

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12342 OF 2015

DBR Constructions Pvt. Ltd. ... Petitioner

Versus

The Chief Officer, Kulgaon-Badlapur
Municipal Council and Ors. ... Respondents

Mr. A.V. Anturkar i/by Mr.S.B. Shetye for the petitioner.

Mr. P.G. Sawant, AGP for the State.

Mr. D.P. Adsule for respondent nos. 1 and 2.

CORAM : B.P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.
DATE : SEPTEMBER 20, 2019

P.C.:

Heard learned counsel for the petitioner, learned AGP for respondent nos. 2, 3 and 5, learned counsel for respondent no. 1. Nobody appear for respondent nos. 4 and 6.

2. A short question before this Court is whether the communication dated 26/10/2015 issued by respondent no.1 Planning Authority has permitted the petitioner to load the TDR and accordingly the structure has been completed. The TDR loaded is part of DRC dated 20/12/2012.

3. Because of some allegations in relation to tampering and

fraud, the said DRC came to be cancelled by the Municipal Council. State Government instructed respondent no.1 Municipal Council to take consequential action. Accordingly the impugned communication has been issued to the petitioner calling upon the petitioner to hand over the possession and informing him that he would not be issued any completion certificate. He has been asked to utilize the relevant DRC and then get the construction regularized.

4. Counsel for the petitioner submits that the petitioner establishment is not found involved in any fraud and after completion of structure, DRC could not have been withdrawn/cancelled to his prejudice. It is further added that the petitioner is ready and willing to purchase TDR in market to compensate for the proportionate loss as DRC has been cancelled.

5. Counsel for respondent no. 1 Municipal Council is seeking time to obtain instructions.

6. From the communication dated 26/10/2015 impugned before us, it does not appear that the structure raised by the petitioner was in any way illegal or even irregular. Only because of cancellation of DRC, Municipal Council has taken the consequential action and directed the petitioner to procure TDR

from DRC in the area as suggested by it and to load that TDR in his construction. Petitioner has shown readiness and willingness for this purpose.

7. We therefore, find that the matter can be looked into by the Municipal Council. Municipal Council itself has in the impugned notice informed the petitioner that if he is interested in obtaining regularization as per loaded TDR from DRC in the sector in which his construction is situated, the same may be obtained within a period of one month.

8. We therefore, direct the petitioner to make appropriate representation and show the TDR/DRC which he intends to provide in place of the cancelled DRC. If such representation is filed within six weeks from today, respondent no.1 Municipal Council shall examine it in accordance with law within next two months.

9. Till Municipal Council passes afresh orders, interim orders passed by this court on 19/09/2018 shall continue.

10. With the above directions, we dispose of the writ petition.

(SANDEEP KASHINATH SHINDE, J.)

(B.P. DHARMADHIKARI, J.)