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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO. 6432 OF 2010

Nitin Ratilal Karia ...Petitioner
V/s.
Pimpri Chinchwad Municipal Corporation & Anr. ...Respondents

Mr.A.V. Anturkar – Senior Advocate a/w. Mr. S.B. Deshmukh i/b.
Mr.Vilas B. Tapkir for the Petitioner.

Mr. S.R. Ganbavale – Advocate for the Respondent No. 1 – P.C.M.C.

Mr. A.I. Patel – Additional G.P. for the Respondent No. 2 – State.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATE : 12TH OCTOBER, 2022.

P.C. :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of certiorari for quashing and setting aside the order passed by the Municipal Corporation Pimpri-Chinchwad on 29th April, 2010 and to allow the application made by the petitioner for grant of additional FSI as per the provisions of DCR N.2.3 for the land which has been acquired by the respondent – Corporation for widening of road proposed under the provisions of the Development Plan in respect of 31 mtrs. as well as for 61 mtrs.

2. It is not in dispute that the petitioner has already

surrendered the portion of the land required for road widening to the Municipal Corporation. The said writ property was in the name of Ratilal Karia, who expired on 02nd August, 1985. It is the case of the petitioner that the distribution of the property was held amongst the legal heirs by virtue of compromise decree arising out of the settlement between the parties on 30th April, 2005.

3. The petitioner thereafter applied for an additional FSI to the Municipal Corporation. There was correspondence exchanged between the petitioner and the Municipal Corporation. The Municipal Corporation called upon the petitioner to produce various documents whilst considering the application filed by the petitioner. It is the case of the petitioner that the petitioner has complied with all requisitions made by the Municipal Corporation. Our attention is invited to the correspondence exchanged between the parties by the learned senior counsel for the petitioner. The Municipal Corporation rejected the application filed by the petitioner. The petitioner accordingly filed Writ Petition No. 8105 of 2008 in this Court. This Court permitted to the petitioner to file additional representation to the Municipal Corporation.

4. The petitioner made additional representation on 10th December, 2009 in pursuance of the order passed in Writ Petition No. 8104 of 2008 and 8105 of 2008. In pursuance of the said

representation made by the petitioner, there was a meeting between the petitioner and the officer of the Municipal Corporation. The petitioner submitted a note at page No. 225 of the petition and submitted that all the requisitions made by the respondents have been complied with. It was the case of the petitioner that the additional FSI is available on 100% of the area, required for road widening, or for construction of new road proposed under the Development Plan proposed under the provisions of the BMC Act, 1949. The owner of such land must be prepared to surrender such area for the road widening or for construction of the new road. Such person are not claiming any compensation.

5. It is the case of the petitioner that these three conditions prescribed under DCR N.2.3 for eligibility to get additional FSI are complied with by the petitioner. Our attention is invited to the impugned order passed by the Municipal Corporation on 29th April, 2010.

6. The Municipal Corporation has rejected the application mainly on the following grounds. (i) the name of the petitioner was entered on the property card on 04th September, 2006 as legal heir of deceased Ratilal B. Karia. The previous application thus filed by the petitioner prior to 04th September, 2006 was not considered as given by the landlord/owner of the property. (ii). Once as per the direction

under Section 154, are issued on 03rd February, 2007, DCR is not permissible after the award is passed. The same analogy is to be applied considering the demand of FSI by the petitioner. (iii). The matter is subjudice before the Hon'ble Supreme Court and thus it is not tenable before the Commissioner of Municipal Corporation to make any reference.

7. Insofar as the first objection raised by the respondent-Municipal Corporation in the impugned order that the name of the petitioner was not on the property card on 04th September, 2006 and thus previous application made by the petitioner cannot be considered as he was not the sole landlord or owner of the property is concerned, the fact remains that the name of the petitioner is ultimately entered in the property card on 04th September, 2006 i.e. prior to the date of decision taken by the Municipal Corporation on 29th April, 2010. Thus there is no substance in this objection recorded by the respondent while rejecting the application for additional FSI made by the petitioner.

8. In our view, the directives issued by the State Government in respect of TDR cannot be made applicable to the claim for additional FSI. It is not the case of the Municipal Corporation under the said DCR N.2.3 that there was reference to the TDR. On the contrary, the petitioner is entitled to additional FSI

however, in compliance with the Terms and Conditions prescribed therein Special Leave Petition No. 7196 of 2010 is already decided by the Hon'ble Supreme Court.

9. During the course of argument, Mr. Ganbavale. Learned counsel for the Municipal Corporation made a statement that the petitioner has not complied with all requisitions made by the Municipal Corporation and thus Municipal Corporation has rejected the application for additional FSI made by the petitioner.

10. A perusal of the impugned order passed by the Municipal Corporation on 29th April, 2010 does not indicate that the application for additional FSI made by the petitioner is rejected on the ground that the petitioner has not complied with all the requisitions.

11. We accordingly pass the following order:-

a). The impugned order dated 29th April, 2010 passed by the Municipal Corporation is quashed and set aside. The application for additional FSI made by the petitioner is restored to file. The Municipal Corporation is directed to reconsider the said application in accordance with law after considering the observations made by this Court in this order. If according to the Municipal Corporation any of the requisition is required to be complied with by the petitioner, in compliance with DCR N.2.3, the same shall be communicated to the petitioner within two weeks from today. The petitioner in that event to

comply with the requisitions required to be complied with according to DCR N.2.3 within two weeks thereafter.

b). The Municipal Corporation shall consider the said application afresh without being influenced by the observations made and the conclusion drawn in the impugned order dated 29th April, 2010 expeditiously and shall make an endeavour to decide such application within eight weeks from the date of the petitioner complying with the requisitions that would be made by the Municipal Corporation.

c). The order that would be passed by the Municipal Corporation shall be communicated to the petitioner within one week thereafter. If the application filed by the petitioner is allowed, all the consequential benefits due to the petitioner as permissible in law shall be granted to the petitioner within four weeks from the date of passing such order. If the application is rejected, the petitioner would be at liberty to file appropriate proceedings permissible in law.

d). The petitioner would be at liberty to file additional application for availing off the benefits, if any, under the provisions of unified DCPR 2020 within two weeks from today. The Municipal Corporation would consider such additional application also in accordance with law.

12. The writ petition is allowed in aforesaid terms. No order as

to costs. All parties to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)