

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 6536 OF 2024
IN
WRIT PETITION NO. 6457 OF 2011

Mira Cooperative Housing Soc Ltd	...Applicant
<i>In the matter between</i>	
Mira Cooperative Housing Soc Ltd	...Petitioner
<i>Versus</i>	
The Pune Municipal Corporation & Ors	...Respondents

Mr Darshanchandra B Zaveri, for the Applicant/Petitioner.
Mr Abhijit P Kulkarni, with Sweta Shah & Krushna Jaybhay, for
Respondent No 1.
Mr AA Alaspurkar, AGP, for Respondents Nos 5 to 7-State.

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CORAM G.S. Patel &
M.M. Sathaye, JJ.
DATED: 18th March 2024

PC:-

1. The principal challenge in this Petition is to an order of 12th July 2011 passed by the City Engineer of the Pune Municipal Corporation (“PMC”). The other prayers are to quash the communication dated 9th January 2009 rejecting the Petitioner’s application for Transferable Development Right (“TDR”) and to quash and set aside a letter of 23rd July 1999.

2. All the prayers for quashing are wrongly worded. Every single one is worded as Mandamus. It should be worded as Certiorari. We will overlook this.

3. The limited facts that we need to dispose of this Petition are simply these.

4. There is a plot of land of 400969 sq ft at CTS No 39, Final Plot No 392/1, Gultekdi, Pune 400 037, abutting Shankarsheth Road. The Petitioner Society owns or owned this land. A portion of it of about 14100 sq ft was reserved for a 36 mts DP (“**Development Plan**”) Road by the PMC under Town Planning Scheme No III. The fact that this portion of the road was taken over by the PMC is not in dispute. What the Petitioner claims is that it has received nothing by way of compensation. Its application for TDR has been refused (hence the separate challenge in that regard); it has not received cash compensation; and it has not received another plot in lieu of the land taken over. Pure and simple, the Petitioner says this is a case of expropriation prohibited under Article 300A of the Constitution of India and violative of their right under Article 14 because the action of the PMC is arbitrary, irrational and unreasonable.

5. That is the whole of the case.

6. Mr Kulkarni, after apologising profusely for his delay and quite needless telling us what was happening in some other Court, informs us that in fact the PMC has agreed that cash compensation

is payable and the impugned order itself says so. The impugned order starts at page 150 at Exhibit “Q” and at page 154, there is a finding returned that possession was taken but no compensation has been offered. TDR cannot be granted. Accordingly, the direction was that cash compensation ought to be computed based on the available records and offered to the Petitioner.

7. Mr Kulkarni states that this entire process was stopped in its tracks because the Petitioner filed this Writ Petition. He submits that this Petition is a sort of self-goal. But for the challenge in this Petition, the cash compensation would have been compensated and computed and paid out a long time ago.

8. The real difficulty for the Petitioner is that the order is of 12th July 2011. Rule was issued. We are in 2024. By now the Unified Development Control and Promotion Regulations (“UDCPR”) that have come into play. The Petitioner in relentless pursuit of TDR once again sought compensation by TDR under the revised DP. This was refused almost predictably in 2024 and now the Petitioner wants to amend. If we allow that amendment to this already admitted Petition, there is a near certainty that it will not reach a final hearing till 2034 or even 2044. By that time there may well be another DP, and this cycle will keep going on indefinitely, perhaps after this High Court has migrated to another location.. We would rather this Petition was disposed of at the present campus.

9. The question will therefore be of what is the base date to be taken into consideration. Obviously, the correct date would be 12th

July 2011 because that is the date of the order itself. We anticipate even before he says it that Mr Kulkarni will protest against any suggestion that interest be paid from 2011 till 2024. He will point out, quite rightly, that it is the Court and not the PMC that is responsible for this delay. Had this order been made in 2011 the situation would not have arisen.

10. Equally, there is the fact that even on a without prejudice basis that compensation has not even been computed yet let alone paid. We presume that there will be some sort of objective basis for computing the compensation. The area of the land taken over is not in dispute. We expect the PMC therefore to compute the compensation on two separate dates, viz., as on the date of possession of 2001 and as of the date of the order of 2011.

11. This will be done within a period of 10 days from today.

12. We will decide on the next occasion what according to us is the more just, equitable and fair decision to take to a final disposal of the Petition.

13. List the matter on 3rd April 2024.

(M.M. Sathaye, J)

(G. S. Patel, J)