

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6345 OF 2020
WITH
WRIT PETITION NO. 6793 OF 2020

1. Tarabai W/o Dhondiba Shelke
2. Jayshree Machindra Shelke

Petitioners
[Orig. Applicants]

Versus

1. The Sub Divisional Officer,
Shirdi Division, Shirdi, Tq. Rahata
Dist. Ahmednagar.
2. The Chief Officer,
Shirdi Nagar Panchayat, Shirdi,
Tq. Rahata, Dist. Ahmednagar.

Respondents
[Orig. Respondents]

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Mr. Amol K. Gawali, Advocate for petitioners.
Mr. S.R. Yadav Lonikar, AGP for respondent No. 1.
Mr. A.V. Hon, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 20th JULY, 2023
PRONOUNCED ON: 12th SEPTEMBER, 2023

ORDER :

1. Since both these petitions raise similar question of law and fact, they were heard together and are being decided by this common order.

2. Writ Petition No. 6345/2020 challenges the order dated 30.06.2020, passed by learned Civil Judge, Senior

Division, Rahata, below Exhibit-1 in Land Acquisition Reference No. 126/2017.

Writ Petition No. 6793/2020 challenges the order dated 30.06.2020, passed by learned Civil Judge, Senior Division, Rahata, below Exhibit-1 in Land Acquisition Reference No. 121/2017.

3. Facts in brief, leading to these petitions are that;

Petitioners are owners of land bearing City Survey No. 908, out of Survey No. 3/24 and 3/25, situated within the limits of Shirdi Municipal Council. Land to the extent of 2070.75 Sq.Mtrs, belonging to the petitioners was acquired for D.P. road. By award bearing L.A.Q.R. No. 3/2007, petitioners were held entitled for compensation of Rs. 1,96,55,389/-.

By award bearing L.A.Q.R. No. 7/2007, petitioners were held entitled for 38,11,500/- for acquisition of 432.00 Sq.Mtrs land for D.P. road.

4. On 10.11.2010, notice under section 12(2) of the Land Acquisition Act, 1894 (for short 'said Act') was served on the petitioners intimating them that they are entitled for award amount of Rs. 1,96,55,389/- and after deducting TDS of Rs. 22,15,626/-, petitioners are entitled for amount of Rs.

1,74,39,763/-.

On 01.12.2011, notice under section 12(2) of the said Act was issued to the petitioners intimating them that they are entitled for award amount of Rs. 38,11,500/- and after deducting TDS amount of Rs. 4,20,513/-, they are entitled for amount of Rs. 33,19,987/-.

5. On 17.06.2011, petitioners approached the respondent for sanction of layout plan and building permission for construction of hotel on the remaining portion of their land. Authorities informed the petitioners that they will be entitled for additional FSI, which can be utilized on the remaining land, if they agree to accept the same in lieu of compensation. Petitioners were asked to file affidavit if said proposal is acceptable to them. Since, proposal was accepted by the petitioners they filed affidavit on 17.06.2011, thereby accepting the additional FSI in lieu of compensation towards acquired land.

6. On 12.06.2012, revised layout plan of remaining land of the petitioners was sanctioned. Petitioners thereafter applied for revised building permission for construction of hotel, same was granted on 12.05.2015.

7. As the petitioners did not collect compensation, under section 31 of the said Act, the compensation amount was transferred to the District Court by Sub Divisional Officer, Shirdi Division. On 15.09.2018, petitioners applied to the Chief Officer, Shirdi Nagar Panchayat, seeking certificate that they were not granted FSI or TDR in lieu of compensation. Petitioners then applied to the learned Civil Judge, Senior Division, Kopergaon, seeking permission to withdraw the compensation of Rs. 1,96,53,389/- and Rs. 38,11,500/- by filing Land Acquisition Reference Nos. 121/2017 and 126/2017.

Said applications are allowed and petitioners were permitted to withdraw the compensation amount and the references were closed.

8. Respondent No. 1 filed applications Exhibit-13 and 14 in Land Acquisition Reference Nos. 126/2017 and 121/2017 stating that the petitioners were granted additional FSI in lieu of compensation and therefore, they are not entitled to any compensation. Hence, both the land acquisition references be restored and the compensation amount should be returned to respondent No. 1.

9. Petitioners opposed the application by filing detail

say, contending that the petitioners applied for additional FSI and they were only granted 40% additional FSI and not 100%. Therefore, by deducting compensation to the extent of 40% additional FSI, petitioners are entitled for remaining amount of compensation along with accrued interest.

10. By the impugned orders, Reference Court has allowed the applications filed by the first respondent and directed the petitioners to return the compensation amount. Hence, the present petitions.

11. Heard the learned advocate for the petitioners, learned Assistant Government Pleader for respondent No. 1 and learned advocate for respondent No. 2. Perused the memo of petitions, annexures thereto, impugned orders and the citations relied on by the parties.

