

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

WRIT PETITION NO.7220 OF 2020

**SUBHASH MANAKCHAND ZAMBAD AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO.7144 OF 2020**

**SURESH MANKACHAND ZAMBAD
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

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Advocate for Petitioners : Mr. S.S. Khoche h/f. Mr. D.P. Palodkar
AGP for Respondents: Mr. A.S. Shinde
Advocate for Respondent Nos. 5 to 8: Mr. Jiwan Patil

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**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 27.01.2023

ORDER :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. Since the facts are similar and the petitioners are claiming the same relief regarding lapsing of reservation pursuant to Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (the Act) we are disposing of these petitions by this common judgment and order.

3. Admittedly, the development plan was sanctioned on 01.10.2001. The writ properties were earmarked as green belts to the extent of 53 Are and 1649.461 sq.mtrs. respectively. Since no steps were taken pursuant to the provisions of Section 126(4) read with either 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 within the statutory period of 10 years, notices under Section 127 were issued. Those were served to the respondents on 26.09.2017 and the petitions have been filed after 24 months of service of the notice.

4. Learned advocate Mr. Patil for the CIDCO submits that the purpose of keeping the green belt would be lost which are so essential for the well being of the society and the environment. The respondents should be given an opportunity to offer additional FSI or TDR to the petitioners in lieu of monetary compensation.

5. The question of the petitioners being offered any additional FSI or TDI in lieu of monetary compensation is no more *res integra* in view of the full bench decision of this Court in the matter of **Shree Vinayak Builders and Developers Vs. State of Maharashtra and Ors.**; 2022(4) Mh.L.J 739 wherein it has been emphatically laid down that the property owner cannot be compelled to accept the TDR in lieu of monetary compensation.

6. As far as the purpose of the reservation is concerned true it is that it is 'reserved' for green belt and except development of the green belt nothing else is to come up on the reserved portion. But even this issue has been decided by this Court in the matter of **Maidan Bacchav Samiti and Ors. Vs. Ramchandra Padmakar Vaidya And Ors.**; 2011(3) All.M.R. 497 wherein it has been laid down that the lapsing of reservation under Section 127

would take within its sweep even the properties ‘designated’ for a particular purpose. The relevant paragraph No.26 reads as under :

“26. The submission is also contrary to section 127 which deals with lapsing of reservation. The section provides that:- “if any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement” or if proceedings for acquisition of such land under the Land Acquisition Act are not commenced within the stipulated period, the owner or any person interested in the land may serve a notice upon the appropriate authority to that effect and if within 6 months from the date of service of such notice, the land is not acquired or steps are not taken for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

The section, therefore, makes it clear that lands which are either reserved, allotted or designated may be acquired. In other words, it is not only lands which are shown to be reserved under the Development Plan, which may be acquired under the Act.”

7. In the light of the decision in the case of **Girnar Traders (2) Vs. State of Maharashtra; 2007 (7) SCC 555**, since admittedly no steps towards acquisition as contemplated in law were taken the consequence are inevitable. The reservation would lapse.

8. The writ petitions are allowed. It is declared that the reservations on the writ properties stand lapsed. The respondent shall take urgent steps for issuance of notification under Sub-Section 2 of Section 127 of the Act.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)