

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14602 OF 2018

M/s. P. P. Associate
Partnership Firm
Through its partner
Shri Krishna Gopal Palande
Having office at:-204,
Sahakar Jyot, About TDC Bank,
Station Road, Bhayander (West)
Dist:- Thane – 401 101.

.Petitioner

Vs.

1. Mira Bhayander Municipal Corporation
Through its Commissioner
Having office at
Swargiya Indira Gandhi Bhavan
Chhatrapati Shivaji Marg,
Bhayander (West),
Dist:- Thane – 401 101.

2. State of Maharashtra
Through Secretary,
Urban Development Department

.Respondents

Mr. A. V. Anturkar, Sr. Adv. a/w. Mr. Sugandh B. Deshmukh for the
Petitioner.

Mr. N. R. Bubna for Respondent No.1-Corporation.

Ms. M. S. Srivastav, AGP for Respondent No.2-State.

CORAM : SUNIL. B. SHUKRE AND
M. W. CHANDWANI, JJ.

RESERVED ON : 02.02.2023

PRONOUNCED ON : 12.04.2023

JUDGMENT (PER : M. W. CHANDWANI, J.)

The Petition challenges the order/communication of Respondent No.1 dated 8th October 2018 and Clause 3.0(vi) of Appendix- B to the Government Resolution dated 29th January 2016 as well.

2. The facts relevant to dispose of the Petition are as under:

The land of the Petitioner was acquired by Respondent No.1 for public purposes. Respondent No.1 agreed to give Development Right Certificate [for short “DCR”] in the form of Transferable Development Right [for short “TDR”] in lieu of surrender of net area of 24611.75 of land by the Petitioner. Respondent No.1 issued the DCR in respect of area of 10,387 sq.mtrs. vide DCR 239 dated 30th May 2008. Respondent No.1 did not grant DCR in respect of balance area of 14,224.75 sq.mtrs. to the Petitioner therefore, Writ Petition Nos. 2440 of 2009 and 2441 of 2009 came to be filed. In the said Petitions, consent terms were filed. It was agreed that for compensation of remaining land, the Petitioner shall file claim before the Land Acquisition Officer for deciding compensation to be paid to the

Petitioner. Land Acquisition Officer fixed monetary compensation. However, Respondent No.1 neither gave requisite TDR in the form of DCR nor paid the monetary consideration to the Petitioner. Therefore, another Writ Petition No.7338 of 2014 came to be filed. The said Petition came to be disposed of with a direction to the Petitioner to appear before Town Planner of Respondent No.1 on 1st February 2016 and Respondent No.1 shall take decision for grant of TDR to the Petitioner.

Meanwhile, State Government framed the New Regulations for grant and use of TDR by issuing notification dated 29th January 2016 (for short “**New Regulations**”). In New Regulations, there is provision for grant of additional TDR of 1.2 times in lieu of surrender of land for public amenity. The Petitioner made a representation dated 1st February 2016 requesting the Respondent No.1 to grant TDR as per New Regulations. By communication dated 8th October 2018, Respondent No.1 rejected the claim of the Petitioner on the ground that as per Clause 3.0 (vi) of New Regulations, the Petitioner is not eligible for TDR under New Regulations. Feeling aggrieved with the refusal and Clause 3.0(vi) of New Regulations, the present Petition is filed, challenging the communication dated 8th October, 2018 of Respondent No.1 and the Clause 3.0 (vi) of New Regulations as well.

3. Respondent No.1, in the affidavit-in-reply has contended that the Petitioner is not entitled to get the TDR as per Clause 3.0 (i) and (vi) of New Regulations. According to Respondent No. 1, since partly compensation was already paid to the Petitioner and possession of the land has already been handed over to Respondent No.1, prior to date of notification dated 29th January 2016 therefore, the Petitioner will not be eligible for additional TDR as per New Regulations. Even, the Petitioner is not entitled as per Unified Development Control and Promotion Regulations, 2020 (for short, “UDCPR”) also in view of clause 11.2.3(i) of UDCPR.

4. Heard learned Senior Counsel Shri Anturkar for the Petitioner as well as learned counsel Mr. N. R. Bubna for Respondent No.1-Corporation and learned counsel Ms. M. S. Srivastava, AGP for Respondent No. 2-State. We have perused the record of the case.

5. Indisputably, the land of the Petitioner was acquired by Respondent No.1 in the year 2008. Respondent No.1 issued TDR for area of 10,387 sq. mtrs. to the Petitioner towards the part of compensation against acquisition. Even, the Petitioner has handed over the possession of the land to Respondent No.1 prior to 29th

January 2016, on which New Regulations came into force by the notification. Since, the impugned communication speaks about Clause 3.0(vi) of New Regulations, we proceed to examine the case in light of Clause 3.0 (vi) of New Regulation.

6. As per Clause 3.0(vi) of New Regulations, the cases where the lawful possession has been taken are not eligible for TDR under New Regulations. By this Writ Petition, Clause 3.0 (vi) of New Regulations has been challenged as arbitrary in nature by claiming it creates impermissible classification between the cases, where lawful and unlawful possession has been given and the person who has given lawful possession, is disqualified from getting the benefit of TDR. Since, the classification has no rational relation to the object sought to be achieved, Clause 3.0 (vi) is in violation of Article 14 of the Constitution of India.

7. Learned Senior Counsel Mr. Anturkar on behalf of the Petitioner would submit that Clause 3.0 (vi) of New Regulation creates discrimination between two categories of persons i.e. persons who give lawful possession of land to Respondent No.1 and persons who give unlawful possession of land to Respondent No.1. According to him, a

person, who gives lawful possession of the land is deprived of all the benefits of New Regulations, which entitle grant of TDR at the rate double than the one given in earlier regulations, which were in vogue prior to coming into force of New Regulations. According to him, if unlawful possession of land is given to Respondent No.1, the person will be entitled to the additional TDR under New Regulation. This is not only the discrimination and violation of Article 14 of the Constitution of India, but it also amounts to rewarding a person who gives unlawful possession of the land to Respondent No.1, so submits the learned counsel. He, therefore, seeks to quash the said clause 3.0 (vi) of the New Regulations, being unconstitutional.

8. Learned counsel appearing on behalf of Respondent No.1 submitted that Clause 3.0 (vi) does not discriminate any class of people and according to him, for applicability of Scheme or Regulation, cut off date or contingencies are to be seen which are determining factors for applicability of a particular scheme or regulations. For applicability of New Regulations, the Government was of the view that in the cases where the possession of the land is already taken, the owner would not be eligible for the TDR as per New Regulations as per Clause 3.0 (vi).

9. We have gone through New Regulations which came into force with effect from 29.01.2016. They prescribe grant of TDR in lieu of the surrender of the land for public amenities. Clause 3.0 describes the cases which are not eligible for TDR under New Regulations. The Clause 3.0 (vi) of New Regulations, on which Respondents rely and the Petitioner claims to be arbitrary and unconstitutional is reproduced as under:

“3.0 The cases not eligible for TDR

----X----X----X----X----

“(vi) Where lawful possession including by mutual agreement/or contract has been taken.”

10. Perusal of this Clause shows that it does not refer to ‘giving’ of lawful possession by the person whose land has been acquired. It refers to ‘taking’ of lawful possession by the acquiring body. Clause 3.0 (vi) excludes the cases from applicability of New Regulations, in which possession of land has already been taken lawfully by the authority. Clause 3.0 (vi) makes distinction between the cases in which the possession has been taken by following due procedure of law and the cases where possession has been taken without following procedure established under the law. The distinction itself clarifies that, in the opinion of the Authority framing the

Regulations, the persons in first and second category are not similarly situated/circumstanced and there appears to be rationale behind it. When possession is lawfully taken, all rights in respect of that property come to an end and, therefore, any claims arising therefrom are liable to be settled under the Regulations then in force, which is not so in a case, where law does not see that possession is validly taken. When the possession is not validly taken, the owner does not lose his right to be in possession of the property and thus, would have a stake in the property which is required to be settled as per the Regulation in force on the day the possession is validly taken. If there is any charge in position of law before possession is lawfully taken, for the good or for the bad, from the view point of the owner and the owner has to accept it with pleasure or displeasure as the case may be. In such a case, we cannot say that his claim be settled as per Old Regulations, they being more beneficial and the reason is that there is no arising of a claim of TDR in respect of the property, which claim would arise only after possession is validly taken. In case of possession, being taken lawfully a claim to receive TDR arises the moment possession is validly taken and, therefore, it has to be settled under the Regulation which was in force at that time. So, there is a rationale behind Clause 3.0 and it separates two categories not similar to each other, which is permissible, and even necessary to prevent arbitrariness in grant of TDRs. Thus, the Clause

3.0 (vi) does not create any classification between people of a group, who are similarly situated.

11. The fundamental principle is that Article 14 of the Constitution of India forbids discrimination. It prohibits the State from denying the persons equal treatment, provided that they are equal and similarly situated but, it permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

12. This takes us to the object of making sub-ordinate legislature i.e. New Regulations. In the wake of the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in place of Land Acquisition Act, 1984, the State Government felt it right to allow fair compensation for the land reserved for public amenities under D.P. by granting additional TDR. The existing regulations of TDR under the Act of 1966 were inadequate. On the recommendation of the Study Group formed by the State Government, New Regulations are framed

to cover the new cases of the land acquisition. New regulations are brought to cover the new cases of the land acquisitions by grant of TDR as per new policy. However, there were pending cases in which, major events of acquisition proceedings occurred, which are of such a nature as if the acquisition proceedings are completed. There were other pending cases in which those major events did not occur and so, the distinction line had to be necessarily drawn between the two.

13. It appears to us that with a view to draw the line between the abovesaid two types of cases, one in which lawful possession of the land was taken by the authority under acquisition proceedings and two where it was not taken, the provision was incorporated in sub-clause (vi) in Clause 3.0 of New Regulations to exclude applicability of New Regulations to the former cases. The cases of the persons, whose land has been taken by the authority without following due process of law, i.e. unlawfully, were treated as good as no acquisitions made, and therefore, they have been made to be governed by the New Regulations. Thus, Clause 3.0(vi) makes distinction between the two categories and has a logic behind it and it shows its nexus with the object sought to be achieved by the scheme. Thus, the classification, if any, qualifies the test of intelligible differentia.

14. To conclude, we do not agree with the argument of learned Senior Counsel Mr. Anturkar that Clause 3.0 (vi) violates Article 14 of the Constitution of India being discriminating and arbitrary. Accordingly, the Petition is dismissed.

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signed by
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(M.W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)