

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

VAISHALI
ANIL
TIKAM

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3816 OF 2004

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Mr. Jayant Maniklal Lunawat)
Address at 1206/B-22, Shivaji Nagar,)
Pune- 411 004)...Petitioner

Versus

1. Pune Municipal Corporation)
A Statutory Corporation,)
Incorporated under the)
Provisional Municipal)
Corporation Act having its)
Officer at Shivaji Nagar, Pune)
2. The Commissioner)
Pune Municipal Corporation)
A Statutory Corporation,)
Incorporated under the)
provisions of Bombay)
Provisional Municipal)
Corporation act having its)
office at Shivajinagar, Pune.)
3. The City Engineer)
Pune Municipal Corporation)
A Statutory Corporation,)
Incorporated under the)
provisions of Bombay)
Provisional Municipal)
Corporation Act having its)
office at Shivajinagar, Pune)...Respondents

Mr. Venkatesh Dhond, Senior Advocate a/w. Ms. Rashmi Raghavan
a/w. Mr. Akshay Kolse Patil a/w. Mr. Parth Jasani i/b. M/s.
Purnanand & Co. for Petitioner.

Mr. Abhijeet P. Kulkarni /a. Ms. Sweta Shah a/w. Mr. Krushna Jaybhay
for Respondent nos. 1 to 3- PMC
Mr. Prashant Mahindrakar, Dy. Engineer, Land and Estates, Pune
Municipal Corporation.

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.**

DATED : 1st AUGUST, 2023

ORAL JUDGMENT [PER SUNIL B. SHUKRE, J.]

1. Leave to amend prayer clause (b) is granted to the Petitioner.
Amendment to be carried out forthwith.
2. Heard. Rule. Rule is made returnable forthwith by consent of
learned counsel for the respective parties.
3. By this Petition, the Petitioner is questioning the legality and
correctness of the communication dated 9th December, 2005 and also
the order passed by the Commissioner of Corporation on 8th July,
2005, whereby a decision was taken by the Commissioner to cancel
12 Development Right Certificates (DRCs) covering area of 3690.01
sq. mtrs. granted to the Petitioner in lieu of his surrender of land
admeasuring 13117 sq. mtrs.
4. The land in question admeasuring 13117 sq. mtrs., according to

the petitioner was surrendered and its possession was handed over to the Corporation with a view to enable the Corporation to grant proportionate TDRs to the Petitioner and since the possession receipt was duly executed by the competent officer of the Corporation acknowledging receipt of 13117 sq. mtrs. of land, in all 26 DRCs were issued in favour of the Petitioner, which covered the area of land surrendered by the petitioner to the Corporation.

5. Learned counsel for the Petitioner submits that suddenly after grant of DRCs, the Petitioner received communication dated 9th December, 2005 informing them that out of 26 DRCs, 12 DRCs were cancelled by the Corporation and when the Petitioner made enquiry into the matter, the Petitioner learnt that the cancellation was done on the specious ground that the actual land/ area surrendered by the Petitioner was lesser than that of the land shown in the record of rights and in the possession receipt and this deficit was of the area equivalent to 3690.01 sq. mtrs. Learned counsel submits that in doing so, no procedure whatsoever was followed and no show cause notice for cancelling the DRCs was issued to the Petitioner. He also submits that there is no provision in the applicable Development Control Regulations conferring power upon the Commissioner to pass an order about cancellation of the DCRs.

6. Vehemently opposing the petition, Mr. Kulkarni, learned counsel for the Corporation submits that it is incorrect to say that no proper procedure in the matter has been followed. He submits that initially, the DRCs in question were suspended and notice was issued to the

Petitioner, but as no satisfactory replies were received from the Petitioner, final order cancelling the DRCs was passed by the Corporation on 8th July, 2005, which was then communicated to the Petitioner by the impugned communication dated 9th December, 2005. He submits that the procedure was properly followed in the present case. He further submits that after the possession of the land was taken over by the Corporation and possession receipt issued to the Petitioner, the concerned officer of the Corporation went to the spot where the land was situated and taking recourse to the Plain Table method, carried out the actual measurement of the land surrendered by the Petitioner to the Corporation and it was found by him that the actual area taken in possession by the Corporation was only 9218.96 sq. mtrs., which was short by area equivalent to 3690.01 sq.mtrs. So, according to him this is not a case fit for any interference in the matter.

