

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12766 OF 2015

M/s. Alpa Realtors Pvt. Ltd. ..Petitioner.
Versus
State of Maharashtra & Others. ..Respondents.

Mr. R. S. Kadam for the Petitioner.
Mrs. M. P. Thakur, AGP for the State.
Mr. A. S. Rao for Respondent No. 2.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
Date : **October 4, 2016.**

P. C. :

1. Heard Mr. Kadam, learned Counsel appearing for the Petitioner, Mr. Rao, the learned Counsel appearing for the Respondent No. 2 and Mrs. Thakur, learned AGP for the State. None present for Respondent No. 4 despite notice.

2. By this petition, the Petitioner is seeking following reliefs
:

"[A] That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ in the nature of mandamus or any other appropriate writ, order, or direction under Article 226 of the Constitution of India, 1950 declaring that the impugned action of not granting of remaining transferable development rights (TDR) of balance 5980 sq. mt. land acquired more particularly mentioned in the memo of petition which are purchased / acquired by the Respondents is illegal and bad in law.

[B] That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India 1950 directing the Respondents to grant immediately, forthwith remaining transferable development rights (TDR) of balance 5980 sq. mt. land to the Petitioner in lieu of the properties (as mention in the memo of petition) purchased / acquired by Respondent No. 2 "KDMC" and Respondent No. 3 its commissioner.

[C] that this Hon'ble Court by issuance of writ of mandamus or any other appropriate writ, direction, order under Article 226 of the Constitution of India 1950 direct the Respondents that in alternative of TDR to grant the monitory compensation along with interest for acquisition of the properties as per the current market value

OR IN ALTERNATIVE to restore the ownership and possession of the said properties to the Petitioner.

[D] That this Hon'ble Court further be pleased to direct, the Respondents to grant interest for the period of delay caused by the Respondents in grant of transferable development rights (TDR) and use of property from the date of acquisition / purchase till the realisation of the grant of TDR or monitory compensation or actual restoration of possession and ownership to the Petitioner."

3. The learned Counsel appearing for the respective parties state that the facts of the present case and facts of Writ Petition No. 4949 of 2013 are identical. We agree.

4. Writ Petition No.4949 of 2013 came to be disposed of by this Court vide order dated 3rd & 4th March 2014 by directing Respondent No.2 to grant TDR to the Petitioner in terms of the agreement. If the second Respondent is unable to grant TDR, it will be

open for the Respondent-Corporation to initiate proceedings for acquisition of the said land in accordance with the prevailing laws. If the second Respondent fails either to grant TDR or to initiate acquisition proceedings, the condition of land will have to be restored as it existed on the date of surrender by the Petitioner and the Petitioner will have to be placed in possession of the said land.

5. In view of the above, for the reasons given in support of the order made in Writ Petition No. 4949 of 2013, we dispose of this writ petition by passing following order :

:- O R D E R :-

- a] We grant time of six months to Respondent No. 2 – Corporation to grant TDR equivalent to the area of the land surrendered free of cost by the Petitioner;
- b] If Respondent No. 2 is not in a position to grant TDR as stated above, it will be open for Respondent No. 2 to initiate the proceedings for acquisition of the said land in accordance with the prevailing laws;
- c] If Respondent No.2 fails to grant TDR as agreed or fails to initiate acquisition proceeding in accordance with law within the stipulated period of six month from today, the possession of the said land shall be restored to the

Petitioner after restoring to its original condition;

- d] The petition is disposed of on above terms.
- e] Though the petition is disposed of, for reporting compliance, the petition shall be listed under the caption "directions on 3rd May 2017.

6. At this stage, Mr. Kadam, learned Counsel appearing for the Petitioner invited our attention to the receipt at page 46 [Exhibit-C] to the petition and submitted that the Corporation has recovered from the Petitioner an amount of Rs.10,12,897/- for levelling of the land and for putting up compound on the land. He submitted that in case Corporation decides to return the possession of the land to the Petitioner, the corporation should also be directed to refund this amount along with interest. This fact is disputed by Mr. Rao, the learned Counsel appearing for the Respondent – Corporation. Since it is disputed fact, this Court would not go into that aspect. Nevertheless, the Petitioner is at liberty to approach the Civil Court for recovery of the said amount.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]