



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5618 OF 2014
WITH
CIVIL APPLICATION NO. 2104 OF 2015

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|--|---------------|
| 1. Shri Surendra Dattatray Kadu | } |
| Age 47 years, Occ. Business, R/at, C-2, | } |
| Atal Co-op. Hsg. Society, Bibvewadi Road, | } |
| Near Vasantbaug, Pune-411 037. | |
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| 2. Smt. Suman Dattatray Kadu | } |
| Age 47 years, Occ. Housewife, R/at, C-2, | } |
| Atal Co-op. Hsg. Society, Bibvewadi Road, | } |
| Near Vasantbaug, Pune-411 037. | } |
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| 3. Sou. Surekha Dhamale | } |
| Age 54 years, Occ. Housewife, R/at, Flat No.5, | } |
| Building No. A1, Chintamani Nagar-III, | } |
| Mahesh Society, Bibwevadi, Pune 411 037 | } |
|
 | |
| 4. Sou. Madhuri Jadhav | } |
| Age: 52 years, Occ. Service, R/at. Jedhe Nagar | } |
| Bungalow No. 29, Bibvewadi, Pune-411 037 | } |
|
 | |
| 5. Sou. Vasundhara Waghmare | } |
| Age 49 years, Occ. Housewife, R/at. "Parvati", | } |
| Erandwana, Bhakti Marg, Pune – 411 005. | } |
| | ..Petitioners |

Nos. 1 to 5 through their Power of Attorney Holders:

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|--|---|
| 1. Shri Jaiprakash Sitaram Goel | } |
| Age 72 years, Occ. Business, having address at: | } |
| 3 rd Floor, San Mahu Complex, Opp. Poona Club | } |
| Bund Garden Road, Pune-411 001 | } |

2. Shri Bhushan Bal Kulkarni	}	
Age 46 years, Occ. Civil Engineer, R/at.	}	
11 Apurva, 11 th Lane Corner, Prabhat Road,	}	
Opp. PNB, Pune-411 004.	}	..Petitioners.

V/s.

1. The Principal Secretary	}
Urban Development Department (I),	}
Mantralaya, Mumbai	}

2. The State of Maharashtra	}
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3. The City Engineer	}
Pune Municipal Corporation, Shivaji Nagar	}
Pune-411 005.	}

4. The Commissioner	}
Pune Municipal Corporation, Shivaji Nagar	}
Pune-411 005.	}

5. Pune Municipal Corporation	}
Shivaji Nagar, Pune-411 005.	}

6. Competent Authority under ULC Act,	}
Pune Agglomeration, PMC Building, Swargate,	}
Shankersheth Road, Pune	}

7. Special Land Acquisition Officer	}
Nos. 15 and 16, Udyog Bhavan, Tilak Road,	}
PMC Ward Office, Building, Pune- 411 030.	}

8. Collector, Pune	}
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9. Hridaynath D. Kadu Deshmukh	}	
Age 54 years, Occ. Business	}	
R/at: 31, Padmdarshan Society, Near Treasure	}	
Park, Pune Satara Road, Pune 9.	}	.. Respondents

WITH

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**CIVIL APPLICATION NO. 2104 OF 2015
IN
WRIT PETITION NO. 5618 OF 2014**

- Mr. S.K. Mishra, Senior Advocate with Mr. Nitin P. Deshpande with Ms. Rachana Harpale with Mr. Sanjay S. Gawde, for the petitioners.
 - Ms. M.P. Thakur, AGP for the State/Respondent nos. 1, 2,7 and 8.
 - Mr. R.S. Khadapkar, for respondent nos. 3 to 5.
 - Mr. A.A. Garge with Mr. Jitendra Oak, for respondent no. 9.
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**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, J.J.**

RESERVED ON : 14th JULY, 2023.

PRONOUNCED ON : 20th OCTOBER, 2023.

JUDGMENT : (PER SUNIL B. SHUKRE, J).

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. By this petition, the petitioners are claiming grant of Transferable Development Rights ('TDR' for short), against their land admeasuring 14547.20 sq. mtrs situated in Survey No. 13, Hissa No. 2/1B/2/1 of Dhankawadi, Pune from respondent no.5, the Pune

Municipal Corporation by quashing and setting aside the orders dated 14.03.2011 and 07.10.2013 passed by respondent no. 5.

