

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

WRIT PETITION NO.4509 OF 2017

1. Sau. Vimala Madan Malara,
Age : 67 years, Occu : Business,
R/o. 9, Shriram Colony,
Next to Sai Hospital,
Samarthnagar, Aurangabad
2. Pratikkumar Rajkumar Agrawal
Age : 23 years, Occu : Business,
R/o. Plot No.1, Cloud 9, Shahanoormiya
Dargah Road, Aurangabad .. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Ministry of Urban Development
Mantralaya, Mumbai.
2. The Collector & Special Land Acquisition Officer,
(Special Ghatak), Aurangabad
3. City and Industrial Development Corporation
of Maharashtra, Aurangabad
Through its Administrator .. Respondents.

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Mr. Anand P. Bhandari, Advocate for the Petitioners.
Smt. R.P. Gour, AGP for Respondent Nos.1 and 2
Mr. Girish L. Awale, Advocate for Respondent No.3

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

DATE : 15-09-2022

ORAL JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

. The issue involved in the present petition is, whether the land designated as 'green belt' in the development plan can be

subjected to the provisions of Section 127 of the Maharashtra Regional and Planning Act, 1966 (hereinafter referred to as the 'MRTP Act, 1966').

2. The City and Industrial Development Corporation is the Special Planning Authority in respect of the Notified Area, Waluj. The State Government sanctioned development plan for notified CIDCO area by notification dated 14.08.2001. The petitioners claim to be owners of land bearing Gut No.183, admeasuring 5-H, 92-R to the extent of area 5 Acres and 30 R situated at village Tisgaon, Tal. and Dist. Aurangabad. In the development plan, the land owned by the petitioners is shown to be affected by 20 meters green belt. The petitioners initially offered to surrender the land in consideration of amount of compensation by way of application dated 17.06.2014 and 25.06.2014. However, CIDCO did not show any interest in acquiring the land owned by the petitioners. Petitioner no.1, therefore, issued a Purchase Notice on 10.07.2014 to CIDCO under Section 127 of the Maharashtra Regional and Two Planning Act, 1966 (hereinafter referred to as the 'MRTP Act, 1966') thereby calling upon the CIDCO to acquire the land. A reminder notice was served on 17.12.2014. It is the case of the petitioner that since a period of 10 years has lapsed from the date of notification of development plan and since CIDCO

failed to acquire the land within a period of 24 months from the date of service of the purchase notice, the designation of the land as 'green belt' has lapsed.

3. The petition is resisted by CIDCO by filing affidavit-in-reply contending that in the sanctioned development plan of Waluj notified area, a strip of 20 meters wide land is designated as 'Green Belt' along both sides of existing rivers / nalas. It is contended that such designation is not 'reservation' as the same is not listed in the reservation list approved by the State Government while sanctioning the development plan. CIDCO has produced such list of reservations at Exh.R-1 to the affidavit-in-reply. To buttress its contention that there is no reservation on the land of the petitioners, it is further averred that the lands along both the sides of river / nalas are required to be kept as 'Green Belt' in order to keep safe distance between growing urbanization and river / nala course considering environmental, ecological and health aspects as such land acts as buffer space. It is further contended that the petition is premised on erroneous interpretation of provisions of MRTP Act, 1966.

4. The Special Land Acquisition Officer, Special Unit, Aurangabad has also filed affidavit-in-reply stating that even though

the land of the petitioners is notified as 'Green Belt', no proposal for acquisition of the land has been received from CIDCO.

5. Mr. Anand Bhandari, learned Counsel appearing for the petitioners would rely upon Section 22 of the MRTP Act, 1966 in support of his contention that development plan contains *inter alia* green belts. He would rely upon provisions of Section 127 of the MRTP Act to submit that the words used are 'reserved, allotted or designated' and, therefore, the provisions of Section 127 are attracted even in respect of designation of land as 'Green Belt'. In support of his contention, he would rely upon order passed by this Court in **Raju Sarjerao Gaikwad Vs. The State of Maharashtra and others**, Writ Petition No.7793 of 2019 decided on 12.03.2020.

6. Mr. Bhandari would also point out that CIDCO has acquired other lands designated as 'Green Belt, and that, therefore its defence of non-requirement of acquisition of land designated as 'Green Belt' is fallacious. In this regard, Mr. Bhandari would rely upon the Award dated 10.01.2007 under which lands earmarked for 'Green Belt' have been acquired by the CIDCO. He would submit that in the affidavit filed by CIDCO to the rejoinder, this factual position has not been disputed by CIDCO.

7. Per contra, Mr. Awale, learned Counsel appearing for CIDCO would submit that it is not necessary for the CIDCO to acquire the land designated as 'Green Belt' in the development plan. That the land designated as Green Belt cannot be developed and therefore acquisition thereof is not contemplated. He would further submit that there is no reservation on the land of the petitioners and that, therefore provisions of Section 127 of MRTP Act, 1966 cannot be attracted.

8. Smt. Gour, learned AGP would submit that proposal for acquisition of lands of the petitioners has not been received by the Special Land Acquisition Officer, Special Unit, Aurangabad.

