

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

WRIT PETITION NO. 6886 OF 2021

Ravindra Fulchand Daftari
Age: 68 years, Occu. Business,
R/o. 216, "Jai Shri Krisha",
Behind Canara Bank Badkas Chowk,
Nagpur

... Petitioner

Versus

1. The State of Maharashtra
Through the Secretary
Ministry of Urban Development
Mantralaya, Mmbai-32
2. The Director of Town Planning,
Maharashtra State
Town Planning & Valuation Department,
Government of Maharashtra,
Central Building, Near Railway Station,
Pune
3. The Collector & Special Land Acquisition
Officer, (Special Ghatak), Aurangabad
4. City and Industrial Development Corporation
of Maharashtra, Aurangabad,
Through its Administrator

... Respondents

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Mr. Anand P. Bhandari, Advocate for petitioner
Mr. S. B. Yawalkar, AGP for respondent Nos. 1 to 3
Mr. S. S. Deshmukh, Advocate for respondent No.4

....

**WITH
WRIT PETITION NO. 530 OF 2020**

Katran Real Estate Pvt. Ltd.

Through its Director, Madhu Ramesh Jain

Age: 68 years, Occu: Business,

R/o: 414, Shirsoli Road, Mehroon Shivar,

Jalgaon, Taluka and District Jalgaon

... **Petitioner**

Versus

1. State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32
 2. The Planning Authority/Commissioner
Jalgaon City Municipal Corporation,
Navi Peth, Jalgaon
 3. Development Authority
C/o. Maharashtra Regional and Town Planning,
2nd Floor, Old BJ Market, Jalgaon
- ... **Respondents**

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Mr. Satyajit Bora, Advocate for petitioner

Mr. S. B. Yawalkar, AGP for respondent No.1

Mr. V. B. Patil, Advocate for respondent Nos.2 and 3

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**CORAM : MANGESH S. PATIL AND
Y. G. KHOBRAGADE, JJ.**

DATE : 01.12.2022

ORAL JUDGMENT :-

Heard. Rule. Rule made returnable forthwith. With the consent of learned advocates for the parties, the petition is taken up for final disposal.

2. Though the parties in both the petitions are different, the petitioners are seeking common relief in the form of declaration as to de-reservation of their property under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "MRTP Act").

3. The learned advocates for the petitioners submit that the development plan for the special planning authority CIDCO and the respondent - Municipal Corporation, were published on 07.03.1990 and 10.08.2004, respectively, putting up their property under reservation for public purposes. Since no steps were taken towards acquisition, they served notices under Section 127 of the MRTP Act on 14.08.2001 and 22.05.2017. The respondent - planning authorities resolved to offer the petitioners transfer of development rights in lieu of monetary compensation, which they refused to accept. The petitions have been filed after expiry of 24 months of such notices under Section 127 of the MRTP Act were served.

4. The learned advocates for the petitioners submit that the consequences are inevitable and even the question as regards compulsion on the property owners to receive TDR has been put to rest in view of the full bench decision of this Court in the case of *Shree Vinayak Builders & Developers Vs The State of Maharashtra*

(Writ Petition No.2231 of 2019 – Nagpur Bench). They submit that admittedly, no declaration under Section 126(4) read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Section 6 of the Land Acquisition Act, 1894) have been made, which are so very important as has been indicated in the matter of ***M/s. Girnar Traders Vs. The State of Maharashtra and others - 2007(7) SCC 555***.

5. The learned advocate for the CIDCO Mr. Deshmukh and the learned advocate for the Jalgaon City Municipal Corporation Mr. Patil would submit that the reservations have been put for public purposes. The public interest should take precedence over the individual interest.

6. We have considered the rival submissions and perused the papers. This Court is bound by the decision in the matter of ***M/s. Girnar Traders (supra)***. When, admittedly, no declaration under Section 126 of the MRTP Act read with the relevant provisions of the Land Acquisition Act (Section 6 of the old Act and Section 19 of the new Act) has been made, the reservations would lapse.

7. There is also no dispute about the time line to be followed, which crystallizes the right to claim that the reservations

have lapsed. The notices under Section 127 of the MRTP Act were issued after lapse of ten years from the development plan having been come into effect. The planning authority did not take steps for 24 months thereafter towards acquisition as is stipulated and the petitions have been filed after expiry of 24 months.

8. The question as regards the TDR is concerned, even the full bench has now held that the property owners cannot be foisted with the offer to accept the TDR. They can persist for monetary compensation.

9. In view of the above state of affairs, when the petitioners have fulfilled the necessary concomitants for crystallizing their rights to claim de-reservation, there is no escape.

10. The writ petitions are allowed. Rule is made absolute.

11. It is declared that reservation stands lapsed. The respondents shall take immediate steps by issuing notification under Sub-section 2 of Section 127 of the MRTP Act.

[Y. G. KHOBRADE, J.]

[MANGESH S. PATIL, J.]