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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3009 OF 2018

Smt. Jayashree Jaysingrao Narke and Ors. ... Petitioners
Vs.
State of Maharashtra and Ors. ... Respondents

Mr. Tanaji Mhatungade for the Petitioners.
Mrs. R.A. Salunkhe, AGP for the Respondent Nos.1, 5 and 6.
Mr. Abhijit M. Adagule for the Respondent Nos.2 and 3.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 30th July 2018.

P.C. :

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1 Rule. The learned counsel appearing for the second, third respondents waives service. The learned AGP waives service for first, fifth and sixth respondents. We permit the petitioners to delete the name of the fourth respondent. Time of three weeks is granted to delete the name of the fourth respondent.

2 Considering the narrow controversy involved in the petition, the same is forthwith taken up for final disposal.

3 The petitioners are the owner of the land bearing Revision Survey No.1010/1 (Part) admeasuring 20500 sq. mtrs., situated at 'A' Ward, Karveer, Taluka - Karveer, District – Kolhapur. It appears that an area of 19060 sq. mtrs. out of the said land is reserved for 'playground' under the sanctioned development plan of the city of Kolhapur under Reservation No.293 and a portion admeasuring 1800 sq. mt. is reserved

under the same sanctioned development plan for 'primary school' vide Reservation No.294.

4 According to the case of the petitioners, the area under reservation was surrendered by the petitioners to the second respondent – Municipal Corporation on the basis of which an entry in the revenue record was made. The petitioners applied for Transferable Development Rights (TDR). The petitioners are relying upon the possession receipt dated 30th May 2011 (Exhibit – D to the petition) which records the delivery of possession of an area of 19060 sq. mt. which is affected by the reservation for playground. Exhibit – E is the letter dated 1st June 2011 addressed by the Assistant Director of Town Planning of the second respondent – Municipal Corporation to the Tahsildar, Taluka – Karveer recording that the area of 1300 sq. mtrs. Reserved for garden is also placed in possession of the Municipal Corporation. The Mutation Entry No.66536 was made accordingly in the year 2011 by which the name of the Municipal Corporation was mutated in respect of the area of 20360 sq. mtrs. It appears that earlier, a proposal submitted by the petitioners for grant of TDR in respect of the surrendered land was disposed of on the ground that there was a discrepancy in the application made by the petitioners and in the survey map prepared by the Taluka Inspector of Land Records. Accordingly, a fresh proposal appears to have been submitted by the petitioners. On the basis of the said fresh proposal, on 6th February 2015, a letter of intent (Exhibit-P) was issued by the Commissioner of the second respondent – Municipal Corporation to the petitioners recording grant of TDR of an area of 9900 sq. mtrs.

5 There is no dispute between the petitioners and the second respondent – Corporation that now the area of 9900 sq. mtrs. which is

mentioned in the said letter of intent dated 6th February 2015 covers both Reservation Nos.293 and 294 for primary school and playground. The letter of intent records that the proposal for grant of TDR in respect of an area of 9900 sq. mtrs. has been approved by the Municipal Commissioner on 31st December 2014 subject to compliance with 10 conditions incorporated in the said letter of intent.

6 The second condition is regarding correcting the area of the land surrendered by the petitioners in the revenue record. The reason is that in Mutation Entry No.66536 effected in the year 2011, the total area of reservation is mentioned as 20360 sq. mtrs.

7 Now, there is an order passed by the Tahsildar, Taluka Karveer on 24th July 2018 by which it is directed that correction shall be made in the 7/12 extract by incorporating the name of the second respondent – Municipal Corporation as an occupant in respect of an area of 81 Ares (8100 sq. mtrs.) reserved for playground and an area of 18 Ares (1800 sq. mtrs.) reserved for primary school. The order also holds that in respect of the area of 27.55 Ares covered by the internal roads, the name of the second respondent be mutated. Accordingly, the name of the second respondent has been mutated in respect of the area of 9900 sq. mtrs. covered by the aforesaid reservations. A copy of the order dated 24th July 2018, a copy of Mutation Entry No.97063 and a copy of the corrected 7/12 extract are taken on record and marked as 'D1', 'D2' and 'D3' respectively.

8 The learned counsel appearing for the second respondent on instructions states that now the petitioners have complied with all the terms and conditions in the letter of intent, save and except the condition

No.6 of getting actual survey and demarcation on the site done through the Deputy Director of Land Records, Karveer and as soon as compliance with condition no.6 is made, TDR in respect of an area of 9900 sq. mtrs. will be granted to the petitioners.

9 We accept the said statements and accordingly, we dispose of the petition by passing the following order :-

ORDER

- (i) We direct the petitioners to deposit the requisite amount of survey fee in the office of the sixth respondent within a period of one month from the date on which this order is uploaded along with an application for carrying out survey in terms of the condition no.6 contained in letter of intent dated 6th February 2015. Within a period of one month from the date on which the application is made by the petitioners and deposit of requisite amount is made in the office of the sixth respondent, the survey and demarcation shall be conducted by the sixth respondent on the site for demarcating the area of 9900 sq. mtrs. surrendered by the petitioners;
- (ii) The survey shall be carried out by the sixth respondent after notice to the second respondent. The survey report along with a copy of the plan drawn during the survey shall be provided to the petitioners as well as to the second respondent within a period of eight weeks from the date on which application for survey is made and requisite fees are deposited by the petitioners in the

office of the sixth respondent;

- (iii) Within a period of three weeks from the date of service of the service of the report on the second respondent, necessary certificate of Transferable Development Right in respect of the area of 9900 sq. mtrs. shall be issued by the second respondent to the petitioners;
- (iv) At this stage, the learned counsel appearing for the petitioners pointed out that application for survey will have to be made by the second respondent and survey fees will payable by the petitioners. Accordingly, we direct that the application which we have directed to be made by the petitioners shall be also signed by the appropriate officer of the second respondent – Municipal Corporation as and when called upon by the petitioners to do so;
- (v) Rule is disposed of with the above terms;

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)