

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

WRIT PETITION NO.10360 OF 2021

- 1] Anil Murlidhar Kakde,
Age: 48 years, Occu: Agri.,
R/o. Wadkha, Post Warzadi,
Tq. & Dist. Aurangabad
- 2] Santosh Sanku Kakde,
(Since deceased through LRs)
- 2a] Pushpa Santosh Kakde
Age: 40 Years, Occu: Agri.,
- 2b] Rohit Santosh Kakde
Age: 21 Years, Occu: Agri.,
- 2c] Sandipan Santosh Kakde
Age: 18 Years, Occu: Agri.,
- 2d] Datta Santosh Kakde
Age: 13 Years, Occu: Education,
[Petitioner No.2d through natural
guardian mother i.e. 2a]
- 3] Pundlik Gopinath Kakde
(Since deceased through LRs)
- 3a] Ayodhya Ganesh Kakde
Age: 40 Years, Occu: Household,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 3b] Uma Vilas Chaudhary
Age: 20 Years, Occu: Household,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad

- 3c] Rutuja Ganesh Kakde
Age: 18 Years, Occu: Education,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 3d] Dnyaneshwari Ganesh Kakde
Age: 16 Years, Occu: Education,
[Since minor, through 3a]
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 3e] Kalpana Rajendra Tawar
Age: 46 Years, Occu: Household,
R/o: House No.839, Mhada Colony,
Murtizapur, Aurangabad
District Aurangabad
- 3f] Pushpa Panjabrao Wagh
Age: 44 Years, Occu: Household,
R/o: At Post Dhendalgaon,
Tq Vaijapur Dist. Aurangabad
- 4] Dnyandeo Gopinath Kakde
[Since deceased through LRs]
- 4a] Shantabai Dnyandeo Kakde
Age: 70 Years, Occu: household,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 4b] Shivaji Dnyandeo Kakde
Age: 46 Years, Occu: Agri,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 4c] Sunita Dinkar Jadhav
Age: 50 Years, Occu: Household,
R/o At Post Waregaon, Tq. Phulambri,
Dist. Aurangabad

- 5] Gangadhar Gopinath Kakde
Age: 50 Years, Occu: Agri.
R/o: Mama Chowk, Panchpimpal Galli,
Paithan, Tq. Paithan, Dist: Aurangabad
- 6] Tukaram Gopinath Kakde
Age: 75 Years, Occu: Agri.
R/o: Mama Chowk, Panchpimpal Galli,
Paithan, Tq. Paithan, Dist: Aurangabad
- 7] Pandurang Maroti Kakde
[Since deceased through LR's]
- 7a] Jijabai Pandurang Kakde
Age: 65 Years, Occu: Household,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 7b] Santosh Pandurang Kakde
Age: 45 Years, Occu: Agri,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 8] Pushpa Santosh Kakde
Age: 40 Years, Occu: Household,
R/o Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 9 Santosh Pandurang Kakde
Age: 45 Years, Occu: Agri,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 10] Manjeetrao Dada Kakde
Age: 75 Years, Occu: Agri,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 11] Sunil Murlidhar Kakde
Age: 47 Years, Occu: Agri,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad

- 12] Appasaheb Vithal Kakde
[Since deceased Through LRs]
- 12a] Indubai Appasaheb Kakde
Age: 55 Years, Occu: Household,
R/o: Plot No.H/13, N-9,
Shrikrishna Nagar, CIDCO,
Aurangabad Dist. Aurangabad
- 13] Dada Sadu Kakde
[Since deceased through LRs]
- 13a] Satibhanabai Dada Kakde
Age: 70 Years, Occu: Household,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad.
- 13b] Gajanan Dada Kakde
Age: 35 Years, Occu: Agri,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 14] Anjaba Bhaurao Kakde
Age: 40 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 15] Janardhan Anjaba Kakde
Age: 36 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 16] Pralhad Kaduba Kakde
Age: 65 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 17] Uttam Kaduba Kakde
Age: 67 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad

- 18] Devidas Apichand Kakde
Age: 45 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 19] Kailas Apichand Kakde
Age: 42 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 20] Pandurang Dattu Kakde
[Since deceased through LRs]
- 20a] Laxmibai Pandurang Kakde
Age: 55 Years, Occu: Household,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 20b] Dadarao Pandurang Kakde
Age: 35 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 20c] Sudam Pandurang Kakde
Age: 30 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 21] Pandharinath Dada Kakde
[Since deceased through LR]
- 21a] Kisan Pandharinath Kakde
Age: 55 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad
- 22] Rama Gujaba Kakde
Age: 65 Years, Occu: Agri.,
R/o: Malegaon, Tq. Badnapur,
Dist: Jalna