7. In the present case, we must say that there is no credible finding recorded by any responsible officer of the Corporation regarding the correct factual scenario of the entire case. On the one hand, it is the contention of the Petitioner that he had surrendered the land having same area as was reflected in the record of rights and also in the possession receipt, which was area 13117 sq. mtrs. and on the other hand, it is the case of the Corporation, that later on it was discovered by the officers of the Corporation that there was deficit in the area that was actually surrendered to the Corporation by the Petitioner and this deficit was to the extent of 3690.01 sq.mtrs. It is also the case of the Petitioner that had it not been the case that land

admeasuring 13117 sq.mtrs was not surrendered by the petitioner to the Corporation, the competent officer of the Corporation would not have issued a possession receipt acknowledging receipt of possession of the land admeasuring 13117 sq. mtrs.

8. The contentions of the Petitioner are supported by the possession receipt issued by the competent officer of the Corporation. It then follows that if the Corporation has some doubt about the total area of the land of which it has received possession actually, the Corporation ought to have adopted proper procedure for finding out the truth of the matter. One of the procedures which could have been taken recourse to by the Corporation, was of taking of joint measurements of the land actually surrendered to the Corporation by the Petitioner, in the presence of the Petitioner, provided the Petitioner consented to such an exercise. If the Petitioner had consented to such an exercise, the officers of the Corporation with the help of the officers of the Land Survey Department could have taken joint measurement of the land in question and could have drawn a panchnama of the joint measurement so taken. But this procedure has not been followed by the Corporation in the present case. If that is so, the only remedy for the Corporation for removal of its doubts was to approach a Civil Court of competent jurisdiction seeking appropriate declaration and necessary directions in the matter. Even that has not been done by the Corporation. So, we find that DRCs in questioned could not have been cancelled.

9. To complicate the whole issue, the Corporation has admittedly

erected a compound wall around the land of which it has taken possession and now the Corporation is saying that some land which ought to have been surrendered to the Corporation by the Petitioner has not been surrendered, and the un-surrendered land is falling outside the compound wall and is situated in the riverbed for which no compensation including the compensation in the form of TDR is admissible. Now, it is too late in the day for the Corporation to take such a plea. Even otherwise, such a plea if taken by the Corporation would undoubtedly give rise to disputed questions of fact. the resolution of which can be made only by appropriate Civil Court, if appropriate proceedings are initiated before it.

10. Even otherwise, we find that there is no provision in the applicable Development Control Regulations which confer power upon the Commissioner to cancel the DRCs on the ground that lesser area has been surrendered to the Corporation than what actually should have been surrendered to the Corporation by the land owner. When we requested learned counsel for the Petitioner and also learned counsel for the Corporation to assist the Court in pointing out existence of any such provision, both of them could not show to us any such provision. Learned counsel for the petitioner even submitted that to the best of his knowledge such provision was non-existent. If this is the position of law, we wonder as to under which authority of law the Commissioner of PMC could have passed an order cancelling 12 DRCs granted to the Petitioner. In fact, in the absence of any such authority having been vested in him, he could not have passed the impugned cancellation order.

11. For the reasons stated above, we find that the impugned order of cancellation of DRCS dated 8th July, 2005 and impugned communication dated 9th December, 2005 made to the Petitioner by the Corporation, both are bad in law and deserve to be quashed and set aside.

12. The petition is allowed. The impugned order dated 8th July, 2005 and impugned communication dated 9th December, 2005 both are ohereby quashed and set aside.

13. Rule is made absolute in the above terms. No costs.

14. We make it clear that this Court has not gone into the question of the claim of the Corporation regarding sharing of the expenditure for construction of compound wall and all rights and contentions in this regard are kept open.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)