

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15140 OF 2019

- 1] Sameer S/o. Padmakarrao Mulay,
Age : 46 years, Occu : Business,
R/o : "Sahyadri Bungalow", Rachnakar Colony,
Railway Station Road, Aurangabad
Aurangabad
- 2] Ranjeet S/o. Padmakarrao Mulay,
Age : 50 years, Occu : Business,
R/o : "Sahyadri Bungalow", Rachnakar Colony,
Railway Station Road, Aurangabad
Aurangabad
- 3] Lata W/o. Padmakarrao Mulay,
Age : 70 years, Occu : Business,
R/o : "Sahyadri Bungalow", Rachnakar Colony,
Railway Station Road, Aurangabad
- 4] Madhukar S/o. Haribhau Mulay,
Age : 75 years, Occu : Business,
R/o : "Shivneri Bungalow", Bansilal Nagar,
Railway Station Road, Aurangabad
District - Aurangabad
- 5] Rahul Vikramchand Sahuji,
Age : 36 years, Occup. : Agri and Business,
R/o : N-11, HUDCO, Aurangabad,
District - Aurnagabad
- 6] Sau. Amruta W/o Rahul Sahuji,
Age : 30 years, Occup : Agri and Business,
R/o : N-11, HUDCO, Aurangabad,
District – Aurangabad
- 7] Sau. Anita W/o Sahyog Sahuji,
Age : 27 years, Occup. : Agri and Business,
R/o : N-11, HUDCO, Aurangabad
District – Aurangabad
- 8] Sau. Priyanka W/o Rishikumar Sahuji,
Age : 26 years, Occup : Agri and Business,
R/o : N-11, HUDCO, Aurangabad,
District – 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.,
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 Industrial and Development Corporation Ltd.,
Waluj Mahanagar,
Aurangabad
 - 8] The Additional Town Planning Officer,
CIDCO, Waluj Mahanagar,
Aurangabad
- .. Respondents

**WITH
WRIT PETITION NO. 15274 OF 2019**

- 1] Madhukar S/o. Haribhau Mulay,
Age : 75 years, Occu : Business,
R/o : “Shivneri Bungalow”, Bansilal Nagar,
Railway Station Road, Aurangabad
District - Aurangabad
- 2] Sameer S/o. Padmakarrao Mulay,
Age : 46 years, Occu : Business,
R/o : “Sahyadri Bungalow”, Rachnakar Colony,
Railway Station Road, Aurangabad
District - Aurangabad

- 3] Rahul Vikramchand Sahuji,
Age : 36 years, Occup. : Agri and Business,
R/o : N-11, HUDCO, Aurangabad,
District - Aurnagabad
- 4] Sau. Amruta W/o Rahul Sahuji,
Age : 30 years, Occup : Agri and Business,
R/o : N-11, HUDCO, Aurangabad,
District – Aurangabad
- 5] Sau. Anita W/o Sahyog Sahuji,
Age : 27 years, Occup. : Agri and Business,
R/o : N-11, HUDCO, Aurangabad
District – Aurangabad
- 6] Sau. Priyanka W/o Rishikumar Sahuji,
Age : 26 years, Occup : Agri and Business,
R/o : N-11, HUDCO, Aurangabad,
District – 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.,
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 Industrial and Development Corporation Ltd.,
Waluj Mahanagar,
Aurangabad

8] The Additional Town Planning Officer,
CIDCO, Waluj Mahanagar,
Aurangabad

.. Respondents

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Advocate for the petitioner in both Wps : Mr. D.P. Palodkar
AGP for the respondent – State : Mrs. V.N. Patil-Jadhav
Advocate for respondents no. 5 & 6 : Mr. Vaibhav Deshmukh (In both Wps)

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 24 AUGUST 2022
PRONOUNCED ON : 26 AUGUST 2022**

ORDER (MANGESH S. PATIL, J.) :

Heard both sides.

2. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents no. 1 to 4. Mr. Vaibhav Deshmukh waives service for the respondents nos. 5 and 6. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. Both these matters which give rise to the same dispute these are being disposed of finally together. In both these matters, the petitioners are seeking a declaration regarding lapsing of the reservation in view of the provision of section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act).

4. The facts are not in dispute. The respondent – CIDCO was appointed as Special Planning Authority. A draft development

plan of Waluj notified area was published on 16-04-1992. It was sanctioned by the State Government on 14-08-2001 under section 31 of the MRTP Act. The writ properties were reserved for playground / primary and secondary school. No steps were taken by CIDCO for acquiring the lands covered by the reservations. After expiry of 10 years, the petitioners issued notices under section 127 of the MRTP Act on 01-08-2017 / 02-08-2017. CIDCO offered development rights in lieu of monetary compensation. Since no steps in the direction of acquisitions were taken within 24 months of issuance of notices under section 127, the petitions have been filed.

5. In catena of judgments of the Supreme Court as also this Court, it has been held that the consequences of not taking steps in the direction of the acquisition within the stipulated time is axiomatic and the reservations would lapse.

6. The stand of the respondents seems to be that the petitioners are bound to accept the offer given by the CIDCO regarding acceptance of development rights in lieu of monetary compensation.

7. A Full Bench of this Court in the matter of Shree Vinayak Builders and Developers Vs. State of Maharashtra and others (Writ Petition no. 2231 of 2019, Nagpur Bench) by the judgment and order dated 25-07-2022 has set at naught any debate on this count.

A specific issue as to whether grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation can be treated as a step for acquisition of land and commencing of the proceedings for acquisition, as is contemplated under section 127 of the MRTP Act. The Full Bench has answered the question to the effect that mere grant of approval or passing of resolution for offering development rights in lieu of monetary compensation is not a step for acquisition of land as contemplated under that provision.

8. Though the issue as to if the offer of development rights can be regarded as a step in the direction of acquisition as contemplated under section 127 of the MRTP Act was not involved, the Supreme Court in the matter of *Girnar Traders Vs. State of Maharashtra*; AIR 2007 SC 3180 has emphatically concluded that nothing short of issuing a declaration under section 6 of the Land Acquisition Act, 1894 read with section 126(2) of the MRTP Act would constitute a step in the direction of acquisition as contemplated under section 127 of the MRTP Act.

9. The respondent – CIDCO had merely offered development rights in lieu of monetary compensation to the petitioners which would not bind them unless they would have agreed for it.

10. Resultantly, since the consequence of lapsing of reservation is axiomatic, the petitions are allowed.

11. It is declared that the reservations over the petitioners' lands have lapsed.

12. Necessary steps be taken for issuing notification for release of the properties in terms of sub-section (2) of section 127 of the MRTP Act within four (4) months.

13. Rule is made absolute in the above terms.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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