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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5310 OF 2018

Shri. Vasant Mahadev Patil and Ors.

... Petitioners

V/s.

The State of Maharashtra and Ors.

... Respondents.

Mr. Shrikrishna R. Ganbavale for the Petitioners.

Mrs. R.A. Salunkhe, AGP for the Respondent Nos.1, 2 and 7.

Mr. Abhijit Mahadeorao Adagule for the Respondent Nos.3 to 6.

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

DATE : 13th AUGUST 2018.

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ORAL JUDGMENT (Per A.S. Oka, J.)

1 Heard the learned counsel appearing for the petitioners. The learned AGP for the first, second and seventh respondents and the learned counsel appearing for the third to sixth respondents. On the earlier date, parties were put to notice that an endeavour shall be made to decide the petition finally at the stage of admission as noted in the order dated 11th July 2018.

2 The petitioners are claiming to be the owners of the land described in paragraph 3(i) of this petition. Different portions of the said property were reserved in the sanctioned Development Plan for various public purposes. The Development Plan for the City of Kolhapur was sanctioned on 18th December 1999. On 2nd January 2012, the petitioners

served a notice under section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”) to the third respondent – Municipal Corporation. By the Resolution No.75 dated 18th February 2012, the General Body of the third respondent – Municipal Corporation resolved to acquire the said property and accordingly, on 17th April 2012, a proposal was submitted by the third respondent to the State Government for compulsory acquisition of the subject property. A copy of the said proposal is annexed as Exhibit – D to the petition. The District Collector passed an order dated 7th/9th July 2012 directing that the proposal for acquisition shall be transferred to the Special Land Acquisition Officer No.11, Kolhapur for necessary action. By the said order, the second respondent directed the third respondent to deposit 25% amount before publication of the notification under section 4 of the Land Acquisition Act, 1894 (for short “the said Act of 1894”), 50% of estimated compensation amount before the publication of a declaration under section 6 of the said Act of 1894 and remaining 50% of estimated compensation amount before the declaration of Award under section 11 of the said Act of 1894.

3 Accordingly, a letter dated 6th October 2015 was addressed by the Special Land Acquisition Officer (11), Kolhapur to the District Collector containing the estimate of the compensation amount payable as per the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 (for short “the said Act of 2013”). A draft of declaration under section 19 of the said Act of 2013 was forwarded along with the said letter to the District Collector for approval. By a letter dated 28th October 2015, the Special Land Acquisition Officer

(11), Kolhapur called upon the Commissioner of the third respondent to deposit the amount of estimated compensation and informed that after deposit of the amount, further steps will be taken to acquire the land under the said Act of 2013. It appears that notwithstanding reminders issued by the petitioners, the amount was not deposited by the third respondent. By a letter dated 17th March 2016, the Commissioner of the third respondent informed the petitioners that the third respondent is willing to grant Transferable Development Right (TDR) in lieu of compensation. By a letter dated 17th May 2016, the petitioners informed the Municipal Commissioner that they are unable to accept the offer. Again by a letter dated 22nd June 2016, the Municipal Commissioner called upon the petitioners to remain present for discussion. There were reminders issued by the Special Land Acquisition Officer (11), Kolhapur to the Commissioner of the third respondent calling upon the third respondent to deposit the amount. In fact, one such letter is of 22nd September 2016 by which the revised amount of Rs.13,02,38,800/- was demanded by the third respondent – Municipal Corporation. Thereafter, there was a correspondence between the petitioners and the third respondent regarding grant of TDR. Applications were made by the petitioners for grant of TDR. However, TDR was not granted and therefore, this petition under Article 226 of the Constitution of India was filed seeking a writ of mandamus directing the first and second respondents to proceed with the acquisition and also for enjoining the third respondent to deposit the requisite amount.

4 There is a reply filed by the third to sixth respondents of Shri Dhananjay Shivgonda Khot, Assistant Director of Town Planning. The

reply brings on record several difficulties in the way of granting TDR as prayed by the petitioners. In paragraph 9, it is mentioned that there is a rivulet named “Jayanti Nala” passing through the said area under reservation and before TDR could be granted, as per DCR, the petitioners will have to carry out necessary development at their own costs and thereafter, hand over the property to the Municipal Corporation.

5 The petitioners have tendered affidavits dated 1st August 2018 and 7th August 2018 recording that they do not wish to avail of TDR.

6 On the basis of a notice issued under sub-section (1) of section 127 of the MRTP Act, the third respondent resolved to acquire the said land under reservation by taking recourse to law of compulsory acquisition. Under sub-section (1) of section 126 of the MRTP Act, there are three modes available for acquisition. The first is by mutual agreement by payment of monetary compensation agreed between the parties, second is of grant of TDR/ FSI in lieu of compensation and third is by taking recourse to the provisions of the said Act of 2013. As far as the first two modes are concerned, the same can be exercised only with the consent of the owners or persons interested in the land under reservation or designation. About grant of TDR, there is no consensus and in fact the petitioners have refused to accept the said option due to several difficulties put forth by the third respondent.

7 There is already a resolution passed by the General Body of the third respondent to acquire the subject lands by taking recourse to law of compulsory acquisition. Therefore, there is no option for the third

respondent but to acquire the said land by taking recourse to the said Act of 2013.

8 Hence, we dispose of the petition by passing the following order.

ORDER

- (i) We direct the Special Land Acquisition Officer (11), Kolhapur to communicate to the third respondent – Municipal Corporation the amount which is required to be deposited by the said Municipal Corporation as a condition precedent for issuing a declaration under Section 19 of the said Act of 2013. The communication demanding the amount shall be issued by the Special Land Acquisition Officer within one month from the date on which this judgment and order is uploaded;
- (ii) We may record here that there is no dispute about the reservation of the subject land in the sanctioned development plan and therefore, in view of the proviso to Section 125 of the MRTP Act, the acquisition under the said Act of 2013 shall commence from the stage of declaration under section 19 thereof;
- (iii) Within a period of two months from the demand for payment made by the Special Land Acquisition Officer as aforesaid, the third respondent shall deposit the requisite amount with the Collector/Special Land Acquisition Officer;

- (iv) Within a period of one month from the date of deposit of the requisite amount by the third respondent, a declaration under section 19 of the said Act of 2013 shall be issued/published in accordance with law;
- (v) The acquisition proceedings shall be completed and compensation shall be paid as expeditiously as possible in accordance with law and in any case within a period of one year from the date on which the declaration under section 19 of the said Act of 2013 is published;
- (vi) Writ petition is disposed of with the above directions;
- (vii) For reporting compliance with the above directions by the third respondent the petition shall be listed under the caption of directions on 26th November 2018.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)