

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

27 WRIT PETITION NO.9148 OF 2019

**SANTOSH MAHADEV DHAYGUDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioners : Mr. Balbhim R. Kedar
AGP for Respondent / State : Mr. S.B. Yawalkar
Advocate for Respondent Nos.2 & 3 : Mr. H.V. Patil

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

DATE : 19-09-2022

PER COURT :

. The petitioners are seeking declaration about lapsing of reservation in tune with Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the 'MRTP Act').

2. We have heard both the sides.

3. The Development Plan was finalized on 18.02.2002. The petitioners' land Survey No.263 was reserved for Primary School, High School and play ground. In spite of lapse of more than ten years, no steps were taken towards acquisition of the writ properties in order to put it to the public use earmarked.

4. A purchase notice under Section 127 of the MRTP Act was served on 24.01.2017 and the petition has been filed after more

than 24 months i.e. on 18.03.2019.

5. Admittedly, no steps were taken towards acquisition of the writ properties as is contemplated under Section 126 of the MRTP Act.

6. Even though the respondent - Development Authority is now ready to transfer TDR in lieu of monetary compensation, the issue is no more *res integra* in view of the Full Bench Judgment in the matter of **Shree Vinayak Builders and Developers, Nagpur Vs. State of Maharashtra and others [2022 (4) Mh.L.J. 739]**. It is not mandatory for the owner of the property to accept TDR in lieu of monetary compensation. It has also been held that even passing a resolution to transfer TDR will not constitute a step towards acquisition of land as is contemplated under Section 126 of MRTP Act and as laid down in the matter of **Girnar Traders Vs. State of Maharashtra and Ors., (2007) 7 SCC 555**.

7. Writ Petition is allowed and it is declared that the reservation has lapsed. The respondents shall take necessary steps for issuance of notification under Sub-section (2) of Section 127 of the MRTP Act.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)