

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1376 OF 2003

Godavari Hatmaag Vastra Nirman
Sahakari Sanshta, Vasarni,
Taluka & District Nanded
through its President
Vishwanath S/o Narsimlu Anantwar
R/o D.R.T. 24, Ravindra Nagar,
Labour Colony, Nanded

... Petitioner.

Versus

1. The State of Maharashtra
2. The Collector, Nanded
3. The Special Land Acquisition Officer,
Upper Penganga Project – 1,
Nanded.
4. The Administrator (New Towns)
City & Industrial Development Corpn.,
Limited, Maharashtra, New Town,
CIDCO, Nanded.
5. The Chief Administrator (New Towns)
City & Industrial Development
Corporation Ltd., Udyog Bhavan,
Jalna Road, Aurangabad.
6. The Joint Managing Director,
City & Industrial Development Corpn.
Ltd., Maharashtra, “Nirmal Bhavan”
Second Floor, Nariman Point,
Mumbai – 400 021.

... Respondents.

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Mr. M.V. Deshpande, Advocate for the Petitioner.
Mr. R.V. Dasalkar, A.G.P. for State.
Mr. A.S. Bajaj, Advocate for Respondent Nos.4 to 6.

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**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATED : 23rd MARCH, 2018

JUDGMENT (PER : T.V. NALAWADE, J.)

1. The petition is filed for giving direction to respondent Nos. 1 to 3 and particularly CIDCO to proceed with the proceeding started under the Land Acquisition Act for acquisition of land admeasuring 30 Mtrs. X 250 Mtrs. from survey no.50 situated at Vasarni, Taluka and District Nanded, which is already taken in possession by respondent no.4 for development of road. Both sides are heard.

2. The petitioner is a Cooperative Hatmaag Society. Survey No.50 is owned by the society. This survey number and other survey numbers were notified as a property required for the purpose of development of a new township by CIDCO. The petitioner society requested to delete this survey number. Some other societies also had requested for deletion of their properties from acquisition proceedings and to denotify the properties.

3. Agreement was reached between the petitioner and the State Government under which the State Government agreed to delete survey nos.50, 36 and 47 subject to some conditions. The petitioner agreed to allow CIDCO to use its portion admeasuring 20 Mtrs. X 250 Mtrs. from survey no.50 and to make construction of road on it. As per the agreement, this road was to be used by the society also and the society was also to be benefited due to construction of this road. In view of the agreement, an undertaking was given by the petitioner to the Government and then these lands were denotified from the acquisition proceeding.

4. It appears that subsequently, CIDCO made correspondence with the petitioner and then due to the request made by the petitioner and due to the decision taken by CIDCO, acquisition proceeding was started in respect of the portion admeasuring 20 Mtrs. X 250 Mtrs. from survey No.50 for construction of road and the road was to be constructed by CIDCO. Notification was issued under Land Acquisition Act and in that notification, the said portion was showed as the portion which was required to be acquired. Possession of this portion was given by the petitioner

to CIDCO.

5. The contentions of the petitioner showed that there were negotiations and some rate was proposed by the petitioner as a market value of the land which was to be given by CIDCO. As CIDCO was in-charge for development of the township, provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') could have been used by CIDCO. When the proceeding was started before the Special Land Acquisition Officer, he expressed that CIDCO was entitled to use its power under the provisions of the MRTP Act. The Special Land Acquisition Officer expressed that CIDCO was competent to use the provisions of the MRTP Act. Accordingly, steps were taken by CIDCO for acquisition under the MRTP Act. Then one officer of CIDCO noticed that there was no need of acquisition. That was realized when the dispute was taken to the Commissioner of Revenue Department. He went through the agreement between the petitioner and the Government in which there is a consent given by the petitioner to allow CIDCO to use its portion admeasuring 20 Mtrs. X 250 Mtrs. for construction of road. Then CIDCO did not show any interest for initiation of

acquisition proceeding. Prior to that, some more portion like 10 Mtrs. X 250 Mtrs. was also taken in possession to make the road more wide. Possession of this road was also given by the petitioner to CIDCO. Thus, CIDCO has used the portion admeasuring 30 Mtrs. X 250 Mtrs from survey No.50 belonging to the petitioner and the petitioner wants to see that it is compensated. For that, direction is sought against the respondent to either start acquisition proceeding or complete the acquisition proceeding which was started and give compensation to the Petitioner.

