v. State of Karnataka***,[31] the origins of "Eminent Domain" were traced and the ethos behind acquisition of land by the government for public good was discussed. The Court elaborated on this in the following terms:

> ***"134. Hugo Grotius is credited with the invention of the term "eminent domain" (jus or dominium eminens) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain: the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of the above principle***

30 (2012) 5 SCC 1.
31 (2011) 9 SCC 1.

> ***varies from countries to countries. Germany, America and Australian Constitutions bar uncompensated takings. Canada's constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law, the same is the situation in United Kingdom which does not have a written constitution as also now in India after the 44th Constitutional Amendment."***
>
> (Emphasis Applied)

98. With these considerations in mind, we deem the present case to be an appropriate instance where public interest must have paramountcy over private interest. We emphasize once again before parting that the rights of the individual must only be watered down when the necessary circumstances demanding such a drastic measure exist.

99. Learned Counsel, Mr. Godbole, has candidly explained to us that the plan for the road through the Appellants' property is mapped in such a way that it will not disturb the buildings that have been constructed on it. Learned Senior Counsel, Mr. Divan, has fairly admitted that this is indeed the case. Given this, we consider that a suitable middle ground has been arrived at which is practical and optimally balances the competing interests between the parties.

D. CONCLUSION

100. For the reasons detailed above, we find that Respondent No. 2 validly exercised its powers under the MMC Act to direct the

acquisition of the Appellants' land. The argument by the Appellants that the MRTP Act maintains supremacy over the MMC Act is not the correct position of law, in our opinion, and the two statutes exist side-by-side with some degree of overlap. The powers under the MMC Act remain intact even in cases where they cover a subject that is also provided for in the MRTP Act.

101. The procedure contemplated under Section 91 of the MMC Act to commence proceedings under the LAA for procuring land was substantially complied with. The part of the provision relied upon by the Appellants is directory in nature and requires substantial compliance rather than strict compliance. The objections raised by the Appellants regarding certain aspects of the process are unfounded as no prejudice was caused to them, and the purported defects are not nearly grave enough to cause an annulment of the entire process.

102. In light of these findings, we do not consider it necessary to comment upon the submissions by learned Senior Counsel, Mr. Naphade, regarding the bona fides of the Appellants and their entitlement to relief on the grounds of equity. Considering the other issues which have been answered in favour of the Respondents, this point becomes moot.

103. In the final outcome, we dismiss the present appeal as being devoid of merit.

104. Pending applications, if any, are also disposed of.

.....J.
(SURYA KANT)

.....J.
(ABHAY S. OKA)

NEW DELHI:
SEPTEMBER 02, 2022