

Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 801 OF 2024

Kanina Rajdksha Sharma & Ors	...Petitioners
<i>Versus</i>	
Thane Municipal Corporation	...Respondent

Mr Mayur Khandeparkar, *with Yash Mommaya, Samit Shukla, Saakshi Saboo, Anuj Sarla, i/b DSK Legal, for the Petitioners.*
Mr RS Apte, Senior Advocate, *i/b Mandar Limaye, for the Respondent-TMC.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 20th February 2024

PC:-

1. Rule. Returnable forthwith. There is an affidavit in reply.

2. The prayers in the Petition relate to the grant of Transfer of Development Rights (“**TDR**”) in regard to certain lands that were conveyed by the Petitioner to Thane Municipal Corporation (“**TMC**”), the sole Respondent.

3. The Petitioners own lands New Survey No 15/2 and New Survey No 14 at village Bhainderpada. Petitioner No 3 owns land bearing New Survey No 13 in the same village. On 4th October

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1999, a 60 meter wide DP road was proposed in the sanctioned Development Plan. This affected the Petitioners' lands.

4. On 21st January 2006, realizing difficulties in conflicting land records, the State Government issued a circular saying that where there was a conflict between a property card and a 7/12 extract, the areas in the property card should be followed.

5. A notification in respect of the properties was issued by the Settlement Commission on 31st January 2017.

6. On 17th January 2018, the Petitioners' architects submitted a proposal for surrender of the land to the TMC in consideration of the issuance of TDR.

7. A 30th August 2018 circular from the State Government reiterated the first one.

8. In April 2019, the TMC obtained title reports.

9. On 21st August 2020, the Petitioners and the TMC executed and registered Deeds of Transfer in respect of the properties in question. Corresponding mutation entries were carried out as well. Possession receipts followed indicating that possession was delivered to the TMC. This possession was delivered on 2nd November 2022.

10. Ultimately, what the TMC issued were Development Rights Certificates (“**DCR**”) Nos 402 to 404 but were in respect of areas less than the areas mentioned in the conveyances.

11. On 3rd May 2022, the Petitioners made an application for the issuance of DRC for the remaining 2851.27 sq mtrs.

12. Mr Apte for the TMC raises two points based on his Affidavit in Reply. The first is that there was a complaint by one Nimbalkar. His complaint was that part of the land was government land and could not have been conveyed. The second complaint by Nimbalkar was that there was an area difference between the survey numbers and the corresponding CTS numbers. The TMC took the stand that the first part would have to be resolved by the Collector. Ultimately that seems to have been done because there is a communication from the Collector of 20th July 2022 at page 218.

13. This leaves the question of the so called difference in area between the old survey numbers and the new CTS numbers.

14. We do not know how Nimbalkar is in any way concerned with any of this or how he can motivate a public authority to not grant TDR when land has been conveyed to the public authority (also the Planning Authority under the MRTP Act) under registered conveyances. There is no question of anyone examining any difference in area between PR cards and 7/12 extracts. The reason is simple. The title to the entire land has passed to the TMC under the registered sale agreements/conveyances. Nobody has questioned

those conveyances. It is inconceivable that the TMC could take a conveyance of land and then proceed on the footing that there is a dispute about the area or acreage of which it has obtained a conveyance. The title to the entirety of that land is contained in the conveyance. Whether a PR card or a 7/12 extract has been updated or not is a separate matter. We find and hold that it is certainly not for the TMC to act on the basis of unsubstantiated complaints made by third parties. If Nimbalkar has a complaint about a difference in the area, his remedies lie elsewhere and above all he must first establish that he has the necessary locus to even raise such a challenge when he is not in any way concerned with the land that is being transacted. Merely because he happens to have some rights over adjacent land will not give him the necessary standing to object to the transaction nor should the TMC act on his complaint simpliciter.

15. We find it wholly untenable in law for the TMC to raise a dispute about the area in question after having taken a conveyance. Such a dispute, if there exists one, could only have been taken and had to be addressed before there was a transfer of title and before there was a conveyance. Notably the TMC had obtained title reports way back in 2019 itself. It is thereafter that in August 2020 the TMC took title to the lands in question.

16. Accordingly, that Petitioners are entitled to TDR and DRCs in respect of the land conveyed under the conveyances of 21st August 2020. We have noted the objection. We have noted the submissions in the Affidavit in Reply filed on behalf of the TMC.

The TMC is now directed to issue the necessary DRCs for the balance area of 2851.27 sq mtrs at the earliest. The chart at Exhibit M at page 191 of which there is no traverse shows the balance TDR DRC to be issued and the exact multipliers. The area in question is 5417.41 sq mtrs. The breakup between the petitioners is also shown in that tabulation. The Rule is accordingly made absolutely in terms of prayer clause B and C(i), C(ii) and C(iii) which read as follows:

“B. that this Hon’ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any appropriate writ, order or direction quashing and setting aside the restriction as to the TDR to be issued to the Petitioner recorded in the possession receipts at Exhibit I Colly;

C. that this Hon’ble Court be pleased to issue a Writ of *Mandamus* or a writ in the nature of Mandamus or any appropriate writ, order or direction directing Respondent No. 1 to issue further Development Rights Certificates to the Petitioners under the Provisions of the MRTP Act and the UDCPR for the differential land area viz:

i. 870.78 square meters for the First Property which amounts to 1,654.48 sq. meters for issuance of TDR in terms of the calculation annexed at Exhibit M;

ii. 393.23 square meters for the Second Property which amounts to 747.14 sq. meters for issuance of TDR in terms of the calculation annexed at Exhibit M;

iii. 1587.26 square meters for the Third Property which amounts to 3,015.79 sq. meters for the issuance of TDR in terms of the calculation annexed at Exhibit M;”

17. The TMC will issue the DRC as expeditiously as possible and in an event within six weeks from today.

18. We have in this order noted the Affidavit in Reply. If there is any claim by any third party (Nimbalkar or anyone else) the TMC will not be answerable or liable to such third parties for having complied with the present order. The TMC will be at liberty to direct any such person to obtain an order of this Court in this matter.

19. Petition is disposed. No order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)