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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4549 OF 2014

M/s. Vedant Construction Petitioner.

V/s

The Thane Municipal corporation
and Others Respondents.

Mr. Nikhil Sakhardande a/w Mr. Chiraj Shah i/b Mr. Jitendra J. Shah
for the Petitioner.

Mr. A.R. Pitale for Respondent No.1/TMC.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 31st August, 2017

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondent No.1
waives service. Heard, by consent of Petitioner and Respondent No.1.

2] The Petitioner has approached this Court being aggrieved by the
decision of Respondent – Corporation dated 04/01/2014, thereby
refusing it to give TDR for an area of 917.00 sq. mts.

3] Facts, in brief, giving rise to present Petition are as under:-

4] The Petitioner claims to have sole and exclusive rights for development of the property bearing Survey No. 77/3, admeasuring 10,140 sq. mts. situated at Village Chithalsar Manpada, Taluka and District Thane (hereinafter referred to as “the said property”). The Petitioner contends that, vide agreement dated 28/12/2012, read with Power of Attorney of the said property, ownership of the said property vested in it. The Petitioner had filed an application for development of the said plot. Under the agreement, the Petitioner was required to carve out an area admeasuring 3,668.18 sq. mts. from the said land for the purpose of reservation in the development plan of the Thane Municipal Corporation, which was to be referred to as “the said reserved portion of land”.

5] As per the policy of Respondent – Corporation, the said reserved portion of land was agreed to be acquired by the Corporation by private negotiations, as contemplated under Section 126 of the M.R.T.P. Act and in lieu thereof the Petitioner was entitled to be granted an FSI equivalent to the aforesaid area of 3,668.18 sq. mts. Accordingly, a declaration was executed between Thane Municipal Corporation and the Petitioner on 29/01/2013. However, by the impugned communication dated 04/01/2014, the Corporation allotted TDR to the Petitioner only for 2848.12 sq. mts. This was on the ground that, though the area of the Petitioner, which was acquired was 3,668.18 sq. mts., the area of 917.00 sq. mts. was already in use for the existing road and, as such, the Petitioner was not entitled to

the TDR for the said land. Hence, the Petitioner has approached this Court.

6] Mr. Sakhardande, learned Counsel appearing on behalf of the Petitioner, submitted that the said plot, admeasuring 3668.18 sq. mts., was reserved in the development plan for High Capacity Mass Transport Route/Road and Park. He submitted that the Petitioner had offered for acquisition of the said plot by mutual negotiations, since Respondent – Corporation had promised to give TDR to the Petitioner equivalent to the area in lieu of the land which was to be acquired. It is, however, submitted that the Corporation had unilaterally reduced the area by 917.00 sq. mts. while granting the certificate, on untenable ground.

7] Learned Counsel for the Corporation submitted that perusal of the affidavit-in-reply filed on behalf of the Corporation by Mr. Pramod R. Nimbalkar, Executive Engineer, Town Planning Department, would show that in joint measurement conducted by the said Office and Superintendent of Land Records, it was revealed that the road was passing through the said reservation. He submitted that it was found that the area of the road occupied, was 917.00 sq. mts. He, therefore, submitted that the Corporation was justified in refusing granting of TDR for an area which was occupied by the existing road.

8] It will be relevant to note that Division Bench of this Court

(Coram: A.S. Oka and Smt. Vibha Kankanwadi, JJ.) had passed an order on 21/06/2017 in the present Writ Petition and para 2 of the said order reads as under:-

“2 We direct the Thane Municipal Corporation to produce measurement plan prepared on the basis of survey made by the Superintendent of Land Records along with the report, if any. The said documents shall be produced within a period of three weeks from today. No further time shall be granted. Place the petition under the caption of 'Fresh Admission' on 14th July 2017.”

9] Accordingly, measurement plan, prepared on the basis of survey made by the Superintendent of Land Records, has been produced before this Court. Perusal of the joint measurement map, which is produced by the Corporation itself, would reveal that no existing road is seen on the said reserved portion of land.

10] No doubt, normally, this Court would not go into the disputed questions of facts and law while entertaining the Petition under Article 226 of the Constitution of India. However, we find that, though, it is the contention of Respondent – Corporation that there is, in existence, a road on the said reserved portion of land and which contention has been denied by the Petitioner, in view of the material placed on record, the contention of the Corporation has no substance.

Perusal of the material placed on record by the Corporation itself, would reveal that Respondent – Corporation itself had requested the Officer of the Superintendent of Land Records vide communication dated 06/02/2013 to get the said plot as well as the said reserved portion of land measured. The map, which is prepared by the Deputy Superintendent of Land Records, would reveal that Gat No.601-B, which is reserved for High Capacity Mass Transport Route/Road and Corporation Park, does not show that there is any road in existence. It could thus be seen that when the map, prepared by conducting a joint measurement by the Corporation and which has been placed on record by the Corporation itself, does not show the road to be in existence, the action of Respondent – Corporation in denying TDR to the Petitioner for an area of 917.00 sq. mts. on the ground that it is utilized by the existing road, in our view, is not sustainable in law.

11] Apart from that, it is to be noted that Respondent – Corporation is not an ordinary litigant. It is a State within the meaning of Article 12 of the Constitution of India. It could be seen that while entering into an agreement of declaration for acquisition of the said reserved portion of land on 29/01/2013 with the Petitioner, the area of 3668.18 sq. mts is specifically mentioned, as an area which would be acquired for the said reservation. The said Deed of Declaration would further reveal that Respondent – Corporation specifically refers to an area of 3668.18 sq. mts. in respect of which the Petitioner would be entitled to TDR. It is further to be noted that the said area has been

specifically mentioned along with boundaries in Schedule-B of the said agreement. It could thus be seen that the Petitioner, on the basis of the representation made to it by Respondent – Corporation that it will be entitled to get TDR for the area of 3668.18 sq. mts., has agreed for acquisition by mutual agreement. Now, Respondent – Corporation cannot be allowed to change its stand to the detriment of the Petitioner.

12] In that view of the matter, we find that the Petition deserves to be allowed in the following terms:-

(i) It is held and declared that the action of Respondent – Corporation in denying TDR to the Petitioner for an area of 3668. 18 sq. mts. is illegal and not sustainable in law.

(ii) Respondent – Corporation is directed to issue TDR Certificate to the Petitioner for an area of 970.00 sq. mts. The same shall be done within a period of four weeks from today.

(iii) Rule is made absolute in the aforesaid terms with no order as to costs.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)