

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6973 OF 2012

DR. AJAZ SHAH KHAN S/P AZAM SHAH KHAN
VERSUS

THE STATE OF MAHARASHTRA & OTHERS.

WITH

CA/11697/2013 IN WP/6973/2012 WITH WP/904/2012
WITH CA/5964/2012 IN WP/904/2012 WITH WP/1415/2012 WITH
WP/1631/2012 WITH CA/5965/2012 IN WP/1631/2012 WITH WP/1631/2012
WITH WP/1865/2012 WITH WP/2083/2012 WITH WP/2440/2012 WITH
WP/3021/2012 WITH CA/5963/2012 IN WP/3021/2012 WITH WP/3030/2012
WITH CA/8305/2014 IN WP/3030/2012 WITH WP/4287/2012 AND WRIT
PETITION NO. 4582 OF 2012.

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Advocate for Petitioners : Mr. S.S. Kazi, Mr. A.N. Kakade, Mr. Deshmukh Javed
Abdul H, Mr. A.K. Gawali, Mr. M.A. Latif, Mr. S.N. Pagare, Mr. D.P. Palodkar
h/f. Mr. A.P. Phatale.

AGP for respondent State : Mr. B.A. Shinde.

Advocate for respondent Municipal Corporation : Mr. Atul M. Karad

Advocate for respondents : Mr. V.D. Kadam/ Mr. M.B.W. Khan/ Mr. N.B.
Khandare

CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.

DATE : 26th APRIL, 2016.

PER COURT:

1] In all these writ petitions, grievance of the petitioners is that respondent Municipal Corporation, without adhering to the provisions of the statute, have illegally either demolished their houses, or conducted markings. The petitioners are not paid any compensation amount for the same. The learned counsel for the respective petitioners submit that as yet no acquisition proceedings are initiated. Without initiating acquisition proceedings, the respondent Municipal Corporation has done markings and in some matters have demolished the houses. The matters, wherein the possession has been taken in these matters, respective counsel submit that the petitioners would be entitled for rental compensation. Learned counsel

for the respective petitioners, on instructions, submit that the petitioners are not interested in accepting TDR or FSI.

2] Mr. Karad, learned counsel for the Municipal Corporation submits that pursuant to the orders passed by this Court from time to time, the authorities of the respondent Municipal Corporation, have made efforts to redress the grievance of the petitioners, by offering them TDR or FSI , and even amount by private negotiations. In some of the matters, the claimants accepted the amount determined through private negotiations and those writ petitions are also disposed of. He further submits that hearing is conducted. In all these writ petitions, the petitioners have not agreed to accept the TDR or FSI. The Municipal Corporation has also forwarded the proposal to the Land Acquisition Officer for initiation of acquisition proceedings. Said proposal is forwarded on 23rd June, 2015.

3] Considering the fact that the deadlock between the petitioners and the respondent Municipal Corporation could not be solved mutually and as the petitioners are not agreeable to accept the TDR or FSI, the petitioners cannot be forced to accept the TDR or FSI against their will. As such, the only recourse open would be to initiate the acquisition proceedings. As has been submitted by Mr. Karad, learned counsel for the Corporation, that proposal is already forwarded to the Land Acquisition Officer, for initiation of acquisition proceedings on 23.6.2015, it would be appropriate that the said acquisition proceedings are taken to its logical conclusion.

4] Learned Counsel for petitioner in W.P. No. 6973 of 2016 states that the petitioner has applied for construction permission, but the same is not being considered on the ground that the writ petition is pending. The authorities may pass appropriate orders on the construction permission in tune with its bye-laws. With these observations, said writ petition is disposed of.

5] In the result, we pass the following order :-

[a] The Municipal Corporation has forwarded a proposal for initiation of acquisition proceedings to the Land Acquisition Officer/Collector on 23.6.2015. The said authority shall initiate the acquisition proceedings, by issuing appropriate notification, within six months from today;

[b] As far as the claim of rental compensation is concerned, petitioners are at liberty to put forth their claim before the appropriate authority;

[c] The amount deposited by the Municipal Corporation in this Court be sent to the concerned Land Acquisition Officer immediately;

[d] The said amount will be deemed to have been deposited by the Municipal Corporation with the Land Acquisition Officer. If any further compliance is required to be made by the Municipal Corporation Aurangabad, the same shall be made within this time lag of six months;

[e] The present order will be applicable to the respective petitioners in these writ petitions.

[f] Needless to state that the respondents will have to adhere to the provisions of the relevant statute in initiating and completing the acquisition proceedings, failing which the petitioners may invoke their rights as are permissible in law.

[g] Writ petitions are disposed of. All Civil applications are also disposed of.