

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5658 OF 2024

Vivek Kishan Nandgude Thr. Its Power of Attorney ... Petitioner
N. D. Ghante

Versus

Pimpri Chinchwad Municipal Corporation & Ors. ... Respondents

Mr. Nitesh Newshe & Vishal Nitesh Newshe for the Petitioner.

Mr. Rohit Sakhadeo for Respondent No.1.

Mr. A. I. Patel, Addl. G. P. a/w Ms. P. N. Diwan AGP for State.

**CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.**

DATED: 15 OCTOBER 2024

Oral Judgment (Per: G. S. Kulkarni, J.)

1. This a classic case depicting the plight of the petitioner - farmer, who has been made to run from pillar to post to receive compensation in respect of his land, which was acquired for the purpose of road construction by respondent No.1 / Pimpri Chinchwad Municipal Corporation.
2. The petitioner was the owner of land admeasuring 10R situated at village Pimple Nilak, Tq. Haveli, District Pune, bearing Khate Kramank 1660. A copy of the Revenue Entries (7/12 extracts) is annexed to the petition. From what has been recorded by respondent No.1 in its letter dated 18 February 2008, in a consensual manner, advance possession of the land from the

petitioner was taken over subject to the petitioner being compensated with appropriate TDR/FSI which was payable only on the ground that the petitioner voluntarily hands over the possession of the land. A copy of the communication as addressed to the petitioner and which was acted upon is required to be noted which read thus :

“(Official Translation)

Pimpri Chinchwad Municipal Corporation,
‘D’ Ward Head Office,
No.Stha/D.H./-----/200--.
Date : (18 February 2008)

To,
Shri Vivek Kisan Nandgude and others,
Vishal Nagar,
Pimple Nilakh.

Subject :- Regarding handing over advance possession of the land required for development work by the Municipal Corporation.

Sir,
The land bearing S.No. 22/1/3/1 admeasuring ----- sq.mt. approximately, situated at Pimple Nilakh, of your ownership is being affected by the 12 meter wide road of the Municipal Corporation (near the Chhatrapati Bank). It is necessary in the interest of public in general that the Municipal Corporation gets the possession of the said land by way of advance possession, subject to the terms and conditions in respect thereof. If you voluntarily handover possession of the said land to the Municipal Corporation, under Advance Possession Receipt then, the consideration for the said land as determined by the Competent Officer as per Rules, will be given to you by the Collector as per the prevailing rules, in the form of the value of the said land/floor space index etc. in lieu of the said land, as per your request.

Hence, you are requested to handover possession of the land of your ownership to the Municipal Corporation by way of advance possession, in the interest of public, as mentioned hereinabove and to render co-operation in this regard.

Yours faithfully,

Executive Engineer,
‘D’ Ward Head Office,

Pimpri Chinchwad Municipal Corporation.”

(emphasis supplied)

3. The aforesaid communication addressed to the petitioner by respondent No.1 was acted upon, in pursuance of which the petitioner handed over possession of his land to respondent No.1. However, although the possession of his land being taken over, the petitioner was not granted the TDR/FSI in lieu of the monetary compensation.

4. The petitioner therefore addressed a representation to respondent No.1 dated 20 February 2008 *inter alia* recording that the work in regard to the construction of the road had already commenced, and as the possession of the petitioner's land for such purpose was already taken over, the petitioner be granted TDR in lieu of compensation. Such letter of the petitioner was responded by a letter dated 03 March 2008 addressed to the petitioner by the Assistant Town Planner of Respondent No.1 stating that the petitioner needs to submit some documents including on the ownership of the land. As rightly urged on behalf of the petitioner, the said letter, had set out several documents to be submitted by the petitioner, which in fact, was never an intimation to the petitioner, prior to the taking over of the possession of the land from the petitioner. This for the reason that as respondent No.1 had already verified and never disputed petitioner's ownership of the land while taking over the possession of the land from the petitioner, which was indisputedly handed over

by the petitioner to respondent No.1. It would be appropriate to note the contents of this letter which reads thus:

(Official Translation)

Dated 03 March 2008

“To,
Shri Vivek Kisan Nandgude,
Residing at Vishal Nagar,
Pimple Nilakh,
Taluka Haveli, District - Pune.

Subject :- Regarding getting F.S.I./T.D.R. in respect of the area from out of the property bearing Survey No. 22/1+3/1 situated at Pimple Nilakh, affected by 12 mt. wide road.

