

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

WRIT PETITION NO. 439 OF 2020

Sulochana N. Bhavsar (since deceased)
through legal heirs. ... Petitioner

Versus

State of Maharashtra and others ... Respondents

Mr. Meelan Topkar, Advocate for the Petitioner.

Mr. Himanshu Takke, AGP for the Respondent-State.

Ms. Oorja Dhond i/by S.K. Sonawane, Advocate for Respondent No.2.

**CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE : 15 November 2022

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ORDER : (Sharmila U. Deshmukh, J.) :

Heard.

2. By this Writ Petition, the Petitioner seeks Transfer of Development Rights (TDR) Certificate equivalent to 1475 sqr.mtrs. under Regulation 34 read with Appendix VII of the Development Control Regulations, 1991, in lieu of compensation awarded by this Court *vide* Award dated 2 April 1993 in Land Acquisition Reference No.40 of 1979. The relief is claimed on the basis that plot of lands at Survey Nos.17/11, 17/12 and 14/5 at village Asalpha, Taluka Kurla,

Mumbai, owned by the Petitioner has been acquired by the Respondents for Ghatkopar-Andheri Link Road Project.

3. The petition was initially filed by one Smt. Sulochana Narayan Bhavsar, who expired during the pendency of the petition and her legal heirs were brought on record. It was the case of original Petitioner's that her deceased husband-Narayan Natthu Bhavsar was the owner of following three plots of lands:

- (i) Survey No.17, Hissa No.11 (CTS No.133, 133/1-14), admeasuring $9 \frac{3}{4}$ Gunthas and $0\frac{1}{2}$ Gunthas Kharba (i.e. 650 sq.mts.) at Revenue Village Asalpe Taluka Kurla, Bombay Suburban District, Registration Sub District Bandra;
- (ii) Survey No.17, Hissa No.12, CTS No.134, 134/1-14, situated at Village Asalpe Taluka Kurla, Bombay Suburban District, Registration Sub District Bandra;
- (iii) Survey No.14, Hissa No. 5, CTS No. 184 and situated at Revenue village Asalpe, Taluka Kurla, Bombay Suburban District, Registration Sub District Bandra, admeasuring 877.5 sq. yards (i.e. 733 sq.mts.).

The aforesaid three plot of lands were acquired by the Respondents for Ghatkopar-Andheri Link Project. After the acquisition in accordance with the procedure under the Land Acquisition Act, 1894 (for short, "Act of 1894"), the property was mutated in the

name of the respondents in land revenue records. The Award was passed by the Special Land Acquisition Officer, (Highways) on 31 March 1977 and compensation of Rs.20,355/- was determined. Thereafter, a reference under section 18 of the Act of 1894, was made to this Court being Land Acquisition Reference No.40 of 1979, seeking enhancement of compensation. This Court *vide* order dated 2 April 1993 disposed of the reference by enhancing compensation by 15% extra amount on market value determined and the enhanced amount of compensation was also deposited by the Authorities. It is the case of the Petitioner that the petitioner has not claimed or withdrawn the same till date. The petitioner claims that the Development Control Regulation, 1991, which came into effect from 25 March 1991, evolved a new scheme for grant of transferable development rights (TDR) and sought TDR in lieu of the compensation. As there was no response to the said application made by the petitioner seeking TDR by the Respondent No.2, the present writ petition has been filed claiming relief of grant of TDR.

4. An affidavit in reply has been filed by one Jagatsing Girase, Deputy Collector (Land Acquisition) No.4, Mumbai Suburban District, dated 16 September 2022, stating that the acquisition proceedings in respect of the petitioner's property resulted into an Award dated 31 March 1977 by following due procedure and that an order of enhancement of compensation was passed by this Court on 2 April 1993 in the reference made. The

affidavit further states that pursuant to the order passed by this Court, respondent No.3 has deposited differential amount in this Court and that further request for grant of TDR in lieu of compensation cannot be considered.

5. It is an admitted position that due procedure under the Act of 1894 was followed and Award was passed on 31 March 1977, and compensation awarded was also subject matter of a Land Reference No. 40 of 1979, which was decided by this Court granting enhanced compensation to the petitioner. A positive assertion has been made by the Deputy Collector in his affidavit in reply that the differential amount as per the order of this Court has been deposited by the Authorities in this Court.

6. Considering the aforesaid facts, the acquisition proceedings do not suffer from any legal infirmity. In the year 1993, upon the reference being decided by this Court, the acquisition proceedings attained finality. We are unable to accept the contention of the petitioner that the petitioner is entitled to grant of TDR in lieu of compensation merely because the Development Control Regulation came into force in the year 1991, before the order of this Court on 2 April 1993. The petitioners have not been able to demonstrate their legal right to claim TDR in lieu of the compensation which was awarded and duly deposited by the Authorities in this Court.

7. Another aspect is that the Writ Petition has been filed in the year 1991, after a lapse of almost 26 years and suffers from delay and laches, which has not been explained in the petition. The acquisition proceedings have attained finality in the year 1993 itself. The compensation was duly deposited by the Authorities and the petitioner cannot seek any further relief after lapse of almost 26 years.

8. There is no merit in the petition, and the writ petition is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)