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

**WRIT PETITION NO.10162 OF 2019**

Madhukar s/o Haribhau Muley  
Age 75 years, Occu. Business,  
R/o "Shivneri Bungalow", Bansilal Nagar,  
Railway Station Road, Aurangabad ... PETITIONER

**VERSUS**

1. The State of Maharashtra  
through Department of  
Urban Development,  
Mantralaya, Mumbai – 32
2. Principal Secretary,  
Department of Urban Development,  
Mantralaya, Mumbai – 32
3. The Collector,  
Aurangabad
4. Special Land Acquisition Officer,  
(Special Unit), Aurangabad
5. City and Industrial Development  
Corporation Ltd.,  
through its Managing Director,  
Mumbai
6. City and Industrial Development  
Corporation Ltd., through its  
Chief Administrator, Udyog Bhavan,  
Town Centre,  
New Aurangabad - 431 003
7. Administrator, New Towns,  
City and Industrial Development  
Corporation Ltd., Waluj Mahanagar,  
Aurangabad

(( 2 ))

8. The Additional Town Planning Officer,  
CIDCO, Waluj Mahanagar,  
Aurangabad ... RESPONDENTS

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Shri D.P. Palodkar, Advocate for petitioner  
Shri K.N. Lokhande, A.G.P. for respondents No.1 to 3  
Shri S.V. Deshmukh, Advocate for respondent No.7

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**WITH**

**WRIT PETITION NO.12292 OF 2019**

1. Ranjeet s/o Padmakarrao Mulay  
Age 50 years, Occu. Business,  
R/o "Sahyadri Bungalow",  
Rachnakar Colony,  
Railway Station Road, Aurangabad
2. Sameer s/o Padmakarrao Mulay,  
Age 46 years, Occu. Business,  
R/o "Sahyadri Bungalow",  
Rachnakar Colony,  
Railway Station Road, Aurangabad ... PETITIONERS

**VERSUS**

1. The State of Maharashtra  
through Department of  
Urban Development,  
Mantralaya, Mumbai – 32
2. Principal Secretary,  
Department of Urban Development,  
Mantralaya, Mumbai – 32
3. The Collector,  
Aurangabad
4. Special Land Acquisition Officer,  
(Special Unit), Aurangabad
5. City and Industrial Development  
Corporation Ltd.,

(( 3 ))

through its Managing Director,  
Mumbai

6. City and Industrial Development Corporation Ltd., through its Chief Administrator, Udyog Bhavan, Town Centre, New Aurangabad - 431 003
7. Administrator, New Towns, City and Industrial Development Corporation Ltd., Waluj Mahanagar, Aurangabad
8. The Additional Town Planning Officer, CIDCO, Waluj Mahanagar, Aurangabad ... RESPONDENTS

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Shri D.P. Palodkar, Advocate for petitioners  
Shri K.N. Lokhande, A.G.P. for respondents No.1 to 3  
Shri S.V. Deshmukh, Advocate for respondent No.7

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**WITH**

**WRIT PETITION NO.12799 OF 2019**

1. Lata w/o Padmakarrao Mulay  
Age 70 years, Occu. Business  
R/o "Sahyadri Bungalow",  
Rachnakar Colony,  
Railway Station Road, Aurangabad
2. Madhukar s/o Haribhau Mulay,  
Age 75 years, Occu. Business,  
R/o "Sahyadri Bungalow",  
Rachnakar Colony,  
Railway Station Road, Aurangabad ... PETITIONERS

**VERSUS**

1. The State of Maharashtra  
through Department of

(( 4 ))

Urban Development,  
Mantralaya, Mumbai – 32

2. Principal Secretary,  
Department of Urban Development,  
Mantralaya, Mumbai – 32
3. The Collector,  
Aurangabad
4. Special Land Acquisition Officer,  
(Special Unit), Aurangabad
5. City and Industrial Development  
Corporation Ltd.,  
through its Managing Director,  
Mumbai
6. City and Industrial Development  
Corporation Ltd., through its  
Chief Administrator, Udyog Bhavan,  
Town Centre,  
New Aurangabad - 431 003
7. Administrator, New Towns,  
City and Industrial Development  
Corporation Ltd., Waluj Mahanagar,  
Aurangabad
8. The Additional Town Planning Officer,  
CIDCO, Waluj Mahanagar,  
Aurangabad

... RESPONDENTS

.....

Shri D.P. Palodkar, Advocate for petitioners  
Shri K.N. Lokhande, A.G.P. for respondents No.1 to 3  
Shri S.V. Deshmukh, Advocate for respondent No.7

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**CORAM: SUNIL P. DESHMUKH AND  
R.G. AVACHAT, JJ.**

**DATED : 24th September, 2020**

**JUDGMENT (PER R.G. AVACHAT, J.)**

Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the parties.

2. These Writ Petitions are decided by this common judgment since common question of facts and law arise therein.

3. By these Writ Petitions, the petitioners seek issue of a writ in the nature of a mandamus or otherwise, to declare that the reservation of the lands, particularly described in the respective Writ Petitions, owned by the petitioners, lapsed and are, therefore, available for development for the purpose permissible to the adjacent lands under the relevant plan.

4. For better appreciation, the details of the lands reserved are given below in tabular form:-

| Sr. No. | Writ Petition No. | Land Gut No. | Area under reservation | Details of reservation | Reservation Site No. |
|---------|-------------------|--------------|------------------------|------------------------|----------------------|
| 1.      | 10162/2019        | 48           | 0 H 44 R               | Technical College      | 4/53                 |
| 2.      | 12292/2019        | 55           | 1 H 06 R               | Technical College      | 4/53                 |
| 3.      | 12799/2019        | 48           | 0 H 16 R               | Institute              | 4/51                 |

The lands reserved as stated hereinafter are hereby referred to as writ lands for the sake of convenience.