3. By the communications dated 14.03.2011 and 07.10.2013, respondent no. 5 rejected the claim of the petitioners for grant of TDR on the ground that there was a compromise entered into between the petitioners and the respondent no. 5 on 04.08.1988, whereby, the petitioners had agreed that as against the land surrendered in favour of the respondent no. 5, the petitioners would not claim any compensation of any nature and that they had admitted the fact of surrender of the said land by them to respondent no. 5, free of cost.

4. With such a stand of respondent no.5 a question would arise as to whether or not respondent no. 5 could now deny the compensation of the land belonging to the petitioners which was surrendered to and which is in possession of respondent no. 5. Before we make an attempt to answer the question, it would be necessary for us to briefly refer to the admitted facts in the matter, which are as follows:

- i. The area of the land belonging to the petitioner which was declared to be surplus land as per the order dated 17.05.1977 passed in the proceedings initiated under section 10(1) of the

Urban Land (Ceiling and Regulation) Act, 1976 ('ULC Act' for short) was 57679.20 sq. mtrs.

ii. Out of the said land of 57679.20 sq. mtrs. the petitioners have been found to be eligible for the benefit of policy of the State Government for retaining the surplus land situated in residential zone for the purpose of construction and sale of 70% of the flats in open market and handing over the balance 30% of the constructed flats to the State Government. The petitioners were given back the 30% of the said surplus land which came to be of 14673.20 sq. mtrs.

iii. As per the Corrigendum Order dated 2.06.2004 passed by the ULC authorities, area covered by 60 ft. of D.P Road passing through the said surplus land was declared as 'non surplus' land holding or 'non vacant land' which was equivalent to 6094.76 sq. mtrs. The setback area of this 60 ft. D.P. Road equivalent to 2016 sq. mtrs. was also declared to be a 'non surplus' land holding. Thus, 'non surplus' land holding area came to be at 8110.76 sq. mtrs. (Area-A), which would be eligible for grant of TDR as per the policy of the Government.

Since, 'non surplus' land having area of 8110.76 sq. mtrs is considered to be non vacant land, that area would have to be deducted from the surplus lands holding of the petitioner and when so deducted, the surplus lands holding of the petitioners would come to be at 49567.44 sq.mtrs. (57679.20 sq.mtrs – 8110.76 sq. mtrs = 49567.44 sq. mtrs).

iv. With the change in Government policy relating to return of surplus land to the land owners for the purpose of construction of flats for sale in open market in percentage to the extent of 70% and returning of the remaining flats to the extent of 30% to the State Government, this proportion of 70:30 came to be modified to 60:40 as per the policy of the Government dated 09.02.1988 and further policy dated 23.08.1989 and with these modifications, there was addition to the area of the surplus land to be returned to the petitioners under the earlier 70:30 policy with the result that the petitioners who were already given back the surplus land having area of 14673.20 sq. mtrs., the Government was required to additionally return to the petitioners surplus land having area of 5153.77 sq. mtrs. (Area-B)

5. The learned counsel for the petitioners has contended that the petitioners are also claiming return of additional surplus land to the extent of 282 sq. mtrs. stating that the joint measurement carried out by respondent no.5 along with petitioners for ascertaining the area of surplus land that was actually returned to the petitioners revealed that the petitioners were actually returned lesser surplus land to the extent of 282 sq.mtrs. and therefore, the petitioners are entitled to receive further additional surplus land to the extent 282 sq.mtrs (Area C). in addition to the said surplus land having the area of 5153.77 sq. mtrs There is also no dispute about these facts as they have been revealed after the joint measurement carried out to determine the surplus land actually returned to the petitioners.

6. It is also in not dispute that the petitioners are otherwise eligible for compensation benefit for the lands as denoted by areas A, B and C total of which comes to 13546.54 sq.mtrs. and such eligibility would be in terms of Development Control Rules, 2017 for Pune Municipal Corporation and such land having been used for the purpose of the D.P. Road to the extent covered by D.P. road and utilised for EWS Scheme to the remaining extent, would be eligible for grant of TDR.

