

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3524 OF 2019

Kenneth A. Dreger

.Petitioner

Vs.

Municipal Corporation for Gr. Mumbai & Ors.

.Respondents

Mr. Sangharaj Rupwate i/b. Ms. Shraddha Vavhal for Petitioner.

Mr. Kunal Waghmare for MCGM.

Mr. Sukanta Karmakar, AGP for State.

CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.

DATE : APRIL 24, 2023

P.C.:

1. We have heard Mr. Rupwate, learned counsel for the petitioner and Mr. Waghmare, learned counsel for the MCGM.

2. The case of the petitioner is that the land belonging to the petitioner to the extent of 51 sq. mtr. was acquired in the year 1990 for the purpose of a road set back. The contention of the petitioner is that he was entitled to compensation and/or the equivalent FSI/TDR/DRC, however, the same has not been awarded to the petitioner. Mr. Rupwate has brought to our notice correspondence in that regard, indicating that the claim as made by the petitioner was subject matter of consideration at the

relevant point of time. It is stated that a letter dated 05 May, 2005 clearly shows that the possession of the said set back area was taken over by the municipal corporation after the petitioner had constructed the storm water drain in 2005.

3. Mr. Waghmare has brought to our notice that in fact, the opinion of the Law Officer, Legal Department was also taken in regard to an award of compensation to the petitioner. By a communication dated 07 May, 2018 the claim of the petitioner was rejected, being a belated claim. The contents of the said impugned letter are required to be noted which read thus:-

“MUNICIPAL CORPORATION OF GREATER MUMBAI

No: TDR/WS/HW – 28 dt. 7/05/2018.

OFFICE OF THE:
Chief Engineer (Development Plan)
Brihanmumbai Mahanagarpalika,
Municipal Head Office, 5th Floor,
Annex Building, Mahapalika Marg,
Fort, Mumbai – 400 001.

To,
M/s. Kenneth A. Dreger
Eken House, 21st Road,
TPS III, Bandra (W),
Mumbai – 400 050.

Sub: Grant DRC in lieu of land bearing CTS No. F/19
of village Bandra at 33rd Road, Bandra (W)
affected by 18.30 mt. wide D. P. Road.
Ref: TDR/WS/Ward HW-28

Sir,

With reference to the above you had been applied for granting TDR in lieu of handing over of setback of above said land.

It is mentioned here that the road set back was handed over in year 1990 & you had applied for TDR in the year of 2010 i.e. after 20 years from handing over.

As per circular no. CE/1262/ACQ-S of 08.07.1987 states that “if the claim for compensation or the FSI in lieu of compensation is made after the expiry of period of 12 years from the date of taking over possession of such land for the purpose of road widening or for the purpose of D.P. road, no benefit either in the form of compensation or FSI in lieu of compensation is payable.”

Therefore your request to grant TDR in lieu of handing over set back cannot be considered.

Yours faithfully,

sd/-
E.E. (D.P.) H & K”

4. Mr. Rupwate has submitted that the said rejection is contrary to the municipal corporation’s own policy and subsequent circular dated 30 November, 1988 which reads thus:-

“ BRIHANMUMBAI MAHANAGARPALIKA
No. CHE/2010/Acq. Of 30/11/88.

CIRCULAR

Sub: Grant of F.S.I. in lieu of set-back land handed over free of cost – Law of Limitation etc.

.....

ChE-20 (Acq.)
1988-89

Ref:- Circular under No. CE/1262/Acq. S of
8th July, 1987.

.....

By the aforesaid circular, the policy in respect of grant of F.S.I. under the Rule No. 10(2) of the D.C. Rules for Brihan Mumbai in lieu of the road set back land as also the lands affected by the proposed

D.P. Roads and the roads proposed under the provisions of the B.M.C. Act etc., has been laid down. It has been laid down that if the claim for compensation for such road land or the F.S.I. in lieu of the compensation in respect of such road land is not made within a period of 12 years from the date of taking over possession of such land for the purpose of road widening or for the purpose of D.P. Road, or the road proposed under the provisions of the B.M.C. Act, no benefit either in the form of compensation or F.S.I. in lieu of compensation etc. shall be granted to the party.

