

Salgaonkar

MANDIRA MILIND
SALGAONKAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1847 OF 2009

Maneka Co-Operative Housing Society .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

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Mr.Bhushan Deshmukh with Abinash Pradhan and Yash Dedhia i/b Wadia Ghandy & Co. for the Petitioner.

Mr.Abhijit Kulkarni with Abhishek Roy, Sweta Shah and Gaurav Shahane for the PMC/Respondent Nos.3 and 4.

Mr.Karan S. Thorat, 'B' Panel Counsel for the State/Respondent.

**CORAM: BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.**

DATE : 08th SEPTEMBER, 2026

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JUDGMENT (PER BHARATI DANGRE, J.)

1. The Petitioner, a Co-operative Housing Society, is the owner of property known as Bibviewadi, Survey No.47/1/1B/2. In relation to the said property, land acquisition proceedings were commenced and it resulted into passing of an Award on 05/11/1984, thereby acquiring land admeasuring 40 R for which the compensation of Rs.64,800/- become payable.

It is the case of the Petitioner that the compensation, though deposited by the acquiring body with State Government, the same is not collected by the Petitioner and it chose to file Suit No.2053 of 1984 against the notice of possession, seeking an order of injunction restraining the authorities from taking possession of the land.

In 1987, when the Corporation prepared a development plan for the city of Pune, the subject land was shown as reserved for weaker section-15.

2. The Development Control Regulation for the city of Pune was published and this included Regulation N-2.4.17, determining the eligibility criteria for availing Transferable Development Rights (**TDR**) in form of Development Right Certificate (**DRC**) and covering those persons, whose lands were acquired and possession of the land was delivered, without receiving part or full compensation, either under the Maharashtra Regional and Town Planning Act, 1966 (for short, "MRTP Act") or The Bombay Provincial Municipal Corporations Act, 1949.

Alongwith the said Regulation, the Commissioner of the Municipal Corporation also floated a scheme to be availed by the persons, whose land was acquired and who were willing to pay the entire amount under the Award plus 12% interest and 5% service fees, to be entitled for grant of TDR.

3. Pursuant to the said Regulation, the Petitioner Society made an application to the concerned Department of PMC on 31/07/2003 for grant of TDR. The Municipal Commissioner was informed that the Petitioner complied with three conditions out of the four conditions and the condition regarding withdrawal of the court proceedings must be complied with.

The Petitioner made a formal application for grant of TDR alongwith an affidavit, which was accordingly preferred

in the prescribed format on 01/04/2004, which included the documents like the Plan and Zoning demarcation, copy of Award as well as the possession receipt.

The Petitioner also undertook to comply with the conditions for grant of TDR and on 18/10/2005, handed over the possession of the property to the Corporation.

This was followed by a letter addressed by the Land Acquisition Special Officer to the Tahsildar stating that the possession of the subject land has been taken and making a request for updating the 7/12 extract.

Further, on 28/06/1996, Suit No.2053 of 1984 filed by the Petitioner was also dismissed.

4. It is the case of the Petitioner that despite completion of all the formalities and handing over the possession of its land on 18/12/2005, no action was taken by the Corporation for grant of TDR as per its request, whereas the applications of the persons similarly situated to that of the Petitioner, were considered and they were granted TDR. The Petitioner has annexed the list of those persons in whose favour TDR has been granted.

5. A further development took place when the Petitioner was awaiting a final decision from the Corporation on its application for grant of TDR and it being, on 03/02/2007, the Urban Development Department issued directives under Section 154 of the MRTP Act, 1966 directing that TDR shall not be granted once an Award has been declared by following the acquisition process and/or the possession is delivered to

the Municipal Corporation. This Notification was to come into effect from its publication.

This was followed by a clarification issued by the Government on 16/08/2007, when the PMC vide its letter dated 28/02/2007, requested the Government to consider whether the directive issued would be applicable to the cases, where the PMC has already taken the possession, but not paid any compensation.

