

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 4172 OF 2010

Shrikant H. Soni ...Petitioner

v/s.

Asst. Director  
Town Planning Authority  
for Nashik Municipal Corporation  
and ors.

...Respondents

Mr. Aspi Chinoy, Sr. Advocate with Mr. Tushar Sonawane and Mr. Nikhip Rajani i/b V. Deshpande & Co. for Petitioner.  
Mr. A. Y. Sakhare, Sr. Advocate with Mr. V. A. Gangal, Mr. Ashok Gade and Mr. C. K. Nirmale for Respondents Nos. 1 & 2.  
Mrs. Neha Bhide, AGP for Respondent No. 3.

CORAM: D. K. Deshmukh &  
Ranjit More, JJ

DATED: 20<sup>th</sup> July, 2011

P.C.:

1. By this petition the Petitioner claims a direction to the Respondent-Corporation to grant to the Petitioner amenity T.D.R. Under the Development Control Regulations.

2. The relevant facts are that, admittedly the land of the Petitioner was reserved for a Development Plan Road (D.P. road). The Petitioner admittedly has surrendered that land and has also paid the expenditure incurred by the Corporation for construction of

the road. Admittedly, the Petitioner has also been given the land T.D.R. For the land covered by the D.P.road. The Petitioner, thereafter, relying on the judgment of the Supreme Court in the case of Godrej and Boyce Manufacturing Co.Ltd. v/s. State of Maharashtra, 2009 SCC (5) 24 claimed amenity T.D.R. The Corporation refused to grant him amenity T.D.R. The principal reason why the Corporation declined to grant the amenity T.D.R. To the Petitioner is that the Petitioner had applied for sanction of lay out of his land. The land of the Petitioner where the Petitioner wanted to lay out the plot was accessed through the D.P.road from the same land. For grant of permission to the Petitioner to lay out the plot a condition was imposed that the Petitioner will surrender the land covered by the road free of costs and will also pay the costs of construction of the road. .

3. The defence of the Corporation is that because the Petitioner agreed to surrender the land covered by lay out road including D.P.road free of costs and also to bear the costs of construction of the road, the Petitioner cannot relying on the judgment of the Supreme Court referred to above and Development Control Regulations claim amenity T.D.R.

4. Perusal of the record shows that it is an admitted position that the part of the land of the Petitioner was affected by the D.P. Road. It is also an admitted position that the Petitioner has surrendered that land to the Corporation. The Corporation has admittedly has not paid any compensation to the Petitioner. The Petitioner admittedly has also paid the expenditure incurred by the Corporation for constructing the D.P. Road. It is also an admitted position that one of the conditions imposed by the Corporation for sanctioning the lay out of the plot submitted by the Petitioner was that the Petitioner will surrender the land under the road in the lay out free of costs and will also bear the costs of construction of the road. Perusal of the judgment of the Supreme Court in the case of Godrej and Boyce Manufacturing Co.Ltd. (supra), especially observations found in paragraphs 60 to 64, indicates that the Corporation cannot impose a condition that the owner will surrender the land which is covered by D.P. Road free of costs and shall construct the road without claiming any compensation from the Corporation. The observations of the Supreme Court from paragraphs 60 to 64 of that judgment are relevant. They read as under:

60. Apart from the contention raised by Mr.Naphade, Mr. Shishodia Senior Advocate appearing for the Municipal Corporation, Greater Mumbai resisted the claims

of the appellants and the writ petitioners on certain other grounds. Mr. Shishodia submitted that for acquisition of the designated plot of land recourse to clause (b) of sub section (1) of Section 126 of the Act could only be taken by mutual agreement of the parties concerned. It was equally open to the municipal authorities not to accept the surrender of the land under clause (b) as it was open to the land owner to make the offer. Therefore, it followed according to him, that the municipal authorities could accept acquisition of the land in terms of clause (b) on certain conditions to which the land owner might or might not agree. In case the land owner did not agree to the condition(s) put by the municipal authority he would not surrender the land and then the acquisition of the land could take place either in terms of clause (a) or clause (c) of section 126 (1).

61. Mr. Shishodia submitted that the appellants in all the cases had agreed to construct the road as part of the condition to surrender the land and getting 100% TDR in lieu of the land. According to him, since the construction of the road was a condition for grant of 100% TDR for the bare land the appellants and the petitioners were not entitled to claim any further TDR at all for construction of the roads by them.

62. Mr. Shishodia further submitted that it was only indulgence shown to the appellants and the petitioners that the municipal authorities agreed to give them additional TDR to the extent of 15% of the road area after the issuance of circular dated April 9, 1996 and 25% of the road area after the issuance of the circular dated April 5, 2003.

63. The submission of Mr. Shishodia is completely unacceptable. The conditions, that is to say, the mutual rights and obligations subject to which the land owner may offer to surrender the designated plot of land to municipal authority and the latter may accept the offer are enumerated in detail in the statutory provisions. Beyond those conditions there can be no negotiations for surrender of the land, particularly in derogation to the land owner's statutory rights.

64. Having regard to the nature of the law the submission advanced on behalf of the municipal authority would lead to palpably unjust and inequitable results. The land owner whose land is designated in the development plan as reserved for

any of the purposes enumerated in section 22 of the Act or for any of the amenities as defined under section 2(2) of the Act or regulation 2(7) of the Regulations is not left with many options and he does not have the same bargaining position as the municipal authority. Therefore, surrender of the land in terms of clause (b) of section 126(1) of the Act cannot be subjected to any further conditions than those already provided for in the statutory provisions. It is of course open to the legislature to add to the conditions provided for in the statute (or for that matter to do away with certain conditions that might be in existence) But it certainly can not be left in the hands of the executive to impose conditions in addition to those in the statutes for accepting the offer to surrender the designated land.

5. What is further pertinent to be noted is that the same Corporation has admittedly released the land T.D.R. in favour of the Petitioner. If, according to the Corporation because of the condition imposed in the letter sanctioning lay out the Petitioner had surrendered the land free of costs, then it is for the Corporation to explain why it released the land T.D.R. In favour of the Petitioner.

6. In our opinion, when the Corporation released the land T.D.R. to the Petitioner, it is clear because of the condition imposed in the order sanctioning the lay out, statutory rights which are acquired by the Petitioner under the Development Control Regulations cannot be denied to the Petitioner.

7. In the result, therefore, the petition succeeds and is allowed. Rule is made absolute in terms of prayer clauses (b) & (c).

8. The learned Counsel appearing for the Corporation states that the Corporation has committed a mistake in communicating the exact amount of expenditure incurred by the Corporation for construction of the D.P. Road. He submits that some additional amount is to be recovered from the Petitioner towards the construction costs of the D.P. Road.

9. In our opinion, as the Petitioner has admittedly paid the amount which was claimed by the Corporation, in case there is any additional amount which according to the Corporation is recoverable on that account, the Corporation shall be free to adopt such remedy as may be available to it under the law.

(RANJIT MORE, J.)

(D.K.DESHMUKH, J.)