

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4864 OF 2021

Smt. Anandibai Kisan Jabar and Ors. ... Petitioners

V/s.

The Commissioner, Thane Municipal ... Respondents
Corporation and Anr.

Mr. G.S. Godbole a/w. Mr. Sandeep D. Shinde I.by Ergo Juris for
petitioner.

Mr. R.A. Thorat, Senior Advocate a/w. Mr. N.R. Bubna for respondent
nos. 1 and 2-Corporation.

Ms. M.P. Thakur-AGP for respondent no. 3-State.

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

DATE : 12th JULY 2023.

ORAL JUDGMENT. : (PER SUNIL B. SHUKRE)

. Heard. Rule. Rule made returnable forthwith, by consent of
learned counsel for the respective parties.

2. This is a case wherein the land jointly belonging to the
petitioners has been taken in possession of by respondent-Corporation
and road is also constructed on the land taken in possession of by the
respondent-Corporation. The possession of area of land which has been
thus utilised by the Corporation is about 2088 sq. meters. However, for

utilisation of the land in such a fashion, it is an admitted fact, the Corporation has not paid any monetary compensation to the petitioners. Of course, the Corporation has shown its willingness to compensate the loss of the land of the petitioners in some other way or to be precise by granting TDR but the proposal is not acceptable to the petitioners and the petitioners desire that the land be acquired by following the procedure of contemplated in Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The position of law applicable to such a fact situation is now well settled. In the case of **Shree Vinayak Builders and Developers V/s. State of Maharashtra and Others** decided on 13th October 2022, full bench of this Court, of which one of us has taken a view that no land owner could be compelled to accept the TDR unless there is a concluded contract for accepting the TDR in view of surrender of the land.

4. In the present case, there is no denying the fact that there has been no concluded contract between the petitioners and the respondents-Corporation regarding surrender of the land and offering of TDR's against the surrender of the land. So, the issue involved in the present petition is squarely covered by the view taken by the full bench of this Court.

5. In view of the above, we find that the petition deserves to be allowed and it is allowed by directing the respondent -Corporation

to acquire the subject land affected by construction of public road comprising area of 2088 sq. meters by following procedure prescribed in Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, starting from its section 19 and onward and paying monetary compensation accordingly within a period of four months from the date of receipt of writ of this Court.

6. Rule is made absolute in the above terms.

7. The petition is disposed of accordingly.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)