The Government, therefore, issued clarification on 16/08/2007 directing that in all cases where the Award was not published and the possession was not taken, grant of TDR was permissible. However, in cases where possession of land has been taken under any provisions of law and the compensation is wholly or partly tendered or deposited or accepted by the owner, TDR shall not be granted. It was also clarified that in all cases, where the Award was not published and the possession had been taken and in cases where no compensation had been paid and possession is taken, TDR shall be granted.

6. It is on 05/10/2007, the Petitioner was communicated about the refusal of the TDR, the same being solely based on the directive issued by the State Government under Section 154 on 03/02/2007 read with the explanation dated 16/08/2007 that on publication of the Award, grant of TDR was not permissible. This communication only relied upon the directives of the Government and the clarification that wherever the Award has been declared, no TDR was admissible.

7. The aforesaid communication constrained the Petitioner to approach the Government of Maharashtra on 08/10/2007 by clarifying that the Petitioner had not accepted any compensation under the Award and has already handed over the possession to PMC on 18/10/2005 on being asked to do so. The Petitioner also stated that it has filed an affidavit stating that it would not claim any compensation on 01/03/2005 and has complied with all the conditions for grant of TDR.

Upon the State Government seeking opinion of the Municipal Commissioner, it was informed that the refusal of grant of TDR was based upon the Government instructions/ Notification dated 03/02/2007 and the consequent clarification dated 16/08/2007.

This resulted into the rejection of the claim of the Petitioner by the State Government on 09/04/2008, when the following reasoning was adopted for rejecting the claim staked by the Petitioner.

“MAHARASHTRA STATE
No.TPS-1807/1900
Case No.42/08/New-13,
Urban Development Dept.
Mantralaya,
Mumbai 400 032
Dated : 09/04/2008

To,
Menka Sahakari Gruha Rachana Sanstha Maryadit,
B-48, Vizewada, 129, Shukrawar Peth,
Pune 411 922

Subject : Development Plan, Pune
Regarding T.D.R. for land S.No.674/1/1B/2
reserved for EWS.

Reference : Your letter dated 8.10.2007.

Sir,

Please refer to your above referred letter. In the said letter, it is requested to the Government for getting T.D.R. for the land in subject.

The Award in respect of the land being Survey No.647/1B/2 at village Bibwewadi to be acquired for the purpose of economical weaker

section has been declared on 5.11.1984 and the possession of the land under acquisition has been taken on 18.10.2005. As per the directions issued by Government dated 3.2.2007 as per Section 154 and as per clarification issued by the Government on 16/8/2007, the T.D.R. Is not admissible for the lands where Award has been declared and possession of the lands taken. Hence, your request for issuing T.D.R. For the said land is hereby rejected and I am directed to inform you accordingly.

Yours,

(Nandkishore Patil)
Addl. Secretary”

8. It is in this background cause of action, when the proposal of the Petitioner Society for grant of TDR received rejection, both by the Corporation as well as the State Government, in light of the Notification/directives issued by the State Government in exercise of power under Section 154 of the MRTP Act, the Petitioner has approached this Court and primarily seeking the following reliefs :-

“(b) This Hon’ble Court be pleased to issue a Writ of Certiorari or any other writ, order or direction in the nature of Writ of Certiorari, and after examining the legality, validity and propriety of the Impugned Orders dated 3rd February 2007 and 16th August, 2007 be pleased to declare the same as ultra vires the provisions of the MRTP Act, 1966 and consequently, the letter/order dated 5th October 2007 and 9th April 2008 be quashed and set aside.

(c) Alternatively for a declaration that the provisions of Section 154 of the MRTP Act are ultra vires the Constitution of India;

(d) This Hon’ble Court be pleased to issue a Writ of Certiorari or any other writ, order or direction in the nature of Writ of Certiorari, and after examining the legality, validity and propriety of the Impugned Orders dated 3rd February 2007; 16th August 2007 and letter/order dated 5th October 2007 and 9th April 2008 be pleased to direct the Respondents to grant TDR in favour of the Petitioners in respect of the subject land;”

9. We have heard the learned counsel for the Petitioner and the learned counsel for the Corporation as well as the State Government.