Reference :- Your application dated 20.02.2008.

Sir,

The application referred to hereinabove on the above-mentioned subject has been received by this Department. However, you have not enclosed any documents pertaining to the ownership right in respect of your property, alongwith the said application. Therefore, you are requested to submit the below-mentioned documents.

Documents to be submitted in the matter of granting T.D.R.

The copies of below-mentioned documents in this entire matter should be submitted in triplicate.

1. Documents in respect of ownership right
 - a. 7/12 extract issued within the period of 3 months
 - b. 7/12 extract together with all Mutation entries made thereon.
 - c. Extract from Property Register Card
 - d. Extracts from Enquiry Register.
 - f. Title Search Report pertaining to last 30 years, in respect of the transactions whatever that might have been entered into in respect of the aforesaid land.
2. Actual Survey Map in respect of the aforesaid land.
3. Opinion on Development Scheme.

4. Order under U.L.C. in respect of the reservation of land
5. Certificate from the Licensed Architect certifying about having put up the permanent marks (Guard Stone) showing the reserved land, area of the reserved land and also certifying that the aforesaid land is free from encroachments.

Therefore, you are requested to submit the above-mentioned documents at the earliest and only thereafter, it would be possible to take further steps in this matter.

May this be known.

Yours faithfully,
(Signature Illegible)
Assistant Town Planner,
Pimpri Chinchwad Municipal Corporation
Pimpri, Pune - 411018.

(emphasis supplied)

5. We may hence observe that although in the letter dated 18 February 2008 issued by respondent No.1 which we have extracted hereinabove, the petitioner's ownership in respect of the land was not disputed and / or was accepted when the petitioner was requested to hand over advance possession of his land, without calling upon the petitioner to made any compliances, as later on sought from the petitioner. The petitioner had accepted and acted upon such communication and changed his position by handing over the possession of his land. In such circumstances the petitioner could not have been taken by a surprise by the Assistant Town Planner by aforesaid letter dated 3 March 2008 calling for personal documents.

6. It therefore clearly appears to us that the communication dated 3 March 2008 calling upon the petitioner to submit these documents listed therein, that too after the petitioner was rendered landless, was quite astonishing. We say so, as the petitioner's land was already taken over and utilized without payment of compensation, which otherwise could not have been taken over only on following a lawful procedure under the Land Acquisition Act, 1894. A perusal of condition No.5 of the aforesaid letter shows that a person like the petitioner who is a farmer is being called upon to obtain an Architect's Certificate.

7. We have not been pointed out anything on behalf of the Municipal Corporation that these were the compliances which were expected from the petitioner / land owner prior to the possession being taken over and to become entitled to the TDR in lieu of the monetary compensation as a contract between the parties was entered and stood concluded under the letter dated 18 February 2008 (supra) issued to the petitioner under which what had remained on the part of respondent No.1 was to grant TDR to the petitioner.

8. In the aforesaid circumstances, the petitioner also made an application under the Right to Information Act, 2005 on 16 September 2011 as to why the petitioner's repeated requests for grant of TDR/FSI were not being considered. Such letter of the petitioner was replied by the Deputy Engineer, Town Planning and Development Department of respondent No.1, informing the petitioner that although the petitioner had made an application for grant of

TDR on 20 February 2008, the petitioner had not submitted documents in support of such application, therefore further action was not taken by respondent No.1 on such application. It was also recorded that if the petitioner submits the necessary documents, appropriate action in that regard would be taken.

9. It appears from the record that the petitioner thereafter entered subsequent correspondence with respondent No.1. Such letters of the petitioner are annexed to the petition and last of such letter being letter dated 3 October 2022, in which the petitioner enclosed the copies of the prior correspondence he entered with respondent No.1, as also enclosed the relevant documents of the 7/12 extract, etc. Such application of the petitioner was ultimately acted upon when the Executive Engineer of respondent No.1 addressed a letter dated 17 October 2022 to its Deputy Director, Town Planning *inter alia* recording that the petitioner is the owner of the land whose land was acquired for the widening of the 12 meter DP road and be issued a certification under “Pra-Patra (a) and (b)”. Such letter also recorded that action to take possession of the land was already taken and the land was utilized for construction of the road. The contents of this letter need to be extracted, which reads thus:-

“(Official Translation)

e-File Entry No.: ‘D’ Ward Civil / Table
Eng./330/2022.