In partial modification to the above policy circular, it has been now decided that in cases where the set-backs, etc. have been acquired, but the Corporation has neither communicated to the owner the rate for compensation or offered compensation then in such cases, request for grant of F.S.I., in lieu of the road set-back land or D.P. Road or road proposed under the B.M.C. Act may be considered, as per provisions of the D.P. Rule 10(2) even though period of 12 years has lapsed provided the building proposal, claiming such additional F.S.I. in lieu of road set-back land or land falling in D.P. Road or the road proposed under the provisions of the B.M.C. Act, has been submitted to the respective E.E.B.P. before the date of the aforesaid policy circular namely 8th July, 1987. The policy, as above has been approved by the M.C. vide the M.C.'s orders under No. MGC/A/8940 dated 21st Oct. 1988.

Sd/- 22/11/88	Sd/- 24/11	Sd/- 29/11/88
Dy. CH.E. (D.P.)	Ch.E. (D.P.)	Dir. (E.S.&P.)
No.ChE/2010/Acq.C of 1/12/88.		
Dir./E.S.&P./9514 of 29/11/88.		
Copy to Dy.C.E. (B.P.(E.S.))		
Copy forwarded for information, necessary action & guidance please.		
BPES/9642 of 8 DEC. 1988		Sd/-
		for Ch.E. (D.P.)
Copy forwarded for information, necessary action and guidance please.		

E.E. (B.P.) (E.S.)”

It is his submission that therefore, the rejection of the petitioner's claim is not a correct approach on the part of the municipal corporation.

5. On the above backdrop, the petitioner has prayed for the following

reliefs:-

“a. That this Hon’ble Court be pleased issue a Writ in the nature of mandamus or any other appropriate Writ, Order or direction calling for the records and proceeding relating to the letter dated 7/5/2018 of the Respondent No.3 and after examining the same, be pleased to quash and set aside the same and be pleased to further direct the Respondent No. 1 and 2 to grant DRC in lieu of land bearing CTS No.F19 B of Village Bandra at 33rd Road, Bandra (West), Mumbai to the Petitioner herein within a period of one month as per the Petitioners application at EXHIBIT G to the petition.

b. That this Hon’ble Court be pleased to issue a Writ in the nature of mandamus or any other appropriate order or direction quashing and setting aside clause (1) of circular dated 8/7/1987 and circular dated 30/11/1988 by declaring the same to be in violation of DCR 10 (2) and also in violation of the Constitution of India and be pleased to direct the MCGM to grant DRC in lieu of land bearing CTS No.F19 B of Village Bandra at 33rd Road, Bandra (West), Mumbai to the Petitioner herein within a period of one month as per the Petitioners application at EXHIBIT G to the petition.

c. That this Hon’ble Court be pleased to issue a writ in the nature of mandamus or any other appropriate Writ, Order or direction directing the Respondent No. 1 to 3 to consider the Petitioners application at EXHIBIT G to the petition without applying clause (1) of Circular dated 8/7/1987 and 30/11/1988.”

6. Having heard learned counsel for the parties and having perused the record, we are of the opinion that the municipal corporation needs to take into consideration the circular dated 30 November, 1988 or any other policy as issued thereafter and re-consider the claim of the petitioner as it appears that the petitioner was not paid compensation in lieu of the land, the area of land, as per the record of the municipal corporation which was taken away for public purpose.

7. Let the municipal corporation take a fresh decision after granting an opportunity of hearing to the petitioner. This be done within a period of six weeks from today, without being influenced by the impugned order dated 7 May, 2018. All contentions of the parties are expressly kept open.

8. Disposed of in the above terms. No costs.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]