7. It is contended that in spite of eligibility of said area for grant of TDR, the benefit of TDR is not being given to the petitioners for the reason of said compromise entered into between petitioners and respondent no. 5 on 04.08.1988, which reason, according to the petitioners, is against the settled position of law.

8. While the above referred facts, as stated earlier, are not in any dispute, what is in dispute here is the right of the petitioners to claim compensation as having survived, after the compromise dated 04.08.1988 entered into between them and respondent no. 5, whereby the petitioners have agreed that for the entire land, the possession of which was handed over by them to respondent no. 5, the petitioners would not take or claim any compensation nor would accept the compensation for such surrender of land by them to respondent no. 5, free of cost.

9. According to learned counsel for respondent no. 5, the main contesting party, this undertaking is binding upon the petitioners and therefore, the petitioners now would not be entitled to claim any compensation for the said land from respondent no. 5. Shri Mishra, learned Senior counsel for the petitioners, however, disagrees and submits that the said compromise, in particular, the term as

mentioned in Clause (4) thereof that the petitioners would not claim any compensation for the land surrendered to respondent no. 5 is something which is like agreeing to do something against the law, and, therefore, is not binding on them on the principle that there is no estoppel against law. But, according to learned counsel for respondent no. 5, such compromise binds the petitioners because it has been acted upon by the parties as could be seen from the order dated 12.10.1988 passed in Writ Petition No. 3203 of 1986 allowing the petitioners to withdraw the Writ Petition No. 3203 of 1986. Learned Senior Counsel for the petitioners in reply submits that the issue involved in the said petition was not relating to claim of compensation against the surrender of land but was in relation to challenge to ULC notification and therefore, the said order of withdrawal cannot be construed as the parties having acted upon the compromise.

10. Before we deal with the effect of the order dated 12.10.1988, allowing the petitioners to withdraw the Writ Petition No. 3203 of 1986, we find it necessary to first consider the law relating to the principle of estoppel against law.

11. In the case of '*Krishna Rai (dead) through Legal Representatives and Ors. vs. Banaras Hindu University through*

Registrar and Ors.¹, the Apex Court has reiterated the law relating to the principle that there is no estoppel against law. It held that principle of estoppel cannot override the law. It further held, by referring to the judgment of the Supreme Court in the Case of ‘**Tata Chemicals Ltd. Vs. Commissioner of Customs**’² that *‘there can be no estoppel against law and if the law requires something to be done in a particular manner, then it must be done in that manner; if it is not done in that manner, it would have no existence in the eye of law.’*

12. Similar is the view taken by the Supreme Court in the case of ‘**The State of West Bengal and Ors. vs. Gitashree Dutta (Dey)**’³, where it observed thus:

“25. It is trite law that there can be no estoppel against a statute. This Court has settled this principle in a catena of Judgments, starting as early as 1955. A Constitution Bench of this Court in ‘**Thakur Amar Singhji v. State of Rajasthan**’, reported in (1955)2 SCR 303, held as follows:

“.....We are unable on these facts to see any basis for a plea of estoppel. The letter dated 28.11.1953 was not addressed to the petitioner; nor does it amount to any assurance or undertaking not to resume the jagir. And even if such assurance had been given, it would certainly not have been binding on the Government,

1 (2022) 8 SCC 713

2 (2015) 11 SCC 628

3 2022 live law (SC) 527

because its powers of resumption are regulated by the statute, and must be exercised in accordance with its provisions. The Act confers no authority on the Government to grant exemption from resumption, and an undertaking not to resume will be invalid, and there can be no estoppel against a statute”.

26. A Constitution Bench of this Court in ‘*Electronics Corpn.of India Ltd. v. Secy. Revenue Deptt., Govt. of A.P.*’, reported in (1999) 4 SCC 458, also upheld this principle and held as follows:

“21. There are two short answers to this contention. In the first place, there can be no estoppel against a statute.....”

27. This Court in ‘*A.P. Dairy Development Corpn. Federation vs B Narasimha Reddy*’, reported in (2011) 9 SCC 286, has held that when the actions of the government are not in conformity with law, the doctrine of estoppel would not apply. This Court observed:

“40.....The State, being a continuing body can be stopped from changing its stand in a given case, but where after holding enquiry it came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply.”