Pimpri- Chinchwad Municipal
Corporation,
Rahatani, Pune – 411017.
‘D’ Ward office,
Civil Department.
Outward No. ‘D’ W/C/WS/889/2022.

Date : 17.10.2022.

To,
The Deputy Director,
Town Planning and Development Department,
Pimpri-Chinchwad Municipal Corporation,
Pimpri – 411018.

Subject : Regarding taking possession of the lands of the Property
Holders from out of the land bearing Survey No. 22/1/3/1-D,
situated at Village – Pimple Nilakh, affected by the 12.00
Mtrs. wide road, proposed in the sanctioned Development
Scheme.

Reference : Application dated 03.10.2022, submitted by Shri Vivek
Kisan Nandgude, residing at Laxmi Niwas, Late Kisan
Nandgude Colony, Vishal Nagar, Survey No. 22-Part,
Pimple-Nilakh, Pune – 27.

Sir,

The below named Property Holder is ready to hand over in the possession of
the Municipal Corporation, the area from out of the land bearing Survey No. 22/1/3/1-D,
situated at Village – Pimple-Nilakh, affected by 12.00 Mtrs. wide D.P. Road, proposed in
the sanctioned Development Scheme. Therefore, it is requested to kindly take further
appropriate steps for giving “Proforma – A” and “Proforma – B” to the concerned owner of
the land.

Sr. No.	Name	Address
1.	Shri Vivek Kisan Nandgude	Survey No. 22/1/3/1-D Part, Pimple- Nilakh, Pune.

Hence, in order to see that the Municipal Corporation duly receives the
possession of the land of the Property Holder named hereinabove, you are requested for co-
operation at your level, for the steps to be taken for taking possession of the area of the said
land.

Yours faithfully,
(Signature)

Executive Engineer (Civil)
'D' Ward Office,
Pimpri Chinchwad Municipal Corporation,
Rahatani, Pune – 17.”

10. However, what has transpired thereafter is interesting, when the then Deputy Engineer, Town Planning of respondent No.1, bonafide, considered that the petitioner be granted compensation in terms of TDR/FSI, as the petitioner was already rendered landless. He accordingly addressed a communication dated 25 July 2023 to the petitioner wherein he acknowledged that the petitioner had submitted nine documents, except one document which was “Pra-Patra (a) and (b) (Original)”. The letter records that a proposal was received by his office for grant of TDR/FSI to the petitioner and on scrutiny of such application and the compliances, one document listed at item 3 i.e. “Pra-Pratra” was not submitted and after the same is submitted the proposal can be taken forward, and further appropriate action can be taken. The said letter of the Deputy Engineer reads thus:-

(Official Translation)

“Pimpri Chinchwad Municipal
Corporation, Pimpri-18.
Town Planning and Development
Department No. T.P.D./W.S./
47/01/2023

Date : 25.07.2023.

To,
Shri Vivek Kisan Nandgude,
Residing at Pimple Nilakh, Pune.

- Subject **11.** Regarding getting F.S.I./T.D.R. in respect of the affected
 :- area from out of the land bearing Survey No. 22/1+3/1/D
 situated at Pimple Nilakh.
- Reference **12.** Your application dated 06.02.2023.
 :-

Sir,

The proposal under the application referred to hereinabove on the above-mentioned subject, has been received by this Department. As mentioned in the said application, you have requested to give consideration in lieu of the affected area from out of the property bearing S.No. 22/1+3/1/D situated at Pimple Nilakh, in the form of F.S.I./T.D.R.. However, on making scrutiny of your proposal, the below-mentioned documents are not found therein.

1. Title Search Report for last 30 years (Original)
2. 7/12 extract (Original copy issued within the period of 6 months)
3. (Pra-Patra) A & B – Original copy.
4. Copy of the re-survey report, within 6 months (Original copy)
5. Scrutiny fee as per Rules
6. Panel Advocate Fee as per Rules
7. Opinion on Development Plan
8. Extracts of Mutation entries since last 30 years
9. Other documents in respect of ownership right.

It is necessary to prepare a file of the compilation of the above-mentioned documents and to submit the said proposal through the Citizen Facility Center. After complying with the documents by you, it would become possible to take further appropriate steps regarding giving consideration as per rules, as requested in the proposal submitted by you.

Yours faithfully,

Deputy Engineer, Town Planning,
Pimpri Chinchwad Municipal
Corporation Pimpri 411018.”

