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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 268 OF 2014
WITH
CHAMBER SUMMONS No. 55 OF 2015

Ashok Kumar Shukla & Ors.	...	Petitioners
Vs.		
The State of Maharashtra & Ors.	...	Respondents
And		
M/s. Minar Enterprises	...	Applicant
		(in the chamber summons)

Mr. Tejas Vora a/w Vivek Shukla i/b Girish K. Vora, for the
Petitioners.

Mr. Milind More, Additional Govt. Pleader for the Respondent Nos. 1
and 2.

Mr. Rampal Singh Kohli a/w Ms. Niharika S. Waradkar, for the
Applicant in CHSW. 55/2015.

Ms. K. H. Mastakar, for the Respondent – BMC.

CORAM : A. S. OKA, &
P. N. DESHMUKH, JJ.

DATE : JANUARY 22, 2018

PC :

1. The Petitioners are claiming to be the legal
representatives of one Krishnakumar Shivgopal Shukla who died on

22nd December, 2007. Certain land held by him was acquired under the provisions of the Land Acquisition Act, 1894 (for short “the said Act of 1894”). An award was made by the Special Land Acquisition Officer on 15th January, 2009. In the award, an observation has been made as regards the subject land that the Municipal Corporation of Greater Mumbai (for short “the said Corporation”) may consider of grant of Transferable Development Rights (TDR) in lieu of compensation, in accordance with the Development Control Regulations of 1991.

2. It appears that the Petitioners filed Writ Petition No. 2316 of 2010 which was disposed of by an order dated 22nd December, 2010. As recorded in paragraph 2 of the said order, the learned counsel for the Petitioners stated before the Court that the Petitioners are not challenging the acquisition but they want to make appropriate representation to the said Corporation for allotting alternate land / structure / compensation. The said writ petition was disposed of by order dated 22nd December, 2010 with liberty to the Petitioners to make a representation to the Corporation. Accordingly, a representation was made by the Petitioners in terms of of the said

order on 23rd December, 2010. By an order dated 24th February, 2011 the said representation was decided by the Chief Engineer (Development Plan) of the said Municipal Corporation. In the said order (Exhibit “D” to the petition), a finding has been recorded that the said Corporation has granted FSI in lieu of compensation to M/s. Minar Enterprises after verifying the documents submitted through the licensed surveyor. The Chief Engineer observed that the entire DP Road FSI has been consumed by M/s. Minar Enterprises. An observation was also made that the said property has been conveyed to M/s. Minar Enterprises. Therefore, the Chief Engineer rejected the representation made by the Petitioners by order dated 24th February, 2011. This order was challenged by filing Writ Petition No. 689 of 2011, which was disposed by a Division Bench of this Court by a judgment and order dated 2nd February, 2012. As can be seen from the second paragraph of the said judgment and order, the grievance of the Petitioners was that the Respondents in the said writ petition received compensation and received extra TDR in lieu of compensation though the Petitioners are the owners of the acquired land by virtue of inheritance. The Division Bench by the said judgment and order

disposed of the petition by passing the following order:

“3. In our view, to the extent that the said observations appear to have decided the question of title, they are without jurisdiction since the Chief Engineer or even the Municipal Corporation for that matter does not have right to decide the question of title. In the circumstances of the case, we are constrained to set aside the observations to the extent that the petitioners do not have any right or title in the land and the land has been absolutely conveyed to respondents. Indeed, the petitioners are agitating a question of title and for which the petitioners have no remedy other than to approach the Civil Court for adjudication of the title which they may do.

4. The order to the extent it holds that the conveyances in favour of M/s. Minar Enterprises are illegal or invalid suffers from an error of law apparent on the face of the record, since that issue will have to be decided by the appropriate civil court. The order is accordingly set aside.

Rule made absolutely in the above terms. No order as to costs.”

3. Therefore, the Division Bench did not grant any relief to the Petitioners. As far as grant of TDR or compensation is concerned, the observation made by the Chief Engineer that M/s. Minar Enterprises have become owners, was set aside by observing that for agitating title claim by M/s. Minar Enterprises, the Petitioners have no remedy other than to approach the civil court for adjudication of the

title. The application for review of the said judgment and order was made in which a grievance was made about the observations which are quoted above. That grievance was rejected by the Division Bench while passing order dated 17th December, 2012 on review petition for the reasons recorded in paragraph 5 of the said order.

4. Thus, the effect of the order of the order dated 2nd February, 2012 passed in Writ Petition No. 689 of 2012 is that the Petitioners cannot succeed in getting TDR or compensation unless the Petitioners approach the appropriate Civil Court and establish their title.

5. The first prayer made in this petition is seeking a challenge of the order 9th July, 2013 passed by the Executive Engineer (Building Proposal) which is at Exhibit “J” to the petition. A note prepared by the Executive Engineer (Building Proposal) WS “K” Ward which records that the Municipal Corporation has granted FSI in lieu of compensation to M/s. Minar Enterprises. By this note, nothing is decided and it only records the factual situation. The second prayer in the petition is for seeking a writ of mandamus directing the Municipal Corporation to consider the Petitioners' claim for

entitlement to TDR in lieu of compensation. Considering the order dated 2nd February, 2012 passed in Writ Petition No. 689 of 2011, the said issue cannot be agitated in this petition unless the Petitioners establish their title. The third substantive prayer is to restrain the Municipal Corporation from taking any further steps on the basis of alleged order dated 9th July, 2013. The fourth and the last substantive prayer is for implementation of the award under Section 11 of the Act of 1894. As stated earlier, the order which is at Exhibit “J” to the petition is of no consequence, which records that the FSI in lieu of compensation has been granted to M/s. Minar Enterprises. Since in the award, it is observed that the Municipal Corporation may consider the prayer for grant of TDR in lieu of compensation, in the light of the fact that FSI has been granted to M/s. Minar Enterprises, unless the Petitioners establish their title to the acquired land, no relief can be granted to them.

6. In Chamber Summons No. 55 of 2015, a copy of the plaint in S. C. Suit No. 1431 of 2012 filed by the Petitioners in City Civil Court has been annexed at Exhibit “U”. In this petition the Petitioners ought to have disclosed a very material fact of filing the

suit in which a declaration of illegality has been claimed in respect of the Deed of Conveyance and a Deed of Confirmation on the basis of which M/s. Minar Enterprises claimed title.

7. The learned counsel for the Applicant in Chamber Summons No. 55 of 2015 has placed on record an order dated 8th July, 2015 by which suit filed by the Petitioners has been ordered to be returned to the Petitioners for presentation to the proper court.

8. Therefore, no relief can be granted to the Petitioners as they have not established their title to the acquired land. There is no merit in the writ petition and the same is rejected.

9. In view of disposal of the writ petition, pending Chamber Summons No. 55 of 2015 does not survive and the same is accordingly disposed of.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]