6. The Land Acquisition Officer has filed reply and he has admitted that initially, proceeding was taken under the Land Acquisition Act, 1984 and then under the provision of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act. In reply, he has quoted the terms and conditions of the agreement which was executed in the year 1987 for deleting land survey No.50 and other lands from acquisition proceedings. It is contended that there was no need of acquisition of the said portion as the portion was to be given by the petitioner. The CIDCO/authority was to spend for creation of road and the road

was to be used by the petitioner society also.

7. The CIDCO has filed reply affidavit and it has also contended that as per the agreement, the portion was given in possession of CIDCO and the road constructed has benefited the petitioner also. It is contended that there was some misunderstanding and due to the misunderstanding, the officers of CIDCO had negotiations with the petitioner and the acquisition proceeding was started. It is contended that this Court had referred the matter to Divisional Commissioner and in the meeting dated 21.03.2005, the Divisional Commissioner expressed that the petitioner is not entitled to get any compensation as the petitioner had given consent for allowing CIDCO to make construction of road on that portion. The correspondence made by the Commissioner with CIDCO is produced on record which started from the year 2003. The CIDCO, however, admitted that when there was an agreement in respect of 20 Mtrs. X 250 Mtrs. and CIDCO acquired portion of 30 Mtrs. X 250 Mtrs.

8. The petitioner has not disputed that its land survey no.50 situated at Vasarni, Tahsil Nanded was to be acquired for development which was to be done by CIDCO, Nanded, and acquisition proceeding was also started. It is also not disputed that the petitioner wanted to see that these lands are deleted from acquisition proceedings. It is also not disputed that there were negotiations and the Government agreed to delete the land of the petitioner from acquisition proceeding subject to some conditions. It is not disputed that the agreement was signed by both the parties and then undertaking was also given by the petitioner society which contained the aforesaid conditions in the agreement. Only after that, the land of the petitioner was deleted from the acquisition proceeding.

9. A copy of the agreement is on record and there is correspondence contending the terms and conditions of the said agreement. The decision was communicated to CIDCO by the Government vide letter dated 13.01.1987. The relevant portion of the communication mentioned above is as under:

“iii) It was decided that some parts of the above mentioned lands from sy. Nos. 36 and 47 which have been transferred to MHADA for development should be deleted from the schedule appended to the Govt. Notification/Urban Development Department No.DOC-1086/297/CR49/86 UD-4 dated 13-10-1986 and necessary notifications should be issued and the CIDCO and MHADA should be instructed not to acquire lands from sy. Nos. 36,47 and 50. A copy of the notification should be forwarded to the Commissioner Aurangabad Division Aurangabad, Collector of Nanded and the Govt. Pleader, High Court of Bombay, Aurangabad Bench at Aurangabad, Administrator CIDCO Nanded.

iv) It was decided that in future if the CIDCO proposes to acquire lands in Sy. No.36 of Vasarni Village, belonging to the Society it should first acquire equal land between sy. Nos. 47 and 50 of the society in Vasarni Village and allot it to the society in exchange of land from sy. no.36 without any compensation.

v) Shri Anantwar agreed that his society shall permit CIDCO to construct a road of 250 Mts. Long and 20 Mts. wide through sy. no. 50 and hand over to the CIDCO the land required for the purpose and shall take the benefit of that road.

vi) The CIDCO shall not take any objection for construction of houses and weaving shades of the society in the lands in sy. Nos.36, 47 and 50.

vii) Shri Anantwar shall give a written undertaking to the Govt. to the effect that he agrees to the above decision.