9. We have heard the learned Counsels for the parties and have perused the record. Section 22 of the MRTP Act, 1966 deals with the contents of the development plan. Clause (c) of Section 22 reads thus:

‘22. A Development plan shall generally indicate the manner in which the use of land in the area of the Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all of any of the following matters, that is to say,

- (a)
- (b)

(c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, **green belts**, nature reserves sanctuaries and dairies;

(d)

(e)'

(emphasis & underlining supplied)

10. Thus, designation of areas as green belts is a part of development plan. We have perused the relevant portion of the development plan by which part of the land of the petitioners has been designated as 'Green Belt'.

11. Since Respondent No.3 - CIDCO has contended that provisions of Section 127 can be attracted only in case of reservation, it would be necessary to reproduce the provisions of Section 127 as under:

'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 (29) 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, 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 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.].’

(emphasis and underlying supplied)

12. Thus, Section 127 of the MRTP Act, 1966 takes in its stride reservation, allocation and designation. It therefore contemplates a situation of the acquisition of land designated for any purpose specified in any plan. CIDCO’s stand that land which is merely designated and not reserved need not be acquired appears contrary to the provisions of Section 127. The land ‘designated’ as ‘green belt’ in the development plan also need to be acquired. Section 127 provides for consequences of failure to acquire the land designated as ‘green belt’ within the specified period. Upon failure to acquire the land, Section 127 provides that *‘reservation, allotment or **designation** shall be deemed to have lapsed*’. Thus, provisions of Section 127 of the MRTP Act, 1966 would apply both to ‘reservation’ as well as ‘designation’.

13. In the instant case, undisputedly period of more than 10 years has lapsed from the date of notification of development plan which was notified on 14.08.2001. Purchase notice was issued by the petitioners on 10.07.2014 and period of more than 24 months has passed from the date of service of such notice. Therefore, under the provisions of Section 127 of the MRTP Act, 1966, the designation of the land as green belt is deemed to have lapsed.

14. Mr. Bhandari has relied upon the decision of this Court in **Raju Sarjerao Gaikwad** (supra) and contended that the Court was dealing with the land designated as 'green belt' alongside nala. This Court has declared that the reservation of the land designated as 20 meters 'green belt' alongside nala stood lapsed. Para Nos. 3 to 5, 7 and 8 of the order read thus:

'3. The present petitions would be restricted to the claim of the petitioners for lapsing of reservation of an area under the garden, green belt alongside nala. So far as land under compulsory acquisition is concerned, the petitioners / parties may take appropriate steps as may be permissible under the law.

4. It is not disputed that in respect of land reserved for garden and 20 meter green belt alongside nala, the steps for acquisition has not been initiated with the period stipulated under Section 127. In view of the judgment of the Apex Court in a case of Girnar Traders Vs. State of Maharashtra and Ors., reported in(2007)7 SCC 555 the reservation stands lapsed.

5. Though the reservation for garden and **20 Meter green belt alongside nala** would stand lapsed.

However, considering the fact that the same is reserved for garden and green belt that are the lungs of the city, we restrain the petitioners from using the said land for one year so as to enable the respondent to acquire the same.

7. The balance has to be struck between individual right and the rights of the public at large. On one hand the provision of Section 127 of the M.R.T.P. Act is fetter on the power of eminent domain, on the other the reservation for garden, play ground, **green belt** being lungs of the city, the Planning Authority has to take all steps to acquire the same.

8. Considering the aforesaid aspects, we pass the following order:-

ORDER

A] The land reserved from Gat No.112 at Tisgaon owned by the petitioners for garden and **20 Meter green belt alongside nala stands** lapsed from reservation.

B] The petitioner shall not use these lands for any purpose for a period of one year. Within a period of one year, the respondent shall take steps to acquire said property.

C] If within a period of one year, the respondents fail to take steps to acquire the property then the petitioner would be entitled to use the said land as the adjacent land is permitted to be used. **However, if the land is in the restricted zone then the stipulation applicable to the land in restricted zone shall apply.** Thereafter the Government shall issue necessary notification about release of aforesaid land from reservation.

D] Writ petition is disposed of. No costs.'

15. Thus, this Court has made the provisions of Section 127 of the MRTP Act, 1966 applicable to the land designated as 'green belt' alongside nala. However, the direction issued by this Court

about taking steps to acquire the land within one year can no longer be issued in view of the settled position now that the period of 24 months specified in Section 127 is sacrosanct and the Courts cannot extend the said period. Therefore, in the instant case, on account of passage of period of 24 months, the designation of 'green belt' on the land of the petitioners has already lapsed.

16. Mr. Bhandari has fairly conceded the position that even after lapsing of the designation of the land as 'green belt' under the provisions of Section 127 of the MRTP Act, 1966 all the stipulations applicable to the land in restricted zone would continue to apply.

17. In view of the above, we pass the following order:

ORDER

(i) The land designated as 'Green Belt' out of the land Gat No.183 situated at village Tisgaon, Tal. and Dist. Aurangabad owned by the petitioners stands lapsed from designation.

(ii) The Notification shall be issued by the State Government under Section 127(2) of the MRTP Act, preferably within a period of three months from the date of passing of this order.

(iii) Since the concerned portion of the land is in the restricted zone, all the stipulations applicable to the land in restricted zone shall, however, continue to apply.

18. Writ Petition is accordingly allowed. No costs.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

GGP