

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

**937 WRIT PETITION NO.9601 OF 2021**

- 1) Satish Madhav Khadke,  
Age 54 years, Occ. Agriculture,  
R/o. Plot No. 6, Gat No. 42/2/B,  
Pimprala road, Jalgaon.
- 2) Chunnilal Madhav Khadke,  
Age 57 years, Occ. Agriculture.
- 3) Sanjeev Vasant Khadke,  
Age 61 years, Occ. Agriculture.
- 4) Jayant Vasant Khadke,  
Age 57 years, Occ. Agriculture.
- 5) Avinash Vasant Khadke,  
Age 54 years, Occ. Agriculture.  
No. 2 to 5 r/o. Plot No. 10A,  
Laxman Nagar, Pimprala Road,  
Near Bajrang Pool, Jalgaon.

...      **Petitioners**

**VERSUS**

- 1) The State of Maharashtra
- 2) The Director of Town Planning  
Maharashtra State, Pune.
- 3) The Assistant Director of Town Planning  
Jalgaon, Dist. Jalgaon.
- 4) The Municipal Corporation, Jalgaon,  
Vallabhbhai Tower, Zilla Peth, Jalgaon,  
Dist. Jalgaon,  
Through its Commissioner.

...      **Respondents**

...

Advocate for Petitioners : Mr. Wani Girish V.  
AGP for Respondent Nos. 1 and 2 : Mr. A.S. Shinde  
Advocate for Respondent Nos. 3 & 4 : Mr. Navandar Mehul Vikas

**CORAM**

**: MANGESH S. PATIL &  
Y. G. KHOBRAGADE, JJ.**

**DATE : 22.11.2022.**

**PER COURT :**

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 who are the owners of the writ properties are seeking a declaration regarding lapsing of the reservation in view of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter 'the MRTP Act').

4. The learned advocate for the petitioner submits that the draft development plan was finalized in the year 2000. Since no steps were being taken by the respondent No. 4-Planning Authority to acquire the land as contemplated under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 or Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioner served a notice under Section 127 of the MRTP Act on 01.03.2018. Though the respondent No. 4 passed a resolution on 21.02.2019 and offered the petitioner transfer of development rights (TDR) in lieu of monetary compensation, they by their communication dated 01.04.2019 refused to accept the TDR. In the backdrop of such state of affairs, the lapsing would occur automatically.

5. The learned advocate Mr. Wani would further submit that just to prolong the eventuality, the respondent No. 4 had called upon the petitioners to furnish some details regarding bifurcation of individual shares in the writ properties which has nothing to do with their right to seek a declaration regarding lapsing of reservation. Once having offered TDR, the respondent No. 4 cannot be allowed to go back. Even the full bench of this

Court in the matter **Vinayak Builders & Developers Vs. The State of Maharashtra and others (Writ Petition No. 2231 of 2019)** dated 25.07.2022 (**Nagpur Bench**) has emphatically laid down that the owner of the writ property cannot be imposed with any such offer and it is his volition.

6. Learned advocate for the respondent No. 4-Corporation submits that though the events described in the petition and narrated by the learned advocate Mr. Wani are correct state of affairs, the respondent No. 4 was merely seeking some clarification so that positive steps could have been taken towards acquisition.

7. We have given thoughtful consideration to the rival submissions and perused the papers. The law in this regard has been crystallized over a period of time. 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** laying down as to what would constitute a step in the direction of acquisition as contemplated under Section 126 of the MRTP Act. It held that nothing short of a declaration under Section 6 of the Land Acquisition Act 1894 which is analogs to Section 19 of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would constitute such a step in the direction of acquisition of the property reserved for public use. Admittedly, no such declaration has been made.

8. As far as the step being taken by the respondent No. 4 Corporation of offering TDR in lieu of monetary compensation, the petitioner had specifically declined the offer which they are entitled to in view of the full bench decision of this Court in the matter of **Vinayak Builders & Developers (supra)**.

9. In view of the above state of affairs, the consequences would be inevitable. Going by the timeline described herein above, the respondent No. 4 having failed to take steps in the direction of acquisition within 10 years of

coming into force of the development plan and thereafter for 24 months after receipt of notice under Section 127, the reservation would lapse.

10. We allow the writ petition and declare that the reservation on land Gat Nos. 312/2/A, 312/2/B, 312/3/A and 312/3B/2, situated within Municipal Corporation Jalgaon, District Jalgaon stands lapsed. The respondents shall take immediate steps for issuance of notification under sub section 2 of section 127 of the MRTP Act.

11. Rule is made absolute in above terms.

( Y. G. KHOBRADE, J.)

(MANGESH S. PATIL, J.)

mkd/-