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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.5877 OF 2021

M/s.Vijay Suraksha Realty LLP

...Petitioner

V/s.

The Thane Municipal Corporation & Ors.

...Respondents

Mr.Manoj J. Bhatt for the Petitioner.

Mr.N.R. Bubna for the Respondent Nos.1 and 2.

Mr.A.A. Alaspurkar, AGP for the State - Respondent No.3.

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.**

DATE : 5TH SEPTEMBER, 2022.

P.C. :-

1. Rule. Mr.Bubna, learned counsel for the respondent nos.1 and 2 waives service. Learned AGP waives service for the respondent no.3. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for writ of certiorari for quashing and setting aside the order of the Commissioner dated 15th June, 2015 and the impugned Letter / Communication dated 14th July, 2021. The petitioner also seeks a declaration that the order of the Commissioner dated 15th June, 2015 insofar as it is concerned with the complete denial of the petitioner's claim over the TDR and / or

compensation towards the free cost of development of 30 meter and 40 meter DP road as well as the ESR as illegal and null and void. The petitioner also seeks a declaration that the petitioner is entitled to TDR in the form of FSI from the respondent no.1 in lieu of the free of cost development of the DP roads and ESR, in compliance of the direction / conditions imposed by the respondent upon the petitioner while approving their development proposal / plan.

3. The petitioner has acquired the development rights in respect of the lands described in paragraph 4-A of the petition and had applied for development permission in respect of the said property to the respondents. The plan was first sanctioned by the respondent nos.1 and 2 on 29th March, 2011. One of the condition imposed by the respondent nos.1 and 2 while granting development permission was that the petitioner should submit a registered declaration with the respondent no.1 to the effect that the petitioner would hand over 40 meter DP road area under amenity plot to the respondent Corporation before issuance of the commencement note and plinth certificate.

4. The petitioner complied with the said condition by submitting a declaration that effect. The petitioner submitted the amended layout sanctioned of development permission / commencement certificate in respect of 2011 and 2014 which was

also sanctioned by the respondent no.1 by issuing commencement certificate.

5. On 7th July, 2014, the Municipal Corporation issued a certificate stating that no application shall be entertained for TDR in lieu of any cost paid for development of an amenity. The Municipal Corporation accordingly passed an order dated 15th June, 2015 imposing a condition for free of cost construction of a DP road Elevated Storage Reservoir (ESR) on amenity plot by the petitioner. The said order provided that no compensation or construction TDR shall be given to the petitioner for constructing the said DP road and ESR.

6. It is the case of the petitioner that the said condition imposed by the Municipal Corporation is contrary to Regulation 47 of of Development Regulation Rules, 1994. The petitioner has already made substantial progress in the development work. The petitioner was thus compelled to submit two separate undertakings both dated 7th July, 2015 to the Municipal Corporation whereby the petitioner undertook to develop the said 30 meter and 40 meter DP road as well as the said ESR with further undertaking that the petitioner will not claim any TDR or compensation in lieu of the said free of cost developments after publication of the said circular dated 7th July, 2014.

7. The petitioner however, has not started construction of the said ESR in terms of the said undertakings. The Municipal Corporation has already issued the occupation certificate on 10th March, 2021 in respect of two buildings developed by the petitioner on the said property. The Municipal Corporation imposed the condition on the petitioner to construct / develop the said proposed ESR on the amenity land by taking directions from the Water Supply Department.

8. on 2nd December, 2020, the respondent no.3 issued a notification by which the Urban Development Control and Promotion Regulation, 2020 (for short “UDCPR”) came to be enforced under which the petitioner is entitled to claim construction / compensation according to the petitioner in lieu of free of cost development of the said proposed 30 meter and 40 meter and the said ESR.

9. The petitioner was served with a copy of the order dated 14th July, 2021 passed by the respondent no.1 Corporation stating that in view of the undertaking rendered by the petitioner that the petitioner is ready to carry out the work of ESR on the amenity land and 30 meter and 40 meter of DP road, the petitioner is not entitled to claim any TDR. The petitioner was called upon to start construction of the concerned road within seven days from the date of receipt of the said letter and threatened of refusal of the permission or occupation

certificate under the proposal in respect of the construction being carried out by the petitioner. The petitioner has impugned the said communication dated 14th July, 2021.

10. Learned counsel for the petitioner invited our attention to the documents annexed to the petition including the undertaking rendered by his client. He submits that the respondent no.1 Corporation has no power to force the petitioner to render such undertaking and to get the work done free of cost i.e. without payment of compensation or to claim for TDR in lieu of compensation.

11. Learned counsel for the petitioner relied upon the provisions of UDCPR, 2020 and submitted that the said circular pressed in service by the Municipal Corporation is contrary to the provisions of UDCPR which are binding on the respondent no.1 Corporation. He invited our attention to various grounds raised in the petition in support of the submission that the said circular pressed in service by the respondent no.1 is contrary to the said provision of UDCPR, 2020 and is thus not binding on the petitioners. The respondents cannot refuse to allow the claim of TDR which the petitioners are entitled to and cannot threaten the petitioner of refusal of permission including the occupation certificate in respect of the work carried out and proposed to be carried out by the petitioner.

12. Mr. Bubna, learned counsel for the respondent no.1 when called upon to point out the provision under which the Municipal Corporation has called upon the petitioner to render such undertaking not to claim any compensation or TDR for the work to be carried out on amenity plot, learned counsel for the respondent no.1 fairly submitted that there is no such provision empowering the Municipal Corporation to insist any such undertaking not to claim any TDR. He however, submits that the undertaking rendered by the petitioner was in the nature of contract entered into with the Municipal Corporation not to claim any TDR. The petitioner cannot be permitted to withdraw such undertaking after having taken benefit of the plan submitted by the petitioner and sanctioned by the Corporation.

13. In view of the fact that the Corporation did not have any authority to insist for such undertaking not to claim any compensation or in the nature of TDR for getting the work free of cost from the petitioner, in our view, the Municipal Corporation could not have insisted the petitioner to submit such undertaking not to claim any compensation in the nature of TDR or otherwise. This aspect is now taken care of by the Legislature in the notified UDCPR, 2020 protecting the right of the party to claim compensation in lieu of free cost of development of the property for the benefit of the Municipal Corporation.

14. In our view, the respondent no.1 Corporation cannot impose such condition and threaten the petitioner that if the petitioner does not construct on amenity plot, further permission that would be required by the petitioner including the occupation certificate would be stopped by the Municipal Corporation. In our view since the action on the part of the Municipal Corporation threatening to refuse further permission is without jurisdiction, we are inclined to interfere in the impugned order passed by this Court. We accordingly pass the following order :-

- a). The writ petition is allowed in terms of prayer clauses (a) to (d). The claim of the petitioner for TDR in the form of FSI from the respondent no.1 Corporation in lieu of free of cost development and ESR shall be made available to the petitioner within four weeks after the petitioner carrying out work on the amenity plot.
- b). The petitioner is directed to comply with the other part of the obligation provided in the sanctioned plan.
- c). The writ petition is allowed in aforesaid terms. Rule is made absolute accordingly. Parties to act on the authenticated copy of this order. No order as to costs.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)