23] Yama Gujaba Kakde
Age: 73 Years, Occu: Agri.,
R/o: Wadkha, Post Warzadi,
Tq & Dist. Aurangabad

24] Gangadhar Dada Kakde
Age: 65 Years, Occu: Agri.,
At Post Chikangaon
Tq. Ambad, Dist. Jalna

25] Kakasaheb Gangadhar Kakde
Age: 40 Years, Occu: Agri.,
At Post Chikangaon
Tq. Ambad, Dist. Jalna

All Petitioners through the Power of Attorney holder
Shri. Kalyan Kundlikrao Dugle
Age: 42 Years, Occu: Private Service,
R/o: R-26, N-9 H.No.345,
Raigad Nagar, HUDCO, Aurangabad
District Aurangabad

...PETITIONERS

VERSUS

1] The State of Maharashtra,
Through the Secretary,
Department of Industries, Energy
and Labour, Mantralaya, Mumbai-32

2] The Maharashtra Industrial Development Corporation,
Through the Regional Officer, MIDC
office at MIDC Industrial Area,
Near Railway Station,
Aurangabad 431 005

3] The Collector, Aurangabad
Collector Office, at Aurangabad
District Aurangabad

4] The Union of India,
Through the Secretary/Director,
Ministry of Commerce and Industry,
Department of Commerce,
New Delhi

... RESPONDENTS

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Mr. U. N. Shete, Advocate for Petitioner
Mr. S. B. Yawalkar, AGP for Respondent Nos. 1 and 3
Mr. S. S. Dande, Advocate for respondent No.2
Mr. A. G. Talhar, Advocate for respondent No.4

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 20.06.2023

ORAL ORDER (Per Ravindra V Ghuge, J):-

1. The Petitioners have put forth prayer clauses (C), (D) and (E), as under:-

(C) The Hon'ble High Court may kindly be pleased to issue appropriate writ, direction or order in the nature of writ and thereby the petitioners land more specifically described in para No.3 be released from the acquisition and further be restored in favour of the petitioners and further be pleased to pass necessary orders for that purpose.

(D) The Hon'ble High Court may kindly be pleased to issue appropriate writ, direction or order in the nature of writ and thereby the respondent authorities be directed to decide the representations at Annexure "J" made by the petitioners for release of lands and restoration of land in favour of the petitioners within stipulated period.

(E) Pending hearing and final disposal of this Writ Petition the Hon'ble High Court may kindly be pleased to direct the respondent authorities not to allot Plot No.C-21 to the extent of petitioners land to any person and further direct not to change the nature of the said plots.

2. These Petitioners have preferred this petition through one Kalyan Kundlikrao Dugle, occupation is private service, who claims to be a power of attorney holder.

3. By order dated 25.11.2022 passed by this Court [Coram: Mangesh S. Patil and Y. G. Khobragade, JJ.], notice was issued subject to the issue of maintainability being considered.

4. The contention of the Petitioners is that, the photostat copy of the power of attorney is placed on record and Mr. Dugle is shown to be an executor. However, we find that there is no statement that he accepts and agrees to act as the power of attorney.

5. Be that as it may, by a notification dated 04.12.1997 issued under Section 32(1) and Section 32(2) of the Maharashtra Industrial Development Act, 1961, the writ land was acquired. There is no dispute that all these petitioners have received their compensation and there is no grievance as regards the quantum of the compensation or any other ground or issue. Now it is contended

in the petition that the petitioners and similarly situated farmers were raising objections. However, there has been no redressal.

6. The only grievance that appears to be voiced in this petition is that Plot No. C-21 and C-22 have been allotted in favour of a Pharmaceutical Industry by the M.I.D.C. and the possession was handed over on 28.12.2007. This petition assailing the allotment is preferred on 24.01.2020, which is practically after around twelve (12) years.

7. The Petitioners claim that their case is covered by Section 39(2)(a) of the M.I.D.C. Act, 1961 which reads as under:-

“39 (2)(a) Where the Corporation proposes to to dispose of by sale any such land without any development having been undertaken or carried out thereon, the Corporation shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it, subject to such requirements as to its development and use as the Corporation may think fit to impose.”