On 01/12/2009, Rule being issued, we took up the Petition for final hearing on completion of the pleadings.

According to the learned counsel for the Petitioner, the rejection of the Petitioner's claim is highly erroneous, as the Petitioner satisfied the conditions for grant of TDR in cases where the lands were under acquisition, and according to him, Regulation N- 2.4.17 stipulated two conditions and both these conditions being satisfied, according to the learned counsel Mr.Bhushan Deshmukh, in terms of the DRC published by the Corporation on 30/09/1993, the Petitioner is eligible for grant of TDR. He would place reliance upon the decision of the Division Bench of this Court in the case of *Kausarbag Co-Operative Housing Society Ltd. Vs. State of Maharashtra*¹ and according to him, the High Court has set aside the Notification dated 03/02/2007 as well as the consequential Notification dated 22/03/2007, being ultra vires to the Regulations. He would invite our attention to paragraph 9 of the law report, which reads thus:-

"9. Coming to the impugned letter dated 22-3-2007, it is submitted by Shri K.K Singhvi, learned senior counsel appearing for the petitioner that Regulation No.2.4.17 is in the realm of subordinate legislation. Therefore, no direction contrary to it could be given by the Government in terms of Section 154 of the MRTP Act. We have perused Notification dated 3-2-2007. The Notification itself leaves no room to deny that the Notification was issued under Section 154 as one of the paras specifically mentions that. Curiously it also gives certain directions which it mentions as "New Rule" and the new Rule (1) is, "Transferable Development Rights (TDR) shall not be permissible once an award has been declared under the acquisition process and or the possession has already been delivered to the Municipal Corporation under any Act." The new Rule (4) says, "Pending the approval to the aforesaid modification the new rule mentioned hereinabove shall come into force with effect from the date of issue of this notification." The new Rule (3) says, "After completing the procedure as laid down under Section 37(1) of the said Act Municipal Corporation shall submit the said modification proposal to the Government for final sanction." In

¹ 2009 SCC OnLine Bom 1435

effect, this Notification appears to be a recommendation for modifying the Regulation. Although this Notification was issued in 2007, but on the date of hearing it was conceded that there was no such approval granted by the Government and this Notification amounts to modifying Regulation No. 2.4.17 which could not have been done in exercise of power under Section 154 of the MRTP Act. Shri Singhvi refers to the judgment of the Supreme Court in *Laxminarayan R. Bhattad v. State of Maharashtra*, reported in (2003) 5 SCC 413 and more particularly to the observations in para 51 thereof. The said observations read thus:

“A direction of the State Government in terms of Section 154 of the Act cannot supersede the statutory provisions contained either in the main enactment or the statutory regulations. The State of Maharashtra had absolutely no jurisdiction to issue any directive contrary to the statute or the statutory regulations.”

10. According to Mr.Deshmukh, this decision was further upheld by the Hon’ble Apex Court in the case of ***Pune Municipal Corporation & Anr. Vs. Kausarbag Co-Operative Housing Society Limited & Anr.***², which affirmed the order dated 15/09/2009 and dismissed the Appeal filed by the Pune Municipal Corporation and the State of Maharashtra.

According to the Petitioner, since the Petitioner satisfy both the conditions stipulated under Regulation N-2.4.17, as the request for grant of TDR was first made by it on 31/07/2003 i.e. after 30/09/1993 and the second condition stipulated therein being complied, as the possession of the subject land was acquired by the State Government on 10/01/1984 i.e. within twelve years prior to 30/09/1993 and the Petitioner has not accepted the compensation, though deposited, the Petitioner is entitled for TDR.

Apart from this, it is also pointed out to us that the Petitioner submitted various affidavits/undertakings to the Corporation, but without taking into consideration the fact that it complied with the stipulation for grant of TDR as per

² (2014) 15 SCC 753

the Regulation, its application was rejected on arbitrary grounds.

