

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4931 OF 2012

Mr.P.B.Shah i/b Mr.Vivek Salunke for the petitioner
Mr.V.P.Malvankar, AGP `A' Panel for the respondent
No.1
Mr.Rajdeep Khadapkar for respondent Nos.2 and 3.

P.C.:

2 The submission of the learned counsel for the
petitioner is that though compensation was accepted,
it was accepted under protest. He submitted that in

similar cases, the Municipal Corporation of the city of Pune has granted the benefit of Transferable Development Right (for short 'TDR') to the owners of the lands who had accepted the compensation under the Land Acquisition Act, 1894. He urged that by a communication dated 7th August 2009, the claim made by the petitioner for grant of TDR was rejected only on the basis of the direction contained in the Government Resolution dated 3rd February 2007. He pointed out that the said direction has been set aside by the Division Bench of this Court by Judgment and Order dated 15th September 2009 in Writ Petition No.7006 of 2006 (Kausarbag Co-operative Housing Society Ltd. Vs. State of Maharashtra and others). He pointed out that the decision of this Court has been affirmed by the Apex Court.

3 The learned counsel for the Pune Municipal Corporation pointed out that apart from the fact earlier on two occasions, same relief was denied by the Pune Municipal Corporation to the same petitioner, as per the Development Control Regulation No.2.4.17, the case of the petitioner will not be covered. He submitted that in view of the Judgment and Order dated 15th September 2009 in the Writ petition No.7006 of 2006, the said Regulation No.2.4.17 will apply which provides for grant of TDR in cases where land is under acquisition. He pointed out that as the petitioner has received compensation in the year 1986 on the basis of an Award made in the year 1983, the case of the petitioner will not be covered by the said

Regulation No.2.4.17.

4 We have given careful consideration to the submissions. On 19th January 2001 the petitioner made an application for grant of TDR in respect of the acquired land. In the said letter, the petitioner has specifically stated that considering the larger public interests, without raising any dispute regarding compensation, the petitioner accepted the compensation of Rs.2,38,821/- on 31st January 1986. The said statement in the letter dated 19th January 2001 clearly show that compensation was accepted by the petitioner without any protest. The said application was not considered by the Municipal Corporation on the ground that it was not in proper form. Therefore, another application dated 1st November 2001 was made by the petitioner. By communication dated 1st January 2002, the prayer made in the application dated 3rd November 2001 was rejected by the Pune Municipal Corporation. There is another communication dated 14th October 2002 which records that a proposal for grant of TDR has been rejected. We must note here that the rejection is on the ground that the petitioner has received compensation for the acquisition of the land. There is a specific communication dated 18th April 2003 addressed to the petitioner which records that in view of Regulation No.2.4.17, as the petitioner had accepted the compensation, the case of the petitioner for grant of TDR in respect of the acquired land cannot be considered. There is another communication dated 18th April 2006 issued by

the Municipal Corporation by which the proposal for grant of TDR was rejected on the same ground. It appears from the petition that the communications issued from the year 2002 to 2006 rejecting the prayer made by the petitioner for grant of TDR were not challenged by the petitioner. Thereafter, an application was made by the petitioner on 25th May 2007 directly to the Hon'ble the Minister of State of the Urban Development Department for grant of TDR. By a communication dated 7th August 2009, the State Government informed the petitioner that the said application has been rejected.

5 It is true that the letter dated 7th August 2009 relies upon the order dated 3rd February 2007 which has been set aside by this Court. The effect of setting aside the said order is that the prevailing Regulation will apply. Regulation No.2.4.17 which was the prevailing Regulation reads thus:

"N-2.4.17 Grant of TDR in cases where lands are under acquisition:

(i)Where Land Acquisition has been declared but request was made for TDR to the Special Land Acquisition Officer after 30 September 1993 i.e the date of publication of these draft Development Control Regulation containing TDR concept.

(ii)Possession of the land has been delivered without having received part or full compensation under either the Maharashtra Regional and Town Planning Act, Bombay

Provincial Municipal Corporation Act, private negotiation or under any Act for the time being in force within 12 years prior to 30 September 1993."

6 The case of the petitioner will not be admittedly governed by both the clause (i) and clause (ii). In this case, admittedly, the petitioner has received a full compensation under the Award declared in the year 1983. As observed earlier, the case sought to be made out by the petitioner that the compensation was accepted under protest is not factually correct in the light of the clear statements made by the petitioner in the letter dated 19th January 2001 (Exhibit-A to the petition).

7 Moreover, the proposal of the petitioner for grant of TDR was repeatedly rejected by the Municipal Corporation from the year 2002 to 2006. The petitioner did not challenge the said orders.

8 For the reasons recorded above, no interference can be made with the communication issued by the respondents declining to grant TDR to the petitioner. Writ Petition is disposed of.

(A.K.MENON,J.)

(A.S.OKA,J.)