



Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 20223 OF 2023

Eversmile Construction Company Pvt Ltd & Anr ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Pravin Samdani, Senior Advocate, with Viraj Parikh, Samit Shukla, Shivani Khanwilkar, Mustafa Nulwab i/b DSK Legal, for the Petitioners.

Mr GS Hegde, Senior Advocate, with Pinky Bhansali for Respondent No. 2-MMRDA.

Ms Shoma Maitra, with Nipeksh Jain i/b Wadia Ghandy & Co, for Respondent No. 4.

Mr Abhay L Patki, AGP, for the Respondent-State.

**CORAM G.S. Patel &
Kamal Khata, JJ.**

DATED: 13th September 2023

PC:-

1. In light of the affidavit filed by Mr Hegde on behalf of the 2nd Respondent, the Mumbai Metropolitan Region Development Authority (“MMRDA”) to the effect that it is not the planning authority in regard to that portion of the Sahar Elevated Road that was built on the land belonging to the Petitioner, we make reference first to paragraph 5 of our order of 31st August 2023 and the

quotation of paragraph 12 of the Petition reproduced there. We repeat it again for clarity:

“12. In the circumstances, there are only two possibilities that can arise:

(i) Respondent No.1, MCGM, has taken over the subject property and constructed the road thereon. Therefore, it must compensate the Petitioners by issuing TDR OR

(ii) Respondent No.2, MMRDA, has taken over the subject property and constructed the road thereon. Therefore, it must compensate the Petitioners by recommending the MCGM to issue TDR.”

2. While we note the statement made in paragraph 1 of MMRDA’s Affidavit in Reply that it is not averse to making a recommendation, we do not see how this can be compelled by a mandamus if MMRDA says it does not have the necessary jurisdiction or that this property is not within its command area.

3. We see no manner in which the holder of a property can be denied a legitimate and recognised form of compensation for the taking over of a part of that property for a public use. Either there has to be compensation under an acquisition act or some form of compensation must be given in kind, for instance by additional FSI, transferable development rights, etc.

4. In this context, Mr Samdani is correct in drawing our attention to the decision of the Supreme Court in *Harikrishna*

*Mandir Trust v. State of Maharashtra & Ors.*¹ In paragraphs 106 to 117, this decision highlights precisely the perils that we anticipate of the public authorities persisting in each disclaiming jurisdictional authority.

5. Prayer clauses A and B of the Petition at pages 19 and 20 read thus:

“A. This Hon’ble Court may be pleased to issue a writ of mandamus, a writ in the nature of mandamus, or such other appropriate writ, order or direction, under Article 226 of the Constitution of India, directing the Respondents to accept the surrender of the Subject Property by the Petitioners, pursuant to the Petitioners’ application dated 24th July 2018.

B. This Hon’ble Court may be pleased to issue a writ of mandamus, a writ in the nature of mandamus, or such other appropriate writ, order or direction, under Article 226 of the Constitution of India, directing the Respondents (or any of them as may be determined) to grant Transferable Development Rights (“TDR”) in the form Development Rights Certificates to the Petitioners against the Subject Property in accordance with the prevailing Development Control Regulations (as the Hon’ble Court may determine).”

6. These prayers will need to be moulded somewhat because the mandamus cannot issue against *all* the Respondents. We confine the mandamus to the Municipal Corporation of Greater Mumbai (“MCGM”), the authority which issues the Development Rights Certificate (“DRC”). We do so because it is not contentious that

1 (2020) 9 SCC 356.

even on the matter of issuance of a DRC, and even if the property had been within its command area, at best MMRDA would have made a recommendation or issued a No Objection Certificate (“NOC”). It would not itself have issued a DRC.

7. Above all, we are mindful of the resultant chaos if compensation in this form is not granted to the Petitioner. That is a much wider public interest because it would necessarily mean that even MMRDA officials would not be able to get to the airport.

8. Having regard to these circumstances, we make Rule absolute in terms of prayer clauses A and B but directed against MCGM Respondent No. 1. The MCGM will issue the necessary DRC after completion of all formalities within a period of no more than four weeks from today. The MCGM will act on production of an authenticated copy of this order.

(Kamal Khata, J)

(G. S. Patel, J)