10. The petitioner society gave undertaking by passing resolution in its meeting and it can be found in correspondence made by the petitioner with the Government on 02.01.1987. The

relevant portion of the said communication with undertaking is as follows:

“1) In this meeting after detailed discussion it was finally decided that societies land bearing Sr. No.36, 47 & 50 which were purchased by it as per letter dated 3.2.1981 of CIDCO, Aurangabad, should be completely deleted from the acquisition proposal of CIDCO, New Nanded project & from the limits of New Nanded, and society will not demand any kind of compensation or damages from CIDCO or Govt. for with holding the lands till today.

2) Secondly, it is also decided that the part portion of Sr. No.36 & 47 which is recently notified in the month of October, 1986 for MAHADA should be deleted from acquisition for MAHADA & de-notified for releasing from MAHADA & NECESSARY Govt. Resolution & notification be issued from Urban Department Govt. of Maharashtra.

3) Thirdly, it is also decided that CIDCO, MAHADA authorities will be informed accordingly, not to acquire Sr. No.36, 47 & 50 of village, Vasarni, Dist. Nanded & to withdraw the acquisition proposal from land acquisition office.

4) Fourthly, as regards Sr. No.50, it is decided that the Govt. Pleader Aurangabad & CIDCO officers will be infomred to withdraw the case form High Court, Aurangabad.

5) It is also decided & finalaised that, if CIDCO requires Sr. No.36 of Vasarni, first they should acquire equal land in between land Sr. No.47 & 50 of Vasarni against land Sr. No.36 adjacent to societies land and allotted to our society and then only they can acquire Sr. No.36 & can take possession. This will be exchange of equal land & there will be no question of compensation or any amount.

6) It is also decided that Road passing through Sr. No.50 Vasarni of our society admeasuring 250 M. Long & 20 Mr. wide (5000 Sq. mt) will be constructed by CIDCO & Society can take benefit of this road & right to take all facilities from this road, Society will handover this piece of land required for road to the CIDCO, New Nanded fro construction and will not take any objection.

7) It is also finalised that CIDCO will have no any kind of objection to construct the houses by the society & their required projects in respect of their cloth production in Sr. Nos. 36, 47 & 50.”

11. The correspondence made by the society with the local body, Corporation dated 07.01.2002 shows that for development of the property of the society, the aforesaid road was shown as road in existence for access and for use of the society. It is not disputed that the society is benefited due to this road. There is some correspondence of the Government directly made with the society showing that as per the demarcation the portion was handed over by society and it was constructed to benefit all, including the society.

12. The Revenue Commissioner interpreted the aforesaid clauses of agreement and undertaking and for the first time he informed to CIDCO that there was no right to the petitioner to get compensation as the petitioner society has given consent in

the agreement for making construction of that road. Thus, there was no need to give compensation to the petitioner society for using the portion mentioned in the agreement and undertaking. The plain reading the aforesaid clauses of agreement, leads to the same inference. Thus, in view of the agreement, it was not necessary for CIDCO to go for acquisition of the portion admeasuring 20 Mtrs. X 250 Mtrs. The society was benefited due to the agreement as its lands were deleted from the acquisition proceedings and further the society got the road constructed by CIDCO for its own use also.

13. The question remains about the land admeasuring 10 Mtrs. X 250 Mtrs. This portion was not mentioned in the agreement and also undertaking given by the petitioner. This Court holds that only to that extent, the petitioner society is entitled to get compensation. For that purpose, proceeding needs to be started, if yet not started. Submissions made show that under the provisions of the MRTP Act read with provisions of the Land Acquisition Act, proceeding was already started, but it was not continued by the respondent. The same can be continued to the extent of the portion admeasuring 10 Mtrs. X 250 Mtrs. This

petition can be partly allowed. In the result, the following order:

ORDER

The petition is partly allowed. The acquisition under Section 126 r/w Section 6 of the Maharashtra Regional & Town Planning Act, 1966, which was started earlier in the year 2000, is to be continued for acquisition of portion of 250 X 10 meters. Proceedings to be completed within one year from today. The remaining relief is refused. Rule made absolute in those terms.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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