.....”

13. It would be clear that even if there is any agreement between the parties to do a particular thing or omit to do a thing, which is contrary to law, the agreement would not be binding upon the parties by the application of principle that there is no estoppel against law.

14. Now, we have to find out if there is any law involved here against which the said agreement is pitted. In our considered view the law which has come into play in this case is the law relating to right to property, under Article 300-A of the Constitution of India. The right to property under Article 300-A of the Constitution of India is not only a constitutional right but also a human right, as held in the case of '*Hindustan Petroleum Corpn. Ltd vs Darius Shapur Chenai & Ors*⁴'. That being so, it cannot be taken away, except in accordance with the procedure established by law, as held in the case of '*T. Vijayalakshmi & Ors vs Town Planning Member & Anr*⁵'. The law in this sense, it is held in the case of '*Bishamber Dayal Chandra Mohan Vs. State of U.P. & ors*⁶', is a State made law or any rules or by laws having the force of law or any positive law.

4 2005 SCC 627

5 2005 (12) SCC 77

6 AIR 1982 SC 33

15. In the context of present case, the right to property is taken away by the provisions made in section 126 of the Maharashtra Regional Town Planning Act, 1966 ('MRTP Act', for short) which prescribe that the State may acquire private land subjected to reservation under a Development Plan. It further provides that such land can be acquired by any one of the modes indicated therein, which could be on payment of amount of compensation as agreed between the parties or in lieu of such amount, by grant of FSI or TDR against surrender of land, free of cost and from encumbrances or by compulsory acquisition in terms of the provisions contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In other words, the procedure prescribed in the MRTP Act for depriving a person of his right to property envisages payment of compensation in one form or the other therefor and it is in consonance with the exposition of the concept of right to property under Article 300-A made by the Supreme Court in its several judgments, some of which are discussed in ensuing paragraphs.

16. In the case of '*Hindustan Petroleum Corpn. Ltd vs. Darius Shapur Chenai*' (*Supra*), the Apex Court has held that there can be no

interference with the right to property of a person, unless it is acquired for a public purpose and reasonable compensation therefore, be paid. The relevant observations of the Apex court, as contained in Paragraph 6, are reproduced hereinbelow:

“6.....Having regard to the provisions contained in [Article 300A](#) of the Constitution of India, the State in exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

17. Similar is the view taken by the Apex Court in the case of **‘N. Padmamma vs. Ramakrishna Reddy’**, when it held thus:

“21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed.”

18. It is thus clear that when a person is deprived of his land by its acquisition or by its utilization for a public purpose by the State or the planning authority, as has happened in the present case, compensation therefor, must be paid to the land owner like the petitioners in accordance with law. In the present case, in spite of

⁷ (2008) 15 SCC 517

utilisation of the aforesaid land of the petitioners for a public purpose, the respondent no. 5 has not paid any compensation to the petitioners and now it is taking a shield for such non-payment of compensation under the compromise dated 04.08.1988. This compromise between the petitioners and respondent no. 5, insofar as it relates to the petitioners agreeing for not claiming any compensation against the surrender of the said land by them to the respondent no. 5 for a public purpose would be clearly contrary to the procedure established by law i.e. Section 126 of the MRTP Act read with Article 300-A of the Constitution of India, and therefore, would be hit by the principle of no estoppel against law. That would make the said agreement entered into by the petitioners in favour of the respondent no. 5 as non-est and non-existent in law, as held in the case of '**Tata Chemicals Ltd.**' (*supra*). The reason is obvious and we have said it earlier a few times over. Right to property is a constitutional right under Article 300-A of the Constitution and therefore, its denial must be in a manner prescribed by law, which is section 126 of the MRTP Act and when it is not done in that manner, the act of denial of such right would have no existence in the eye of law.

19. Learned counsel for respondent no. 5 has contended that in the present case the facts are somewhat different and therefore, the principle of no estoppel against law cannot be successfully applied to them. He submits that the compromise dated 04.08.1988 has been acted upon by the parties because that compromise was filed in Writ Petition No. 3203 of 1986, which became the reason for the High Court to allow the petitioners to withdraw that petition as could be seen from the order dated 12th October 1988.

