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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8012 OF 2014**

Santacruz Contractors and Builders
Pvt. Ltd. and Anr.

... Petitioners

Versus

Thane Municipal Corporation of
City of Thane and Ors.

... Respondents

Mr. P.K. Dhakephalkar, Senior Advocate a/w Mr. Aditya Shiralkar for the
Petitioners.

Mr. R.S. Apte, Senior Advocate i/by Mr. Ajit Ram Pitale for the
Respondent No.1.

Mr. V.P. Malvankar, AGP 'A' Panel for the Respondent No.2.

Mrs. Sharmila U. Deshmukh for the Respondent No.3.

**CORAM : A.S. OKA &
C.V. BHADANG, JJ.**

DATE : 9th FEBRUARY, 2016

P.C.

1 Notice for final disposal was already issued. We have heard
the learned senior counsel appearing for the Petitioners, the learned
senior counsel appearing for the first Respondent, the learned AGP for
the second Respondent and the learned counsel appearing for the third
Respondent.

2 With a view to appreciate the controversy involved in this Petition under Article 226 of the Constitution of India, a brief reference to the facts of the case will be necessary.

3 The Petitioners are claiming to be the owners of the land more particularly described in Exhibit-A to the Petition. The said land admeasuring 16482.42 square meters is affected by a reservation in the sanctioned Development Plan of the first Respondent – Thane Municipal Corporation. The reservation is for a Development Plan road. The question involved in this Petition is as regards grant of Transferable Development Rights (for short “TDR”) in relation to the said land affected by the said reservation. The Petitioners are relying upon Appendix-W of the Development Control Regulations applicable to the first Respondent. The Petitioners on 9th September, 2010 submitted a proposal to the Assistant Director of Town Planning of the first Respondent for grant of Development Right Certificate (for short “DRC”) in respect of the said land reserved for 45 meter wide Development Road. The case made out by the Petitioners is that possession of the said land was handed over to the first Respondent under a possession receipt dated 9th April, 2013 and a Declaration-cum-Indemnity Bond executed on behalf of the first Petitioner. It appears that on 15th April, 2010, the Commissioner of the first Respondent

addressed a letter to the Principal Secretary of the Urban Development Department of the Government of Maharashtra pointing out that the area covered by the Development Plan Road is affected by Coastal Zone Regulations (for short “CRZ”). A guidance was sought by the Commissioner of the first Respondent on the question whether in such a case, the acquisition of the land reserved for road can be made by grant of TDR. By a letter dated 25th July, 2014 the first Respondent informed the Advocate for the Petitioners that the proposal of the Petitioners for grant of TDR/ DRC will be processed after the appropriate guidance is received from the State Government. The prayer made in this Petition under Article 226 of the Constitution of India is for issuing a writ of mandamus to the first Respondent to grant DRC/ FSI in the form of TDR in respect of the said land which is already surrendered by the Petitioners to the first Respondent.

4 We must note that there is some controversy associated with the possession receipt referred earlier. The stand taken by the first Respondent – Municipal Corporation in the affidavit-in-reply of Shri Pramod R. Nimbalkar, Town Development and Planning Officer is that though there is a possession receipt duly signed by the Municipal Officer in fact, the possession was not taken over by the Municipal Corporation. Considering the stand taken in the said affidavit, this

Court had directed the Municipal Commissioner to personally remain present in the Court. Order dated 26th November, 2015 records that the possession receipt signed by the Municipal Officers clearly records that vacant possession of the said land has been handed over to the Municipal Corporation.

5 Thereafter, the Municipal Commissioner personally remained present in the Court and explained to the Court that it was a consistent practice followed by the Municipal Corporation to take such advance possession receipts and only after the proposal is approved, actual physical possession is taken over. The Municipal Commissioner assured the Court to change the said practice as reflected from affidavit of Shri Pradeep Laxmidas Gohil, working as the Assistant Director of Town Planning of the said Municipal Corporation. Office noting prepared by the Municipal Commissioner is annexed to the said affidavit.

6 The learned senior counsel appearing for the Petitioners invited our attention to the CRZ notification published on 6th January, 2011 by the Central Government. He pointed out the relevant provisions in the said CRZ notification and in particular the provisions applicable to CRZ-III which is classified as No Development Zone. He

pointed out sub-clause (j) of clause (iii) under the said notification which provides that in No Development Zone, construction of roads, bridges, etc., can be permitted on case to case basis by the Coastal Zone Management Authority. His submission is that there was no need for the Municipal Corporation to seek guidance from the State Government as the CRZ notification itself permits the construction of roads in CRZ-III which is earmarked as No Development Zone. Based on the provisions of the CRZ notification, this Court issued notice to the third Respondent - the Maharashtra Coastal Zone Management Authority (for short "CZMA"). Dr. Bhagwantrao Namdev Patil, Director, Environment Department and the Member Secretary of the third Respondent has filed an affidavit-in-reply. He has referred to the Coastal Zone Management Plan (for short "the CZMP") for Maharashtra which is approved by the Ministry of Environment and Forest, Central Government on 27th September, 1996. In paragraph 6, he has stated that a part of the said plot is situated in CRZ III area which falls within No Development Zone. Referring to the CZMP annexed to the additional affidavit of the Petitioners, he stated that the said plan is not sanctioned. He, however, stated that the approved CZMP shows the proposed road on the land belonging to the Petitioners. The relevant part of paragraph 8 of his reply reads thus :-