(emphasis supplied)

13. It is at this stage, the petitioner raising a grievance that although all the documents were submitted and the issuance of “Pra-Patra (a) and (b) (Original)” being completely within the authority of respondent No.1, which should have been granted to the petitioner, to avail the TDR/FSI, the present petition came to be filed.

14. As the petitioner was being denied the benefit of the compensation in terms of TDR/FSI only for the “Pra-Patra (a) and (b)” not being submitted, as the same was not issued to the petitioner by respondent No.1, this Court considering respondent No.1’s communication dated 17 October 2022 (supra) passed an order on 11 October 2024 directing respondent No.1 to issue “Pra-Patra (a) and (b)” in favour of the petitioner. The said order is required to be noted which reads thus:

“1.At the request of Mr. Sakhadeo, learned counsel for respondent No.1 / Corporation, only as a matter of indulgence, we adjourn the proceedings to **15 October 2024 (HOB)**.

2. In the meantime, considering the communication dated 17 October 2022 (page 42 of the paper book), we direct respondent No.1 to issue “pra-patra” (a) and (b) in favour of the petitioner. This more particularly as the issue is pending in this regard for quite some time, as also there is absolute clarity in this regard, considering the internal letter dated 17 October 2022 of respondent No.1.

3. In any event, it cannot be the stand of respondent No.1 that the petitioner would be deprived of the compensation and / or his merit entitle for the TDR, if it is so acceptable to the petitioner. This cannot wait for any technicalities, when substantial compliances are already made by the petitioner and as pointed out to us in respondent No.1’s own letter dated 25 July 2023 at page 44 of the paper book.

4. Accordingly, Stand over to **15 October 2024 (HOB)**. ”

15. However, what has transpired after we passed the aforesaid order is something, which would shock our judicial conscience. We say so as, although “Pra-Patra (a) and (b)” was issued to the petitioner, in reality it is merely a paper formality and of no consequence as respondent No.1 is clearly inclined not to grant any compensation to the petitioner, much less in the form of TDR/FSI, qua the petitioner’s land acquired by the respondent No.1 Municipal Corporation. This is evident from what is informed to the Court by Mr. Prasad Gaikwad, Deputy Director, Town Planning, who has taken the opportunity of the last adjournment to file a reply affidavit. What surprises us is that the affidavit completely disregards the petitioner’s grievance on non-grant of compensation and the correspondence in that regard made by respondent No.1 which never disputed grant of compensation to the petitioner, in terms of the TDR/FSI. The affidavit contains statements which wantonly denies to the petitioner, the benefit of the TDR/FSI, as agreed to be granted by respondent No.1 in its letter dated 25 July 2023 (supra) to be granted to the petitioner on the submission of “Pra-Patra (a) and (b)”.

16. What is more glaring is the nature of the objections as raised in the reply affidavit which in our opinion appears to be with an intention to create a different record, contrary to the clear stand taken on behalf of the Municipal Corporation in the letter dated 25 July 2023 and the subsequent letters as noted by us hereinabove. This, knowing well that the petitioner is rendered

landless, as the possession of the petitioner's land was taken in the year 2008, affecting the petitioner's valuable rights under Article 300A of the Constitution, without recourse to any procedure under the Land Acquisition Act to otherwise lawfully acquire the petitioner's land. Further, the petition is surprisingly sought to be opposed also on the ground of delay and laches. The reply affidavit does not leave an opportunity to criticize the petitioner on such aspects, however, not denying that the petitioner is a farmer with limited means, when the deponent for the first time alleges the petitioner of not being prompt in submitting documents, and being accused of espousing a stale cause of action in asserting grant of compensation. On such plea, the petitioner is being denied grant of compensation in the reply affidavit.

17. In our opinion such stand as taken by Mr. Prasad Gaikwad is *de hors* the prior position / correspondence of respondent No.1 / Corporation entered with the petitioner, when the petitioner was never denied his entitlement to the compensation in form of TDR/FSI. Further, what is shocking is the content of para 9 of Mr. Prasad Gaikwad's affidavit in which in terms, he states that in so far as the issue of TDR/FSI is concerned, it falls under UDCPR – 2020. He refers to rule No.11.2.3(6) in regard to the existing user so as to deny to the petitioner grant of TDR. It is stated that in the present case as the DP road is already constructed, hence, the said DCPR had become applicable. It also refers to a notification dated 28 January 2016 by the State Government and

more particularly annexure – “B” clause No.3-VII under which the petitioner cannot be granted TDR. The contents of paragraph Nos. 9, 10 and 11, of the reply affidavit of Mr. Prasad Gaikwad are required to be noted which reads thus:

