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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3185 OF 2021

Sharayu Sharadchandra Gupte & Anr. Petitioners

Vs.

Pune Municipal Corporation & Ors. Respondents

Mr. Tejas Deshmukh for the Petitioners
Mrs. R. M. Shinde, AGP for the State
Mr. A. P. Kulkarni for the Respondents

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : APRIL 8, 2022

P.C.

1 Mr.Deshmukh, the learned Advocate for the Petitioners submits that the land of the Petitioners bearing Sy.No.87 Hissa No.46 admeasuring 4R situated at Baner is affected in 30 mtr. wide development plan road. The Respondent Municipal Corporation has constructed the road, however, no compensation amount has been paid.

2 The learned Advocate for the Respondent Corporation submits that the Corporation is ready to give TDR/DRC, as the case may be. However, till date, no such proposal is

received. The Petitioner No.1 and her family members did not raise any objection while the road was constructed. The learned Counsel submits that the Respondents have already expressed their intention of giving Transferable Development Rights (TDR) / Development Rights Certificate (DRC). It is for the Petitioners to accept it.

3 It does not appear to be a matter of dispute that the land of the Petitioners admeasuring 4R from Sy.No.87 Hissa No.46 at Baner is affected in 30 mtr. wide development plan road. The road is constructed. The Respondents have not taken up acquisition proceedings and now the Respondents contend that they are ready to give TDR/DRC. The Petitioners may accept the same.

4 The Respondent Corporation has every right and authority to acquire the land for public purpose. The land, it appears, was reserved for development plan road. The Respondent Corporation has every right to acquire the said land for the purpose of development plan road. The Respondent Corporation cannot compel the owner to accept the TDR/DRC, as the case may be. If the owner, on his own volition, is ready to accept the TDR/DRC, then the

Corporation can award the TDR/DRC. However, if the owner is not accepting the TDR/DRC, then the Corporation has an option to proceed against the owner for acquisition of the land under section 126(1)(c). In the present matter, till date, there is no agreement between the parties on the payment of amount as such. Provision of Section 126(1)(a) would not be attracted. Section 126(1)(b) only would apply and if the land owner or lessee agrees to surrender the land, that also would be on the volition of the owner i.e. it should be voluntary surrender of the land. The present matter be governed by Section 126(1)(c) only.

5 In the light of the above, we pass the following order :

a. The Respondent Corporation may explore the possibility of acquiring the land by negotiations with the Petitioners. If within six months, there is no consensus between the Petitioners and the Corporation to acquire the land by agreement, then the Respondents shall initiate the acquisition proceedings in respect of the land of the Petitioners i.e. affected in 30 mtr. wide development plan road from Sy.No.87 Hissa No.46 at Baner by issuing

declaration under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 126 of the Maharashtra Regional and Town Planning Act 1966, expeditiously, preferably within six months.

b. The acquisition shall be completed within the period stipulated under section 25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

c. The Writ Petition is accordingly disposed of.
No costs.

(VINAY JOSHI, J.)

(S.V. GANGAPURWALA, J.)