12. According to the learned advocate for the petitioners at the time of obtaining undertaking from the petitioners, it was not brought to their notice that they will be entitled for only 40% of additional FSI and not 100%. Petitioner No. 1 is illiterate and petitioner No. 2 is 12th standard pass, therefore fraud is played on the petitioners while obtaining undertaking from them. By granting 40% additional FSI, 60% land of the petitioners is

acquired without paying any compensation, which has caused injustice to the petitioners. Regulation No. 19.3.1, cannot be relied upon to take away petitioners' right to property. Petitioners are entitled for 60% compensation. Reference Court has misdirected itself in passing the impugned orders.

In support of his submission he relied on *Pt. Chet Ram Vashist (dead) by L.Rs v. Municipal Corporation of Delhi*, AIR 1995 SC 430, *Godrej and Boyce Manufacturing Company Limited v. State of Maharashtra and others*, (2009) 5 SCC 24, *State of Maharashtra vs. Bhimshankar Sidramapa Chippa*, 2009 (5) Mh.L.J. 76 and *Pune Municipal Corporation and another vs. Kausarbag Co-operative Housing Society Ltd. and another*, (2014) 15 SCC 753.

13. On the other hand, learned advocate for respondent No. 2 submits that in the year 1992, development plan is sanctioned. Petitioners have moved the Reference Court only after they completed their construction by availing 40% of additional FSI. It is clearly stated in the agreement that FSI shall be granted as per regulation No. 19.3 and 19.3.1. By relying on Clause 4 of the agreement, he submits that, there is no merit in the case of the petitioners. He further submits that building

permission was sought by the petitioners in the year 2013 and after utilization of additional FSI and after completion of their building, present petitions are filed by the petitioners in the year 2020, which are belatedly filed and on the ground of delay and latches also the petitions are liable to be dismissed. Further submission is decisions relied upon by the petitioners are not applicable to the facts of the present case. In support of his submission he relied on **Manohar Shripad Bhat and another vs. Municipal Corporation, City of Pune**, 2008 (5) Mh.L.J. 433.

14. Before dealing with the rival submissions, it is apposite to refer to relevant provisions of Standardised Building Bye-laws and Development Control Rules for "B" and "C" Class Municipal Councils of Maharashtra (for short 'said Rules').

"19.3. Whenever called upon by Planning Authority, under provision of section 183 of M.M. Act areas under roads and open space in Byelaw No. 19.2 shall be handed over to the Planning Authority after development of the same for which nominal amount (of Rs.1) shall be paid by the Planning Authority. In case of the owners who undertake to develop the open spaces for bonafide reasons as recreational community open spaces, the Authority may permit the owner to develop the open space unless the Authority is convinced that there is misuse of development of open spaces in which case the Authority shall take over the land.

19.3.1. The Chief Officer shall permit on the same

plot, additional built up area on 100 per cent of the area required for road widening or for construction of new roads of the final Development Plan, if the owner (including the lessee of such land) is prepared to release such area of road widening or for construction of new roads without claiming any compensation thereof. Such 100 percent of the area going under road widening or new road construction shall be limited to 40 per cent of the area of the plot remaining after release of the land required for road widening or road construction, provided further that this concession shall not be granted in respect of roads located in the areas of Town Planning Schemes.”

15. In the affidavit executed by the petitioners on 17.06.2011, it is specifically mentioned that the petitioners will be entitled for additional FSI as per Rule 19.3 and 19.3.1 and in lieu of that the petitioners are ready to give up compensation for 2070.75 Sq.Mtrs acquired portion. In clause 3 of the affidavit, it is categorically stated that since the petitioners are accepting the permissible additional FSI, the petitioners are giving up the compensation and the said acquired area is being given to the Nagar Panchayat, Shirdi, free of cost without any complaint or condition. Clause 4 of the affidavit affirms that after getting additional FSI of the acquired area, petitioners shall not be entitled for the compensation amount declared as per the award, in future. Clause 11 further stipulates that only after additional FSI is sanctioned in terms of Rule 19.3 and 19.3.1, the

petitioners shall be entitled to utilize the built up area and petitioners shall not complain in that behalf.

16. The fact of petitioners giving up compensation in lieu of additional FSI is not in dispute. Indisputably, in the affidavit filed by the petitioner, accepting additional FSI in terms of Rule 19.3 and 19.3.1, petitioners have given up their right to compensation. Admittedly, petitioners have utilized additional FSI by making construction on their property. In the light of these admitted facts, petitioners are now estopped from claiming that since only 40% of additional FSI is granted to them, they are entitled to claim 60% of the compensation amount. Since, petitioners have exercised their option of accepting additional FSI as per Rule 19.3 and 19.3.1 and having acted upon the same, the petitioners are not entitled to turn back and go against their own affidavit to claim on specious ground that petitioners were not given understanding that they will be entitled for 40% of additional FSI and not 100%.

