

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2211 OF 2005

The Municipal Corporation of City
of Thane, a corporate body
governed by the provisions of
Bombay Provincial Municipal
Corporation Act, 1949 having
its office at Panchpakhadi,
Thane (W).

....Appellant
(Orig. Defendant)

V/s.

Mukesh Ramful Gupta
Adult, Occ: Business,
R/at: Manoj Kunj, 144,
Senapati Bapat Marg,
Bombay-16

....Respondent
(Orig. Plaintiff)

Mr. N.R.Bubna, Advocate for Appellant.
Ms. Gauri Godse, Advocate for the Respondent.

**CORAM :- R.M.SAVANT &
SANDEEP K. SHINDE, JJ.**

RESERVED ON :-12TH DECEMBER, 2017.

PRONOUNCED ON :- 22ND DECEMBER, 2017

JUDGMENT: [Per Shri Sandeep K. Shinde, J.]

The Thane Municipal Corporation Original Defendant in
the Suit has preferred this First Appeal against the judgment and
decree dated 10.3.2005 passed by the Civil Judge Senior Division,
Thane in the Special Civil Suit No.647 of 1995.

2 Facts in brief of the suit are as follows:

Plaintiff is the owner of the suit land bearing Tika No.2 City Survey No.307 admeasuring 222.41 sq.mtrs. and City Survey No. 308 admeasuring 15.89 sq.mtrs. situated opposite Ashok Talkies near S.T.Stand, Gokhale Road, Chendani, Thane, known as Gupta Estate/House (Hereinafter referred to as 'Suit Property/Plot').

The suit property was purchased by the Plaintiff under registered deed of conveyance on 2.3.1978. It was occupied by the tenants on monthly rent for business/residential purposes. On 14.12.1987, the Special Land Acquisition Officer, Thane informed the Plaintiff about a portion of the land, the Corporation intended to acquire for road widening project. The Thane Municipal Corporation thus, demolished the part of the building and acquired part of the suit plot for road widening project. It is the Plaintiff's case that before demolition of the building, there were several negotiations and meetings between the landlord, tenants and Municipal officers. It is the Plaintiff's case that the then Municipal Commissioner Mr. Chaube promised the landlord that they would sanction plan for proposed building considering the co-operation solicited by the landlord and existing tenants and as such, landlord agreed to accommodate existing tenants in the new proposed building. It is

the Plaintiff's case that on 29.11.1989 the then Municipal Commissioner promised to consider plaintiffs' case as a special case for sanction of FSI and building plan as Corporation wanted Plaintiff's portion of land for road widening. Plaintiff further pleaded that the Thane Municipal Corporation provided a suitable temporary accommodation to the tenants within their property or elsewhere.

3 It is the Plaintiff's case that in view of the road widening, the Corporation also vacated and shifted some of the Plaintiffs' old tenants at its own risk and cost. It is the Plaintiff's case that he obtained vacant possession as building was required to be partly demolished for carrying out work of construction of road widening. Plaintiff thus pleaded that the Defendant-Corporation compelled Plaintiff to execute the agreement with the tenants in the old building and all such agreements were executed at the instance of the Corporation. In the circumstances, Plaintiff wanted to construct new building as early as possible so as to accommodate old tenants in the new premises. Plaintiff thus had executed agreements with 11 tenants.

4 Plaintiff submitted plan and specifications of the suit property to the Defendant-Corporation through his architect and the Corporation sanctioned the said plans and specifications vide permit

VP 88/341/TMC/TDD/704 dated 20.12.1991 and also issued commencement certificate of the same date 20.12.1991 (Hereinafter called as the 'Sanctioned Plans' and the said 'Commencement Certificate' respectively).

5 That as per the said Sanctioned Plans and as per the prevailing Development Control Rules of the Thane Municipal Corporation (Hereinafter referred to as 'D.C.Rules'), Plaintiff was permitted to use FSI 1:2. The said FSI 1:2 was sanctioned for the suit property because the same was in gaothan. In support of the claim that the suit property was in gaothan land, the Plaintiff had submitted to Corporation title documents along with certified copies of extract of the property card, enquiry register, site plans, etc. obtained from City Survey Officer, Thane. It is the Plaintiff's case that in the extract of the property register card, there was remark in the column of the tenure that the suit property was termed as 'C' (Mafi) i.e. Gaothan". Plaintiff further pleaded that as per Section 122 of the Maharashtra Land Revenue Code, 1966 which corresponds to Section 126 of the Bombay Land Revenue Code, 1879, tenure 'C' and the Mafi are of gaothan.

6 It is the Plaintiff's case that on the basis of aforesaid documents, the Corporation also confirmed that suit property was

gaothan land and, therefore, as per the prevailing D.C.Rules, FSI 1:2 was available in respect thereof and accordingly, plans were sanctioned.

7 It is the Plaintiff's case that prior to granting sanction and approval to the plans submitted by the Plaintiff, Corporation had already sanctioned plans in respect of several similar other building proposals to which FSI 1:2 was permitted to be used on the basis of documents similar to one stated hereinabove. That upon obtaining sanction and approval from the Corporation, Plaintiff gave notice of commencement of construction of the new building to the Corporation and commenced the work of construction as per the said notice of commencement.

8 It is the Plaintiff's case that on 15.5.1993, the Corporation had issued a notice of stoppage of construction work followed by two notices dated 4.10.1993 and 24.2.1995 under Section 51 of the Maharashtra Regional Town Planning Act, 1956 and 258 of the Bombay Provincial Municipal Corporation Act, 1949. These were the show-cause notices whereby the Plaintiff was called upon to show cause as to why construction permission granted by the Corporation should not be revoked. These two notices were replied by the Plaintiff on 22.3.1995.

9 It is the Plaintiff's case that the Respondent-Corporation had called upon him to submit revised plan on the basis of FSI 1.33 for its sanction and approval. It is the Plaintiff's case that the said notice was issued by the Corporation in terms of the directions issued by the State on 23.4.1993 under Section 154 of the M.R.T.P Act assuming and presuming that the plot of land on which building was permitted to be constructed was not ear-marked in Gaothan in the development plan of the then Thane Municipal Council.

10 It is the Plaintiff's case that notice dated 15.5.1993 (Suit Notice) was issued by the Corporation as per the direction from the Urban Development Department issued under Section 154 of the MRTP Act, 1966. The said notice was challenged by the Plaintiff by filing Special Civil Suit No.647 of 1995 in June, 1995. In the said suit, the Plaintiff sought relief of declaration that the said suit notice bearing no.TMC/TDD/537 dated 15.5.1993 was illegal, malafide, inoperative in law and the same may be quashed.

11 Besides, Plaintiff also sought declaration that the Corporation was not entitled to direct the Plaintiff to submit revised plan. He also sought a declaration of his entitlement to continue with the plan sanctioned on 20.12.1991. The Plaintiff also sought relief of perpetual injunction. The Plaintiff also sought a declaration

that on the principle of promissory estoppel, the Corporation is stopped from denying that the suit property is gaothan and FSI 1:2 which was lawfully admissible for the development of the suit plot. The Plaintiff also sought injunction pending the suit to restrain the Corporation from enforcing the suit notice by prohibitory injunction from interfering with work of construction of new building. The Plaintiff also sought mandatory injunction for grant of occupancy certificate and permission to occupy the premises in the new building including part occupation.

12 The Corporation filed its Written Statement and contended that;

(i) From 1.10.1982, the Thane Municipal Council area and surrounding area got merged into a Corporation known as Thane Municipal Corporation and provisions of the Bombay Provincial Municipal Corporation Act, 1949 were made applicable thereto;

(ii) That on 21.12.1982, the State Government had issued directions under Section 154 of the MRTTP Act and directed the Corporation to adopt Standardised Building Bye-laws and Development Control Rules, in place of D.C.Rules, 1974 and further directed to take

steps under Section 37(i) of the MRTTP Act;

(iii) The Corporation in view of the directions passed resolution on 1.7.1985 to initiate minor modifications to the Development Control Rules of 1974.

(iv) That vide resolution dated 2.5.1988, the Corporation resolved to accept the amended Development Control Rules, 1985 (For short 'Amended D.C.Rules of 1985) and submitted the same with minor modifications and submitted the same for minor modifications to the Government for sanction in July, 1988;

(v) Corporation in the meantime, pending the sanction of the said D.C.Rules of 1985 anticipating the Government sanction adopted policy decision to bring the said Rules in operation.

(vi) As per the sanctioned Development Control Rules, 1985 for lands shown as Gaothan in 1974's Development Plans, the permissible FSI was 1.33 and in all other cases FSI permissible was 1.

(vii) That since Plaintiff's property was outside the area ear-marked as Gaothan under development plan of 1974, the suit property is entitled to consume FSI 1 and not 1:2.

13 In short, It is the Defendant's contention that in view of instructions issued by the State on 23.4.1993 under Section 154 of the MRTP Act, since the suit property was not falling within the gaothan area as shown in the Development Plan 1974 of Thane Municipal Council area, sanctioned FSI 1:2 was incorrect and as such, suit property is entitled to consume FSI 1. Thus, taking recourse to the directions issued under Section 154, it is contended by the Corporation that their action to direct the Plaintiff to re-submit the plan with FSI 1 cannot be faulted with. It appears that the Corporation by taking recourse to the aforesaid instructions also directed the Plaintiff to stop the construction work and, therefore, the suit notice cannot be faulted with and as such justified its action.

14 It appears from the record that pending the suit, the Plaintiff had filed an application for interim relief. That vide order dated 2.4.1996 the learned Civil Judge Senior Division restrained the Corporation from implementing the suit notice dated 15.5.1993 in respect of construction which was in existence on 17.5.1993 as

particularised in its notice dated 4.10.1993 till the decision of the suit.

15 The learned Judge after appreciating pleadings and the evidence placed on record by the parties, decreed the suit partly vide judgment dated 10.3.2005 and declared the suit notice as bad in law, inoperative and unexecutable. The learned Judge further declared that the Corporation was not entitled to direct the Plaintiff to submit revised plan/proposal on the basis of FSI 1 for its sanction and approval for construction of a new building in the suit property. The learned Judge was pleased to direct the Corporation to issue occupancy certificate and also restrained it from interfering or demolishing any part of building constructed by the Plaintiff on the suit property.

16 Heard the learned counsel for the Appellant and the learned counsel for the Respondent. Perused the records and proceedings.

17 Point, we are required to answer is:

- (i) Whether the judgment and decree passed by the Trial Court in the subject suit inter-alia declaring the suit notice dated 15.5.1993 as illegal, inoperative and unexecutable is legal, valid and proper ?

18 Before advertng to the facts of the case, it may be stated that development plan of the erstwhile Thane Municipal Council along with Development Control Rules had been sanctioned by the Government vide Notification dated 3.10.1974 . In terms of Development Control Rules of 1974, permissible FSI for area falling in Gaothan was 1: 1.33 and for the rest 1:1. On 16.7.1980, the Government by Notification of the same date, prescribed standardised building bye-laws and development control rules for the areas within the jurisdiction of various Municipal Corporations. On that date, Respondent-Corporation had not come into existence as it was subsequently established on 1.10.1982 for the areas falling within the jurisdiction of erstwhile Municipal Council. The State of Maharashtra in exercise of the authority under Section 154 of the MRTP Act read with Section 37 issued directions to the Corporation by its memorandum dated 21.12.1982 to adopt the said Standardised Building Bye-laws and Development Control Rules to be made applicable to the area within the jurisdiction of Thane Municipal Corporation in place of Development Control Rules of 1974 sanctioned earlier along with Development Plan and to follow the procedure prescribed under Section 37 of the MRTP Act. The Corporation in pursuance of the directions resolved to initiate minor

modifications under Section 37(1) of the MRTP Act to replace sanctioned Development Control Rules of 1974 by Standardised Building Bye-laws and Development Control Rules. Corporation vide its resolution dated 2.5.1988 resolved to accept the amendment to the original text of Draft Development Control Rules and submitted minor modification to the Government for sanction along with amendment. The said minor modification proposal was submitted to the State for sanction on 29.7.1988. On 19.6.1993, the State sanctioned Development Control Rules, 1985.

19 That before sanctioning the Draft Development Control Rules 1985 on 23.4.1993, the State in exercise of the authority under Section 154 issued certain directions regarding admissible FAR in gaothan area. These directions were issued pending consideration of the Draft Development Control Regulations submitted by the Respondent -Corporation to the Government. That the following directions were issued on 23.4.1993:

“22 While the minor modification proposal was pending for sanction by the State Government, on 21st December, 1991, Respondent No. 2- Corporation published the revised Draft Development Plan in terms of Section 26 of the M.R.T.P. Act.

On 23rd April, 1993, certain directions were issued by the Government under Section 154 regarding

admissible F.A.R. in Gaothan area. The directions were issued pending consideration of the Draft Development Control Regulations submitted by Respondent No. 2-Corporation to the Government. The directions issued by the State Government have been annexed as Exhibit 'J'. from which it appears that the following directions were issued :- (emphasis supplied)

"(a) Till the Draft Development Control Regulations submitted to Government by the Thane Municipal Corporation in 1988 are finally sanctioned, the Municipal Corporation shall follow the provisions of sanctioned Development Control Regulations for 'Goathan Areas'.

(b) The 'Gaothan Area' shall be taken as only that area which is shown on the map of the sanctioned Development Plan of Thane Municipal Council Area.

(c) As regards the development permissions granted by the Municipal Corporation after 1988 for the areas outside the Gaothan Area as shown on the sanctioned Development Plan of Thane Municipal Council, permission for further development is to be withheld and no Occupation Certificates are to be issued until further orders.

(d) In case of plots where commencement certificate has been issued with additional F.S.I, for Gaothan, the Municipal Corporation may initiate action under Section 51 of the M.R.T.P Act, 1966 and revoke permissions after following procedure prescribed under the law.

(e) Till the Revised Development Control Regulations are finally sanctioned by Government, Municipal Corporation of Thane shall follow the stricter provisions of 4 rules, viz., sanctioned rules of 1974, Standard Bye-laws sent by Government in 1981. rules published Under Section 37 in 1985 and Draft Revised D.C.R. published in Dec., 91.

(f) Due permission from the Railway Authority would be needed where Development Permission is to be granted by the side of railway properties. In the absence of the suitable regulations in the present Development Control Rules, the Thane Municipal Corporation may follow the Development Control Regulations prescribed in Development Control Regulations for Greater Bombay, 1991."

20 Directions dated 23.4.1993 were partially modified by the State on 19.6.1993 and directed that in cases where the Thane Municipal Corporation had sanctioned development permission with F.A.R. equivalent to 2.00 after May, 1988 in accordance with the resolutions passed by the said Corporation in June, 1988 excess F.A.R. over and above 1.33, so allowed shall not exceed 2.00 or the F.A.R. actually consumed on 23.4.1993, whichever is less.

21 Having so modified its earlier directions dated 23.4.1993, the State Government, in exercise of its powers under Section 37(2) of the MRTP Act, sanctioned the Draft Building and

Development Control Regulations, 1985 subject to the modifications referred to in the schedule, and for that purpose, amended the Government notification dated 3.10.1974, as follows:

" The Development Control Rules applicable for the erstwhile Thane Municipal Council sanctioned by the Government Notification, Urban Development and Public Health Department No. TPS- 1272/70693/RPC, dated 3rd October, 1974 shall be replaced by Development Control Regulations sanctioned with modifications by Government, Urban Development Department by Notification No. TPS- 1292/1702/ CR-194/92/UD-12, dated 19th June, 1993 which shall be applicable to the entire area within the jurisdiction of Thane Municipal Corporation with immediate effect.

By the aforesaid Notification dated 19th June, 1993, after Clause N.2.1.1, the following notes were inserted :-

"Note 1 :- The extent of area to be treated as "Gaothan", shall be strictly confined to":

(i) that area shown as "Gaothan" in the Development Plan of Thane (for old Municipal Council limits) sanctioned by Government vide Notification No. TPS-1272/70693/RPC, dated 3rd October, 1974, and

(ii) that area shown as "Gaothan" in village Form No. I of Revenue Record and held on Gaothan tenure without payment of N. A. Assessment of villages now included in the limits of Thane Municipal Corporation vide Government Resolution No. TMC-3082/1172/UD-21, dated 1st October, 1982.

Note 2 :-Provided that, in cases (out of Gaothan'as defined in Note 1 above only) where Thane Municipal Corporation has sanctioned F.S.I, equivalent to 2.00 after May, 1988, in accordance with the Resolution passed by the Corporation in June, 1988, the excess F.S.I, over and above 1.33 shall be allowed. The excess F.S.I, so allowed shall not exceed 2.00

or the P.S.I, actually consumed as on 23rd April. 1993 whichever is less.....”

All these facts noted above find mention in the Notification, Exhibit 'L' dated 19th June, 1993. whereby modification to the Development Control Regulations was sanctioned by the State Government under Section 37 of the M.R.T.P. Act.”

22 Mr. Bubna the learned counsel for the Defendant would submit that in terms of the Development Plan of 1974 of the Thane Municipal Council, the suit property was not falling in the gaathan area as ear-marked therein. He would further submit that in terms of the Development Control Rules of 1974, the suit land was entitled to consume FSI 1. Mr. Bubna would further submit that the learned trial Judge has committed a gross error by interpreting, gaathan area, as what is defined under the Maharashtra Land Revenue Code, 1879. He would submit that reliance placed by the learned trial Judge on the revenue entries for classifying and holding the suit property as gaathan was erroneous. He would submit that scope and ambit of the MRTP Act is altogether different and as such classification and tenure of the land in development plan is under exclusive domain of the planning authority under the MRTP Act. In other words, the learned counsel for the Defendant contended that though particular land may be gaathan for purposes of the Maharashtra Land Revenue Code. 1966 but not necessarily gaathan

as understood under the Development Plan and Development Control Rules framed under the MRTP Act of given planning authority.

23 Mr. Bubna further submitted that directions issued by the State in exercise of authority under Section 154 of the MRTP Act are binding on the Corporation. He would submit that pending the consideration of the Draft Development Control Rules, 1985, on 23.4.1993 directions were issued by the State regarding admissibility of FAR in gaothan area. Mr. Bubna has brought to our notice clause (b) of the said directives which read as under: “Gaothan Area' shall be taken as only that area which is shown on the map of the sanctioned development plan of the Thane Municipal Corporation area”. (*emphasis supplied*)

He would, therefore, submit that admittedly suit land was not shown in the gaothan area of Development Plan of 1974 and, therefore, FSI 1:1 was admissible and not even 1.33. On this premise, Mr. Bubna submitted the suit notice and the directions calling upon the Plaintiff to submit revised plan cannot be faulted with. He would further submit that the trial Judge has completely ignored the directions of the State dated 23.4.1993 which were otherwise binding on the Corporation under the MRTP Act.

24 Mr. Bubna would also submit that the trial Judge has committed error by directing the Corporation to issue occupancy certificate in spite of the fact that the Plaintiff had carried out construction contrary to Development Control Rules and the directives of the State and as such, on equitable considerations, the Plaintiff is not entitled to any relief.

25 Mr. Bubna has relied on the judgment of the Division Bench of this Court in the case of **M.A.Panshikar v. State of Maharashtra** reported in **2002(5) Bombay C.R.318**.

26 Ms. Godse the learned counsel for the Plaintiff on the other hand supported the judgment and decree. She has taken us through the first directions and modified directions dated 19.6.1993 issued by the State, whereby first directions dated 23.4.1993 were modified.

 She would submit that the Corporation had sanctioned the plan on 20.12.1991 with FSI 1:2 and, therefore, it cannot be said that the construction was unauthorised.

27 She has taken us through the modified direction dated 19.6.1993 issued by the State. Ms. Godse submitted that in terms of

the modified directions contained in Note 1(i), the suit land was not shown as Gaothan in D.P. of the Thane Municipal Council of 1974; but in terms of the Clause (ii) of Note 1, it was shown as gaothan in village Form No.1 of revenue record and held gaothan tenure. She would further submit that when plans were sanctioned in December, 1991, officers of the Defendant-Corporation had taken note of the revenue entries to hold suit land as gaothan. She would further submit that the suit land is now included in the limits of Thane Municipal Corporation and as such it is to be treated as gaothan.

28 Ms. Godse has invited our attention to Note 2, the same is re-produced hereunder:

"Note 1 :- The extent of area to be treated as "Gaothan", shall be strictly confined to":

(i) that area shown as "Gaothan" in the Development Plan of Thane (for old Municipal Council limits) sanctioned by Government vide Notification No. TPS-1272/70693/RPC, dated 3rd October, 1974, and

(ii) that area shown as "Gaothan" in village Form No. I of Revenue Record and held on Gaothan tenure without payment of N. A. Assessment of villages now included in the limits of Thane Municipal Corporation vide Government Resolution No. TMC-3082/1172/UD-21, dated 1st October, 1982.

Note 2 :-Provided that, in cases (out of Gaothan'as defined in Note 1 above only) where Thane Municipal Corporation has sanctioned F.S.I, equivalent to 2.00 after May, 1988, in accordance with the Resolution passed by the Corporation in June, 1988, the excess F.S.I, over and above 1.33 shall be allowed. The excess

F.S.I, so allowed shall not exceed 2.00 or the P.S.I, actually consumed as on 23rd April. 1993 whichever is less.....”

Ms. Godse submitted that in terms of Note 2, it was provided in cases where the Corporation had sanctioned FSI equivalent to 2 after 1988 in accordance with Resolution passed in June, 1988 for excess FSI over and above, FSI 1.33 shall not exceed 2.00 or the FSI actually consumed on 23.4.1993 whichever is less. She would, therefore, submit that since the suit land has been treated as gaathan in terms of note 1 and 2, FSI sanctioned on 20.12.1991 stands confirmed. Ms. Godse would, therefore, submit that though plan with FSI 1:2 was sanctioned in December, 1991 the instructions contained in directions dated 19.6.1993 under Section 154 of the MRTTP Act relates back to all plans sanctioned after 1988 and therefore, instructions in Note 1 and 2 crystalises Plaintiff's case and thus, judgment and decree passed by the trial Court can be sustained on the basis of the said Note 1 and 2.

29 It may be stated that the Defendant-Corporation in its reply has not placed the modified direction dated 19.6.1993 on record and therefore, has not brought to our notice the said modified direction. The learned counsel Mr. Bubna though tendered the compilation of documents/paper-book has not tendered the

modified direction which has a bearing on the issue. Hence, we were proceeding on the basis of the direction issued under Section 154 in its original form, till our attention was drawn by the learned counsel for the Respondent to the modified direction which is referred to in the judgment of the Division Bench in **M.A.Panshikar's** case (Supra).

30 Mr. Bubna in his rejoinder has taken us through Notes 1 and 2 and submitted even if suit land is treated as gaathan in terms of Note 1(ii), FSI actually consumed as on 23.4.1993 or FSI in excess of 1.33 but not more than 2.00 whichever less has been protected and/or regularised. He would submit that though the plan was sanctioned with FSI 1:2, as on 23.4.1993, Plaintiff had consumed negligible FSI and, therefore, the Plaintiff was not entitled to consume FSI more than what he had consumed upto 23.4.1994 in terms of the modified direction and especially Note 2 thereof.

31 We have gone through the pleadings as well as directions issued by the State firstly, on 23.4.1993; and 19.6.1993. It is not in dispute that, the suit land is now included in the limits of Thane Municipal Corporation. It is also not in dispute that the suit land was shown as gaathan in village form no.IV of the revenue

record when the plan was sanctioned by the Corporation on 20.12.1991 and, therefore, it is to be treated as 'Gaothan' in terms of Clause (ii) Note 1 . It is not in dispute that the Corporation had sanctioned FSI 1:2 for suit land. On close scrutiny of the directions and particularly Note No.1(ii) and Note No.2, we hold the suit land is squarely covered by the instructions in Note 1(ii) and Note 2. In our view, having regard to the facts as afore-stated, the suit land is required to be treated as 'Gaothan' and the finding of the trial Court in that regard cannot be faulted.

32 That on close scrutiny of Note No.2, we disagree with the submissions of Mr. Bubna, that since the Plaintiff had consumed negligible FSI on 23.4.1993, excess FSI so allowed stands frozen on 23.4.1993 and thus admissible FSI would be only to the extent of FSI consumed in construction completed as on 23.4.1993, even if it is negligible and not more than it. In our view, Note 2 postulates that if land is answering the description of the instructions in either of the clauses of Note 1, than, admissible FSI would be 1:2 or FSI actually consumed on 23.4.1993, whichever was less. (*emphasis supplied*) On plain reading of the note, it cannot be said that admissible FSI would be only to the extent of the construction completed on 23.4.1993.

If the contention of Mr. Bubna is accepted then we would be creating one more category, i.e., case “where FSI was allowed 1:2, but frozen at the stage of consumption as on 23.4.1993”. This interpretation would be absurd as it would run contrary to the object and purpose for which directions were issued. In fact, Note No.2 admits a interpretation that if the construction was over on/or before 23.4.1993, but had not consumed FSI more than 2 and leaving FSI balance, then such balance FSI could not be utilised over the said plot. This interpretation would be in sync with the object with which the direction was issued. We, therefore, reject the contention of Mr. Bubna.

33 It may also be stated that the Corporation in its written statement, has not dealt with all the averments in the plaint. We have perused the pleadings of the Corporation as well as the evidence of P.W.1. That save and except the suggestions to the P.W.1 in cross-examination, the Corporation has done nothing. The Corporation has not brought on record any document to indicate that in lieu of acquisition of part of the suit land for road widening project, the Plaintiff was compensated. In fact, it is the Plaintiff's case that portion of the suit property was acquired by the Corporation for road widening project and in lieu thereof, there was

promise by the Corporation to sanction FSI 1:2. The Corporation has not brought on record any document to show that in lieu of acquisition of part of suit property, owner thereof was compensated. In the absence of such documents either in the form of award or otherwise and in the light of the fact that averments in plain were not denied, possibility of assurance by the Corporation to consider the case of Plaintiff for granting FSI 1:2 for suit land cannot be stated to be without substance. It also appears from the plaint that the old building standing on the suit plot was required to be demolished since part of the suit land was acquired for road widening project. It is averred in the plaint that the Corporation had accommodated some tenants until the completion of the new building. Thus, cumulative effect of all such events leads us to hold that there was some assurance by the Corporation to the owner of the suit land that it would sanction FSI 1:2 for the suit plot as a special case.

34 Be that as it may, firstly, we hold that the Corporation ought to have brought to our notice directions dated 19.6.1993 which were altogether missing in the written statement as well as in the paper-book supplied by Mr. Bubna.

35 The Trial Court answered the issue No.3 in the

affirmative by holding that the Plaintiff has proved that the suit property is situated within 'Gaothan' and FSI 1:2 is lawfully admissible for the development thereof. Though the conclusion drawn by the trial Judge while answering this issue is correct, we do not agree with the reasoning of the learned Judge. It cannot be said that merely because the land is classified as 'Gaothan' under the Maharashtra Land Revenue Code for the purposes of the Maharashtra Land Revenue Code, it is to be treated as 'Gaothan' under the M.R.T.P. Act. We have held that under the M.R.T.P. Act, the local authority is empowered to classify the land in terms of the Development Plan irrespective of its tenure under the Land Revenue Code.

The learned trial Judge while answering the issue no.5 has held that the principle of promissory estoppel is operative against law. This finding is equally incorrect and runs counter to the judicial pronouncements that there cannot be estoppel against statute. Finding on this issue is, therefore, incorrect and the same is set aside.

36 It may be stated that the Notification dated 23.4.1993 and 19.6.1993 and another Notification were subject matter of Writ Petition No.3498 of 2000 and the Division Bench in the judgment of

M.A.Panshikar (Supra) wherein it was held by the Division Bench to the following effect :- “By the said Notification, it was provided that till the time Regulations in respect of development/re-development of the congested area are sanctioned, along with the said development plan, Regulations sanctioned by the Government by Notification dated 19.6.1993 shall be applicable for 'Gaothan' area.” Thus, Notification dated 19.6.1993 providing maximum FSI to any certain area was permitted till the Final Development Control Regulations along with the Development Plan were sanctioned.

The challenge to this Notification was turned down by the Division Bench for having not challenged the same at the appropriate time in-as-much as it appears that the same was challenged nearly after seven years. Be that as it may, fact remains that in respect of the case in hand, the suit land answers all descriptions of Note 1(ii). Suit land now is included within the limits of Thane Municipal Corporation. In view of the aforesaid, we hold FSI 2 was admissible qua the suit land for its development.

37 Though we have upheld the applicability of FSI 1:2 to the land in question for the reasons stated herein above. In so far as the directions issued to the Corporation to issue occupancy certificate to the Plaintiff is concerned, we are unable to sustain such

a direction for want of jurisdiction as also could not have been issued in the absence of verification and inspection of the building by the authorities of the Corporation that as such, we direct the Plaintiff to submit an application to the Corporation for obtaining occupation certificate of the building constructed on the suit land. We further direct the Corporation to process the said application in in terms of our observations hereinabove and in accordance with law within a period of three months from today. The rest of the decree stands confirmed except to the extent of Clause (iv) of the judgment and order dated 10.3.2005.

38 In the result, the Appeal is partly allowed. Decree be drawn up accordingly with no order as to costs. The Appeal is disposed of.

(SANDEEP K. SHINDE, J.)

(R.M.SAVANT, J.)