

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8568 OF 2015

M/s Money Magnum Constructions Petitioner
vs
1 State of Maharashtra and 3 ors. Respondents

Dr. Milind Sathe, Senior Advocate with Prachi Dhanani I/by
Veritas Legal for the petitioner.

Mr. C. P. Yadav, AGP for respondent No.1.

Mr. A.R. Pitale for respondents 2 and 3.

Mr. Nakul Jain, M. Nivit Srivastava I/by M/s. Maniar
Srivastava Associates for respondent No.4.

**CORAM: ANOOP V. MOHTA AND
A. A. SAYED, JJ.**

DATE : October 21, 2015

ORAL JUDGMENT (Per Anoop V. Mohta J.):

Rule, returnable forthwith. Heard finally by consent.

2 The dispute in the present Petition pertains to the non-
grant of amenity TDR in respect of construction of road undertaken by
the Petitioner to the tune of 21,594 sq. mtrs., inspite of
judgment/order of this Court in Writ Petition No.3887/2013-M/s.
Money Mangum Constructions v. State of Maharashtra dated 21

August 2013, which is based upon the judgments of Supreme Court in Godrej and Boyce Manufacturing Company Ltd v. State of Maharashtra¹ and Pune Municipal Corporation v. Promoters and Builders Association² .

3 This Court, by Order dated 21 August, 2013, had directed the Respondent Corporation to consider and grant the amenity TDR in respect of 21, 594 sq. mtrs.

4 The Commissioner, Thane Municipal Corporation, by Order dated 17 September, 2013, initially sanctioned amenity TDR for construction of the road for 21,594 sq. mtrs.

5 The Commissioner, Thane Municipal Corporation, by Order dated 23 September, 2014 revised earlier Order dated 17 September, 2013 and confined the amenity TDR to 13,022 sq. mtrs. The dispute therefore now pertains to the balance 8,572 sq. mtrs.

6 Respondent Nos. 2 and 3 by their Affidavit in Reply dated 6 October, 2015, in particular paragraph 15 of the said Affidavit, have

1 (2009) 5 SCC 24

2 AIR 2011 SC 1916

stated the following in respect of the Petitioner's claim for balance 8,572 sq. mtrs. TDR:

“15 I say that so far as remaining portion of road is concerned i.e. 8572 m², the Petitioner had exercised his option to construct 5312 m² road afresh as per specifications and norms laid down by City Engineer of the Corporation as per the Regulation 6 of Appendix 'W' of DCR and 3260 m² is still remained to be constructed. Hence, Petitioner cannot claim TDR for Development of Amenity which is not developed by him and this is nothing but misusing the order of Hon. Court. Hence under the circumstances if Petitioner wants to claim TDR against remaining road of 5312 m², the Petitioner has to comply other necessary conditions namely to carry out construction as per the specification of TMC, to execute possession receipt of said 5312 m² constructed road with the City Engineer and to execute agreement to that effect, with A.D.T.P. So far as remaining un-constructed road of area 3260 m² is concerned, Petitioner may make a fresh

application for specifications to the City Engineer of Corporation and it shall be considered on merit.”

7 In so far as an area of 5,312 sq. mtrs., out of 8,572 sq. mtrs. is concerned, this portion of the DP Road has been constructed as per the specifications and norms laid down by City Engineer of the Corporation as per Regulation 6 of the Appendix ‘W’ of DCR and in order to avail TDR, the Petitioner has to execute possession receipt of 5,312 sq. mtrs. constructed road with the City Engineer and to execute agreement to that effect with the Assistant Director Town Planning. The Petitioner is willing to do so. Thane Municipal Corporation to execute the possession receipts and enter into the Agreement within a period of 2 weeks from date of application for the same by the Petitioner and Thane Municipal Corporation to grant the necessary TDR within a period of 2 weeks thereof.

8 In respect of the remaining area of 3,260 sq. mtrs, the Affidavit states that the Petitioner will have to make fresh application for specifications to the City Engineer of the Corporation. The Petitioner is willing to do so as per the specifications already

provided by the City Engineer via letter dated 24.03.2014 (Exhibit 'T')

9 In respect of 3,260 sq. mtrs of the DP Road, the Petitioner shall up-grade the area of 3,260 sq. mtrs. and complete the same within a period of ten weeks hereof. On certification of completion work of the up-gradation of the area of 3,260 sq. mtrs., DP Road, the Corporation shall issue Development Rights Certificate for the said area within a period of four weeks thereof in accordance with law. The Petitioner to make necessary compliances.

10 The Petition is accordingly disposed of in the aforesaid terms.

11 Rule made absolute in the aforesaid terms.

12 There shall be no order as to costs.

(A. A. SAYED, J.)

(ANOOP V. MOHTA, J.)