It is also submitted that pursuant to the High Court quashing the directive dated 03/02/2007 issued under Section 154 of the MRTP Act as well as the subsequent clarification, the Petitioner is entitled for TDR. The learned counsel has also sought to place before us the comparison of the facts involved in *Kausarbag Co-Operative Housing Society Ltd.* (supra) and in the case of the Petitioner to point out that the striking similarity in factual aspects alongwith the law laid down, entitled the Petitioner to the TDR, as prayed for.

11. The learned counsel for the Corporation, Mr.Kulkarni, would make a strenuous effort in contesting the claim of the Petitioner, and according to him, *Kausarbag Co-Operative Housing Society Ltd.* (supra) involved distinct facts and he would emphasise on the fact that the compensation was deposited by the acquiring body with the State Government, but it is the Petitioner, who failed to collect the compensation, as the Petitioner was agitating its claim filed in the civil suit. The learned counsel would also place reliance upon the decision of the Apex Court in the case of *Indore Development Authority Vs. Manoharlal & Ors.*³ to submit that once the compensation is declared under the Land Acquisition Act under an Award, it is not permissible to avail the benefit of TDR. The learned A.G.P. would also place reliance upon the decision of the Division Bench in the case of *Pawan Rajaramrao Kadam Vs.The State of Maharashtra & Ors. (Writ Petition No.6746 of 2024)*, in opposing the claim of the Petition

³ (2020) 8 SCC 129

and according to the learned counsel, representing the Respondents, the Petition did not deserve any consideration and they prayed for its dismissal.

12. We have perused the decision of Division Bench of this Court in *Kausarbag Co-Operative Housing Society Ltd.*(supra), when a claim was staked for TDR under the relevant Development Control Regulation (DCR) N-2.4 framed under the MRTP Act, 1966. The moot question was as regards the applicability of Regulation N-2.4.17 and the petitioner's land being situated in Kondhava Khurd, Pune shown in the development plan as 'garden' and it was acquired under the Land Acquisition Act, 1894 by passing an Award on 22/01/1982.

The society then preferred an application for grant of TDR and when the opinion was sought from various authorities, they expressed willingness to grant TDR/DRC in lieu of society's entitlement for compensation. The society was told that TDR/DRC would be granted, provided all the court proceedings are withdrawn, and accordingly, the Petitioner withdrew all the litigations.

The compensation pursuant to the Award was offered to the petitioner society in 1987, which was not accepted and it rather filed a reference for higher compensation under Section 18 of the Land Acquisition Act, which was also subsequently abandoned.

The proposal of the petitioner, however, received rejection in light of the directives issued by the State Government under Section 154 of the MRTP Act and that was the cause for the petitioner to approach this Court.

13. In the wake of the facts placed before the Court, two factors are to be noted, namely, the land was acquired pursuant to an Award passed in 1987 and even the possession of the land was taken and handed over to the Pune Municipal Corporation. The respondent-Corporation specifically contended that the provision in Regulation N-2.4.17 will not apply as the land was not shown as reserved in the development plan under the MRTP Act, but was a part of the layout submitted by the petitioner for the development of the land, wherein it was shown as a 'garden' and which received approval in the year 1973. It was contended that the development permission was granted on this assurance of the petitioner, but the Division Bench noted that it would not make any difference, whether the land was part of the development plan reserved by the Government or was part of the development plan submitted by the petitioner, as a part of the layout in which the land in question is shown as 'garden'.

It was held that the modified DCR N- 2.4.17(ii) does not make any such distinction, but it only offers TDR in lieu of compensation at the request of the owner, provided the land was acquired or taken possession of 12 years prior to 30/09/1993. The second submission advanced that the TDR could not be claimed when the land was not acquired by an agreement between the planning authority and the owner, was also brushed aside by noting that no such stipulation is to be found in Regulation N-2.4.17. The petitioner also claimed that the owners similar to him were granted TDR and this fact was not disputed.

In light of the aforesaid facts, finding is rendered, which we have already noted in the preceding paragraphs in form of paragraph No.9 of the law report.

As a result, the Notification dated 03/02/2007 was held to be illegal and ultra vires to the Regulations and for this very reason, the consequential Notification dated 22/03/2007 was also set aside.

