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2/2/1990

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 1392 OF 1990

- 1) M/s.Green Field Co-operative )  
Housing Society Limited, )  
Santacruz (West), situate at )  
S.V.Road, Opp.Akbarallys, )  
Bombay - 400 054. )  
2) Mr. Harshad K. D. )  
Architect, having his office )  
at 3rd Floor, 23, Hamam Street, )  
Ambalal Doshi Marg, Fort, )  
Bombay - 400 023. ... ) ... Petitioners.

Versus

- 1) Municipal Corporation for )  
Greater Bombay, Municipal )  
Corporation of Greater Bombay, )  
having its office at Mahapalika )  
~~Maxxy~~ Building, Mahapalika Marg, )  
Fort, Bombay - 400 001. )  
2) The Executive Engineer, )  
Building Proposal, Western )  
Suburb, H & K Ward, Bombay )  
Municipal Corporation, Bandra )  
(West), Bombay - 400 050. ... )

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- 3) The Ward Officer, )  
H/West Ward, Municipal )  
Corporation for Greater )  
Bombay, Bandra (West), )  
Bombay - 400 050. )  
4) State of Maharashtra. ) ... Respondents.

Mr. M. Morje for Petitioners.

Mr. G.V.Murthy for Respondent Nos.1 to 3.

Miss S.M.Dandekar for Respondent No.4.

CORAM : SHRI S.H.KAPADIA, J.

DATED : 14TH JUNE, 1994.

ORAL JUDGMENT :

By this writ petition, the Petitioner-Society claim the benefit of Circular dated 4th August 1987 which deals with grant of F.S.I. in lieu of set-back land or construction of roads by the Corporation under the Development Plan. The Petitioners' claim for F.S.I. in lieu of compensation under the said Circular has been rejected by the Corporation on the ground that the said claim for F.S.I. in lieu of compensation was not made within 12 years from the Corporation taking over  
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possession of the land for the purpose of road widening or for the purpose of D.P.Road. In the circumstances, the present Writ Petition has been filed.

2. At the outset, it may be mentioned that the Petitioner has challenged the validity of the said Circular and has also in any event claim the benefit of F.S.I. on the ground that its claim for F.S.I. was within 12 years of their land being taken over by the Corporation for set-back purposes. For the reasons stated hereinafter, I am not required to go into and examine the constitutional validity of the said Circular dated 4th August, 1987.

3. For the purpose of deciding this Writ Petition, the following facts briefly are required to be stated.

- (a) The Petitioner No.1 is a Co-operative Housing Society. The petitioners are the owners of the Plot of land admeasuring 2077.8 sq.mtrs. bearing CTS No.G/505 of Village Bandra situate at S.V.Road, Santacruz (West), Bombay - 400 054. A portion of the land was acquired by the Corporation and Possession was taken of

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about 100 sq.mtrs. in 1973 for set back purposes by the Bombay Municipal Corporation.

(b) By letter dated 17th October 1976 addressed to the Society, the Assistant Engineer (Maintenance), H/West ward, Bombay Municipal Corporation, the Society informed the Corporation that the Society had decided to take advantage of F.S.I. in lieu of set back land acquired by the Corporation for road widening. By the said letter, the Corporation was requested to advise the Society about the formalities to be completed in order to finalise the area of the set back land at the earliest opportunity.

(c) By letter dated 2nd February 1975 addressed by the Assistant Engineer to the Society, the Society was informed that the set back land affected by 90' wide sanctioned regular line was acquired by the Corporation on 3rd December 1973 and the area was of the acquired set back land was ~~116.96~~ 116.96 sq.yards. The Society was required to confirm the same

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within seven days failing which it was to be presumed that the area mentioned in the letter was acceptable, to the Society. By the said letter, the Assistant Engineer, also acknowledged the fact that the Society was only interested in taking advantage of additional F.S.I. in lieu of compensation for the acquired set back land.

- (d) By letter dated 13th February 1977, the Society categorically confirmed that the area of the acquired set back land works out to 116.96 sq.yards as stated by the Corporation in their letter dated 2nd February 1977. Thereafter, no intimation whatsoever was given to the Society although the Society had categorically requested the Assistant Engineer to do so with regard to the formalities required to be complied with by the Society.
- (e) On 21st September 1978, the Society once again wrote to Executive Engineer enclosing relevant documents which the Engineer had
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called upon the Society to produce. Once again the Society referred to correspondence of 1976 and 1977 and pointed out that the Society was interested in claiming additional F.S.I. and that the Society had opted for F.S.I. and not for compensation. Since the benefit of F.S.I. was not given as contemplated by the Circular, the above Petition was filed. In the present case, Corporation has not filed any Affidavit-in-Reply.

4. Mr. Morje, learned Counsel appearing for the petitioners, submitted that the above letters dated 17th October 1976 addressed by the Society to the Corporation as well as the letter dated 13th February 1977 addressed by the Society to the Corporation confirming the area of the acquired set back land constituted a claim for F.S.I. within clause 1 of the Circular dated 4th August 1987. Mr. Morje also submitted that under the Circular dated 4th August 1987, Society was required to claim compensation or F.S.I. in lieu of compensation within 12 years

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from the date of the Corporation taking possession of the land. Mr. Morje pointed out that the possession was taken on 3rd December 1973 and therefore the Petitioners' claim for F.S.I. on 17th October 1976 as well as 13th February 1977 was within the prescribed period. Mr. Murthy, learned counsel for the Corporation, on the other hand submitted that the confirmation to the Society's claim for compensation was made only by the Society as indicated in the letter of 21st September 1988 and therefore the Petitioners were not entitled to claim F.S.I. under the above Circular because it was beyond the prescribed period of 12 years. Mr. Murthy submitted that the Society was required to comply with certain formalities including the submission of the requisite plan and since the Society did not do so, within the prescribed period of 12 years from 3rd December 1973, the claim for F.S.I. was barred under the said Circular.

5. I find considerable merits in the contention of Mr. Morje, learned Counsel for the Petitioners. The possession of the land was taken

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on 3rd December 1973. The Society categorically by their letter dated 17th October 1976 informed the Corporation that the Society was only interested in claiming F.S.I. and not compensation. By the said letter, the Society called upon the Corporation to advise them as to ~~the~~<sup>what</sup> formalities, they were required to comply with. By letter dated 13th February 1977, the Society was requested by the Corporation confirmed the area of the acquired land to be 116.96 sq.yds. The Corporation did not call upon the Society pursuant to the above two letters to comply with any other further formalities. It is 1988 that the Society had also complied with further formalities but the Corporation has refused to give them the benefit of the F.S.I. under the said Circular. Clause 1 of the said Circular categorically states that if a claim for F.S.I. or compensation is made by the Society within 12 years then the Corporation will grant either compensation or F.S.I. as claimed. Clause 3 of the said Circular further provides that if the claim for F.S.I. or compensation is duly made within the prescribed period and no decision is

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is taken by the Corporation on account of procedural delay, then such case should be considered even after expiry of 12 years from the Corporation taking over possession. In the present case, therefore, in view of the letters addressed by the Society to the Corporation, it is clearly established that claim for P.S.I. in lieu of compensation was made within the prescribed period.

6. For the foregoing reasons, the Corporation is directed to grant P.S.I. subject to the Petitioners complying with all statutory conditions as required in law. Rule is accordingly made absolute with no order as to costs.

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