



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9343 OF 2023

Mrs. Sneha W/o Shirish Gadiya,
Age-52 years, occu:Agri. & Business,
R/o-Gut No.403, Village Golwadi,
Taluka and District-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 Industrial and Development
Corporation Ltd.,
Through its Chief Administrator,
Udyog Bhavan, Town Centre,
New Aurangabad – 431003,
- 6) Administrator, New Towns,
City Industrial and Development
Corporation Ltd., Waluj Mahanagar,
Aurangabad,

7) The Additional Town Planning Officer,
CIDCO, Waluj Mahanagar,
Aurangabad.

...RESPONDENTS

...
Mr. D.P. Palodkar Advocate for Petitioner.
Mr. P.S. Patil, Additional G.P. for Respondent Nos.1 to 4.
Mr. V.P. Deshmukh Advocate for Respondent Nos.5 to 7.
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**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 23rd JANUARY, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. The petitioner is the owner and possessor of the land admeasuring 0 Hectare 14 R out of Gut No.131 of village Valadgaon, Taluka and District-Aurangabad. Respondent No.5 CIDCO, came to be appointed as Special Planning Authority of Waluj notified area by the State Government. The draft development plan of Waluj notified area came to be published on 16th April 1992. The State Government accorded sanction to the development plan under Section 31 of the Maharashtra Regional

Town Planning Act, 1966 (for short "the MRTP Act") and it was published in the official gazette on 14th August 2001. It was shown in the said development plan that the land belonging to the petitioner would be affected by the "play ground" reservation.

3. It is the case of the petitioner that the planning authority was under obligation to acquire the properties of the private persons affected by the reservation within the period of ten years from the date of enforcement of final development plan. However, respondent No.5 is not interested in acquiring the land nor even in a position to develop the said land as per its reservation. Therefore, the petitioner was constrained to issue notice under Section 127 of the MRTP Act on 8th March 2021, which was received by respondent No.6 on the same day. Reply has been given by respondent No.6 on 8th July 2021 stating that reservation is falling under the category of 'Optional Development' (reservation). In the said reply it has been further stated that as per the resolution passed of the Board of Directors of the CIDCO on 24th April, 2017, a policy of giving compensation in the form of only Development Right Certificate (TDR) towards

acquisition of lands under the DP Reservation of 'Optional Development (reservation)' has been approved. The petitioner replied to the said communication of respondent No.6 on 10th August 2021 pointing out that the stand of the respondent is contrary to the land acquisition policy and the notification of the Government dated 5th July 2016. It was pointed out that choice of selecting mode of compensation is with the land owners as per the provisions of law and the planning authority cannot force the land owner to accept the compensation in the form of TDR / DRC. The period for taking action by respondent No.6 has lapsed due to its own inaction and therefore, the petitioner is constrained to file the present Writ Petition.

4. One Mr. Ashutosh Vasant Uikey, Additional Chief Planner, CIDCO, has filed affidavit-in-reply on behalf of respondent Nos. 5 to 7. It is contended that the Petition is not tenable in view of the fact that the petitioner filed Writ Petition No. 9343 2023 for lapsing of reservation of land which is notified for part of Waluj CIDCO, Aurangabad. The petitioner had challenged the said reservation and it was pointed out by the respondent that Waluj project is based on unique policy of public and private

participation. In the development plan, it is envisaged that CIDCO will act as catalyst for the development by acquiring 100% land in the Growth Center areas and develop the same with all physical and social infrastructure. 25% land from each land holding falling within the Phase-I will be acquired by paying land compensation and the said land will be used for 18 Mtrs. wide roads and above, mini stadium, general public utilities and civil services along the roads. As the project was proposed to be developed through public participation, it was envisaged that some of the reservations will be developed by the land owners themselves. The play ground is outside the Growth Centers and therefore the land owners may develop the same or they may surrender lands under these reservations to the CIDCO for development. It has been contended that CIDCO is likely to incur exorbitant cost for acquiring and developing infrastructure on such lands and the pace of development in all the Nagars outside Growth Centers is not viable if the burden of acquiring these lands under reservations of optional development would be through monetary compensation and therefore, the resolution came to be passed by the Board of Directors of CIDCO on 27th April 2017. The proposal was, therefore, forwarded to the State

Government for approval. It is contended that respondent CIDCO would give compensation in the form of D.R.C. i.e. Development Right Certificate towards acquisition of lands under the D.P. reservations of 'optional development' and therefore, compensation for acquired land cannot be given as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. As the interest of the public is involved, it should not be treated that the reservation for the play ground has lapsed. The petitioner is required to be directed to take the benefit of D.R.C.

5. Heard learned Advocate Mr. Palodkar for the petitioner, learned Additional Government Pleader Mr. Patil for respondent Nos.1 to 4 and learned Advocate Mr. Deshmukh for respondent Nos.5 to 7.

6. In order to cut short, it can be said that all the learned Advocates have argued in support of their respective contentions.

7. As aforesaid, most of the facts are admitted. Respondent

No.5 is the appropriate authority. The plans were sanctioned and the land belonging to the petitioner is shown to be affected with the reservation of 'play ground'. Certainly the development of the land was under the MRTP Act and therefore the provisions of the said Act would govern in the matter. Certainly, the owner of the land should have the choice either to accept compensation or to accept the Development Right Certificate if offered by the developing authority. But herein this case it appears that respondent Nos.5 to 7 want to force the petitioner to accept the Development Right Certificate, to which the petitioner is not ready. Respondent Nos. 4 to 7 cannot go against the provisions of law. We follow the decision of the Full Bench of this Court in *Writ Petition No.2231 of 2019 (Shree Vinayak Builders and Developers vs. State of Maharashtra and others)*. The ratio laid down in *Girnar Traders (2) vs. State of Maharashtra, 2007 (7) SCC 53*, *Girnar Traders (3) vs. State of Maharashtra, 2011(3) SCC 1*, *Shrirampur Municipal Council vs. Satyabhamabai, 2013(5) SCC 627*, would be applicable in this matter. In spite of giving notice under Section 127 of the MRTP Act, respondent No.5 has not taken further appropriate steps. Rather with a belated reply it appears that respondent No.5 insisted the petitioner to accept the Development Right

Certificate. Further in reply to the communication made by respondent No.5 when petitioner made it known to respondent No.5 that she is not willing to accept the Development Right Certificate, yet the further steps have not been taken. It will have to be held that the reservation on the petitioner's land has lapsed. In consequence the petitioner's land is free from reservation and is available for the development by her.

8. The Writ Petition therefore, deserves to be allowed. Hence the following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) It is declared that the reservation of the 'play ground' on the land of the petitioner i.e. admeasuring approximately 0 Hectare 14 R land out of Gut No.131 of village Valadgaon, Taluka and District-Aurangabad has lapsed and the land is free from reservation and available for development to the petitioner as per the use permissible to the adjacent land.

(III) Respondent Nos.1 and 2 are directed to issue the order as prescribed under Section 127(2) of the MRTP Act, 1966 regarding lapsing of reservation in respect of the petitioner's land, within a period of FOUR WEEKS from today.

(IV) Respondents are directed to issue development permission in favour of the petitioner in respect of her land without insisting for publication of order under Section 127(2) of the MRTP Act, 1966.

(V) Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JAN24