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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.6452 OF 2011 WITH
CIVIL APPLICATION NO.2526 OF 2014

Niyojit Jivhala Grih
Nirman Sastha ...Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Datta Pawar i/b Onash Legus for the petitioner
and applicant
Mr.V.S.Gokhale, AGP for the respondent Nos.1 and 2
Mr.S.S.Patwardhan for respondent No.3

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : FEBRUARY 6, 2015

ORAL JUDGMENT (PER A.S.OKA,J.)

1 Considering the subsequent decision of this Court as well as the Apex Court, the petition is forthwith taken up for final disposal. Rule. Respondents waive service.

2 The challenge in this petition is to the Government order dated 3rd February 2007. the said order is purportedly passed under section 154 of the Maharashtra Regional and Town Planning Act,1966 (for short 'the MRTP Act'). The relevant part of the Government order reads thus:

"DIRECTIONS

All the Municipal Corporations which have the provisions regarding grant of Transferable Development Rights (TDR), for the lands which are

acquired under either the MRTP Act, BPMC Act, Private Negotiation or any other Act shall initiate modification proposal after following procedure laid down under section 37 of the said Act so as to replace the provisions in this regard by new rule as follows:

New Rule

- 1) Transferable Development Rights (TDR) shall not be permissible once an Award has been declared under the acquisition process and or the possession has already been delivered to the Municipal Corporation under any Act
- 2) Municipal Corporation shall publish a notice inviting suggestions and or objections regarding the modification within sixty days from the day of issue of this order
- 3) After completing the procedure as laid down under section 37(1) of the said Act Municipal Corporation shall submit the said modification proposed in the Government for final sanction
- 4) Pending the approval to the aforesaid modification the new rule mentioned hereinabove shall come into force with effect from the date of issue of this notification."

3 On 13th January 2010, the petitioners submitted a proposal for grant of Transferable Development Rights (for short 'TDR'). The claim for TDR was made in relation to the land of the petitioner which was acquired under the Land Acquisition Act, 1894 wherein an award under section 11 was made on 20th

July 1991. The case of the petitioner is that the Officers of the respondent No.3 Kolhapur Municipal Corporation informed the petitioner that the application for grant of TDR cannot be considered in the light of the Government order dated 3rd February 2007. It appears that the petitioner was seeking grant of TDR under Regulation 85 of the Kolhapur Development Regulations, 1996.

4 The purport of the impugned order of the State Government dated 3rd February 2007 is that all Municipal Corporations shall commence procedure under sub section(1) of section 37 of the MRTP Act for modification of the Development Control Regulations for providing that grant of TDR shall not be permissible once an Award has been declared in the acquisition process or the possession of the land has been delivered to the Municipal Corporation under any enactment.

5 There are two decisions of different Division Benches of this Court dealing with issue of the legality of clause (4) of the aforesaid Government direction which directs that the new Rule mentioned hereinabove shall come into force from 3rd February 2007 without actual modification being made in accordance with section 37. The Division Benches of this Court found that the direction to forthwith implement the amended Rule without completion of the procedure of the modification under section 37 of the MRTP Act was completely illegal. The said decisions are in the cases of the Kausarbag Co-op

Housing Society Limited and another vs. State of Maharashtra¹ and the Judgment and Order dated 14th February 2011 in Original Side Writ Petition No.2287 of 2010 in the case of.D.B.Realty Ltd. & Anr. Vs. State of Maharashtra.

6 We must note here that the decision of this Court in the case of Kausarbag Housing Society Ltd. has been affirmed by the Apex Court by the Judgment and Order dated 9th October 2014 in Civil Appeal No.3008-3009 of 2010.

7 The net result of the aforesaid Judgments of this Court is that the modified rule incorporated in the impugned order dated 3rd February 2007 will not be operative till the procedure under section 37 of the said Act is completed and that the relevant Regulation in relation to the grant of TDR which existed prior to 3rd February 2007 will continue to operate, unless there are modifications lawfully made to the relevant Regulation at any time subsequent thereto. Suffice it to say that the prayer for grant of TDR could not have been denied on the basis of the impugned order dated 3rd February 2007.

8 Hence, we dispose of the petition by passing the following order:

(I) The prayer clause (a) is worked out in the light of the aforesaid decisions of this Court

and the Apex Court;

- (II) The prayer made by the petitioner for grant of TDR could not have been refused only on the basis of the impugned order dated 3rd February 2007. Therefore, it will be open for the petitioner to make a fresh application for grant of TDR to the respondent No.3-Municipal Corporation;
- (III) If such application is made, the respondent No.3-Municipal Corporation shall decide the same as expeditiously as possible and preferably within a period of three months from the date on which the application is made. It is obvious that the application cannot be rejected on the basis of the impugned order dated 3rd February 2007;
- (IV) However, the application made by the petitioner shall be decided in accordance with law;
- (V) Rule is partly made absolute on above terms with no order as to costs;
- (VI) Civil Application No.2526 of 2014 does not survive and the same is also disposed of.

(A.K.MENON,J.)

(A.S.OKA,J.)