

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

WRIT PETITION NO. 8247 OF 2022

- 1] Uday Bhaskarrao Deshmukh,
Age 47 years, Occ. Agri. And business,
- 2] Mrs. Sheela w/o. Bhaskarrao Deshmukh,
Age 65 years, Occ. Agri. & Business.
- 3] Shri Mangesh s/o. Bhaskarrao Deshmukh,
Age 43 years, Occ. Agri. And Business.

All R/o. Plot No. 439, N-3,
CIDCO, Aurangabad,
Tal. And Dist. 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,
2nd Floor, Nirmal Building, Nariman Point, Mumbai.
6. City and Industrial Development Corporation Ltd.,

through its Chief Administrative Officer, New Towns
Udyog Bhavan, Town Center,
New Aurangabad 431 003.

7. Administrator, Waluj Mahanagar Project,
City and Industrial Development Corporation Ltd.,
Udyog Bhavan, Town Center,
New Aurangabad – 431 003.
8. The Additional Town Planning Officer,
CIDCO, Waluj Mahanagar,
Aurangabad.

.. RESPONDENTS.

Mr. D.P. Palodkar, Advocate for petitioners
Mr. S.G. Sangle, AGP for respondent Nos. 1 to 3,
Mr. Sachin S. Deshmukh, Advocate for respondent Nos. 6 to 8.

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

DATE : 27th MARCH 2023

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 the reservation on their land to the extent of 1.06 Hectare out of 4.49 Hectares in Gat No.,133 of village Valadgaon, Taluka and District Aurangabad has lapsed and land is free from reservation and available for development.

3. Petitioners contend that the land owned and possessed by the them to the extent of 1.06 Hectare from Gat no. 133 of village Valadgaon is affected by reservation of garden in the sanctioned development plan of Waluj notified area. The City and Industrial Development Corporation (CIDCO) came to be 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 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 published in the official Gazette on 14.1.2001 and it has been enforced w.e.f. 1.10.2001.

4. According to the petitioners, though the development plan came to be sanctioned by the State Government on 14.8.2001, no steps have been taken towards acquisition of reserved land by the Special Planning Authority in tune of its obligation to acquire the properties affected by reservation within 10 years from the date of enforcement of final development plan. The petitioners are neither in position to develop their own land nor can they utilize it for any other purpose due to subsisting reservation for garden.

5. The petitioners issued notice under Section 127 of the MRTP Act dated 28.11.2019 to the CIDCO, which has been duly served on 29.11.2019. The petitioner issued yet another notice dated 4.12.2019 under Section 127 of the MRTP Act since the area under reservation was less than as mentioned in the previous notice. In response to the said notice, the Director of Town Planning, Pune, issued directives to planning

authority to take effective steps in response to the purchase notices issued by the petitioners. The Administrator, Waluj, Mahanagar Project, CIDCO, replied the notice of the petitioner vide communication dated 11.12.2020 stating that as per the Board Resolution of CIDCO having BR No.11833 dated 24.4.2017, the petitioner can avail development rights certificate (TDR). According to petitioners, the period of more than two years has elapsed from the service of notice. However, the respondents failed to take steps in terms of Section 127 of the MRTP Act. Resultantly, the reservation on the land of the petitioner has been lapsed. The petitioner, therefore, applied for development permission along with requisite fees. However, the respondent No.8/Additional Town Planning Officer, CIDCO, refused to entertain the request under the pretext of reservation.

6. In response to the notice of the writ petition, respondent Nos. 6 to 8 filed affidavit in reply, contending that as per the prevailing policy, the petitioners can accept development rights certificate since only 25% of the land from the ownership of the petitioners has been affected by the reservation. The petitioners would be entitled to occupy 75% of land for development as per choice.

7. We have heard learned advocate appearing for respective parties and perused the record. The portion of the land belonging to petitioner has been affected by reservation of garden under the development plan dated 14.8.2001 notified for Waluj Mahanagar project. For more than 10 years, from the date of enforcement of final development plan, respondent planning authority failed to take steps to acquire the land. The petitioners have issued notice dated 4.12.2019

under Section 127 of the MRTP Act in respect of 1.06 Hectare falling under the reservation of garden. The respondent authority referring to the directives issued by the Director of Planning, Pune, did not take effective steps. However, replied to the notice of the petitioner vide communication dated 11.12.2020 stating that the reservation on land of petitioners is falling in category of optional development (reservation) and as per the board resolution dated 24.4.2017, the petitioners were offered development rights certificate in lieu of monetary compensation. Conversely, the petitioner is not willing to accept such compensation.

8. It is trite that the petitioner cannot be compelled to accept the compensation in alternate mode against his wish. Pertinently, after service of purchase notice, the planning authority has not taken effective steps towards acquisition of the land as contemplated by Section 126 of the MRTP Act. The period of more than 2 years has been lapsed from the date of service of purchase notice dated 4.12.2019. Consequently, the reservation stood lapsed.

9. Pertinently, writ petition No. 1229 of 2017 with 1256 of 2017 in respect of the same reservation has been decided by this Court at the behest of the owners of the property from Survey No. 179. This Court, after considering the rival submissions issued declaration of lapsing of reservation. In the present case, though it has been contended on behalf of the respondent No.4 that effective steps are taken for acquisition of the land, said contention is unacceptable. Merely passing resolution to acquire the land and forwarding proposal for acquisition cannot be termed as effective steps. For that purpose, reference can be given to the decision in the matter of *Girnar Traders and another Vs.*

State of Maharashtra reported in (2007) 7 SCC 555, which has been reaffirmed in a catena of judgments. Observations in para.57 of the said judgment 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.”

10. In the light of the aforesaid observation, which is persistently followed, the defense put forth on behalf of the respondents is liable to be rejected. Further 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*** held that mere grant of approval or passing of resolution by authorities concerned for grant of TDR/FSI in lieu of monetary compensation is not a step for acquisition of land. Hence contention that the petitioner is offered compensation in the form

of TDR cannot be accepted as step towards acquisition. Once it is established that the respondent planning authority has failed to take steps for acquisition of the land, by issuing notification under section 126(2)(C) of the MRTP Act, r/w. Section 6 of the Land Acquisition Act /Right to fair compensation Act, the reservation shall be deemed to have been lapsed.

11. Resultantly, writ petition succeeds. Hence, 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 garden on the land of the petitioner to the extent of 1.06 Hectare out of 4.49 Hectares in Gat No. 133 of village Valadgaon 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

grt/-