

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

**WRIT PETITION NO. 9661 OF 2021**

1. Ravindra Madhukar Ghuge  
Age 55 years, Occu: Business,  
R/o Plot No. 128/1, 'Madhukar'  
Near Pravin Apartment, Adarshanagar,  
Jalgaon, Tq. & Dist. Jalgaon
2. Pramod Madhukar Ghuge ... **Petitioners**  
Age 53 years, Occu: Business,  
R/o Plot No.21, Near Sharda Mandir,  
Shreenagar, Mahabal Area, Jalgaon  
Tq. & Dist. Jalgaon
3. Fakruddin Roshanali Amreliwala  
Age 70 years, Occu: Retired
4. Abdulha Roshanali Amreliwala,  
Age 66 years, Occu: Retired
5. Munira Alihusain Amerliwala,  
Age 49 years, Occu: Household
6. Mufaddal Alihusain Amreliwala  
Age 30 years, Occu: Business
7. Hisain Alihusain Amreliwala, ... **Petitioners**  
Age 26 years, Occu: Business,  
Respondents 3 to 7 R/o Plot No.4,  
Roshan Manjil, Omkar Nagar, Zilla Peth,  
Jalgaon, Tq. & Dist. Jalgaon

**VERSUS**

1. The State of Maharashtra, ...  
Through its Secretary,  
Urban Development Department,  
Mantralaya, Mumbai 400 032

2. The District Collector, Jalgaon,  
Collector Office, Jalgaon
3. Jalgaon Municipal Corporation,  
Through its Commissioner,  
Tq. & Dist. Jalgaon
4. Assistant Director of Town Planning,  
Jalgaon Municipal Corporation,  
Tq. & Dist. Jalgaon

Mr. Parag V. Barde, Advocate for the petitioners,  
Mr. S. B. Yawalkar, AGP for respondent Nos. 1 and 2 State,  
Mr. M.V. Navandar, Advocate for respondent Nos. 3 and 4.

**CORAM** : MANGESH S. PATIL &  
Y. G. KHOBRADE, JJ.  
**DATE** : 25.11.2022

**PER COURT:**

1. We have heard both the sides.
2. Rule. The Rule is made returnable forthwith. At the request of the parties, the matter is heard finally at the stage of admission.
3. The petitioners are seeking a declaration regarding lapsing of the reservation as contemplated under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter 'the MRTP Act').
4. The petitioners' case is that in a development plan which had come into force with effect from 10.08.2004, the writ property was

reserved for Primary school and play ground, being Survey No.454/2A as Site No.132.

5. Mr. Barde, the learned Advocate for the petitioners submits that inspite of the petitioners having served a notice under Section 127 of the MRTP Act on 14.09.2018, no tangible steps as are contemplated towards acquisition of the writ property were taken for 24 months. Only a TDR was offered which they had declined to receive in lieu of monetary compensation.

6. The learned Advocate for the Respondent- Corporation would submit that the Corporation had made an attempt to acquire the property by offering TDR to the petitioners and resolution to that effect was passed on 15.11.2019 but the petitioners have refused to accept the TDR. A proposal was forwarded to the State for taking necessary steps for acquisition but it has not been properly responded to.

7. We have given thoughtful consideration to the rival submissions and perused the papers.

8. Suffice for the purpose to refer to the decision in the matter of **Girnar Traders and Another Vs. State of Maharashtra and others; 2007 AIR (SC) 318**, wherein, it has been laid down that the steps in the direction of acquisition of land reserved under the provisions of the MRTP Act would be nothing but short of a declaration under Section 6

of the Land Acquisition Act 1894 (analogous to Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) read with section 126 of the MRTP Act. Admittedly, no such steps have been taken for whatever reason.

9. The right of property owners to insist for payment of monetary compensation by refusing TDR is also settled by the full bench 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)**. It has been specifically laid down that it is the choice of the property owner either to accept TDR or to insist for payment of compensation.

10. Merely by indulging in correspondence expecting the State to initiate proceedings for acquisition without effectively being ready to pay compensation would be a mere belief.

11. There is nothing on the record to demonstrate that respondent-Corporation which is the development authority had taken any step except writing letters to the Government and the Special Land Acquisition Officer.

12. Therefore, the consequences would follow as envisaged in catena of judgments on lapsing of the reservation.

13. The writ petition is allowed.

14. It is declared that reservation on land Survey No.454/2A situated at Mehrun Shivar, Tq. & Dist. Jalgaon stands lapsed. The respondents shall take steps for issuance of notification under sub section 2 of section 127 of the MRTP Act as early as possible.

11. Rule is made absolute in above terms.

(Y. G. KHOBRAGADE, J.)

( MANGESH S. PATIL, J.)

JPChavan