14. As far as the present case is concerned, we find that the challenge of the Petitioner is to the rejection of its application for grant of TDR under the very same Development Control Regulations, namely, N-2.4 and the Petitioner also staked its claim for grant of TDR on the basis of Regulation N-2.4.17. The land involved in the present case was shown in the development plan to be reserved for weaker section and it was acquired for rehabilitation of Janta Colony Slum on Parvati Hill. The land acquisition proceedings commenced in January 1984 and the Award was passed on 05/11/1984.

A reference to the letter dated 03/11/2003 read with the letters, which are annexed alongwith the Petition and specifically tendered before us in the compilation of documents, reflect that various departments of Respondent No.3 initially opined that the Petitioner is eligible for grant of TDR. The Petitioner filed a civil suit seeking a restraint order from taking possession of the property and gave an undertaking not to claim additional compensation and not to prosecute the proceedings and in turn, complying with the conditions of grant of TDR. The Petitioner gave a categorical letter on 03/11/2003 stating that in the event TDR is granted,

the Petitioner will withdraw the suit. In any case, on 28/06/1996, the suit was disposed of.

The compensation of Rs.64,800/- was determined in the Award, but the petitioner never received the compensation

In this case also, the Petitioner has annexed the list of similarly situated owners, who are granted TDR, but merely on the basis of the impugned Notification as well as the clarification issued by the State Government, by exercising the power under Section 154, the request of the Petitioner has been turned down.

15. Comparing the facts of the present case with the one which fell for consideration before the Division Bench in case of *Kausarbag Co-Operative Housing Society Ltd.* (supra), we find that the facts are identically situated. When we specifically note that the Notification of 03/02/2007 does not hold the field and is already declared as illegal and ultra vires to the Regulations, we do not see any reason why we should once again entertain the challenge to the said Notification, which is already struck down.

The Hon'ble Apex Court accorded its approval to the reasoning adopted by the Division Bench while declaring the Notification dated 03/02/2007 and 22/03/2007 to be illegal and ultra vires of the DC Regulations. With specific focus on Regulation N-2.4.17, on facts the Apex Court noted that the acquisition of the land belonging to the respondent society was initiated by Notification dated 28/01/1982 issued under Section 4 of the Land Acquisition Act and the Declaration under Section 6 was published on 02/01/1985. Apart from

this, it was also noted that the Award was declared on 22/01/1987 and it was the stand of the petitioner that the description of the land as an existing garden was incorrect and what should have been mentioned in the development plan is that the land was proposed for garden, as possession of the same was still with the society on the date of publication of the final development plan i.e. on 05/01/1987 and the possession of the land was taken over only on 18/02/1987.

In the backdrop of the aforesaid factual matter, the Apex Court noted that the concept of TDR was introduced for the first time in the MRTP Act in the year 1993, by an amendment of Section 126(1)(a), (b) and (c) of the MRTP Act and the modalities for grant of TDR were brought into force by amending the DCR N-2.4 with effect from 05/06/1997. Clarifying that the concept of TDR involves the surrender of land reserved for various public purposes in the development plan free of cost and in exchange thereof grant of TDR entitling the holder thereof to construct a built-up area equivalent to the permissible FSI of the land handed over by him on one or more plots in the zone specified, it was held that such rights are transferable. The object behind introduction of TDR and which was admitted by the PMC, according to the Apex Court, was to meet the situation faced by the Corporation on being called upon to make payment of over Rs.1500 crores to take over different sites measuring about 600 ha which had been reserved for different public purposes in the development plan.

Recording that in order to avoid this, the DCR contemplated grant of TDR subject to the two specific stipulations, namely, the possession of the land has been

delivered without receipt of part or full compensation payable under the MRTP Act, the Bombay Provincial Municipal Corporation Act, private negotiations or under any Act and such event should have occurred within 12 years prior to 30/09/1993 (date of publication of the draft DCR containing the TDR concept). The Hon'ble Apex Court specifically observed thus :-

“Having regard to the clear language contained in DCR N-2.4.17(ii) and the object sought to be achieved by the introduction of TDR, we do not see as to how grant of TDR can be confined only to cases of lands which have been reserved in the development plan and not to lands acquired under the [Land Acquisition Act](#) which land eventually becomes a part of the finally approved and sanctioned development plan. The above would also lead to the conclusion that DCR N-2.4.17 is capable of operating independently and is not contingent on the existence of the conditions mentioned in DCR N-2.4.1(A).”