“9. As regards the issue of T.D.R is concerned, it is most respectfully submitted that, firstly under UDCPR 2020 more particularly Rule No.11.2.3(vi) for an existing user, TDR is not payable. In present case D.P road is already constructed hence applicable. Similarly a notification dated 28/1/2016 is issued by state government more particularly annexure B clause no.3(vii). Hereto annexed and marked as Exhibit R- 1 (colly) are the copy of relevant provision of UDCPR 2020 and copy of notification dated 28/1/2016 issued by state government. I crave leave to rely upon the same.

10. UDCPR come into force on 12/12/2020.

11. In pursuance of Petitioner's proposal dated 06/02/2023, PCMC carried out on spot inspection on or about 23/07/2023 after which it was found that, at the said spot/land road is already developed. The same is developed well before 2022. It is further submitted that, the subject land is affected by 12 Meter D.P. Road as per development plan opinion dated 29/10/2005.”

18. From the perusal of the aforesaid contents of the reply affidavit of Mr. Prasad Gaikwad, it is quite clear that the intention of the deponent is to defeat the claim of the petitioner for grant of compensation in terms of the TDR, on absolutely frivolous and untenable grounds. There are also new grounds being informed to the Court under the affidavit and not to the petitioner at any point of time. In our opinion, the reply affidavit is far from *bonafide*, in fact, the contents of the affidavit deliberately fail to notice that the petitioner’s land was taken over in the year 2008 and the rules which have been referred to be

applicable are of the year 2020. Also, there appears to be a deliberate omission to acknowledge the prior correspondence more particularly respondent No.1 having desired to take over the land and make the petitioner landless under a consensual arrangement with an agreement to provide TDR in lieu of monetary compensation. This apart, Mr. Prasad Gaikwad, the deponent of the affidavit does not stop at this, when in paragraph 12 of the affidavit, he further states that not only would the petitioner not be entitled to TDR/FSI but he would also not be entitled to the payment of compensation. The contents of the said paragraph are required to be noted which reads thus:

“12. Further copy of petitioners letter dated 20/2/2008 (page 36 of petition) mentions about claim of TDR/FSI and letter dated 12/12/2024 (page 40 of petition) mentions claim only about T.D.R hence even otherwise petitioner could not have and cannot claim any other compensation and that too he would have been entitled only after proving his entitlement under law in the year 2008 and before road being developed which the petitioner till date has failed to produce and prove. The perusal of petition and or the annexed documents thereto shows that there is no document placed on record by petitioner which proves that in the year 2008 itself he had submitted all required documents as mentioned in pcmc letter (page 29 of petition).”

19. Having noted the contents of paragraph 12 as also the other contents of the affidavit, we are of the opinion that respondent No.1 ought to have conducted itself as a responsible public body and function as per the rule of law and not at the *ipse dixit* of the Officers like the deponent of the reply affidavit, who has crossed all limits of legitimacy, rationale and fairness in dealing with the petitioner's case. The Officers of respondent No.1 cannot have such

reckless and casual approach, in dealing with the valuable rights of the citizens qua their land guaranteed under Article 300A of the Constitution. This more particularly when the petitioner was deprived of his land by respondent No.1, which was utilized way back in the year 2008.

20. We may also observe that after respondent No.1 tookover the petitioner's land, respondent No.1 was in an absolute dominating position qua the petitioner a farmer who was rendered landless. The petitioner having handed over his land to respondent No.1, was at the complete mercy of respondent No.1 and its Officers. It is very easy for the public bodies like respondent No.1 to lure farmers like the petitioner to give up their land, with a clear declaration agreement that he would be compensated by grant of TDR/FSI and thereafter in such jugglery as in the present case, back out. After taking over possession of the land, the petitioner was left at the complete mercy of respondent No.1 and was left begging for grant of compensation. Most importantly, while taking possession of the land from the petitioner, in no manner whatsoever it was disputed that the petitioner is not the owner of the land and in fact, in the capacity of the owner of the land, correspondence was addressed to the petitioner to hand over the possession and accordingly possession was taken over from the petitioner.

