

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDCITION**

WRIT PETITION NO. 52 OF 2013

M/s. S.R.Dantal Builders and Promoters. ..Petitioner.
vs.
Municipal Corporation for Gr. Mumbai
and ors. ...Respondents.

Mr. J.G.Reddy for the Petitioner.
Mr.Vinod Mahadik for the BMC.

**CORAM : A.S.OKA AND
A.P. BHANGALE, JJ.
DATE : 07 April, 2015**

PC:

Heard the learned counsel for the petitioner, learned counsel appearing for the first respondent and the second respondent. The grievance made in the petition is as regards the failure of the first respondent Municipal Corporation to release Development Rights Certification (DRC) of 106.06 sq. meters and to refund an amount of Rs.12,68,000/- to the petitioner.

2) A Letter of Intent was issued by the first respondent -Municipal Corporation on 21 January 1997. By the said letter of

intent, the petitioner was informed that his request for grant of transferable development rights in lieu of the land of the petitioner bearing CTS No.250E of Village Mogra which was reserved for Municipal Primary School, will be considered after complying with the conditions incorporated in the said letter of intent. Condition No.6 in the said letter of intent reads thus:-

“That to execute the right of way agreement with the Corporation before taking over the possession of the land under reference”.

3) The submission of the learned counsel appearing for the petitioner is that the petitioner has made a substantial compliance with the conditions. He pointed out that a Primary School Building has been constructed on the said reserved plot by the petitioner and the same is in possession of the first respondent Municipal Corporation. He submitted that though the agreement of right of way in favour of the first respondent may not have been executed, the petitioner has obtained an access to the said plot under a Leave and licence Agreement which is annexed to the petition. He submitted that even the Slum Rehabilitation Authority is willing to provide access to the said plot on which the

School building is constructed. He submitted that though a substantial compliance has been made by the petitioner, the compensation in the form of the DRC and the refund of deposit has been denied. He submitted that before deciding the representation made by the petitioner in terms of the interim order of this Court, the petitioner was not granted an opportunity of being heard.

3) We have considered the submissions. On Page Nos.64 and 65 is the order passed by the Executive Engineer on the representation of the petitioner. In the said order, it is observed thus:-

“You have submitted the copy of agreement for the said Right of Way with adjoining land holder i.e. Mercantile CHSL dated 6.3.1998 on CTS. NO.250(pt). However, you failed to shift the compound wall thereon so as to provide the adequate Right of Way.

You had again agreed upon to obtain the 6.75 mt. Wide Right of Way for plot under reference. Hence, the construction of school building on plot under reference in lieu of TDR was allowed to develop.

In view of above, your request for releasing the balance DRC for the constructed built up area of 106.-06 sq. meters. and refund the

deposit of Rs.12,68,000/- will be considered on its merit as and when the authentic access is made available to M.C.G.M at site by executing Right of Way agreement.

In this respect, you have been already informed vide letter dated 19.04.2012.”

We have also reproduced the Condition No.6 in the letter of Intent. It contemplates that the petitioner will execute right of way agreement with the Municipal Corporation before taking over the possession of the land under reference. Admittedly, no such agreement of right of way has been executed. The petitioner is relying upon a letter addressed by M/s. Sunshine Developers and Construction Company showing readiness and willingness to provide access. Though the petitioner has annexed a copy of agreement of right of way, it is an admitted position that it only a draft of the agreement and the same has not been actually executed. Therefore, as of today, the petitioner has not complied with the conditions contained in the Letter of Intent. The petitioner is entitled to DRC and refund of deposit only after compliance is made with the said conditions.

4) In the order passed by the Executive Engineer, it is

specifically observed that the request of the petitioner for releasing balance DRC of area of 106.06 sq. meters and the refund of the deposit of Rs.12,68,000/- will be considered as and when an authenticate access is made available to the Municipal Corporation. The order passed by the Executive Engineer of the Corporation shows that the Municipal Corporation is ready to grant relief to the petitioner subject to condition of the petitioner complying with the Condition No.6 of the letter of Intent. Therefore, as of today, no relief can be granted . As and when the petitioner complies with the condition No.6 of the Letter of Intent, the petitioner is free to make an application to the first respondent. In view of what is stated in the order of the Executive Engineer, the Municipal Corporation is bound to act upon such applications after satisfying itself that the petitioner has complied with Clause 6 of the Letter of Intent.

Hence, no relief can be granted to the petitioner as of today. Subject to above observations, the petition is rejected.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)