

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6420 OF 2023**

Vijay Kashiram Sawant ...Petitioner
Versus
Thane Municipal Corporation Through Its ...Respondent
Commissioner

**Mr Pranil Sonawane, with Suhas Oak, i/b Nikhil Shinde, for the
Petitioner.**
**Mr Mandar Limaye, for Respondent No. 1-Thane Municipal
Corporation.**

**CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 29th August 2023**

PC:-

1. Rule. Returnable forthwith without an Affidavit in Reply because no Affidavit in Reply is possible.

2. There is no dispute that the Petitioner's land admeasuring 2708.14 sq mts from CTS No. 612 Sector 5, at Village Majiwada, District Thane was taken over by the Thane Municipal Corporation for various public purposes including primary school, playground, gymnasium and DP road. Possession is with the Corporation. It is not contentious that no compensation in cash has been given to the

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Petitioner. In fact, it is not contentious that no compensation of any kind has been given to the Petitioner. The Petitioner has not demanded cash compensation whether under the Land Acquisition Act, 1894 or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. What he has been seeking since 2012, a good 11 years ago, is that his claim for being granted transferable rights and a development rights certificate should be considered and processed.

4. It is abundantly clear to us that private property cannot be taken over for a public purpose except in accordance with law. Even if there is forcible acquisition, to take physical possession of property without offering any recompense or compensation at all would prima facie run afoul of Article 300-A of the Constitution of India. That may no longer be a fundamental right but it is nonetheless a constitutional right. We are not even on the amount of TDR or the quantum of compensation but simply that no public body can acquire land for free without providing some form of adequate compensation.

5. The Petition itself came to be filed in 2023 because, for reasons that are unclear to us, a Civil Court believed that it could not pass an order for such reliefs. We do not think that is a correct approach in law. But we will let that pass.

6. Mr Limaye fairly states that the Petition itself may be allowed to be treated as a representation along with all the annexures. Mr Limaye states that the Executive Engineer of the Town Planning Authority of the Thane Municipal Corporation will take an appropriate decision on the representation. We are making it clear that we are not asking the Executive Engineer to decide the Writ Petition. We have decided the Writ Petition. He is only to decide the amount of TDR or other compensation that is payable to the Petitioner in respect of the land described above.

7. Mr Limaye asks for reasonable time for this purpose. That decision is to be taken and the application is to be disposed of with a concise reasoned order by 3rd October 2023. All contentions before the Executive Engineer are expressly left open. Liberty to the Petitioner to apply thereafter.

8. Liberty to the Petitioner to file a compilation of additional documents with Affidavits provided this is done by 8th September 2023.

9. The Petition is disposed of in these terms. No order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)