



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

912 WRIT PETITION NO. 10489 OF 2025

M.S. SARA BUILDERS THR ITS PROPRIETOR S.R. AGRAWAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. G. R. Sayed h/f Mr. Vishal Amritlal Bagdiya, Advocate for the
Petitioner

Mr. V. M. Jaware, AGP for Respondent-State

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**CORAM : SANDIPKUMAR C. MORE AND
ABASAHEB D. SHINDE, JJ.**

DATED : 05/02/2026

ORAL ORDER : (Per : ABASAHEB D. SHINDE, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the petitioner and the learned AGP appearing for respondent Nos.1 and 4.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has put forth the following reliefs:

“B. To quash and set aside the award dated 18.02.1997 passed by the Special Land Acquisition officer, Aurangabad (Exhibit ‘D’) to the extent of acquisition land in Gut No.171 to the extent of 23 R of village Tisgaon, Tq. & Dist. Aurangabad by issuing appropriate writ or direction or order in the nature of writ as the case may be;

- C. To quash and set aside the notice dated 05.06/08.2015 issued by Administrator CIDCO (Exhibit-K) by issuing appropriate writ or direction or order in the nature of writ as the case may be;
- D. To direct respondents Nos.2 & 3 to permit to use the land Guts Nos.171 of village Tisgaon, Tq. & Dist. Aurangabad for residential purpose which is shown in award dated 18.02.1997 by issuing appropriate writ or direction or order in the nature of writ as the case may be.”

3. Learned counsel for the petitioner submits that the issue involved in the present writ petition is no longer *res integra* in view of the judgment rendered by this Court dated 24/11/2025 in Writ Petition No.10120 of 2015 in the case of Kamalkishor Kaluram Bajaj vs. The State of Maharashtra and others. He invited our attention to the observations of this Court in paragraphs 16 to 20 thereof, which read thus:

“16. In **“Prahlad Singh and Others V/s Union of India and Others” 2011 (5) Mh.L.J. 1**, it is held that,

“In terms of the plain language of section 16 of the Land Acquisition Act vesting of the acquired land in the Government takes place as soon as possession is taken by the Collector after passing an Award under section 11. To put it differently, the vesting of land under section 16 of the Act presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in section 16 cannot be raised in favour of the acquiring authority. In the present case, it is not possible to sustain the finding and conclusion recorded by the

High Court that the acquired land had vested in the State Government because the actual and physical possession of the acquired land always remained with the appellants and no evidence has been produced by the respondents to show that possession was taken by preparing panchanama in the presence of independent witnesses and their signatures were obtained on the panchanama. The impugned order set aside (2011) 5 CC 394”

17. In **“Velaxan Kumar V/s Union of India and Others” (2015) 4 SCC 325**, it is held,

“Further, with respect to taking over of possession of the land by the respondent Government, it is clear from the facts and circumstances of the case that actual physical possession of the land in question has not been taken by the respondents. Even if for the sake of argument it is accepted that possession of the land was taken by the respondents, actual physical possession of the acquired land has not been taken over by the respondents as pleaded by them by following due process of law. It is clear that due procedure has not been followed by the acquisition authority by way of preparing proper “panchanama” in the presence of independent witnesses and the land holders and therefore it is contrary to the principles of law laid down by the Supreme Court in “Sita Ram Bhandar Society, (2009) 10 SCC 501”.

18. *Petitioner's case is squarely covered by the above ratio. In the present case also no evidence is produced by the Respondents to show that possession of Petitioner's land was taken by preparing Panchanama in presence of independent witnesses and their signatures were obtained on the Panchanama. There is no document to substantiate the stand of the CIDCO that possession of Petitioner's land was taken or payment was made to the Petitioner. Therefore, there is no merit in the said contention of the CIDCO.*

19. *Learned AGP has placed reliance on para 191 of the decision "**Girnar Traders (3) V/s State of Maharashtra and Others**" (2011) 3 SCC 1, which is as follows:*

"191. Having said so, now we proceed to record our answer to the proposition referred to the larger Bench as follows:

For the reasons stated in this judgment, we hold that the MRTP Act is self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of Chapter VII of the MRTP Act but with a specific

exception that the provisions of the Land Acquisition Act insofar as they provide different time frames and consequences of default thereof including lapsing of acquisition proceedings cannot be read into the MRTP Act. Section 11-A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisition under Chapter VII of the MRTP Act.”

20. *Since the Administrator has passed order on 3rd October, 2013, granting approval to the deletion of 0.90 Hectare land of the Petitioner and others out of Gut Nos. 171 and 172, reserved for Mini Stadium and as neither possession is taken nor compensation is paid, we are of the view that the aforesaid observations are not applicable to the peculiar facts of the present case.”*

4. Learned counsel for the petitioner has placed on record the service affidavit in respect of service of notice on respondent Nos.2 and 3, pursuant to the order dated 29/01/2026. However, despite service of private notice, respondent Nos.2 and 3 have remained absent.

5. In the light of judgment of this court in the case of **Kamalkishor Kaluram Bajaj** (*supra*), we are inclined to allow the writ petition. Hence, we pass following order.

ORDER

- A). Writ petition is allowed in terms of prayer clauses B, C and D.
- B). Rule is made absolute in the above terms with no order as to costs.

(ABASAHEB D. SHINDE, J.) (SANDIPKUMAR C. MORE, J.)

VS Maind/-