

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7678 OF 2014

Smt. Sulabha Ramesh Shah & Ors.] ... Petitioners

Versus

The State Government of Maharashtra & Ors.] ... Respondents

Mrs. Kiran Bagalia i/b Mr. Krishna Kelkar for Petitioners.

Mr. P. G. Sawant, AGP for State - Respondent Nos.1 & 3.

Mr. M. L. Patil for Respondent No.2.

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

DATE :- 23 FEBRUARY, 2017

P. C. :-

1. The petitioners claim to be owners of land bearing Survey No.743/A/1/1, 743/A/1/2 and 743/A/1/3 admeasuring about 14900 sq. meters situated at Untawadi, Nasik City. The title of the said land has been transferred to them by the predecessors-in-title of the said land, as claimed by the petitioners. The dispute as raised in the present petition concerns acquisition of an area admeasuring 2266 sq. meters by respondent no.2 - Nasik Municipal Corporation, for the purpose of road widening.

2. The case of the petitioners is that the possession of the land in question admeasuring 2266 sq. meters was taken over by

respondent no.2 under an agreement dated 06/01/1994 entered between, the predecessors-in-title of the petitioner and the Assistant Director of respondent no.1 - Corporation. The petitioners referred to Clause 3 of the said agreement which, *inter alia*, states that no monetary benefit would be paid for the purpose of said land being handed over to respondent no.2 and that the purchasers of the petitioners could be compensated by granting of a Floor Space Index ('for short, 'FSI') on the remaining portion of the land, when plans for construction on the said portion of the land would be submitted in future. The case of the petitioners is that this condition in the agreement has become an impossibility to be executed between the parties, inasmuch as, it is revealed that the remaining land is rendered non-developable as no construction can be undertaken in view of the land coming under the 'high flood line', of river Nasardi as per the CRZ notification. The petitioners, therefore, have approached this Court making the following main prayers :-

- “a) *It be declared that the acquisition of the petitioners land admeasuring 2266 sq. mtrs. from survey no.743/A/1, 743/A/2, 743/A/3 at Nasik haslapsed as no compensation whatsoever has been paid to the petitioner for the same and the respondents be further directed to either return possession of the land to the petitioners or acquire the same under applicable laws within a time bound programme.*
- A-1) *The Respondent No.2 be directed to pay damages at the rate of 12% p.a. of the value of the said land admeasuring 2266 sq.mtrs. from Sr.No.743/A/1/1, 743/A/1/2 and 743/A/1/3 as per ready reckoner as applicable year on year from 6th January 1994 with 12% interest thereon until fair compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (social impact Assessment and Consent) Rules, 2014 is paid to the petitioner.”*

3. Respondent no.2 has appeared in this petition and has filed a reply affidavit of the Estate Manager, in which the respondent no.2 does not dispute the said agreement dated 06/01/1994. Respondent No.2 has stated that the petitioners though claim to be the owners of the land, they have not produced any documents of title in respect of the land. The case of respondent no.2 is that all along, respondent no.2 was ready to give FSI to the owner. However, the owner did not submit plan for development of remaining land and did not request for FSI and subsequently, the said land was transferred by the owner to one Ramesh Manilal Shah, the General Power of Attorney holder of the owner who had executed the agreement dated 06/01/1994. It is also stated that the dispute was pending between the owners and the petitioners which was subject-matter of Civil Suit No.253 of 2011. The subject-matter of the suit included the land in question as handed over to the Municipal Corporation under the said agreement dated 06/01/1994. Respondent no.2, thus, states that on account of dispute, the petitioners or their predecessors did not submit plan for construction on the remaining land and did not claim FSI as agreed to be given to them by respondent no.2 and thus cannot be held liable for any delay in the grant of FSI. It is averred that by letter dated 31/10/2009 issued by Nasik Irrigation Department of respondent no.2, it was directed that no development permission shall be granted in the restrictive zone in the Godavari, Vaghadi, Nasardi and Valdevi rivers passing through the city. It is stated that in pursuance thereof, a circular dated 12/11/2009 was issued by virtue of which no land development was permissible in the remaining land

claimed by the petitioners after 12/11/2009. Respondent no.2 has further averred that for the first time, the petitioners have come with a case demanding compensation. The original parties to the agreement never demanded compensation. Respondent No.2 has also objected the petition on the ground that the writ petition is barred by delay and laches and that no explanation is given for the delay in approaching the Court from the year 1994 till 2014. During this period, neither a claim for FSI was made nor was any compensation claimed.

4. Having heard the learned Counsel for parties on the above rival contentions, it appears to us to be not in dispute that the land in Survey No.743/A/1/1, 743/A/1/2 and 743/A/1/3 admeasuring 2266 sq. meters were taken over under the agreement dated 06/01/1994 by respondent no.2 for the purpose of road widening. Under Clause 3 of the agreement, respondent no.2 - Corporation has agreed to grant to the predecessors-in-title of the petitioners equivalent FSI to be utilized on the remaining land as and when construction plans to develop the remaining land would be submitted. It appears that there were certain disputes between the private parties on the land in question which was the subject-matter of a civil suit. The land which was taken over by respondent no.2 - Corporation for the DP road was also subject-matter of the said suit. It appears that in view of this, there was no claim made by respondent no.2 to either claim FSI or claim any compensation for the said land for the purpose of road widening. Further, in view of the directions issued by the Irrigation Department, the remaining land on which the FSI which was to be

granted, had become non-developable being falling in the high flood line. There is no dispute on this.

5. Be that as it may, the fact remains that the land in question was taken over by respondent no.2 for the purpose of road widening under the agreement dated 06/01/1994, respondent no.2 had agreed to grant FSI to be utilized on the remaining land, which has now become non-developable. We do not adjudicate the right of the parties in this writ petition on the agreement in question and in any case, we cannot. We are, however, of the opinion that the persons who were legitimately and lawfully entitled under the agreement dated 06/01/1994, are not precluded from claiming a benefit which respondent no.2 had offered to confer namely FSI. Respondent no.2 - Corporation has not disputed that at the relevant time, there was no concept of a floating FSI namely Transferable Development Rights (for short, 'TDR') which came to be notified by the Municipal Corporation by its notification dated 13/01/2000. It is provided that when private land is acquired for municipal purpose and if compensation for the same had not been paid to the owners, the owners can avail TDR to the extent of land acquired. This being the clear position, in our opinion, there should not be a hurdle for Municipal Corporation to consider the request to grant a TDR for the land in question which was utilized for the purpose of road widening.

6. In view of the above discussion, we dispose of this petition with a direction that the Municipal Corporation shall treat this

petition as a representation of the petitioners for grant of TDR or compensation in lieu of TDR, if the petitioners are so legitimately entitled, on producing before the Municipal Corporation documents showing that they are the owners of the land in question and legitimately entitled for such a claim. The representation of the petitioners be accordingly considered and disposed of in accordance with the law by respondent no.2 - Municipal Corporation within a period of eight weeks from today.

7. All contentions of the parties on merits of the matter are expressly kept open.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)