

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

960 WRIT PETITION NO.13735 OF 2021

PANKAJ SURESH BOROLE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. S.S. Bora h/f. Mr. Gaikwad Pramod S
AGP for the respondent – State : Mrs. M.A. Deshpande
Advocate for the respondent no. 4 : Mr. V.D. Gunale
...

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

DATE : 4 OCTOBER 2022

ORAL ORDER (MANGESH S. PATIL, J.) :

The petitioners are seeking a declaration about the reservation on the writ property having been lapsed by virtue of inaction on the part of the respondent - planning authority to take steps towards acquisition, as is contemplated under section 126 and 127 of the Maharashtra Regional and Town Planning Act, 1966 (**MRTP Act**).

2. Having heard both the sides, it transpires that the development plan was notified on 11-02-2002 and came into effect on 07-04-2002. After some intervening hick-ups, the petitioners served notice under section 127 of the MRTP Act on 27-05-2019. The respondent - corporation offered them TDR in lieu of monetary

compensation by a communication dated 27-08-2019 but the petitioner in response refused to accept it and the petition is filed on 03-12-2021.

3. As far as the offer to accept the TDR is concerned, 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) has specifically held that it cannot be imposed unless the owner is ready to accept it.

4. There is absolutely no material to demonstrate about the respondent - corporation having taken any visible steps towards acquisition, as is contemplated under section 126 of the MRTP Act by issuing the declaration under section 6 of the Maharashtra Land Acquisition Act, 1894 or section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within the time prescribed under section 127 of the MRTP Act, and as has been interpreted by the Supreme Court in the matter of *Girnar Traders and another Vs. State of Maharashtra and others*; 2007 AIR (SC) 3180. The consequences are inevitable. The reservation would lapse.

5. The writ petition is allowed.

6. It is declared that the reservation has lapsed.

7. The respondent shall take steps for issuing notification under section 127(2) of the MRTP Act.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/