17. It is thus clear that by filing affidavit the petitioners have accepted additional FSI in terms of Rule 19.3 and 19.3.1 and gave up their right to compensation, same is also acted upon as the petitioners were given 40% addition FSI as per

rules, it would therefore inequitable now to allow the petitioner to go back on the terms of the affidavit.

18. In *Monnet Ispat and Energy Limited v. Union of India and Ors.*, (2012) 11 SCC 1, it is held;

"182.1. Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

19. In view of recitals of the affidavit and since same are acted upon, the petitioners are now estopped from going back to said and claim 60% compensation, since they were given 40% additional FSI as per rules.

20. In Manohar Bhat (supra), the learned Division Bench of this Court repelled the arguments of the respondent with following observations;

"6. The alternate arguments is not attractive after having accepted once that the petitioners are entitled for the TDR and the TDR has accordingly granted and

same has been consumed by the petitioners, it is not opened for the respondents to say that in view of the acquisition of land and the possession being taken, the TDR cannot be granted to the petitioners because the Government has prohibited to grant such TDR. Thus, they cannot blow hot and cold at one and the same time so as to squeeze the citizens whose property has been compulsorily acquired under the provisions of law. If the law has extended benefits to the persons in view of compulsory acquisition, those benefits should be extended to the citizens and, therefore, we are not impressed upon by the alternative arguments advanced by Mr. Ketkar and we, therefore, reject the same."

21. In the case in hand, petitioners having accepted additional TDR as per rules and having consumed the same, cannot now blow hot and cold at one and the same time to claim that they are entitled for 60% of compensation amount.

22. Filing of Land Acquisition Reference Nos. 121/2017 and 126/2017, by the petitioners itself is contrary to the undertaking given by them in the affidavit that they shall not file any reference.

23. From the order dated 10.01.2019 passed below Exhibit-1, it appears that the fact of petitioners having accepted additional TDR, which was already consumed by them, was not pointed out to the Reference Court either by the petitioners or by

the Government at that point of time.

24. Record further indicates that initially building permission was given to the petitioners on 24.08.2012 and revised building permission was granted on 30.03.2015. After consumption of additional FSI and after completion of construction of hotel, petitioners applied to the Chief Officer, Shirdi Nagar Panchayat on 15.09.2018 contending that petitioners have not claimed any FSI or TDR and sought certificate to that effect. Here also petitioners have suppressed that they have availed additional TDR. It is therefore clear that the petitioners have filed affidavit with the Chief Officer on 17.06.2011 at the time of seeking revised building permission, and stated that they have agreed to give acquired area free of cost and without any condition in lieu of additional FSI in terms of Rule 19.3 and 19.3.1. Admittedly, 40% additional FSI is given as per the said rules and therefore petitioners are not entitled for any compensation.

25. Reference Court has rightly appreciated the rival submissions and has applied relevant provisions and has passed reasoned orders, which are not liable to be interfered in the extra ordinary writ jurisdiction.

26. In Pt. Chet Ram Vashist (supra), the Apex Court has explained the meaning of expression "such conditions" and held, *"at the time of sanction of lay out plan imposing the condition that area specified for park and school shall vest in Corporation is illegal."*

This ruling is distinguishable on facts.

27. In Godrej and Boyce Manufacturing (supra), the land of the owner was shown in development plan as reserved for road. The owner voluntarily surrendered said land after constructing thereon development plan roads at his own cost and as per specifications stipulated in relevant rules. Regulations framed under Maharashtra Regional and Town Planning Act, 1996, provide for FSI in the form of development rights certificate equal to gross area of surrendered reserved plot. These regulations provide for further development right in such cases in the form of FSI equivalent to the area of construction/development done by the land owner. In these facts, it is held that, *"area of construction/development having been fixed by the Regulations as measure of equivalence, landowner was held to be entitled to determination of equivalence in accordance therewith and not on any other basis"*

such as value of the amenity constructed/developed on the surrendered land. Such a change could be effected only by amending the Regulations and not by any executive circular of municipal authorities."

28. In the present case, since the regulations provide for 40% FSI which is availed by the petitioners and their right to compensation was given up and the land was given to respondent free of cost unconditionally, this citation is distinguishable on facts and is of no help to the petitioners.

29. In Bhimashankar Chippa (supra), the Division Bench of this Court held that, "*on acquisition of open land in sanctioned layout by Municipal Corporation, the land does not get vested in Municipal Corporation free of cost merely because of a condition imposed in the order sanctioning layout to transfer such open land to the Municipal Corporation. The land owner who holds the open land in trust for all the plot holders in the layout would be entitled to receive the compensation equivalent to the market value at the first instance."*

In the light of affidavit filed by the petitioners, this judgment is also of no assistance to the petitioners.

30. For the aforestated reasons, no case is made out by the petitioners to exercise extra ordinary writ jurisdiction and to interfere in the impugned orders. There is no illegality or perversity in the orders impugned in the present petition. Writ petitions being devoid of merit are dismissed.

[NITIN B. SURYAWANSHI, J.]