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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7786 OF 2015**

Smt. Nidah Abdul Kasim Momin and Anr. Vs. Bhiwandi Nizampur City Municipal Corporation and Ors.	... Petitioners ... Respondents
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Ms. Anita Bhaktwani for the Petitioners.
Mr. N.R. Bubna for the Respondent No.1.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 20th MARCH, 2018

PC.

1 Heard the learned counsel appearing for the petitioners and the learned counsel for the first respondent. The averments made in the Petition reveal that in the sanctioned development plan for the City of Bhiwandi Nizampur under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) property bearing Survey No.93/35 (Part) admeasuring 2500 square meters has been affected by Reservation No.124 for stadium.

2 According to the case made out by the petitioners in this Petition, on 8th August, 2012 the first respondent – Corporation issued a

letter to the petitioners offering them Transferable Development Rights (TDR) in respect of an area of 2100 square meters which is reserved for stadium. According to the case of the petitioners, the possession of the said area of 2100 square meters was handed over by the petitioners to the first respondent – Municipal Corporation. The petitioners are relying upon the bond dated 13th August, 2012 a copy of which is annexed on page 14 of the Petition.

3 The learned counsel appearing for the petitioners submitted that the petitioners have complied with the terms and conditions incorporated in the letter dated 8th August, 2012 (Exhibit – A to the Petition). She pointed out that the bond dated 13th August, 2012 which is duly registered in the office of the Sub-Registrar of Assurances clearly records that the petitioners have placed the first respondent in possession of an area of 2100 square meters. She also pointed out that by making a specific mutation entry, the name of the first respondent has been mutated in the 7/12 extract. Her submission is that as the petitioners have complied with the terms and conditions incorporated in letter dated 8th August, 2012, a writ of mandamus be issued against the first respondent to grant TDR to the petitioners in respect of area of 2100 square meters.

4 We have perused the letter dated 8th August, 2012. There are various conditions imposed in the said letter subject to which the first respondent agreed to grant TDR to the petitioners. The conditions were of execution of an affidavit before the Executive Magistrate that the petitioners have not received compensation. Another condition was of executing a registered document and transfer 7/12 of the area of 2100 square meters in the name of the petitioners. One more condition being condition No.4 was of duly handing over possession of area reserved for stadium to the first respondent – Municipal Corporation under a possession receipt. Another condition was of constructing compound wall around reserved land after obtaining permission of the City Engineer of the first respondent – Corporation. The said condition is condition No.6.

5 Going by the stand taken in the Petition, it appears that name of the first respondent has been mutated in the 7/12 extract. However, it is not the case of the petitioners that the petitioners have complied with condition No.6 in letter dated 8th August, 2012 of constructing the compound wall around the reserved plot. Moreover, the petitioners have not annexed to this Petition a possession receipt duly signed by authorised officer of the first respondent – Corporation regarding delivery of possession of the reserved area.

6 We have perused the registered document a copy of which is annexed as Exhibit – B. The said document is a unilateral document of bond executed by the petitioners which does not bear signature of any of the officers of the first respondent – Municipal Corporation. Though the said document purports to record that the petitioners have handed over possession, it cannot be termed as the possession receipt as it is not signed by any officer of the first respondent – Municipal Corporation.

7 Unless we are satisfied that the petitioners have made compliance with the conditions incorporated in the letter dated 8th August, 2012 we cannot issue a writ of mandamus directing the first respondent to grant TDR to the petitioners.

8 We, therefore, dispose of the Petition by passing the following order :-

ORDER

- (i) If according to the case of the petitioners, they have complied with all the terms and conditions in the letter dated 8th August, 2012 (Exhibit – A to the Petition), it will be open for the petitioners to make a representation in writing along with copies of relevant documents to the

first respondent;

- (ii) If such representation is made, the first respondent shall examine whether the petitioners have substantially complied with the terms and conditions incorporated in the letter dated 8th August, 2012;
- (iii) After examining the representation, the Municipal Corporation shall take a decision on the aspect of compliance within a period of six weeks from the date on which the representation is made by the petitioners;
- (iv) A copy of the decision taken by the Municipal Corporation on the representation shall be forwarded to the petitioners;
- (v) Needless to add that if the Municipal Corporation finds that the petitioners have substantially complied with all the terms and conditions in the letter dated 8th August, 2012, the Municipal Corporation shall issue necessary TDR certificate to the petitioners;
- (vi) We make it clear that we have made no adjudication on the question whether the petitioners have complied with the terms and conditions in the said letter;

- (vii) The Petition is disposed of on above terms;
- (viii) All concerned to act upon an authenticated copy of this order.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)