

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO.4224 OF 2023
WITH WP/8785/2023

GURUKRUPA LAND DEVELOPERS THROUGH IT'S PARTNER
PRAVINKUMAR ASARAM MUGDAIYA
VERSUS
THE STATE OF MAHARASHTRA THROUGH DEPARTMENT OF URBAN
DEVELOPMENT AND OTHERS

Mr.D.P.Palodkar, Advocate for the Petitioner.
Mr.V.M.Kagne, AGP for the Respondent/State.
Mr.Sachin Deshmukh, Advocate for the Respondent/CIDCO.

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

DATE : SEPTEMBER 5, 2023

PER COURT :

1. All these Petitioners are identically placed. In the second matter, we had passed the following order on 25.07.2023 :-

"1. *The Petitioner has put forth prayer clauses (A) and (B), as under :-*

“(A) The Hon'ble High Court may be pleased to issue writ of mandamus or any other appropriate writ or order or direction in the nature of writ and thereby declare that the reservation of Institute to the extent of 1581 Sq. Mtrs. on the land of petitioner out of Gut No.170 (P) of village Tisgaon, Nagar 1, Waluj

Mahanagar, Aurangabad is lapsed and land is free from reservation and available to the petitioner for development as per the use permissible to the adjacent land.

(B) The Hon'ble High Court may be pleased to issue writ of mandamus or any other appropriate writ or order or direction in the nature of writ and thereby direct the respondent Nos. 1 and 2 to issue the order as prescribed by Section 127 (2) of the MRTP Act regarding lapsing of reservation in respect of land of the petitioner i.e. adm. 1581 Sq. Mtrs. out of Gut No.170 (P) of village Tisgaon, Nagar 1, Waluj Mahanagar, Aurangabad within 04 weeks."

2. *Issue notice to the Respondents, returnable on 28/08/2023. The learned A.G.P. waives service of notice on behalf of Respondent Nos.1 to 5. Shri. Deshmukh, the learned Advocate waives service of notice on behalf of Respondent Nos.6 to 8.*

3. *List this petition in the 'urgent orders' category on the next date along with Writ Petition No.4224/2023."*

2. The learned Advocate representing Cidco has tendered an affidavit in reply in both the matters.

3. In the first matter, the land acquired admeasures 2000

Sq.Mtrs. out of Gat No.170 (P) of village Tisgaon, Tal. and District Aurangabad, for the purpose of a vegetable market. In the second petition, land admeasuring 1581 Sq.Mt. out of the same gat number has been reserved for 'institute' purpose. The development plan was sanctioned for the Waluj notified area on 14.08.2001 in both the cases.

4. In the first petition, a purchase notice was issued on 07.10.2019 u/s 127 of the MRTP Act, 1966. In the second petition, the purchase notice was issued on 13.05.2021. Period of 2 years in both these matters after issuance of purchase notice, has expired on 07.10.2021 and 12.05.2023.

5. The Petitioner places reliance upon the following judgments :-

[a] Municipal Corporation of Greater Bombay Vs. Hakimwadi Tenants' Association, 1988 Supp.SCC 55.

[b] Girnar Traders (2) Vs. State of Maharashtra, 2007(7) SCC 555.

[c] Girnar Traders (3) Vs. State of Maharashtra, 2011 (3) SCC 1.

[d] Shrirampur Municipal Council Vs. Satyabhamabai, 2013 (5) SCC 627.

[e] Balaji Associates through its Partners and others Vs. State of Maharashtra and Others (2019) 19 SCC 1.

[f] Laxmikant and Others Vs. State of Maharashtra, 2022 SCC OnLine SC 349.

[g] Shree Vinayak Builders and Developers Vs. State of Maharashtra WP No.2231/2019, Nagpur Bench.

[h] Yashashwin Enterprises Vs. State of Maharashtra, 2021 SCC OnLine Bombay 6587.

[i] Sameer Padmakarrao Mulay and others Vs. State of Maharashtra, WP No.15140/2019 Aurangabad Bench.

6. The learned Advocate representing the Cidco Authorities has placed reliance upon the affidavits in reply and has opposed this petition. In ground (v), the Cidco Authorities have averred as under :-

"(v) Once notice under Section 127 of the MRTP Act is served by the owner on the planning authority in the prescribed manner, the planning authority has left with no option but to take steps towards acquisition by making an application to the State Government and seeking issuance of declaration within prescribed period. The attempt of CIDCO to submit proposal for modification and communicate the owner that no action would be initiated on the basis of notice under Section 127 of the MRTP Act until decision on the proposal for modification would not stop the running of time. The period of two years cannot be extended on the basis of such illegal steps initiated by CIDCO which are completely against the provisions of MRTP Act, 1966, the Part - I and sanctioned Development Control Regulations."

7. The learned Advocate has then painstakingly drawn our

attention to the objects of the acquisition. He submits that the Cidco Authorities have been constantly concentrating on developmental activities and have identified lands for the purposes of social facilities such as gardens, play grounds, schools, dispensaries, community centers and a vegetable market is one more addition to the list.

8. Notwithstanding the strenuous submissions on behalf of Cidco, the issue is with regard to the Law as is crystallized by the Hon'ble Supreme Court in **Girnar Traders Vs. State of Maharashtra and Others [(2011) 3 SCC 1]**. Within a period of 24 months, the Cidco Authorities have to initiate steps as are recognized by Section 126(4) of the MRTP Act. If within 24 months, no such steps are taken, the Law takes it's own course and the matter has to be taken to a logical conclusion. Under Section 127(2), a notification has to be issued declaring that the reservation has been lapsed. We do not find any hurdle in reaching the said conclusion in the light of the facts before us.

9. In view of the above, **both these petitions are allowed**. We direct CIDCO Authorities to submit a proposal to Respondent No.2 within a period of 30 days, in the light of this order. The concerned

authority would issue a notification declaring that the reservation has lapsed, in terms of Section 127(2), within a period of 45 days from the date of receipt of the proposal from CIDCO.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)