Apart from the above, we deem it apposite to reproduce the following observation of the Apex Court :-

“16. “Making of DCR or amendments thereof are legislative functions”. The Government Order dated 3-2-2007, though claimed to be clarificatory by the appellants, really, seeks to prohibit the grant of DCR under DCR N- 2.4.17 so far as lands in respect of which award under the Land Acquisition Act had been passed or possession of which has been taken over. This is contrary to the clear intent behind DCR N-2.4.17. The Government Order itself acknowledges the necessity of following the procedure prescribed by Section 37 of the MRTP Act before the aforesaid modification could become effective. Yet, surprisingly the Government Order goes on to state that, “Pending approval of the aforesaid modification, the new rule mentioned hereinabove shall come into force with effect from the date of issue of this notification”. The government order in question, having been issued under Section 154 of the MRTP Act, therefore, cannot override DCR N- 2.4.17 as the directions under Section 154 of the MRTP Act would be in the nature of administrative instructions (*Laxminarayan R. Bhattad v. State of Maharashtra*). Admittedly, at the relevant point of time, the requisite process under Section 37 of the MRTP Act has not been completed.”

16. With the above clear pronouncement of law, we see no reason why the Petitioner shall be denied the benefit, as we find that the facts involved in the present Petition are identical and rather correspond to the facts in ***Kausarbag Co-Operative Housing Society Ltd.*** (supra), where the law has been laid to the aforesaid effect.

The reliance placed by the learned A.G.P. in case of ***Pawan Rajaramrao Kadam*** (supra), in our view, does not take the case of the Respondents any further.

17. In the wake of the aforesaid, we allow the Writ Petition, by clarifying that the Notification dated 03/02/2007 issued by the State Government is already set aside by the Division Bench in ***Kausarbag Co-Operative Housing Society Ltd.*** (supra) and this Judgment is upheld by the Apex Court. We also declare that the clarification regarding TDR in continuation of the Government Letter dated 03/02/2007, addressed by the Urban Development Department to the Commissioner, Pune Municipal Corporation, for the very said reason that the Notification dated 03/02/2007 is already quashed and set aside, the challenge to the clarification dated 16/08/2007 must also meet the same fate, as the main Notification itself does not survive for consideration.

In the wake of the aforesaid, the impugned order dated 05/10/2007 passed by the Pune Municipal Corporation as well as the order dated 09/04/2008 passed by the State Government (Urban Development Department), rejecting the proposal of the Petitioner Society for grant of TDR based on the Government directions dated 03/02/2007 and the clarification dated 16/08/2007 are also quashed and set aside.

We direct the Pune Municipal Corporation to grant the TDR to which the Petitioner Society is entitled, but has been refused, relying upon the Directions/clarification issued by the State Government, which we have already quashed and set aside.

18. The counsel for the Corporation made an earnest request to remand the matter back to the Corporation for determining as to what TDR would be admissible to the Petitioner, but we do not deem it appropriate to consider the said request, as we must note that the claim of the Petitioner for the TDR is based upon DCR N-2.7.14 and since we are of the view that the Petitioner has complied with both the conditions thereof, namely, the request was made for grant of TDR after 30/09/1993 and the possession of the subject land has been given to the Corporation and the Petitioner has not yet received the compensation and this has been done within the period of twelve years prior to 30/09/1993, we direct the Corporation to grant TDR to the Petitioner in accordance with Regulation N-2.7.14.

Since the Petitioner is kept away from the said benefit for considerable length of time, we direct the TDR/FSI to be granted to the Petitioner Society, by issuing appropriate DRC within a period of twelve weeks from today.

19. The Petition stands disposed of in the aforestated terms.

(ASHISH S. CHAVAN, J.)

(BHARATI DANGRE, J.)