

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

WRIT PETITION NO. 4618 OF 2022

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- 1] Sachin s/o Shantilal Chhaparwal,
age 42 years, Occ. Business & Agri,
R/o Plot No.42, Tirumala Complex,
Shahnoorwadi, Aurangabad.
- 2] Asha Shantilal Chhaparwal,
age 66 years, Occ. Business & Agri,
R/o Plot No.42, Tirumala Complex,
Shahnoorwadi, Aurangabad.
- 3] Anand Manakchand Saklecha,
age 56 years, Occ. Business & Agri,
R/o 9, Ahinsa Nagar, Jalna 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.,
through it's Managing Director,
Mumbai.

6. City and Industrial Development Corporation Ltd.,
through its Chief Administrator,
Udyog Bhavan, Town Center,
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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Mr. D.P. Palodkar, Advocate for petitioners
Mr. S.G. Sangle, AGP for respondent Nos.1 to 4.
Mr. Sachin S. Deshmukh, Advocate for respondent No.6 to 8.

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**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 18th APRIL, 2023
PRONOUNCED ON : 3rd MAY, 2023**

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JUDGMENT : [PER S.G. CHAPALGAONKAR, J] :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of parties.

2. The petitioners have approached this Court under Article
226 of the Constitution of India thereby seeking a declaration that
reservation on land admeasuring 0H 20R out of Gat No.44 at village

Golwadi, Taluka and District Aurangabad has lapsed and the land is free from reservation.

3. Petitioners contend that they are the owners and possessors of the land admeasuring 0H 20R out of Gat no.44 of village Golwadi, which has been affected by reservation for 'Vegetable Market' under sanctioned development plan of Waluj Notified area. The City and Industrial Development Corporation (for short CIDCO) has been appointed as a Special Panning Authority for Waluj notified area by the State Government. The draft development plan of Waluj notified area came to be published on 16.4.1992. The State Government accorded sanction to the development plan of Waluj Notified Area under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "MRTP Act" for sake of brevity) vide notification dated 14.08.2001 published in the official Gazette and it has been enforced w.e.f. 1.10.2001.

4. According to the petitioners, although the development plan came to be sanctioned by the State Government and the same has been enforced from 1.10.2001, no steps have been taken towards acquisition of the reserved land by the Special Planning Authority in tune with its obligation to acquire properties affected by reservation within 10 years

from the date of notification of development plan. The petitioners are not in position to beneficially utilize their lands in view of subsisting development plan reservation for 'Vegetable Market'. The petitioners are deprived of their valuable right.

5. It is further contention of the petitioners that they have served purchase notice dated 14.10.2019 under Section 127 of the MRTP Act. In response to the said notice, respondent no.7 addressed communication dated 30.12.2019 to the petitioners informing that in view of the Board Resolution no.1883 dated 24.4.2017, the CIDCO has adopted policy to offer compensation by way of Development Right Certificate (DRC) towards acquisition of the lands reserved under "optional development". The petitioners were further called upon to submit the map so that CIDCO can take decision and grant DRC. The petitioners replied on 4.8.2020 and refused to accept DRC in lieu of monetary compensation. It is further contention of the petitioners that although the period of two years from service of purchase notice has been expired, Special Planning Authority failed to take steps towards acquisition as contemplated under section 126 of the MRTP Act, 1966. According to the petitioners, they have made detailed representation dated 8.2.2022 requesting CIDCO to issue notification as contemplated under section 127 (2) of the MRTP Act declaring lapsing of reservation in

respect of the land owned by the petitioners. However, there is no response from respondents/CIDCO.

6. In response to the notice of this writ petition, respondent nos.6 to 8 filed affidavit-in-reply contending that CIDCO is discharging its statutory responsibility of providing city level infrastructure for which the land of the petitioners has been put under reservation. Apart from small piece of the land put under reservation from ownership of the petitioners, the petitioners hold large piece of the land for their own benefit and enjoyment. Even, on development of the reserved land, the petitioners would be benefited. It is further contention of the respondents that, CIDCO has offered the compensation by way of DRC in terms of Board Resolution, however, the petitioners are not ready to accept the same.