"8. ... I say that the approved CZMP shows the proposed road on the land as belonging to the Petitioners. The

approval of the said CZMP wherein the proposed road is shown does not amount to consent of the Respondent No.3. In respect of every development in the CRZ areas including the development of the proposed infrastructure shown in the approved CZMP will require the proposal to be submitted to the Respondent No.3 for recommendations. I further say and submit that separate proposal will have to be submitted to the Respondent No.3 Authority for recommendations to the project.”

(underline supplied)

7 The learned senior counsel appearing for the first Respondent, on instructions, states that the first Respondent - Municipal Corporation will submit a proposal to the third Respondent for grant of permission in terms of the CRZ notification. He submits that if permission is granted by the third Respondent - CZMA, all steps will be taken by the Municipal Corporation to grant TDR as prayed for by the Petitioners in accordance with the Development Control Regulations.

8 We have considered the submissions. Considering the clarification issued by the Municipal Commissioner, it is not necessary for us to go into the controversy regarding the possession receipt dated 9th April, 2013. Suffice it to say that it is an accepted position that the said land described in Exhibit-A to the Petition is reserved in the

sanctioned Development Plan for the Development Plan road and that the Petitioners have offered to surrender the said land to the first Respondent for the said public purpose in lieu of DRC/ FSI in the form of TDR. It is also an admitted position that the proposal to that effect is pending with the first Respondent. As per the earlier stand of the first Respondent, the proposal was kept pending as the guidance from the State Government is awaited.

9 It is also not in dispute that if the Municipal Corporation is permitted to carry on construction of the Development Plan road on the said land, the prayer of the Petitioners for grant of TDR in lieu of surrender of the said land to the Municipal Corporation can be considered. The difficulty expressed earlier by the Municipal Corporation seems to be that as a part of the said land is covered by CRZ-III and No Development Zone under the CRZ Notification, the TDR cannot be granted as the Municipal Corporation may not be able to construct a road. We have carefully perused the CRZ notification which was published in the Government of India notification dated 6th January, 2011. The notification imposes restrictions on the areas notified as CRZ as set out in the said notification. The said notification also provides for preparation of CZMP by the CZMA of the respective States. Clause 8 of the said notification provides for norms for the

regulation of the activities permissible under the said notification. The Sub-Clause (III) of Clause 8 deals with CRZ-III. It also specifies the activities which may be permitted in No Development Zone forming part of CRZ-III. Clause (j) of the permitted activities reads thus :-

“(j) construction of dispensaries, schools, public rain shelter, community toilets, bridges, roads, provision of facilities for water supply, drainage, sewerage, crematoria, cemeteries and electric sub-station which are required for the local inhabitants may be permitted on a case to case basis by CZMA.”

10 Thus, even as per the said CRZ notification, on the land subject matter of this Petition, it will be open for the Municipal Corporation to construct a road after obtaining a permission of CZMA. Now, that the Municipal Corporation has agreed to apply to CZMA for grant of permission, the Petition need not be kept pending and the same is disposed of. Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the first Respondent to make an application to the third Respondent for grant of permission in accordance with clause (j) quoted above. Application shall be made within a period of one month from today;

- (ii) We direct the third Respondent to place the said application before its immediately next meeting. Appropriate decision shall be taken on the said application;
- (iii) We direct the third Respondent to communicate the decision taken on the application to the first Respondent as well as to the first Petitioner;
- (iv) If a permission is granted by the third Respondent, within a period of two months from the date on which communication of grant of permission is issued to the first Respondent, all procedural compliances shall be made by the first Respondent by actually taking over the physical possession of the said land affected by the Development Plan road reservation under the sanctioned Development Plan;
- (v) Necessary DRC shall be issued to the Petitioners in terms of an application dated 9th September, 2010 on or before expiry of a period of two months from the date on which the communication of the grant of permission is received by the first Respondent from the third Respondent;
- (vi) In the event, the third Respondent rejects the proposal

submitted by the first Respondent, it will be open both for the Petitioners as well as the first Respondent to challenge the said decision in accordance with law;

- (vii) Writ Petition is disposed of on above terms;
- (viii) All concerned to act upon an authenticated copy of this order;
- (ix) It is needless to add that necessary compliances which are required to be made by the Petitioners in terms of the DCR shall be made by the Petitioners.

(C.V. BHADANG, J)

(A.S. OKA, J)