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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7762 OF 2017

Surendra Ranchhodbhai Patel & Ors. ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

Mr.G.S.Godbole I/b Mr.Akshay Petkar for the
Petitioners
Ms Nisha Mehra, AGP for the respondent No.1
Mr.N.R.Bubna for the respondent No.2
Ms Sharmila Deshmukh for the respondent No.3

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA, JJ.
DATE : JUNE 26, 2018

P.C.:

1 Heard the learned counsel for the petitioners and the learned counsel for the second respondent. The learned counsel for the petitioners states that the petitioners have not handed over the possession of the property subject matter of this petition in respect of which the petitioners had claimed TDR/DRC. The learned counsel for the second respondent on instructions of Mrs.Saee Vadke who is the Law Officer of the second respondent confirms that the possession of the said land has not been taken over.

2 On the last date, the learned counsel for the petitioners on instructions made a statement that

now the petitioners are no more interested in surrendering the subject land against grant of DRC/TDR. He submitted that if the Municipal Corporation wants to take over the said land or a part thereof for construction of a development plan road, the Municipal Corporation will have to take recourse to the provisions of law regarding compulsory acquisition.

3 The challenge in this petition under Article 226 of the Constitution of India is firstly to the communication at Exhibit-N by which prayer for grant of TDR/DCR was rejected. The learned counsel for the petitioners states that the petitioners are not pressing at this stage the challenge to the notification dated 14th March 2017 (Exhibit-N) and he states that the petitioners will challenge the same as and when an attempt is made to act upon the same.

4 In view of what is stated above, this petition need not be kept pending and we dispose of the same by passing the following order:

(I) We accept the statements made by the learned counsel for the petitioners on instructions which are recorded above. The statements made in the affidavit of the first petitioner tendered on record which is marked as 'A-1' are also accepted;

(II) We also accept the statement made by the learned counsel for the second respondent on instructions

that the possession of the subject land has not been taken over by the second respondent. It is obvious that the respondents cannot dispossess the petitioners without following due process of law which will include prior notice of dispossession;

(III) We make it clear that if the respondents or any of them issue a notice directing the dispossession of the petitioners after following due process of law, the same shall not be acted upon within a period of two weeks from the date on which the same is served to the petitioners.

(IV) We make it clear that we have made no adjudication on the challenge to the notification dated 14th March 2017 (Exhibit-N to the petition) and it will be always open for the petitioners to challenge the same in accordance with law as and when occasion for doing so arises;

(V) Writ petition is disposed of.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)