7. We have heard submissions advanced by the learned advocates appearing for the respective parties.

8. It is evident that the petitioners are the owners of land gat no.44 situated at village Golwadi, Taluka & District Aurangabad. The 20R portion of said land is made part of reservation under development plan for Waluj notified area, sanctioned under section 31 of the MRTP Act, 1966. It has been notified on 14.8.2001 in official gazette and enforced w.e.f. 1.10.2001. For more than 20 years, the CIDCO, / Special Planning

Authority failed to take steps to acquire the reserved land. Under the statutory scheme of MRTP Act, the planning authority is under obligation to acquire the land of private ownership within the period of ten years from the date of publication of the development plan notification. Apparently, we observe failure on the part of the planning authority to adhere with the statutory scheme. The petitioners/owners of the land issued purchase notice in terms of Section 127 of the MRTP Act, 1966 which has been duly served upon the CIDCO on 7.10.2019. However, during the statutory period of two years from the date of service of the purchase notice, no steps for acquisition are taken by the planning authority. In that view of the matter, by statutory implication, the reservation under development plan stood lapsed.

9. Although, it has been contended on behalf of the respondents/planning authority that deference to purchase notice, petitioners were offered Development Right Certificate (DRC) since their land is subject matter of optional development and consider same as step for acquisition, in our considered view, such offer would not constitute step towards acquisition in terms of MRTP Act, 1966. Pertinently, the Development Control Regulation of CIDCO provides choice to the land owner to accept the TDR or FSI in lieu of the monetary compensation. Section 22 of the MRTP Act nowhere recognize different concepts likes

compulsory or optional reservation in development plan or for that purpose, consequential mode to compel the land owner to accept TDR or FSI in lieu of monetary compensation. The Full Bench of this Court in the matter of *Shree Vinayak Builders and Developers Vs. State of Maharashtra and others reported in 2022 (4) Mah L J 739* observed thus :-

“43. Question (1) – This Court holds that the acquisition under Section 126(10(a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 has to be by consensus between both the parties and not only at the option of the Acquiring Authority.

Question (2) - Mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract and the question would have to be determined in the facts and circumstances of each case. Therefore, the land owner can withdraw his request and refuse or decline to surrender the land as long as there is no concluded contract between the parties.

Question (3) – Mere grant of approval or passing of resolution by the authorities concerned for grant of TDR/FSI in lieu of monetary compensation is not a step for acquisition of land, thereby commencing the proceedings for the acquisition of land, unless it concludes the contract between the parties.”

10. The next contention raised by the respondents that the planning authority was ready to acquire the land and offered DRC in lieu of monetary compensation, as such, purchase notice of the petitioners has been duly responded. It is trite that once the purchase notice in

terms of section 127 of the MRTP Act has been served, the planning authority shall take effective steps for acquisition of the land. The Supreme Court in the matter of Girnar *Traders and another Vs. State of Maharashtra reported in (2007) 7 SCC 555*, observed in paragraph no.57 of the judgment, which reads thus :-

“57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leave it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.”

11. In light of the aforesaid observation, the defense put forth on behalf of the respondents is liable to be rejected. Since period of ten years after enforcement of development plan and period of two years after service of purchase notice is lapsed, reservation in respect of the

land owned by the petitioners under development plan enforced w.e.f. 1.10.2001 stand lapsed.

12. Resultantly, writ petition succeeds. We proceed to pass the following order :-

:- O R D E R :-

[a] Writ petition is allowed.

[b] We hold and declare that the reservation of "Veg Market" on the land of the petitioners to the extent of 0 Hectare 20 R out of Gat no.44 of village Golwadi, Taluka & District Aurangabad is lapsed and land is free from reservation.

[c] Respondent no.1 shall issue notification declaring lapsing of reservation under Section 127(2) of the MRTP Act, 1966, at the earliest and in any case within a period of 3 months from the date of service of writ of this court.

12. Rule made absolute in above terms. No orders as to costs.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

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