



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

WRIT PETITION NO. 3050 OF 2024

1. M/s Sai Sacchai Developers
Through its Partner,
Shri Vedant S/o Shirish Gadiya,
Age : 34 years, Occu. : Agril. & Business,
R/o Gut No. 40, Village Golwadi,
Tq. and Dist. Aurangabad.
2. Shri Girish S/o Narayan Pawar,
Age : 51 years, Occu. : Agril. & Business,
R/o Flat No. 1202, Empress Building,
Kalyan, Dist. Thane.
3. Mrs. Rutuja W/o Girish Pawar,
Age : 47 years, Occu. : Agril. & Business,
R/o Flat No. 1202, Empress Building,
Kalyan, Dist. Thane. .. 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,
Chhatrapati Sambhajnagar (Aurangabad).
4. Special Land Acquisition Officer,
(Special Unit),
Chhatrapati Sambhajnagar (Aurangabad).

5. City Industrial and Development Corporation Ltd. through its Chief Administrator, Udyog Bhavan, Town Centre, Chhatrapati Sambhajnagar (Aurangabad).
6. Administrator, New Towns, City Industrial and Development Corporation Ltd., Waluj Mahanagar, Chhatrapati Sambhajnagar (Aurangabad).
7. The Additional Town Planning Officer, CIDCO, Waluj Mahanagar, Chhatrapati Sambhajnagar (Aurangabad).
8. Chhatrapati Sambhajnagar (Aurangabad) Metropolitan Region Development Authority, through its Metropolitan Commissioner, Divisional Commissioner Office, Delhi Gate, Chhatrapati Sambhajnagar (Aurangabad)... Respondents

Shri Devdatta P. Palodkar, Advocate for the Petitioners.

Mrs. Vaishali N. Patil-Jadhav, A.G.P. for the Respondent Nos. 1 to 4 and 8.

Shri Vaibhav P. Deshmukh, Advocate for Respondent Nos. 5 to 7.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT ON : 19.09.2024
JUDGMENT PRONOUNCED ON : 26.09.2024

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard both the sides finally with consent at the admission stage.

2. The petitioners are approaching this Court for the relief of declaration that the reservation stands lapsed U/Sec. 127 of the Maharashtra Regional and Town Planning Act, 1966 (for the sake of brevity and convenience hereinafter referred as to the “Act”) and for consequential direction to issue notification U/Sec. 127(2) of the Act and to issue development permission to the petitioners.

3. The petitioners are owners of 1H 01 Are land out of 6H 12 Are of gut No. 348 situated at Waluj (Bk), Tq. Gangapur, Dist. Chhatrapati Sambhajnagr, Waluj Mahanagar – 3. Out of that 0H 58 Are of land was under reservation which is referred to as ‘writ land’ hereinafter. In the development plan a reservation is clamped over it for the following purposes :

“Park, 24.00 & 150.00 M.W. DP Road and Balance
25% Pocket with substation to the extent of 0H 58R.”

4. The respondent No. 5 is a Special Planning Authority under the provisions of the Act for the purpose of carrying out planned development in Waluj notified area. Lateron the respondent No. 8 was appointed as Special Planning Authority for planned development in Waluj notified area vide order dated 22.05.2023. The final development plan of Waluj notified area was published on 14.08.2001 and it came into effect from 01.10.2001.

5. It is the case of the petitioners that since 14.08.2001 no

steps have been taken towards acquisition of the writ land by the Special Planning Authority. The petitioners could not develop the writ land since then. They issued notice U/Sec. 127 of the Act on 04.02.2019 to the Special Planning Authority – respondent No. 5, which was served on 05.02.2019. The necessary documents showing right, title and interests were also forwarded along with the notice. No further steps were taken for more than 24 months after receiving the notice. The petitioners were informed by the letter dated 14.03.2019 by the respondent No. 6 that it was resolved by the Special Planning Authority to delete the land from Waluj notified area vide resolution dated 18.02.2019.

6. The learned counsel submits that no steps of acquisition were taken as contemplated by Sec. 126 of the Act during the stipulated period after the enforcement of final development plan and also after receiving purchase notice and, therefore, reservation in question stands lapsed. He relies on various judgments mentioned in para No. 10 ground No. (v) of the petition to buttress his submissions. It is further submitted that the resolution passed by the Special Planning Authority for deleting the writ land from the notified area and offering of Transferable Development Rights (for short 'T.D.R.') would not amount to steps towards acquisition of the land, as is expected under Sec. 126 of the Act as well.

7. The learned counsel Mr. Deshmukh for the respondent Nos. 5 to 7, who are the contesting parties would oppose the

submissions and the reliefs claimed by the petitioners with the help of affidavit in reply. He would submit that the reservation is clamped on the lands of notified area and the Planning Authority decided to permit the land owners to develop their own lands. It was resolved on 27.04.2017 to introduce revised and new provisions in the development plan for the purposes enumerated in para No. 6 of the reply. He would submit that the reservation in question has been imposed with specific objective, for the benefit of the locality. He would submit that for the reasons stated in the affidavit in reply, the relief cannot be granted to the petitioners. The answering respondents are ready to offer T.D.R. to the petitioners. The purchase notice is illegal and the petition is liable to be dismissed.

8. The respondents have not raised any dispute regarding title and interest of the petitioners over the writ land. The purchase notice issued on 04.02.2019 was served on the concerned respondents on 05.02.2019. These facts are also not disputed.

9. The writ land was under reservation since 01.10.2001 and no steps have been taken towards acquisition of land for more than ten years. Thereafter, no steps have been taken for more than 24 months from 05.02.2019 i. e. receipt of purchase notice. The petitioners have made out a case for declaration regarding lapsing of reservation U/Sec. 127 of the Act.

10. We have gone through the affidavit in reply. None of the

contentions would ensure to the benefit of the respondents to exclude the writ land from lapsing of reservation. The communication dated 14.03.2019 addressed by the respondent No. 5 to the petitioners' lawyer intimating that the land was proposed to be deleted from CIDCO notified area would be of no avail, rather would constitute surrender of the objective with which the reservation was clamped. The plea raised by the respondents does not come within the purview of taking of steps towards acquisition of land. In view of settled legal position as is laid down from time to time in various judgments referred to by the petitioners in para No. 10 ground (v) of the petition, we are of the considered view that the petition deserves to be allowed.

11. The submissions of the respondent Nos. 5 to 7 that T.D.R. can be offered to the petitioners cannot be said to be a ground to deny the relief to the petitioners as laid down by the judgment of the larger bench in the matter of **Shri Vinayak Builders and Developers Vs. State of Maharashtra in Writ Petition No. 2231 of 2019**.

12. For the reasons stated above, we are inclined to grant relief in the following manner.

O R D E R

a) The writ land shall stand released from the reservation due to its lapsing and the petitioners' shall be at liberty to develop the same in accordance with law.

b) The respondent Nos. 5 to 8 shall forward the proposal for notification U/Sec. 127(2) of the Maharashtra Regional and Town Planning Act, 1966 to the respondent No. 1/State Government within a period of two (02) months from today and the respondent No. 1 shall issue notification within a period of two (02) months thereafter.

c) Rule is made absolute in above terms. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb / Sept. 24