



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

WRIT PETITION NO.5421 of 2024

Siraj Mohiuddin Khan Gulam Mustfa Khan,
Age : 52 years, Occ. Agri. and Business,
r/o. H.No.1-25-5, Mustafa Manzil,
Lotakaranja, Near Markaz Masjid,
Chh. Sambhajinagar (Aurangabad)

..Petitioner

Vs.

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 - 431 003
6. Administrator, New Towns,
City Industrial and Development
Corporation Ltd.,
Waluj Mahanagar,
Aurangabad
7. The Additional Town Planning Officer,
CIDCO, Waluj Maharashtra,
Aurangabad

..Respondents

Mr.Devdatt P. Palodkar, Advocate for petitioner
Mr.P.K.Lakhotiya, AGP for respondent nos.1 to 3
Mr.V.P.Deshmukh, Advocate for respondent nos.5 to 7

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : JUNE 24, 2025

ORDER :-

This petition under Article 226 of the Constitution of India
is filed for the following main reliefs:-

(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 admeasuring 0H 01 R land out of Gut No.118 of village Tisgaon, Tq. and Dist. Aurangabad, within a period of (04) weeks.

(C) The Hon'ble High Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction in the nature of writ and thereby direct the respondents to issue development permission in favour of the petitioners in respect of land admeasuring approx. 0H 01 R land out of Gut No.118 of village Tisgaon, Tq. and Dist. Aurangabad without insisting for publication of order under Section 127(2) of the MRTP Act 1966.

2. The land, admeasuring 1H 01 R in Gut No.118, situated at village Tisgaon, Tq. and Dist. Aurangabad, has been reserved for technical college in the final Development Plan of Waluj, notified on 14.08.2001. Respondent no.5 was the planning authority. Since no

effective steps were taken by it for acquisition of the said land, the petitioner issued notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act", for short) to respondent no.5, calling upon it to acquire the land. Before lapsing of the period of two years, post receipt of the notice by respondent no.5, the petitioner filed the present Writ Petition. However, pending the petition, the period of two years lapsed. The petition, therefore, could not, now, be termed to be premature.

3. Learned counsel for the petitioner would submit that respondent no.5 did not take effective steps in response to the notice dated 05.10.2022 and therefore, the land stood de-reserved by the deeming provision in view of Section 127 of the MRTP Act. He, therefore, urged for allowing the Writ Petition.

4. Learned AGP for respondent nos.1 to 3 and learned counsel for respondent nos.5 to 7 - CIDCO and its authorities would, on the other hand, submit that the CIDCO took a decision vide Board Resolution No.12310 dated 03.03.2020, not to acquire any land in Waluj notified area. They would further submit that a proposal has been moved for approval for development of the land by public-private partnership. They submit that the Writ Petition is premature. They, therefore, urged for dismissal thereof.

5. We have considered the submissions advanced. Perused the documents on record. It is not in dispute that the subject land belongs to the petitioner. It was reserved for Technical College in the development plan published on 14.08.2001. Respondent no.5 – CIDCO was the planning authority. It has, however, passed the board resolution on 03.03.2020, deciding not to acquire any land in the notified area of Waluj project. Moreover, the petitioner issued respondent no.5 – CIDCO the notice under Section 127 of MRTP Act on 05.10.2022. Respondent no.5 informed the petitioner on 26.04.2024 about the board resolution referred to herein above. It was further informed that a policy decision was taken to give compensation in the form of “Development Right Certificate” only.

6. Section 127 of MRTP Act reads thus:-

127. Lapsing of reservations.

(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twenty four months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation

shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.

7. The phraseology of Section 127 referred to herein above, indicates that on receipt of the notice, the planning authority is expected to take effective steps towards acquisition of the land, within the time frame of 24 months. If no effective steps are taken, the land under reservation is deemed to have been released from such reservation. The land, thus, becomes available to the owner for the purpose of development as is permissible in case of the adjacent land under the relevant plan.

8. Providing T.D.R. or D.R.C. in lieu of the monetary compensation for acquisition of the land is at the option of the landowner, as to whether to accept the same or not. The planning authority has to pay the landowner the compensation in terms of money. Since within 24 months next after receipt of the notice under Section 127 of the MRTP Act, no effective steps have been taken by the respondents for acquisition of the subject-land, the land stands

de-reserved. Pending the petition, the period of two years next after receipt of the notice was lapsed. The petition, therefore, could not, now, be said to be premature.

9. In the result, the petition succeeds. The same is allowed in terms of prayer clauses (B) and (C).

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP