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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12890 OF 2016

Perfect Buildcon & Anr.

...Petitioners

Vs.

Municipal Corporation for the City of Nasik & Anr. ...Respondents

Mr. A.S. Rao, Advocate for the Petitioners

Mr. M.L. Patil, Advocate for the Respondents

CORAM : NARESH H. PATIL &

M.S. KARNIK, JJ.

DATED : 19TH DECEMBER, 2016

P.C. :

Heard finally by consent.

It is submitted by the Counsel appearing for the Petitioner that the earlier Regulations for grant of Transferable Development Rights were framed on 29th January, 2016. The then Regulation 8.0 reads as under:

“8.0 EFFECT OF THIS REGULATION:-

(a) Provision of Generation of TDR from these regulations shall not be applicable where DRC has been issued prior to publication of these regulations. However Utilization of such TDR shall be allowed as per these regulations only.

(b) These Regulations shall come into effect from publication of this Notification in Official Gazette”.

2. The said Regulation was amended by a Notification dated 2nd May, 2016 which reads thus:

8(a) In the Regulation no. 8(a), the sentence “However Utilization of such TDR shall be allowed as per these regulations only “is replaced with -

“However DRCs issued under the old Regulations shall be allowed to be utilised as per TDR zones of old Regulations without indexation but subject to all other conditions of these Regulations Such utilisation shall be allowed for one year only”.

Provided also that old TDR purchased for utilisation on a specific plot with registered documents of sale and/or specific proposal for utilisation of such TDR pending in the ULBs prior to these regulations shall be allowed completely as per the old regulations”.

3. Learned Counsel submits that the Corporation had wrongly referred to the amended Regulation 8.0 and rejected the application.

4. In our view the matter is required to be remanded back to the Corporation for re-consideration. The impugned communication

Exhibit-O refusal certificate for building permission dated 18th May, 2016 is set aside. The matter is remanded back to the Corporation with directions to go through the record and the issues raised by the Petitioners and thereafter pass appropriate orders as per law.

5. Rule made absolute in the above terms. The Petition is disposed of accordingly.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)