

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4894 OF 2013

Shri. Rajendra T.Dolas.

...Petitioner.

vs.

The Deputy Director and ors.

...Respondents.

Mr. Vijay Killedar for the Petitioner.

Mr. Deepak R. Mone for the Respondent No.1.

Mrs. M.P.Thakur, AGP for Respondent Nos. 3 to 5

CORAM : A.S.OKA AND
A.P. BHANGALE, JJ.
DATE : 18th April , 2015

PC:

Heard learned counsel appearing for the petitioner and the
learned counsel appearing for the respondent Nos. 1 and 2.

2) An Application was made by the petitioner to the Pimpri Chinchwad Municipal Corporation for grant of Transferable Development Rights (for short "TDR"). The TDR was claimed in respect of the land held by the petitioner which was reserved by Reservation No.402 in the sanctioned Development Plan for play ground. On 30 November 2006, the Deputy Director of Town Planning of the Pimpri Chinchwad Municipal Corporation informed the petitioner that the petitioner will have to produce the documents of title, city

survey plan and ULC No Objection Certificate for the purposes of grant of TDR. The said letter specifically records that after declaration of an award, the petitioner will be disentitled to TDR.

3) The challenge in this petition under Article 226 of the Constitution of India is to the order dated 13 February 2008 issued by the Deputy Director of the Pimpri Chinchwad Municipal Corporation by which the application for grant of TDR was rejected in the light of order dated 3 February 2007. The second challenge is to the communication dated 21 January 2013 issued by the State Government to the petitioner by which the prayer made by the petitioner for grant of TDR in respect of the said land was rejected.

4) The submission of the learned counsel for the petitioner is that the order dated 13 February 2008 is bad in law as the order dated 3 February 2007 issued by the State Government has been set aside by this Court and that the order of this Court has been confirmed by the Apex Court. The second submission is that though the Award in respect of the said reserved land under the Land Acquisition Act, 1894 is already declared, much before the declaration of the award, the petitioner had applied for grant of TDR. He stated that the petitioner had made compliance with the requisitions set out in the letter dated 30 November 2006 by submitting necessary documents. He invited our

attention to Paragraph 8 of the Writ Petition in which the said assertion has been made. He, therefore, submitted that his prayer for grant of TDR ought to have been considered as an application for grant of TDR has been made much prior to the date of the Award.

5) We have given careful consideration to the submissions. As far as the order dated 13 February 2008 is concerned, the challenge by the petitioner is justified as the order of the State Government dated 3 February 2007 has been set aside. By the second impugned order passed by the State Government, the application for TDR has been rejected on the ground that after making an Award, the possession of the acquired land has already been taken over.

6) By the communication dated 30 November 2006, the Municipal Corporation called upon the petitioner to produce certain documents. The petitioner was put to notice that if an award is declared, the petitioner will be disentitled to grant of TDR. The Award was declared on 13 April 2007. Notice was given to the petitioner of taking over possession on 30 April 2007. On 14 May 2007, the petitioner applied to the Commissioner of the Municipal Corporation as well as Special Land Acquisition Officer, for grant of TDR. In the said letter, the petitioner has not stated that in compliance with letter dated 30 November 2006, the petitioner had submitted necessary documents

as set out in the said letter. Even in the subsequent correspondence, such a contention is not raised. There is a bald assertion is made in Paragraph 8 of the petition without material particulars. It is not stated as to when and how the documents described in the letter dated 30 November 2006 were submitted. The learned counsel appearing for the petitioner sought time to obtain information under the Right to Information Act, 2005. If the petitioner claims that he has complied with the requisitions made in the letter dated 30 November 2006, the petitioner could have at least stated that the date on which the compliance was made and the documents were handed over to which Officer or office of the Municipal Corporation. Whether the petitioner has complied with the requisitions by furnishing documents is a fact which is within the special knowledge of the petitioner and therefore, there is no reason for the petitioner to apply under the Right to Information Act, 2005.

7) As the petitioner was already put to notice that the application for TDR will not be considered after the Award is made, the petitioner is not entitled to claim any relief. By the second impugned orders the TDR has been denied on the ground that an Award has been already made.

8) Therefore, though the order dated 13 February 2008 passed by the Municipal Corporation may not be correct, no relief can be granted to the petitioner. The petition is, accordingly, rejected.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)