8. In the entire petition, the Petitioners have not averred that these two plots are a part of an area where the M.I.D.C. has not undertaken any development and that the said land is simply lying barren. In the oral submissions, the learned Advocate for the Petitioners has contended across the bar that the petitioners are aggrieved that the concerned pharmaceutical company is not properly

developing and utilizing C-21 and C-22 plots. Reliance is placed upon the judgments delivered by the Hon'ble Supreme Court in ***Woman's Education Trust & Anr Vs. State of Haryana & Anr - AIR 2013 SC 2488*** and ***M/s. Usha Stud and Agricultural Farms Private Ltd. and Ors. Vs. State of Haryana and Ors - AIR 2013 SC 1282***.

9. The learned Advocate representing the M.I.D.C. submits that the entire petition is founded on a misconception. He further submits that it should be the Petitioners who should first plead that the parcel of land in which C-21 and C-22 are situated, has not been taken under development by the M.I.D.C. and is a completely barren land. Per contra, he submits on instructions, that those parcels of land which have been retained by the M.I.D.C. were earlier being utilized as a Special Economic Zone (S.E.Z.). These have been well developed by the M.I.D.C., insofar as providing amenities. It is stated that the Special Economic Zone is now de-notified in the light of paragraph 6, of the reply filed by the Assistant Development Commissioner, SEEPZ-SEZ, Andheri (East) Mumbai, Respondent No.4 herein.

10. He further submits that the M.I.D.C. is now utilizing the demarcated parcels of the land, for industrial development in an area, which is commonly known as the Shendra Five Star M.I.D.C. area.

Roads have been laid. Water pipelines and drainages have been laid. Electricity poles have been erected, electric cables have been laid and electricity transmission is provided. All amenities as are required and permissible under the provisions of the M.I.D.C. Act, have been provided and only thereafter, by following the due procedure, these plots have been allotted to those industries, who wished to develop them.

11. He further submits that, merely because an industry has purportedly not developed the plot and has not commenced industrial activities thereon, does not give a cause of action to these Petitioners. The Petitioners have filed a misconceived Petition.

12. We find that Section 39 speaks of disposal by sale of any such land, which has not been under any development by the M.I.D.C., meaning, no development has been undertaken or carried out thereon and the M.I.D.C. intends to dispose of such land by sale. It is in these circumstances that the original land owners, subject to their desire to purchase it and develop it as per the requirements/conditions as may be imposed upon them by the M.I.D.C. There is no statement made in the petition as to whether the Petitioners are willing to pay the market price for the said lands and

whether they are agreeable to develop the land as per the requirements, which may be imposed upon them by the Corporation.

13. We find that the learned Advocate for the M.I.D.C. is well placed in his submissions that the petitioners are misconstruing the language of Clause (a) under Sub-Section 2 to Section 39, "*land without any development having been undertaken or carried out thereon*". When the M.I.D.C. has provided roads, drainage, water and electricity and has carried out development, even on the internal roads making the plots accessible and ready for development, such situation would not be covered by Sub-Clause (a).

14. The reliance of the Petitioners on ***Womans' Education Trust*** (supra), is misconceived since the said judgment is clearly distinguishable on facts. The land acquired fell in the green belt. The authorities decided to release the land to certain extent. The lands of other land owners who were identically placed, were released and the Petitioner's request for release of the land was selectively refused. It is in these circumstances that the Hon'ble Supreme Court allowed the appeals on the ground of discrimination.

15. In ***M/s Usha Stud*** (supra), the issue of discrimination was once again dealt with. The land of the appellant along with the other

entrepreneurs was acquired for the same purpose. The lands of the other entrepreneurs, was released. The land of the appellant was utilised for establishing a firm and for carrying out other activities. The appeals were allowed and the declaration issued by the State Government under Section 6(1) of the erstwhile Land Acquisition Act, 1894, was quashed.

16. In view of the above, we do not find that the petitioner has any cause of action to be espoused in this petition. Moreover, this petition suffers from delay and laches. The concerned developed plots by M.I.D.C. bearing Nos. C-21 and C-22, had been allotted to a pharmaceutical company, which has taken possession of the land on 28.12.2007, whereas, this petition has been filed on 24.01.2020, which is after more than twelve (12) years. The issue as to how would the M.I.D.C deal with the said Pharmaceutical industry, is best left to the former.

17. In view of the above, **this petition being devoid of merits, is therefore, dismissed.**

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS