



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2511 OF 2019

1. Runwal Township Pvt. Ltd.	}	
A private Limited Company	}	
Registered under the provisions	}	
of Companies Act, 1956,	}	
having its Registered office	}	
at Runwal and Omkar E Square,	}	
5 th floor, Opp. Sion Chunabatti Signal,	}	
Sion (E), Mumbai- 400 022.	}	
2. Kishorkumar Jain	}	
Director of Petitioner No.1,	}	
having his office address	}	
at Runwal Township Pvt. Ltd.	}	
Runwal and Omkar E Square,	}	
5 th floor, Opp. Sion Chunabatti Signal,	}	
Sion (E), Mumbai- 400 022.	}	...Petitioners.

V/s.

1. State of Maharashtra	}	
Urban Development Department	}	
through the office of the	}	
Government pleader,	}	
Original Side, Bombay High Court.	}	

2. Municipal Corporation of Greater Mumbai,	}	
a statutory corporation established	}	
under the MMC, Act 1888 having	}	
its office at Mahapalika Bhavan,	}	
Mahapalika Marg, Mumbai-400 001.	}	

3. Municipal Commissioner	}	
Municipal Corporation of Greater Mumbai,	}	

Mahapalika Bhavan, Mahapalika Marg, }
Mumbai-400 001. }

4. Chief Engineer, Development Plan }
Municipal Corporation of Greater Mumbai, }
Mahapalika Bhavan, Mahapalika Marg, }
Mumbai-400 001. }

5.Executive Engineer, Development Plan }
Municipal Corporation of Greater Mumbai, }
Mahapalika Bhavan, Mahapalika Marg, }
Mumbai-400 001. }

6. Assistant Engineer, (Maintenance) }
D-Ward, Municipal Corporation of }
Greater Mumbai, }
Jobanputra Compound, Nana Chowk, }
Mumbai- 400 007. }

7. Assistant Engineer (Survey), }
City Municipal Corporation of Greater Mumbai, }
Mahapalika Bhavan, Mahapalika Marg, }
Mumbai-400 001. }

... Respondents.

- Mr. Saket Mone a/w. Ms. Jayshree Ramachandran, with Mr. Shrey Shah I.by Vidhii Partners, for the petitioners.
- Mr. Yashodeep Deshmukh a/w. Mr. Kunal Waghmare I.by Mr. Sunil K. Sonawane, for the Respondent – BMC.
- Mr. Prasanna Jamgaonkar, Sub Engineer, “DP” Department (BMC) present.

CORAM

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

RESERVED ON : 18th JULY 2023

PRONOUNCED ON : 10th OCTOBER 2023

JUDGMENT : (PER SUNIL B. SHUKRE, J)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Petitioner No. 1 is the owner of larger plot bearing Cadastral Survey No. 233 of Malabar-Cumbala Hill, Division 91, Lady Laxmibai Jaghmohandas Road, Nepeansea Road, D-Ward, Mumbai, out of which an area of 404.44 square yards being the setback affected area (hereinafter referred to as '**the setback land**') of a public street was acquired by respondent no. 2 as far back as 17th April 1969 and thereafter it become a part of a public street. The entire plot was originally owned by one Meghji Gopalji and his wife and under the conveyance deed dated 12th August 2011 and another conveyance deed dated 30th December 2010, registered on 6th January 2011, the entire plot including the right in respect of the setback land was transferred to the petitioner no. 1. There was exchange of correspondence between officers of the Corporation and the erstwhile owners of the said property for payment of compensation for acquisition of the setback land. By the letter dated 29th June 1976, addressed to the Corporation, the erstwhile owners of the said property informed the Corporation that they did not receive any compensation for the setback land and they requested to inform them of the status about compensation that was to be paid to them. In

response thereto officer of the respondent no. 2 informed the erstwhile owners of the said property to depute their representative to the office of the Corporation on any working day. It appears that the erstwhile owners then informed the Corporation that instead of compensation they would like to have the benefit of FSI. By the letter dated 22nd May 2006, the erstwhile owners again informed the Corporation that they did not receive any compensation for the land or reconstruction of compound wall even though the possession of the land was taken over as indicated in the letter dated 2nd April 1973. The erstwhile owners, by their letter dated 23rd December 2009 again reiterated their demand for payment of compensation in the form of FSI. The compensation, however, was not paid.

3. The issue of payment of compensation in the form of FSI was continuously pursued by the erstwhile owners of the land but it appears that no benefit of FSI as demanded by them was made available to the erstwhile owners. According to the petitioners, the internal notings of the officers of the Corporation which have been filed on record disclosed that the setback land was taken into possession on 17th April 1969 but no record regarding payment of compensation in any form for acquisition of the setback land was traceable.

4. The petitioners submit that after purchasing the said property from the erstwhile owners, the matter was taken up on behalf of petitioner no. 1 with the Chief Engineer Development and Planning, Municipal Corporation of Greater Mumbai i.e. respondent no. 2 and

another request for releasing monetary compensation or giving benefit of FSI in lieu of acquisition of the setback land was made on 7th July 2018. Ultimately by the impugned communication dated 7th December 2018, the respondent no. 2, informed the petitioner no. 1 that its request for releasing of monetary compensation/FSI in lieu of acquisition of setback land from out of the said property could not be honoured for the reason that the setback land was acquired by the Corporation as far back as 17th April 1969.

5. Being aggrieved by the same, petitioners are before this Court seeking quashing of the impugned communication and issuance of mandamus to the Corporation for payment of monetary compensation or grant of FSI in lieu of the acquisition of the setback land.

6. The Corporation has not denied acquisition of the setback land for a public street widening way back in the year 1969, but it has rejected claim on the ground that there is an inordinate delay and there are laches as well on the part of the petitioners in asserting their rights. It submits that the petitioners have not submitted any documentary evidence regarding non-receipt of compensation. It submits that since the petitioner no. 1 purchased the land in the year 2011 on “as is where is basis” and in the year 2011 the land was already a part of a public street, the petitioners would not have any right, title and interest in respect of the setback land and thus would have no right to claim any compensation in respect thereof. It also submits that the Corporation had called upon the erstwhile owners of

the said property to remain present in the office of the Corporation and accept the compensation determined by the Corporation but there was no response from them and in fact, there is no explanation given by the petitioners as to why the right to receive compensation was not asserted by the original owners till June, 1976 when the setback land was acquired in the year 1969.

7. Learned counsel for the petitioners, relying upon '*Vidya Devi v/s State of Himachal Pradesh and Ors.*¹ submits that the conveyance deed registered on 30th December 2010 clarifies that whatever right the erstwhile owner had in respect of the setback land, was also transferred along with the remaining property to the petitioner no. 1 and this is not a case where there are any latches on the part of the erstwhile owners as well as petitioner no. 1 for the reason that the erstwhile owners and petitioner no. 1 had been consistently demanding payment of compensation or granting of benefit of FSI since the year 1976. He also submits that right to property under Article 300-A is a Constitutional right and has been elevated to the status of human right and therefore, if any property of a citizen of Indian is taken away by the State, the State is under an obligation to pay a reasonable compensation in one form or the other. He also submits that it is no longer *res-integra*, as held in the case of '*Kamla Housing v/s. Municipal Corporation of Greater Bombay and Ors.*², that as per the own policy of the Corporation, a person whose setback land is acquired by the Corporation is entitled to receive the

1 (2020) 2 SCC 569

2 2012 (5) Mh.L.J.181

monetary compensation or benefit of FSI in lieu of the monetary compensation.

8. Shri Deshmukh, learned counsel for the Corporation submits that there is an inordinate delay in the present case, which has not been explained properly by the petitioner no. 1 or the erstwhile owners of the larger property of which setback land was a part in claiming compensation from the Corporation and therefore, this petition deserves to be dismissed. He further submits that even otherwise, the setback land having been already acquired in the year 1969 and the petitioner no. 1 having come into picture in the year 2011, now cannot claim any compensation or benefit of FSI. He further submits that there is no proper explanation given by the petitioner no.1 or the erstwhile owners of the said property for not claiming any compensation during the period from 1969 till 1976. He further submits that the erstwhile owners have not been joined as a party to this petition. On these grounds, he urges that this petition be dismissed.

9. There is no dispute about the acquisition of the setback land for widening of a public street in the year 1969. The issue is, however, about the compensation and the petitioners say that it has not been received by the earlier or present owner. The Corporation, in response, states that the petitioners have not produced any documentary evidence showing that no compensation whatsoever for acquisition of the setback land was received by them. But, we find that the submission is not true. The voluminous correspondence between

the erstwhile owners and the Corporation and lastly between the petitioner no. 1 and the Corporation is placed on record, the veracity of which has not been disputed by the Corporation. This correspondence clearly establishes the fact that no monetary compensation or benefit of FSI has been granted to the erstwhile owners or the present owner i.e. the petitioner no. 1. There is, therefore, no gainsaying on the part of the Corporation that no evidence has been brought on record regarding non-payment of compensation to either the erstwhile owners or the present owner in lieu of acquisition of the setback land by the Corporation.

10. The Corporation has also contested the claim on the ground that the erstwhile owners have not been joined as parties to this petition and in their absence, the lis involved in this petition could not be properly adjudicated upon. In response to such an objection of the Corporation, the petitioner no. 1 has filed an additional affidavit-in-reply stating that erstwhile owners executed Power of Attorney dated 30th December 2010, registered on 6th January 2011 and another Power of Attorney dated 12th August 2011, registered on the same day of 12th August 2011 appointing the petitioner no. 1 through its authorised representative as true and lawful attorney acting on behalf of the erstwhile owners to execute and perform various acts and deeds mentioned therein which included authority given to petitioner no. 1 to obtain benefit of FSI in respect of the setback land acquired by the Corporation. Copies of registered deed of Power of Attorney have also been placed on record by the petitioners. There is no denial to these averments which are supported by the said registered deeds of Power

of Attorney containing a clause authorising petitioner no. 1 to obtain benefit of FSI in respect of the acquisition of setback land by the Corporation. With such authority, we do not think that the erstwhile owners were necessary parties to this petition.

11. As regards the contention of the Corporation that the petitioner no. 1 has acquired the said property including the setback land at a time when the setback land had already become a part of the public street way back in the year 1969, thereby dis-entitling the petitioner from claiming any compensation whatsoever, we must say that although, it is true that the setback land had become part of a public street and that the erstwhile owners were no longer owners of the setback land, the right which had accrued to the erstwhile owners to claim compensation in lieu of acquisition of the setback land has remained alive in the facts and circumstances of this case, which can be seen from the voluminous record of correspondence between erstwhile owners and the Corporation and later on between the petitioner no. 1 and the Corporation and other documents, some of which have been referred to by us earlier.

12. The conveyance deed dated 30th December 2010, registered on 6th January 2011 and conveyance deed dated 12th August 2011 registered on the same day of 12th August 2011 are important in the context of right of petitioner no. 1 to claim compensation. Both these documents show that the saleable property described in schedules to these conveyance deeds included the setback land and what was conveyed by the erstwhile owners to the petitioner no. 1 was in the

nature of right, title and interest in the saleable property. In the year 2011, the setback land having been already acquired by the Corporation was obviously not available for sale and therefore, even if that was shown to be included in the “saleable property” as described in schedules to these documents, in reality it was not and could not have been a subject matter of sale deed at least in physical form. A question would then arise- would the Corporation as the present owner of the setback land now, be absolved of its liability to pay compensation altogether? Answer to the question would have to be no, though the question as to whom it be paid would depend for its answer upon what is actually transferred to the petitioner no. 1 under the conveyance deeds in question. Of course, in normal course of circumstances it would be paid to the land owner as a matter of course, considering the nature of right to property in the contemplation of the Constitutional scheme under Article 300-A. It is well settled law that right to property under Article 300-A of the Constitution of India is, if not a fundamental right, a Constitutional right and as held in the case of **‘Vidya Devi’** (Supra), it has now become a human right meaning thereby that no person shall be deprived of his property, save by authority of law. The ‘law’ in this context would be a Central or State legislation or Rules or Regulation or bye law having the force of law or a Positive or State made law as envisaged in the theory of Positive law expounded by Scholars like Jeremy Bentham and John Austin (see **‘Dolby Builder Pvt. Ltd. and another v/s. The Municipal Corporation of Greater Mumbai and Others’**³ and **‘Bishambhar Dayal Chandra Mohan and Ors. Vs. State of Uttar Pradesh**

3 W.P.2727/2021 decided on 27.09.2023

*and Ors*⁴). Thus, whenever land is acquired by the State or its Authorities, reasonable compensation for deprivation of the land must be paid to the land owner. After all, a person cannot be deprived of his right to property except in accordance with law.

13. In the present context, such 'law' would be section 126 of the Maharashtra Regional Town Planning Act, 1966, which provides for agreement based compensation and compulsory acquisition, about which even the respondent- Corporation does not raise any dispute. So, the compensation, as per this law, would have to be paid to a rightful claimant, which is not paid here so far. In the present case, the rightful claimant would be petitioner no. 1. Reason being that the erstwhile owners, seen from aforesaid conveyance deeds, had transferred their right, title and interest in the saleable properties which included, the setback land. Of course, the setback land was not available for transfer of any title in it to the present owner but, the right to receive compensation in respect of the land already acquired, which had accrued to the erstwhile owner, was indeed available for its transfer to the present owner, it having remained alive till then, and this was what was done by the said conveyance deeds. By these deeds, right, title and interest in the setback land, together with the remaining portion of land were transferred by the erstwhile owners to the present owner. That only meant, in the context of the setback land, that a live right to receive compensation in lieu of acquisition of setback land was transferred by the erstwhile owners to the present owner. This is further confirmed by the averments made in this regard by the petitioner no. 1 in its additional affidavit-in-reply dated 30th June 2023

4 1982 SCR (1)1137

supported by giving of authority by the erstwhile owners to petitioner no. 1 to obtain FSI in lieu of the setback land acquired by the Corporation, not denied by the Corporation. Besides, there is also evidence on record, about which we have already discussed in the earlier paragraphs, showing that right to claim compensation in lieu of the acquired setback land has been consistently asserted by the erstwhile owners and then by the petitioner no. 1, the present owner. It would then follow that what is said in the aforestated conveyance deeds regarding sale of the saleable properties on “as is and where is basis”, meant exclusion of physical land relating to setback area and inclusion of right of the erstwhile owners to claim compensation for the acquired setback land which was transferred to the petitioner no. 1. That means the petitioners are within their right in law to claim compensation for the acquired setback land, in accordance with law, from the Corporation. We therefore, find no merit in the argument of learned counsel for the Corporation in this regard.

14. Corporation has placed blame upon erstwhile owners as well as petitioner no. 1, the present owner, in claiming compensation belatedly. It also says that there is no explanation whatsoever given by the petitioners as to why there was a complete lull on this front from the year 1969 when the setback land was acquired till 20th June 1976, when for the first time the erstwhile owners raised a demand for payment of compensation. Learned counsel for the Corporation, relying upon the cases of *‘State of Uttar Pradesh and Others v/s. Rajmati Singh⁵’* and *‘Rushibhai Jagdishbhai Pathak vs. Bhavnagar*

5 2022 SCC onlin SC 1785

Municipal Corporation⁶ submits that the petitioners are not entitled to receive any compensation for the reason of laches and inordinate delay on their part.

15. It is no doubt true that the setback land was acquired by the Corporation for the purpose of public street widening sometime in the year 1969 and the intimation regarding non-receipt of compensation was given to the Corporation by the erstwhile owners for the first time on 29th June 1976. It is also true that the petitioners have not given any explanation for such a belated demand on the part of the erstwhile owners. But, further correspondence exchanged between the erstwhile owners and the Corporation also shows that the demand for payment of compensation or grant of benefit of FSI was being made by the erstwhile owners consistently atleast after 1976, which was continued even by the petitioner no.1, the present owner when it became the owner of the said property in the year 2011 and this correspondence further shows that the Corporation never raised any objection as to why there was delay on the ground of erstwhile owners in assertively pursuing their claim to receive the compensation. On the contrary, by its letter issued to the erstwhile owners on 12th August 1976, the Corporation showed its willingness to work out the issue of compensation. Therefore, we find that the Corporation had never intended at any point of time to deprive the erstwhile owners and even the present owner of the compensation on account of delay on the part of erstwhile owners. This correspondence would generally show that the Corporation was willing to workout the issue of payment of compensation but suddenly, things changed and by the impugned

6 2022 SCC online SC 641

communication dated 7th December 2018, the Corporation rejected the claim of compensation at a later stage, thereby going against its own willingness to pay the compensation till the later stage.

16. There is one more perspective to examine the issue of delay. The Apex Court in the case of ***Vidya Devi*** (*Supra*) has held that claim relating to payment of compensation is based upon continuing cause of action and therefore, any opposition of the State to pay the compensation for the reason of delay and latches on the part of the property owner should ordinarily be rejected. In the same case, the Supreme Court has held, referring to the observations made in the case ***Tukaram Kana Joshi & Ors. vs M.I.D.C. & Ors***⁷ that a person deprived of his property without legal sanction or following due process of law would be the one who has a continuing cause of action and thus a person is entitled to receive compensation. We find that this proposition of law applies with equal force to the case of the petitioners thereby entitling them to receive monetary compensation or benefit of FSI/TDR as admissible under the applicable Development Control Rules.

17. In the case of ***State of Uttar Pradesh and Others v/s. Rajmati Singh*** (*supra*) what was involved was service claim and it was held that normally, belated service related claim would be rejected on the ground of delay and latches but there was an exception carved out to the general rule and it was when the service related claim resulted from a continuing wrong. Similar is the ratio of ***Rushibhai Jagdishbhai Pathak*** (*supra*). These cases would show that normally a service

⁷ (2013) 1 SCC 353

related claim is barred by inordinate delay and latches on the part of the claimant, but, as an exception it may not be so debarred, if it is based upon a continuing wrong. These cases only show that in a case based upon continuing cause of action, ground of inordinate delay and latches would not constitute any effective defence for a party to resist the case.

18. We thus find that the respondent-Corporation could not have rejected the claim for payment of monetary compensation or grant of benefit of FSI/TDR made by the petitioners and therefore, the impugned communication dated 7th December 2018 is liable to be quashed and set aside. We further find that the petitioners are entitled to receive the monetary compensation or grant of benefit of FSI/TDR in lieu of acquisition of setback land in accordance with law applicable under the Development Control Rules. The petition is, therefore, allowed in terms of prayer clauses (a) and (b) which read as under:

(a) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records and proceedings pertaining to the issuance of the Impugned rejection dated 7th December 2018 (Exhibit V) and after examining the legality, validity and propriety thereof, be pleased to quash and set aside the same;

(b) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the

Respondent nos. 2 to 7 to grant benefit in the form of compensation/FSI/TDR in lieu of compensation against the hand over of 404.44 sq. yds setback land; and or monetary compensation in accordance with law.

19. Monetary compensation or benefit of FSI/TDR in accordance with law be granted to the petitioner no. 1 at the earliest and preferably within a period of eight weeks from the date of the order.

20. Rule is made absolute in the above terms.

21. Writ Petition is disposed of accordingly.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)