

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

905 WRIT PETITION NO.7404 OF 2022

KANTILAL RAMLAL CHUNGADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH DEPARTMENT OF URBAN
DEVELOPMENT AND OTHERS

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Advocate for Petitioners : Mr. Palodkar Devdatt P.
AGP for Respondent Nos. 1 to 4 : Mr. S. B. Yawalkar
Advocate for Respondent Nos. 5 & 6 : Mr. Deshmukh Vaibhav P.

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948 WRIT PETITION NO.7372 OF 2022

DILIP TARACHAND TARASING CHUNGADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH DEPARTMENT OF URBAN
DEVELOPMENT AND OTHERS

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Advocate for Petitioners : Mr. Palodkar Devdatt P.
AGP for Respondent Nos. 1 to 4 : Mrs. M.A. Deshpande
Advocate for Respondent Nos. 5 to 8 : Mr. J.J. Patil

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

DATE : 08.02.2023

PER COURT :

Learned advocate Mr. Deshmukh Vaibhav submits that he has instructions to appear on behalf of respondent No. 5 and 6 in Writ Petition No. 7404/2022. He also tenders across the Bar an affidavit in reply on behalf of the respondent Nos. 6 to 8, in the same petition. It is taken on record.

2. Heard both the sides.

3. By invoking article 226 of the Constitution of India the petitioners are

seeking a declaration regarding deservation of their respective properties reserved in a development plan of Waluj published by the CIDCO on 14.08.2001 which came into effect on 01.10.2001 duly approved by the State Government.

4. Since no steps were taken towards acquisition notices under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act) was issued on 17.12.2018 and the petitions have been filed in the year 2022, beyond 24 months of the notices. Though the respondent-CIDCO has filed a detailed affidavit in reply in both these petitions and has expressed its intention to continue with the reservation, it has not been mentioned precisely as to what steps were taken towards acquisition of the reserved properties as is contemplated under section 126 the MRTP Act. In the matter of **Girnar Traders and another Vs. State of Maharashtra and others; 2007 AIR (SC) 3180** the words “steps in the direction of acquisition” have been interpreted to mean nothing short of a notification under Section 126(4) of the M.R.T.P. Act read with Section 6 of the Land Acquisition Act, 1894. Admittedly, no such course has been ever followed.

5. Though the respondent-CIDCO is offering a Development Rights Certificate (DRC) analogous to TDR, a 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 already held that the owners of the properties cannot be compelled to accept TDR in lieu of monetary compensation.

6. Learned advocate for the petitioners submits that the petitioners are not willing to have DRC.

7. The Writ Petitions are allowed. It is declared that the reservation on the petitioners' in Writ Petition No. 7372/2022 land bearing Gat No. 32 admeasuring 0 Hectare 59-Are situated at village Golwadi Tq. & Dist.

Aurangabad and land Gat No. 16 admeasuring 0 Hectare 29 Are situated at village Golwadi Tq. & Dist. Aurangabad in Writ Petition No. 7404/2022 stands lapsed.

8. The respondents shall take prompt steps for issuance of notification under sub Section 2 of Section 127 of the M.R.T.P. Act.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-