20. Mr. Mishra, learned Senior counsel for the petitioners submits that the issue involved in that petition was entirely different and so it is a fallacy to say that the said compromise was acted upon insofar as the question of claiming or giving up claim of compensation against surrender of land by the petitioners to respondent no. 5 for public purpose is concerned.

21. In our view, there is great substance in the argument of learned Senior counsel of the petitioners and no merit in the submission of learned counsel for the respondent no.5. When we consider the prayers of Writ Petition No. 3203 of 1986, we notice that the issue involved in that petition was entirely different and it related to the challenge made to the legality or otherwise of the notification

issued by the competent authority under Section 10(1) and Section 10(3) of the ULC Act in respect of the land of the petitioners. In that petition, the petitioners had also sought a declaration that the ULC Act was *ultra vires* the Constitution and the petitioners had alternatively sought reading down of the relevant provisions of the ULC Act in a manner as to exclude the land under cultivation of the petitioners from the definition of 'vacant land'. All these prayers were confined to provisions of the ULC Act and whereas the challenge made in this petition is not about the legality or otherwise of the action taken under the ULC Act, but is about the denial of claim of compensation. Then, the compromise dated 04.08.1988 was reached between the petitioners and the respondent no. 5 for the reason that there was an interim stay granted by this Court in Writ Petition No. 3203 of 1986 because of which the construction work relating to the EWS Rehabilitation Scheme going on at Bibvewadi and Dhankawadi had come to a halt due to which poor sections of the society were getting affected and these beneficiaries would have got no respite unless the stay was vacated. It was thought that best way of getting the stay vacated was by quick disposal of the writ Petition, for which, it was considered necessary to have a settlement with the petitioners. That

was the reason why the compromise between the petitioners and the respondent no. 5 was arrived at with a view to seeking early disposal of the petition so that way for going ahead with the construction work relating to Rehabilitation scheme was cleared. This is evident from the recitals made in the deed of compromise dated 04.08.1988 (page 102). These recitals show that the purpose of the compromise was to clear the way for proceeding with the Rehabilitation Scheme by obtaining order of vacating of the stay, which became possible due to withdrawal of the petition with the leave of the Court. These facts would show that only because the said compromise was filed in this Court and order of disposal of the writ Petition was thereafter obtained, it cannot be said that the compromise was acted upon. In order that an agreement is seen to be acted upon, the intention of the parties behind the agreement is important. If it is different from what appears from the words used in the agreement, the meaning of the words “agreement being acted upon” would have a different connotation and would convey a different meaning of the words “acted upon”, which in a given case could be of filing of compromise in Court. Here, the intention of the compromise was to obtain vacating of the interim stay which was fulfilled by this Court when it allowed the petitioners to

withdraw the writ Petition. This was not “acting upon the agreement” to claim no compensation. The agreement is, therefore, rejected.

22. There is also an argument made on behalf of respondent no. 5 that there is an inordinate delay in claiming compensation in the present case. We must say that now this issue is no longer *res-integra* as the Supreme Court, in the case of ‘***Vidya Devi v/s State of Himachal Pradesh and Ors.***⁸ has held that cause of action in such a case is continuing and therefore, there would be no question of delay in rising a claim of compensation for deprivation of right to property. The argument is rejected.

23. In the result, we find that this petition deserves to be allowed and it is allowed accordingly.

24. Respondent no. 5 is directed to grant Transferable Development Rights (TDR) against land admeasuring area of 13546.54 sq.mtrs the possession of which is already taken, to the petitioners by taking into consideration the provisions of Unified Development Control and Promotion Regulations of 2020 (i.e. UDCPR2020), ITS 11.2.4, specifying the quantum of TDR in respect of land under reservation acquired by a Municipal Corporation in non-congested areas, within a period of twelve weeks from the date of the order.

8 ((2020) 2 SCC 569

25. Rule is made absolute in the above terms.
26. Writ Petition is disposed of accordingly.
27. In view of the above, Civil Application No. 2104 of 2015 does not survive and the same is disposed of.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)