

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

WRIT PETITION NO.8068 OF 2022

Vedant s/o Shirish Gadiya,
age 32 years, Occ. Agri & Business,
R/o. Plot No.2, Gat No.40,
Village Golwadi,
Tq. & Dist. 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 it's Managing Director, 2nd Floor, Nirmal
Building, Nariman Point, Mumbai.
6. City and Industrial Development Corporation Ltd.,
through it's Chief Administrator,
New Towns Udyog Bhavan, Town Center,
New Aurangabad 431 003.
7. Administrator, Waluj Mahanagar Project,
City Industrial and Development Corporation Ltd.,
Udyog Bhavan, Town Centre,
New Aurangabad 431 003.

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

.. RESPONDENTS.

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Mr. D.P. Palodkar, Advocate for petitioners
Mr. S.B. Pulkundwar, AGP for respondent Nos.1 to 4.
Mr. Sachin S. Deshmukh, Advocate for respondent No.5 to 8.

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

**RESERVED ON : 19th APRIL, 2023
PRONOUNCED ON : 3rd MAY, 2023**

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

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

2. The petitioner has approached this Court under Article 226 of the Constitution of India, thereby seeking a declaration that reservation on his land to the extent of 1.60 Hectar out of Gat No.56 situated at village Valadgaon, Taluka and District Aurangabad is lapsed and the land is free from reservation and available for development to the petitioner.

3. Mr. Palodkar, learned advocate appearing for the petitioner would submit that the petitioner is the owner of land bearing Gat no.56

situated at village Valadgaon, Taluka and District Aurangabad. The CIDCO has been appointed as a Special Planning Authority of Waluj Notified Area by the State Government. Draft Development Plan of Waluj Notified area came to be published on 16.4.1992, which has been accorded sanction by the State of Maharashtra 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. The Development Plan has been enforced w.e.f. 1.10.2001. Land of the petitioner is affected by the reservation and the same is earmarked for "School to the extent of 0.60 Hectar and Play Ground to the extent of 1.00 Hectar". Since the respondents/planning authority failed to take effective steps for acquisition for more than ten years, the petitioner could not use his land to his benefit thereby causing prejudice to his right under Article 300-A. of the Constitution of India. Mr. Palodkar would further submit that the petitioner served notice of section 127 of the MRTP Act on 29.06.2020 which has been duly received by the CIDCO on the same day i.e. 29.06.2020. Even after expiry of 24 months statutory period, no steps are taken by the CIDCO towards acquisition of the land. Hence, the reservation stood lapsed by operation of law. However, respondents have refused permission for development to the petitioner.

4. Mr. Sachin Deshmukh, learned counsel appearing for the respondents/CIDCO would submit that in response to the purchase notice served by the petitioner, he was offered TDR/DRC in lieu of monetary compensation in view of the Board Resolution No.11833 dated 24.4.2017. Unfortunately, petitioner did not respond to the offer of the CIDCO. Hence, he is not entitled for the relief, as claimed.

5. We have heard learned advocate appearing for the respective parties. With the assistance of learned advocates, we have perused the record.

6. The ownership of the petitioner in respect of land bearing Gat no.56 situated at village Valadgaon, Tq. & District Aurangabad is not in dispute. The CIDCO/Special Planning Authority notified Development Plan which has been enforced w.e.f. 1.10.2001. The petitioner's land has been earmarked for 'School and Play Ground' under the said Development Plan. No steps for acquisition of the land reserved have been taken in pursuance of the Development Plan. The planning authority is under statutory obligation to acquire the land of private owners within the period of Ten years for the purpose of the development indicated under the Development Plan. Further, the law contemplates two years' statutory period after service of purchase notice by the land

holder, so as to enable the planning authority to take steps for acquisition of the land.

7. In the present case, petitioner has served purchase notice to the planning authority on 29.06.2020. The statutory period expired on 28.06.2022. However, no steps for acquisition of the land are taken by way of statutory implication, the reservation stood lapsed.

8. Although, it has been contended on behalf of the respondents/CIDCO that TDR/DRC was offered to the petitioner in terms of the Board Resolution No.11833 dated 24.4.2017 and the petitioner has failed to respond to said offer, 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* decided the controversy and 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.

9. In that view of the matter, the land holder cannot be compelled to forgo his land by accepting the offer of TDR/DRC in lieu of the monetary compensation. Only by consent of land holder this mode can be adopted in terms of law laid down by full bench of this court (supra). Apparently in this case, land holder has never consented for such offer.

10. The second contention that the CIDCO was always ready and willing to acquire the land, but for monetary compensation and the petitioner could have accepted offer of TDR/DRC which is eventually beneficial for him. As such the requisite steps are taken by planning authority to acquire land in response to purchase notice. However, such contention appears to be fallacious. What would constitute the effective steps for acquisition has been laid down by 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, which explains relevant provisions pertaining to development plan reservation under MRTP Act, 1966 the defense put forth on behalf of the respondents is liable to be rejected. It is not the case of respondent planning authority that any step as indicated in judgement of Girnar Traders (Supra) has been taken pertaining to reserved land of petitioners. Further in view of expiry of more than 10 years after enforcement of the Development Plan and period of two years after service of purchase notice, reservation of land owned by the petitioners under Development Plan enforced w.e.f. 1.10.2001 stand lapsed by statutory implication.

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

:- ORDER :-

- [a] Writ petition is allowed.
- [b] We hold and declare that the Development plan reservation of “School and Play Ground ” shown on the land of the petitioner to the extent of 1.60 Hecter out of Gat no.56 of village Valadgaon, Taluka & District Aurangabad is lapsed and the land is free from reservation.
- [c] Respondent no.1 shall issue notification declaring lapsing of reservation under Section 127(2) of The Maharashtra Regional and Town Planning 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.

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

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

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