

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.6677 OF 2012**

Mr.Arvind Balaji Walvekar .. Petitioner

Versus

The State of Maharashtra thru  
Secretary, Ministry of Urban  
Development & others .. Respondents

...

Mr.G.S.Godbole with Mr.Siddhartha Ronge, for the petitioner.

Ms.S.S.Bhende, AGP for the State.

Mr.Rajdeep Khadapkar, for respondent no.2.

**CORAM: DR. MANJULA CHELLUR, CJ. &  
G.S. KULKARNI, J.**

**DATED: 7<sup>th</sup> FEBRUARY, 2017**

**P.C.:-**

1            Heard Mr.G.S. Godbole, learned Senior Counsel for the petitioner and Mr.Rajdeep Khadapkar, learned counsel for respondent Corporation.

2            It is not in dispute that land admeasuring 343 sq.mtrs in CTS No. 1611, Final Plot No.8 at Shivaji Nagar, Pune was partly acquired by Municipal Corporation of Pune. It is also not in

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dispute that apart from this land, 343 sq.mtrs balance land belonging to the petitioner is still in possession and control of the petitioner. It is also not in dispute that in terms of the regulations, the petitioner can seek additional Floor Space Index (FSI) on the remaining land, but the only condition is that it should be before passing of the award. Apparently, way back in 2006, the petitioner approached this Court in Writ Petition No.7732 of 2006 seeking additional FSI on the plot, which is the remaining plot after demarcating 343 sq.mtrs. In terms of paragraph no.2 of the order dated 6/12/2007, it is said that if proposal is submitted, appropriate decision in accordance with law will be taken within 15 days from the date of receipt of such proposal. However, there was no outer limit for submitting such proposal. Again, by virtue of order dated 11/12/2007, 15 days time limit to take a decision was extended to 60 days in terms of Section 45 of the Maharashtra Regional and Town Planning Act (for short "MRTP Act"). Subsequent to this speaking order dated 11/12/2007, on 11/6/2010, as per Exhibit-M at page 148, a letter was addressed to Special Land Acquisition Officer and the Municipal Commissioner. However, when nothing happened, they again approached this Court in the year 2011 by filing Civil Application No.917 of 2011 in Writ Petition No.7732/2006. On 15/11/2011, the Court directed the applicant - petitioner to submit a proposal for FSI/TDR to the Municipal Corporation. On 15/12/2011, time was extended.

3            On 15/12/2011, again a detailed letter was addressed to Municipal Commissioner and City Engineer of Municipal

Corporation of city of Pune which is at Exhibit-P. Again, in terms of letter dated 4/4/2012 (Exhibit-Q), another reminder incorporating claim for FSI on the balance or remaining plot was submitted. It is not in dispute that till date, there is no decision on either accepting the request of the petitioner or rejecting the same by the respondent - corporation. According to Mr. Godbole, Senior counsel arguing for the petitioner, in terms of the directions of the Court, though they have submitted a letter indicating the actual relief they are required to have, nothing is received as response from the respondent municipal corporation. Therefore, they had to approach this Court again in this Writ Petition.

4           As against this, learned counsel arguing for the respondents submits that there was no need to reply to the letter since there was no proposal at all in terms of prescribed format. Therefore, there is no justification on the part of the petitioner to complain against the respondent corporation. Learned counsel for the respondent Corporation further submits that since an award came to be passed on 16<sup>th</sup> April 2012, even if any benefit is available in terms of FSI, the petitioner cannot have the said benefit since such FSI in terms of DCR can be extended only if award is not passed.

5           What we notice till date is that there is not even an intimation to the petitioner that the proposal has to be in the prescribed form, therefore, they are not able to take a decision. It is to be noticed that if it is not in the prescribed format within the period as directed by the Bench, they ought to have rejected the

letter, thereby giving an opportunity to the petitioner to submit the proposal in prescribed form.

6           We are of the opinion that it is now not open to the respondents to come up with the plea that since the proposal was not in the prescribed form, they were justified in waiting till date in not answering that letter.

7           In the notice dated 24<sup>th</sup> January 2002 (Exhibit-D) issued under section 213 of the then Bombay Provincial Municipal Corporations Act, 1949 (now, the Maharashtra Municipal Corporations Act, 1949, intimating that there were more than FSI/TDR benefit to the petitioner.

8           In the light of above factual situation, practically, we find that the petitioner was coming before this Court since 2006 much prior to the date of award seeking the benefit of FSI/TDR and, in fact, there was a direction to the respondent to consider the same. Now, it is too late on the part of the respondents to say that they cannot extend such benefits since the award is passed. We are of the opinion that the consideration of benefit, if any, in the form of FSI did arise and was appreciated by this Court way back in December 2007 and later on i.e. on 15<sup>th</sup> November 2011. In the light of their commitment in the year 2002, as indicated in the notification under Section 213 of the then Act, we are of the opinion that the petitioner's case has to be considered by the respondent Corporation irrespective of the award being passed. If there is any statutory format, we direct the petitioner to submit

such prescribed format within four weeks from today, and once it is submitted, the same has to be considered purely on merits within two weeks thereafter strictly in accordance with the procedure contemplated in law.

9                      Petition is disposed of accordingly.

**(G.S.KULKARNI, J)**

**(CHIEF JUSTICE)**