21. We may observe that in the event, the procedure as mandated in law was to be adopted and followed, it was incumbent for respondent to resort to the

procedure under Section 126 of the Maharashtra Regional Town Planning Act, 1966 read with the provisions of the Land Acquisition Act, 1894 to acquire the petitioner's land by making payment of compensation, however, this was avoided in lieu of the consensual arrangement. Needless to observe that if such lawful procedure was to be resorted, all necessary steps which would include issuance of appropriate notifications, inviting objections from the petitioner, hearing the petitioner and determination of compensation as per the prevalent market rate were required to be resorted. However, when by-passing such procedure, respondent No.1 in a consensual manner took over the possession of the petitioner's land with a promise to the petitioner to grant to the petitioner TDR/FSI in lieu of monetary compensation, in our opinion, it was certainly an onerous responsibility and obligation on respondent No.1 and its Officers to act swiftly and comply with its promises and assurances and not to wield a reckless approach. This more particularly when there is a rule of law which is prevalent, and the rights of the parties to own the land could not have been deprived contrary to the guarantee under Article 300A of the Constitution. It also cannot be countenanced that once the petitioner was deprived of his land in a manner not known to law, even assuming that the petitioner did not have some of the documents at the relevant time, it cannot be that the petitioner would be deprived of his Constitutional right as the

owner of the land to receive compensation in complete defiance of such legal rights.

22. As noted above, in the present case, the correspondence as entered between the parties is replete qua the recognition of the petitioner's rights as the owner of the land and to the legitimate entitlement to receive the TDR. Most importantly, respondent No.1, under our order dated 11 October 2024, has now issued "Pra-Patra (a) and (b)" in favour of the petitioner and subject to the orders to be passed on the present proceeding. Thus, by grant of "Pra-Patra (a) and (b)", it is implicit that the petitioner's rights for grant of TDR/FSI have been recognized, as this was the only document which had remained to be submitted by the petitioner which is now issued by respondent No.1, for the petitioner to be entitled to the TDR/FSI.

23. Be that as it may, what has also disturbed us is the vehemence of Mr. Sukhadeo in justifying every possible line in the reply affidavit of Mr. Prasad Gaikwad, Deputy Director, Town Planning albeit not supported in law. Mr. Sukhadeo is not in a position to justify as to how, merely because all the documents were not submitted or they were being belatedly submitted by the petitioner, could disentitle the petitioner to the compensation as asserted in the reply affidavit. He is also not in a position to justify the stand taken in the reply affidavit in paragraph Nos.9, 10 & 11, that is, as to how the UDCPR of 2020 would become applicable in respect of land, which had stood acquired in the

year 2008 and that too without following due procedure in law and / or by payment of compensation to the petitioner. He is also not in a position to justify as to how such stand of the deponent of the reply affidavit can at all be accepted by the Court, that the petitioner is not entitled to either TDR or any compensation as stated by Mr. Prasad Gaikwad in paragraph 12 of his affidavit as noted by us hereinabove. This more particularly, when the contents in paragraph 12 are in the teeth of the letter dated 25 July 2023 as addressed by the then Deputy Engineer, Town Planning of Respondent No.1.

24. From the tenor of the affidavit of Mr. Prasad Gaikwad, we are of the clear opinion that this affidavit is filed to mislead the Court, to say the least, and / or to take a dishonest stand which no public officer can take and more particularly contrary to the record, that too in the case of a farmer, who has been deprived of his land as also his right to receive compensation, rendering him landless, as far back in 2008.

25. The position in law in this regard for the petitioner to become entitle to compensation is well settled. No person can be deprived of his land, for being utilized for a public purpose, without being compensated as the law would mandate. In the present case, the petitioner has become entitled for the TDR/FSI as the petitioner has submitted all the documents. The only deficit document is also now issued to the petitioner namely “Pra-Patra (a) and (b)” as annexed to the reply affidavit. However, what cannot be overlooked is that

although “Pra-Patra (a) and (b)” has been issued, by virtue of the affidavit of Mr. Prasad Gaikwad, it is being rendered is a mere paper formality and / or to be of no consequence, as noted by us above. In our opinion, when “Pra-Patra (a) and (b)” was issued as per the orders of this Court which considered respondent No.1’s prior letter dated 25 July 2023, to take a stand as contained in the reply affidavit by Mr. Prasad Gaikwad that the petitioner would be denied grant of compensation in our opinion this has amounted to a highest impropriety in making such affidavit to not only render the “Pra-Patra” of no consequence but even render the Court orders meaningless.

