

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1337 OF 2023

WITH

INTERIM APPLICATION NO. 17912 OF 2023

IN

WRIT PETITION NO. 1337 OF 2023

M/s. Eastern Machinery & Anr

.... Petitioners

Vs.

Principal Secretary, UDD, Mumbai

& Ors

... Respondents

Mr. Girish Godbole, Senior Advocate with Adv. Sandesh Patil i/b
Adv. Anusha Amin for the Petitioners.

Mr. R. S. Apte, Senior Advocate with Adv. N.R. Bubna for the
Respondent No.2.

Mrs. M. P. Thakur, AGP for Respondent –State.

Mr. R. N. Kachare, for the Applicant in IA/17912/2023

CORAM : HON'BLE SHRI JUSTICE G. S. PATEL

& HON'BLE SHRI. JUSTICE KAMAL KHATA, JJ.

DATE : 23rd APRIL, 2024.

MINUTES OF ORDER

1. Rule. By consent Rule made returnable forthwith and the Petition is taken up for hearing. The respective Advocates waive service.

2. The record indicates and there is no dispute that land bearing Survey No. 59/A/11/B1, 59/A/11/B/2/1 Pt., 59/A/11/B/2/2 Pt., 59A/13/C, 59A/14A., 59/A/1/20A, 59/A/1/21/A, 59A/22/B/1/A/2, 59A/22/B/2, 59A/22/B/3A and 59A/23A at Village Chitalsar, Manpada, Tal. and Dist. Thane within the limits of Respondent No. 2 Thane Municipal Corporation was inter-alia reserved for a 30 meters wide and another 40 meters wide proposed Development Plan Road according to the Final Development Plan of the Corporation sanctioned in the year 1999. It is also not in dispute that the Respondent No.2 Corporation has constructed Roads on the said land of the Petitioners before acquiring the same under the repealed Land Acquisition Act, 1894 or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. However, by communication dt. 8th February, 2017 issued by the Municipal Commissioner of Thane Municipal Corporation (**Exh-Q, Pages-95-97**), the Commissioner offered twice the area of the land taken over for construction of road as TDR credit + 15% incentive. Paragraph 6 of the said letter read thus;

6) Compensation for the acquisition: As per the recent modification in regulation, Corporation is offering twice the area credit of TDR for the area of land surrendered, Hence, you will be entitled to receive double TDR for the land already surrendered and proposed to be surrendered. Further, you may claim incentive of 15% of additional area credit for the land proposed to be acquired afresh if proposal for surrendering the land in lieu of TDR is submitted in 2017.

4. Pursuant to this offer, Petitioners have agreed to accept TDR by letter dt. 10th February, 2017 (**Exh.-R, Pages 98-99**) para 2 of the said letter read thus;

2) Exceptionally we have agreed to accept TDR against purchase price for road expansion in 1998 under Phase-1 and additional road expansion in 2017 under Phase-II as well as land taken by TMC for constructing Nallas across our land. As TMC is purchasing our land now only, we request that incentive of 15% of additional area credit as per point No.6 of your above letter should be given for all the above

lands including Phase-I road expansion and nallas. This is our legitimate and fair request.

5. It is also accepted position that thereafter, the Municipal Commissioner for the City of Thane has issued following Development Right Certificates (DRCs) in the name of Petitioners pursuant to the Government Notification dt. 29.01.2016 and Addendum dt. 02.05.2016 by indicating the ASR rate of land being Rs. 43,300/- per square meter for the year 2017-18.

- i) DRC No. 282 dt. 6th May, 2017 for 955.56 sq.mtrs. in the name of Petitioner No. 2.
- ii) DRC No. 283 dt. 6th May, 2017 for 6467.71 sq.mtrs. in the name of Petitioner No. 1.
- iii) DRC No. 303 dt. 2nd December, 2017 for 955.56 sq.mtrs. in the name of Petitioner No. 2.
- iv) DRC No. 304 dt. 2nd December, 2017 for 6467.71 sq.mtrs. in the name of Petitioner No. 1. `

6. According to the said four DRCs, for the area of 7423.27 sq. Mtrs which was then presumed to have been. taken over by the Corporation, DRC Certificates of twice the area i.e. for a total area of 14846.54 sq. mtrs. have been issued. In terms of the

Government Notification dt. 29.01.2016 and Addendum dt. 02.05.2016 and para 6 of letter dt. 8th February, 2017 issued by the Municipal Commissioner, Petitioner would be entitled to a 15% incentive TDR of 1113.49 sq. mtrs. in terms of aforesaid notification though no additional area would be admissible as per UDCPR.

7. By order dt. 28th August, 2023 passed in this Petition, the District Inspector of Land Records was directed to complete the survey of the land taken over by the Corporation. Accordingly, Deputy Superintendent of Land Record, Thane has filed compliance Affidavit dt. 11th October, 2023 along with the measurement map of MR No.2438/2023 and panchanama and compliance of the Order dt. 28th August, 2023 has been recorded in the Order dt. 15th February, 2024 passed in the present Petition. In terms of the said Order, Petitioners have filed Additional Affidavit of Shri. Narayan Tolani dt. 22nd February, 2024 and according to the Petitioners the total extent of land taken over by the Corporation for the 30 meters and 40 meters wide roads is 12145 sq. mtrs. However area as per form 12 is 12100 sq. Mtrs. and area as per P Line received from the office of DSLR is 11842.35 sq.mtrs. As per

letter dated 19/3/2024 issued by the office of DSLR, there is difference in area of S.No.59/A/22/B/1A as per Form 12 vis a vis P Line drawing to the extent of 257.65 sq. mtrs.

