

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4375 OF 2018

VIJAY DEEPCHAND CHORDIYA AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Petitioner : Mr. A.P. Bhandari.
AGP for Respondent No. 1 : Mr. S.R. Yadav.
Advocate for Respondent No. 2 : Mr. P.R. Patil.

CORAM : RAVINDRA V. GHUGE &
SUNIL K. KOTWAL, JJ.
Dated : 26th September, 2018.

PER COURT :

1. During the last two to three hearings on this Civil Application, we found that the learned advocates for the litigating sides were interested in having the issue resolved in the light of the judgment of our Court dated 05/12/2017., delivered in Writ Petition No. 8212/2010. We had therefore passed orders on 03/08/2018 and 03/09/2018.

2. Learned counsel for the Corporation frankly states that the Corporation has its own impediment in granting 200% TDR to the applicants and at the same time it is not in a financial condition to pay the compensation to the applicant, in view of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. Learned counsel for the applicant has, in the above stated backdrop, addressed us to the limited extent of prayer clause 'B' set out in the Civil Application which reads as under :

“B. Order dated 05.12.2017 passed in Writ Petition No. 8212/2010 (Exhibit “B”) may kindly be modified and instead of “date of filing of the petition i.e. 05.08.2010” in concluding line of paragraph No.17, “date of this order i.e. 05.12.2017” be inserted.”

4. It is contended that the land of the applicant has already been acquired and utilized and no benefits have been extended to him as are required to be done. In view of the acquisition of land, the benefits that are to be extended to him should be computed, not as per the date of the filing of his Writ Petition which is 05/08/2010, but as on 05/12/2017, since the judgment of this Court is delivered on 05/12/2017.

5. Learned counsel for the Corporation has strenuously opposed this Civil Application contending that merely because the proceedings were pending and are decided in the year 2017,

would not justify grant of greater benefits to the applicant.

6. We find that when this applicant has sought an amendment to the Writ Petition and especially to prayer clause 'D', we had passed an order on 16/11/2017, which reads as under :

"1. Learned Counsel for the petitioners prays for leave to amend prayer Clause-D as per the existing law keeping in view that this Petition was filed on 05.08.2010 when the erstwhile Land Acquisition Land, 1894 was in force. Pursuant to an amendment to Section 126 of the M.R.T.P. Act, the right to the T.D.R. would be practically 200 percent.

2. Learned Counsel for the Corporation has opposed the said request and submits that merely because the law has undergone an amendment during the pendency of the Petition, would not entitled the petitioner to seek an amendment to prayer Clause-D.

3. We are of the view that on the date this Petition is to be considered and decided, the rights of the parties will have to be considered and adjudicated upon in accordance with the law which is applicable. If better benefits are available under the amended provisions, we do not find it appropriate to refuse an amendment to the prayer clause.

4. As such, leave to amend prayer Clause-D is granted. Amendment be carried out forthwith."

7. The applicant petitioner was, therefore, permitted to amend prayer clause 'D'. So also, we find from our judgment dated 05/12/2017, that we had issued specific directions to the respondent/Corporation in paragraph Nos. 16 and 17 which read as under :

“16. We direct the respondent No.2 Jalgaon Municipal Corporation to initiate proceedings for acquisition in respect of the subject land which is owned by the petitioners bearing Survey no.168/2A, situated at Mehrun, Taluka and District Jalgaon, as shown in the development plan of the Jalgaon Municipal corporation, and complete the same as early as possible, preferably within a period of two years from today.

17. As there is an inordinate delay on the part of respondent No.2 to consider the legitimate claim of the petitioners, we direct respondent No.2 to grant TDR/ FSI benefit to the petitioners in accordance with the rules prevalent on the date of filing of the petition i.e. 5.8.2010.”

8. Considering the above, we find that the Civil Application filed by the applicant/petitioner seeking correction in the date 05/08/2010, appearing in paragraph No. 17, so as to mention the date 05/12/2017, which is the date of our judgment, needs to be accepted.

9. In view of the above, this Civil Application is allowed. The date 05/08/2010 mentioned in paragraph No. 17 of our judgment dated 05/12/2017, shall stand replaced by the dated 05/12/2017. Office shall issue the corrected copy of the judgment dated 05/12/2017.

(SUNIL K. KOTWAL, J.)

(RAVINDRA V. GHUGE, J.)

S.P.C.