5. The petitioners are the owners of the writ lands. CIDCO is a special planning authority for Waluj Notified Area. Draft development plan of Waluj Notified Area was published in 1992. Vide notification dated 14/8/2001, the development plan has been sanctioned/ approved. It came into force w.e.f. 1/10/2001. The CIDCO, special planning authority, did not take steps towards acquisition of the writ lands. The petitioners, therefore, on 1<sup>st</sup> and 2<sup>nd</sup> August 2017, issued CIDCO, notice/s under Section 127 of the Maharashtra Regional and Town Planning Act (MRTP Act for short), calling upon it to acquire the writ lands or take necessary steps in that direction within a period prescribed therefor. The planning authority, instead of complying with the mandate of Section 127 of the MRTP Act, passed resolution in the meeting of its Board of Directors to offer the petitioners Development Right Certificate (DRC) in lieu of compensation in terms of money. Since the offer was unacceptable, the petitioners have preferred these Writ Petitions.

6. The respondents No.2 to 4 are the instrumentalities of the State of Maharashtra. The respondents No.5 to 8 are the offices of City & Industrial Development Corporation Ltd. (CIDCO). Affidavit-in-reply has been filed by Special Land Acquisition Officer on behalf of the State of Maharashtra, stating therein that the CIDCO has not yet made proposal for acquisition of the writ lands.

An affidavit-in-reply has also been filed on behalf of the CIDCO, stating therein that it has passed resolutions dated 27/4/2017 and 27/8/2018, proposing to grant DRC/TDR to the extent of area under acquisition instead of monetary compensation. The petitioners may accept the offer.

7. Shri D.P. Palodkar, learned counsel for the petitioners would submit that, factual matrix is not in dispute. The petitioners are not obligated to accept the DRC/TDR. The CIDCO was expected to take necessary steps towards acquisition of the writ lands within a statutory period of two years from the date of service of notice under Section 127 of the MRTP Act. Since the CIDCO has failed to comply with the statutory mandate, the writ lands did stand released from the reservation. In support of his submissions, learned counsel has placed reliance on the

judgment of the Hon'ble Supreme Court of India in case of Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabhai Bhimaji Dawkher & ors. Reported in AIR 2013 SC 3757.

8. The learned A.G.P. would, on the other hand, submit that the CIDCO has not made any proposal for acquisition of the writ lands. The learned counsel for CIDCO, on the other hand, submitted that the petitioners may accept the offer of DRC/TDR .

9. The respondent CIDCO is a special planning authority for Waluj Notified Area. The development plan has been sanctioned by the State Government way back in August 2001. Little over 19 years have passed since sanction of the development plan.

10. Section 127 of the MRTP Act speaks of lapsing reservation. It reads thus :

**"127. Lapsing of reservations :-**

(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a

declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [twenty four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

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

11. In the case of **Shrirampur Municipal Council (Supra)**, it has been observed thus :-

Section 127 speaks of lapsing of reservation. It

lays down that if any land reserved, allotted or designated for any purpose specified in any plan prepared and sanctioned under the 1966 Act is not acquired by agreement within ten years from the date on which a final Regional plan or final development plan comes into force or if proceedings for the acquisition of such land under the 1966 Act read with Land Acquisition Act are not commenced within that period, the owner or any person interested in the land may serve notice on the planning Authority, Development Authority or Appropriate Authority to that effect. That section further lays down that if the land is not acquired or no steps are commenced for its acquisition within six months from the date of service of notice, the reservation etc. shall be deemed to have lapsed and the land shall be deemed to have been released from such reservation etc. so as to enable the owner to develop the same. The expression 'no steps as aforesaid' used in S.127 of the 1966 Act has to be read in the context of the provisions of the Land Acquisition Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under 1966 Act or the Land Acquisition Act. Steps towards the acquisition would really commence when the State Government takes active steps for the acquisition

of the particular piece of land which leads to publication of the declaration under Section 6 of the Land Acquisition Act. Any other interpretation of the Scheme of Section 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the Land Acquisition Act. But a holistic reading of the provisions makes it clear that while engrafting the substance of some of the provisions of the Land Acquisition Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the Development plan/ Town Planning scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. If mere passing of resolution or sending of letter to Collector or State Govt. to acquire land is considered to be step for acquisition, it would lead to absurd results and the landowners will be

deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution.

12. Admittedly, the CIDCO did not take any steps towards acquisition of the writ lands within ten years from the date of notification of the development plan and/or during the period of two years next after receipt of notice issued under Section 127 of the MRTP Act. Mere passing of a resolution to offer DRC/TDR in lieu of monetary compensation cannot be treated as commencement of proceedings for the acquisition of writ lands. In view of the observations of the Apex Court in Shrirampur municipal Council's case (supra), steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of lands which leads to publication of the declaration under Section 6 of the Land Acquisition Act.

13. Since no meaningful steps have been taken towards acquisition of the writ lands within a statutory period, on receipt of the purchase notice issued under Section 127 of the MRTP Act,

the writ lands stand released from the reservation and would be available to the petitioners for being used for the purpose of development as is permissible in the case of adjacent lands under the relevant plan. The State Government shall notify the lapsing of reservation by order to be published in the official gazette. The Writ Petitions are thus allowed in aforesaid terms. Rule is made absolute.

(R.G. AVACHAT)  
JUDGE

(SUNIL P. DESHMUKH )  
JUDGE

fmp/-