8. On 4th March, 2024, an Affidavit-in-Reply is filed by Shri.Satish Ugile, ADTP of Thane Municipal Corporation principally raising the following objections to the area indicated by the Petitioners in their additional affidavit referred above.

- i) In respect of land at Sr. No. 2 and 3 of the area statement prepared by the Petitioners in respect of land affected by 30 meters wide road, the same was standing in the name of Sakhubai Kisan Gorath and 30 others, that possession of the said land was received by the Respondent Municipal Corporation from Attorney of the said persons and the dispute in respect of said land is sub-judice in this Court in Writ Petition No. 10338 of 2009.
- ii) The land at Sr. No. 1 of the area statement prepared by the Petitioners in respect of land 40 meters wide road is not included in Form-4 received from the Office of DSLR

9. The office of DSLR has issued Form No.12 so also P Line drawing regarding area statement prepared by the Respondents.

10. In so far as the first objection of the Corporation referred in para 8(i) above, it is directed that the Petitioners shall, at present, not claim the TDR Credit / DRC to the extent of 330 sq. mtrs. which is subject matter of dispute in Writ Petition No. 10338 of 2009. In so far as the disputed area of 330 sq. mtrs. is concerned, the TDR credit and the consequent DRC of 709.50 sq. mtrs. will be subject to the final outcome of the dispute involved in aforesaid Writ Petition No. 10338 of 2009 and Petitioners will be entitled to apply for the same and the Corporation can consider the said application depending on the outcome of aforesaid Writ Petition No. 10338 of 2009.

11. In respect of the second objection noted in para 8(ii) and 9 above, Petitioners are ready to presently treat the area of land S.No.59/A/22/B/1/A/2 to be 473.35 sq. mtrs instead of 731 sq. mtrs. Petitioners will be entitled to further compensation, if area of S.No.59/A/22/B/1/A/2 is found to be more than 473.35 sq. mtrs. after resolution of difference in Form 12 area and P

Line drawing area of S.No.59/A/22/B/1/A/2 by the office of DSLR Thane.

12. In so far as the claim of the Petitioners for monetary compensation is concerned, in the Additional Affidavit dt. 4th March, 2024 of ADTP, Thane Corporation it is stated that the Respondent Corporation has no objection for issuance of Reservation Credit Certificate for affected area after excluding area for which TDR has already been issued. The provision for Reservation Credit Certificate is incorporated in Regulation 11.3 of UDCPR which is applicable to Thane.

13. Petitioners have contended that though DRC for 7423.27 sq. meters were issued in the year 2017 but they were not issued DRC for 15% incentive area equivalent to 1113.49 sq mtr. The Petitioner therefore have submitted that, fresh additional DRC's for 1113.49 Sq. mtrs. be issued to the petitioners as per ASR of 2017.

14. In view of the aforesaid and the readiness shown by the Petitioners not to claim TDR Credit for land admeasuring 330 sq. mtrs. which is subject to the on going dispute in Writ

Petition No. 10338 of 2009, the Petitioners shall be issued fresh additional DRC for 1113.49 sq mtrs as per ASR of 2017. TILR measurement having already been carried out, condition restricting use of DRC till TILR measurement is removed. Similarly restriction on validity of DRC also is removed and Respondent Corporation is directed to issue a letter regarding the same to the petitioners.

15. In so far as the remaining undisputed area of 4089.08sq. mtrs. is concerned, the Corporation can be directed to issue Reservation Credit Certificate to the Petitioners.

16. In view of the above, the Petition is disposed off with the following directions;

- a. Petitioners shall be issued fresh DRCs for the incentive area of 1113.49 Sq.meters as per ASR of 2017.
- b. The Corporation is directed to issue Reservation Credit Certificate under Clause 11.3 of UDCPR for land ad-measuring 4089.08sq. mtrs. referred in para 15 above

and the amount of compensation to be paid to the owner shall be as per valuation finalised by Collector, Thane as per provisions of LARR Act, as per sub-clause 3 of Regulation 11.3 of UDCPR. The District, Collector Thane will finalise valuation within a period of 12 weeks from passing of this order.

- c. It is directed that DRCs for 1113.49 Sq.meters shall be issued within 4 weeks from today. The clarificatory letter referred to in clause 14 herein-above shall be issued within 2 weeks from today .

RCC shall be issued within 2 weeks from date of execution of registered conveyance which shall be executed within 2 weeks from finalization of valuation by Collector Thane. The draft shall be prepared by the corporation and petitioner shall remain present in the office of sub- Registrar, Thane for execution of the conveyance. Time shall be the essence of completion of the entire exercise.

- d. In so far as the TDR credit of 709.50 sq. mtrs. is concerned, the same will be abide by the final outcome of Writ Petition No. 10338 of 2009.

- e. Petitioners will be entitled to RCC for area of S.No.59/A/22/B/1/A/2 over and above area of 473.35 sq. mtrs. for which RCC is presently being issued, if the same is found to be more than 473.35 sq. mtrs. after resolution of difference in Form 12 area and P Line drawing area of S.No.59/A/22/B/1/A/2 by the office of DSLR Thane.
- f. Writ Petition is disposed off in the aforesaid terms with no order as to costs. The DSLR, Thane shall complete the exercise of finalising the area referred above within a period of 2 weeks from passing of the order.
- g. In view of the disposal of the Writ Petition, Interim Application No. 17912 of 2023 does not survive. However, all contentions of the Applicant therein are expressly kept open. The Applicant shall be at liberty to adopt appropriate Civil proceedings and all contentions of the Applicant and the Petitioners in Petition are expressly kept open to be agitated in the proceedings.