26. Thus, on one hand, it appears that Mr. Prasad Gaikwad, the deponent of the affidavit himself has issued “pra-patra (a) and (b)” however, on the other hand by incorporating such contents of his affidavit as noted by us and for reasons best known to him and / or on extraneous considerations, has sought to deprive the petitioner of his legitimate entitlement to the compensation (TDR/FSI). In fact, he has gone a step ahead to take a position that the petitioner would not entitled to “any compensation” on the ground of delay in submission of the documents, which was never the stand of respondent No.1 in the correspondence entered with the petitioner. Such contention in the reply affidavit is contrary to the settled principles of law as laid down by the Supreme Court in plethora of its judgments (*See: Tukaram Kana Joshi & Ors. Vs.*

Maharashtra Industrial Development Corporation & Ors¹. and Vidaya Devi Vs. The State of Himachal Pradesh²

27. We are certainly not accepting the stand taken in the reply affidavit of Mr. Prasad Gaikwad which unfortunately is stated to be filed on behalf of respondent No.1. In fact, we have no manner of doubt that our observations on the reply affidavit of Mr. Prasad Gaikwad stands compounded, when we dwell deep into the merits of the matter. In these circumstances, we reject Mr. Sukhadeo's contention that the Court considering the reply affidavit needs to hold that the petitioner is not entitled to claim the compensation. We may also observe that as a Constitutional Court, we also cannot be oblivious of an Officer of a public body taking a totally untenable stand, contrary to the rule of law, which in our opinion, is required to be seriously dealt in passing appropriate orders as to costs.

28. In the light of the above discussion, we are of the clear opinion that the petition needs to succeed as respondent No.1 certainly is under a mandate of law to grant compensation to the petitioner in the form of TDR or otherwise. Further, in the manner in which the petitioner has been deprived of his legitimate entitlement to receive compensation in the form of TDR/FSI when the petitioner's land was not subject matter of acquisition by following the procedure of Land Acquisition Act and the possession being taken over

1 (2013) 1 SCC 353

2 (2020) 2 SCC 569

without compensation being paid, to the petitioner, in our opinion, in the alternative the petitioner would also become entitled for payment of monetary compensation instead of TDR (**See: Indore Development Authority Vs. Manoharlal & Ors³**). We are accordingly inclined to dispose of the petition by the following order:

ORDER

- i. Respondent No.1 is directed to grant the petitioner TDR/FSI equivalent to the monetary compensation and by considering the issuance of “Pra-Patra (a) and (b)” as granted to the petitioner in pursuance of our order dated 11 October 2024.
- ii. In the alternative to (i) above, in the peculiar facts of the case, there shall be also an option to the petitioner to receive either the TDR/FSI and / or to receive monetary compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 considering the law as laid down by the Supreme Court in **Indore Development Authority** (supra).

3 (2020) 8 SCC 129

iii. In the event, the petitioner intends to accept the TDR/FSI, the same be released in favour of the petitioner within one week of the petitioner informing the Deputy Director, Town Planning, his intention to avail the TDR.

iv. In the event, the petitioner is not interested to avail of the TDR, in that event, respondent No.1 shall pay to the petitioner monetary compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of six weeks of making such request, along with appropriate interest calculated from the day the petitioner was deprived of his land till payment.

29. Although, the above directions would meet the ends of justice, we would be failing in our duty if we do not pass an appropriate order as to costs, to be paid to the petitioner and considering the brazenly illegal and mischievous stand taken by the deponent of the affidavit. We are not informed by Mr. Sukhadeo that the reply affidavit has received any approval from the highest Authority in the Municipal Corporation and we will not permit any *post facto* and / or any further approval to be placed on record more particularly, considering the peculiar facts of the case. At this stage, Mr. Sukhadeo has

pointed out that the deponent is the highest authority and no approval for filing of such affidavit before the Court was necessary and Mr. Prasad Gaikwad has filed this affidavit in his own authority.

30. In this view of the matter, we direct that Mr. Prasad Gaikwad, Deputy Director, Town Planning shall personally pay a cost of Rs.50,000/- to the petitioner within a period of 10 days from today, failing which the Municipal Corporation shall recover the same from his emoluments and pay the same to the petitioner.

31. The petition accordingly stands allowed in the aforesaid terms.

32. Disposed of.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)