

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

WRIT PETITION NO. 5540 OF 2021

M/s. Key Stone Construction Company
Pvt. Ltd., A Company Registered under
The Companies Act, having its registered
Office at 122, Navi Peth, Jalgaon Dist.
Jalgaon, through its Director,
Ritesh Omprakash Agrawal,
Age 43 years, Occ. Business and Agril.
R/o. 'Ganesh Kunj' Akashwani Chowk,
Jalgaon, Dist. Jalgaon.

... **Petitioner**

VERSUS

1. The State of Maharashtra
Through the Secretary
Ministry of Urban Development
Mantralaya, Mumbai- 32.
2. Municipal Corporation Jalgaon,
Through its Commissioner.
3. The Collector,
Jalgaon, Dist. Jalgaon.
4. The Director of Town Planning
Maharashtra State Town Planning
& Valuation Department,
Government of Maharashtra,
Central Building, near railway
station, Pune.
5. Assistant Director, Town Planning
Municipal Corporation, Jalgaon,
Jalgaon.

... **Respondents.**

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Advocate for the Petitioner : Mr. Anand P. Bhandari.
A.G.P for the Respondent Nos. 1, 3 & 4 : Mrs. R.P. Gaur.
Advocate for the Respondent Nos. 2 & 5 : Mr. Mehul V. Navandar.

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 16.09.2022.

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. The Rule is made returnable forthwith. Mrs. Gaur learned A.G.P. waives service for the respondent Nos. 1, 3 and 4 and learned advocate Mr. Navandar waives service for the respondent Nos. 2 and 5.

2. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner is a company which is seeking a declaration regarding lapsing of reservation under Section 127 of the Maharashtra Regional and Town Planning Act (hereinafter 'MRTP Act'), for failure of the respondents to take steps in the direction of undertaking acquisition of its land reserved for 'shopping centre' in a development plan of Municipal Corporation Jalgaon which was sanctioned on 01.03.2002.

4. The petitioner served the notice under Section 127 of the MRTP Act to the respondents on 22.10.2018. The petitioner was called upon to submit certain documents. Subsequently, the respondent-Corporation offered Transfer of Development Rights (TDR) in lieu of monetary compensation by its offer dated 29.05.2019. The petitioner refused to take the TDR. Hence the petition.

5. Mr. Bhandari learned advocate for the petitioner would vehemently submit that all the requisites as mandated by law for seeking a declaration regarding lapsing of the reservation have been followed strictly. The only issue that had remained to be considered was as to if in lieu of compensation the Planning and Development Authority can insist the land owner to accept TDR. He would submit that even this issue is no longer *res integra* in view of the full bench decision of this Court in the matter of **Vinayak Builders & Developers Vs. The State of Maharashtra and others** (Writ Petition No. 2231 of 2019) dated 25.07.2022 (Nagpur Bench). He would submit that taking a roving enquiry, land owner has been held to be

entitled to refuse or decline TDR and mere passing of the resolution to grant TDR in lieu of monetary compensation will not constitute a step towards acquisition of the land as contemplated under Section 126(1) of the MRTP Act. He would, therefore, submit that the petitioner is entitled to get the declaration.

6. Per contra, learned A.G.P and learned advocate Mr. Navandar would submit that offering of TDR is a step in acquisition. The public purpose of the intended use cannot be lost sight of. But they concede that the full bench of this Court has now set at rest this issue.

7. There is no dispute about the fact that the development plan for Jalgaon Municipal Corporation was sanctioned on 01.03.2002. The petitioner served a notice under Section 127 of the MRTP Act to the respondents on 22.10.2018 that is after lapse of ten years from the date of sanction of the development plan and the petition has been filed on 11.02.2021 that is after 24 months of service of notice to the respondents under Section 127 of the MRTP Act.

8. Except offering TDR no steps have been taken by the respondents as contemplated under Section 126(1) of the MRTP Act towards acquisition of the writ land. As has been laid down in the matter of **Girnar Traders Vs. State of Maharashtra and others; (2007) 7 SCC 555**, nothing short of issuance of a declaration under Section 126 can be regarded as a step in the direction of acquisition of the land reserved for a public purpose.

9. So far as the aspect regarding offering of the TDR in lieu of monetary compensation, even that issue has now been set at rest by the full bench in the matter of **Shri. Vinayak Builders & Developers (supra)** wherein three questions were referred for the decision by the full bench which have been answered in the following manner :

Sr. No	Questions	Answers
1)	Whether the modes of acquisition : provided under Section 126(1) (a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 are at the choice of either of the parties or only of the acquiring authority ?	This Court holds that the acquisition under Section 126(1)(a) and (b) of the Maharashtra Regional & Town Planning Act, 1966 has to be by consensus between both the parties and not only at the option of the Acquiring Authority.
2)	If the planning authority has : approved the request of the land owner for grant of monetary compensation or grant of TDR/FSI in lieu of compensation, can the land owner withdraw his request and thereby refuse or decline to surrender the land ?	Mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by by itself will not always result in a concluded contract and the question would have to be determined in the facts and circumstances of each case. Therefore, the land owner can withdraw his request and refuse or decline to surrender the land as long as there is no concluded contract between the parties.
3)	Can the grant of approval or : passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation be treated as a step for acquisition of land and thereby commencing the proceedings for acquisition of the land ?	Mere grant of approval or passing of resolution by the authorities concerned for grant of TDR/FSI in lieu of monetary compensation is not a step for acquisition of land, thereby commencing the proceedings for the acquisition of land, unless it concludes the contract between the parties.

10. In view of such emphatic decision of the Court nothing remains to be decided except declaring that the reservation has lapsed.

11. We allow the Writ Petition.

12. It is declared that the reservation on the writ property bearing Survey No. 29/A/1/A/1 admeasuring 3985 square meters (site No. 184) of village Mehrun, Tq. & Dist. Jalgaon, stands lapsed.

13. Respondents shall take urgent steps for issuance of notification under Section 127(2) of the MRTP Act.

14. The Rule is made absolute in above terms.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-