

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5606 OF 2012

1. Pravin Vasudeo Khadke,
Age : 49 years, Occu. Business,
R/o 470/8, Opp. Bhaskar Market,
Jalgaon
2. Shri Leeladhar Pundlik Chaudhari,
Age : 49 years, Occu. Agri. & Business,
R/o Adarsh Nagar, Jalgaon
3. Shri Shamkant Pandharinath Chinchole,
Age : 51 years, Occu. Agri. & Business,
Jalgaon
4. Shri Satish Tukaram Deshmukh,
Age : 52 years, Occu. Agri. & Business,
R/o 181, Baliram Peth, Jalgaon
5. Shri Shamkant Kisanrao Rane,
Age : 49 years, Occu. Agri. & Business,
R/o Parijat Sankul, Jalgaon
6. Shri Sunil Bhimsen Khade,
Age : 45 years, Occu. Agri. & Business,
R/o Adarsh Nagar, Jalgaon
7. Sau. Pratibha Satish Kale,
Age : 45 years, Occu. Household,
R/o Adarsh Nagar, Dist. Jalgaon

PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032

2. The Jalgaon City Municipal Corporation,
through its Commissioner,
Jalgaon City Municipal Cororation,
Jalgaon
3. The Assistant Director of
Town Planning, Jalgaon,
B.J. Market, Jalgaon
4. The Government Polytechnic College,
Jalgaon, through its Principal

RESPONDENTS

Mr. P.S. Shendurnikar, Advocate for the petitioners
Mr. S.B. Joshi, A.G.P. for the respondent/State
Mr. P.R. Patil, Advocate for respondent No.2

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

JUDGMENT RESERVED ON : 12th DECEMBER, 2018
JUDGMENT PRONOUNCED ON : 22nd DECEMBER, 2018

JUDGMENT (PER : R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith. With
the consent of the learned counsel for the parties and
the learned A.G.P., heard finally.

2. By this writ petition, the petitioners seek
direction to respondent No.2, Jalgaon City Municipal
Corporation, Jalgaon ("JMC", for short) to issue them
further Transferable Development Right ("TDR", for
short) in the form of Development Right Certificate (for
short, "DRC"), to the extent of 1245 sq.mtrs., as a

consideration for having handed over that much portion of the land with the construction of Development Plan Road ("DP Road", for short) thereon and providing amenities thereto.

3. The facts, in brief, are as follows :-

The land, being Survey No.351/2B/2, admeasuring 6100 sq.mtrs., situated at Jalgaon, belongs to the petitioners. The part of the said land has been acquired by the JMC for the purpose of 24 mtrs. wide DP Road. The area under acquisition is 1245 sq.mtrs. The petitioners voluntarily delivered the possession of the said land to the JMC on 30th April, 2008.

The petitioners claim to have constructed DP Roads, RCC gutters and erected street lights on / and along the surrendered land. In view of Section 126 (1) (b) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act", for short) and the Regulation thereunder, the petitioners are entitled to additional TDR. The petitioners time and again requested the JMC to grant the TDR. Since the request of the petitioners was not paid heed to, they filed Writ Petition (No.10723 of 2010) against the JMC for the very relief. A Division

Bench of this Court, by its order dated 16th December, 2011, disposed of the Writ Petition with a direction to the JMC to consider the representation of the petitioners for grant of additional TDR, in accordance with its Regulations, within eight weeks. The JMC turned down the petitioners' representation by its order dated 27th January, 2012. Hence, the petition.

4. The respondent – JMC disputed the claim of the petitioners that they have constructed the DP Roads and provided the amenities at their own costs and delivered the same to the JMC.

**SCHEME FOR GRANT OF ADDITIONAL TDR
UNDER THE MRTD ACT**

5. The definition of the word "Amenity", as per amended Section 2 (2) of the MRTD Act is as under :-

"2 (2) 'Amenity' means roads, streets, open spaces, parks, recreational grounds, playgrounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences."

Section 126 of the MRTP Act reads as under :-

"126. Acquisition of land required for public purposes specified in plans -

(1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, any appropriate Authority may, except as otherwise provided in section 113-A, acquire the land,-

(a) by an agreement by paying an amount agreed to or,

(b) in lieu of any such amount, by granting the land-owner or, the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) *****

(2) to (4) *****

While Regulation No.14.3(A)(6) of the Development Control Regulations reads as under :-

"When an owner/lessee also develops or constructs the built up area on the surrendered plot at his cost subject to such stipulations as may be prescribed by the Chief Officer or appropriate authority as the case may be and to their satisfaction and hand over the said Developed/constructed built-up area to the Chief Officer/appropriate authority free of cost, he may be granted further D.R. in the form of F.S.I. equivalent to the area of construction/development done by him, utilisation of which etc. will be subject to the regulations contained in these rules."

6. The Apex Court in case of **Godrej Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra and others, (2009) 5 SCC 24**, observed as under :-

"The provisions made for the development rights that arise from a piece of land and yet acquire a separate and independent existence with the added flexibility of being transferable come very useful in case of plots of land shown in the development plan as reserved for some public purpose or amenity that prohibits their owners from developing those plots by making any other kind of construction. In such circumstances, it is open to the landowner to surrender the plot of land free of cost (and free from all encumbrances) to the municipal authorities who may acquire the land by granting to the landowner floor space index or transferable development rights against the area of the surrendered land. The law further provides for additional floor space index or transferable development rights against the

development or construction of amenities (for which the plot is shown reserved in the plan) by the owner at his own cost."

7. Thus, the law clearly envisages grant of F.S.I. Or TDR under two different heads, one for the land and the other for construction of amenities for which the land is designated in the Development Plan, at the cost of the owner.

8. The question is as to the petitioners' entitlement for grant of further TDR or FSI.

The petitioners are the owners of the land, being Survey No.351/2/2, admeasuring 6100 sq.mtrs., is undisputed. Admittedly, the JMC acquired 1245 sq.mtrs. of land for construction of D.P. Road. The learned counsel for the petitioners would submit that after handing over possession of the land, admeasuring 1245 sq.mtrs. on 30th April, 2008, the petitioners developed the D.P. roads, laid RCC gutters on either side of the roads and erected street lights. The learned counsel invited our attention to the certificate issued by the City Engineer. The learned counsel also took us through the correspondence between the petitioners and the JMC to contend that the petitioners immediately approached

the JMC, requesting for grant of further TDR. The learned counsel further took us through the site inspection report submitted by the Government Polytechnic college.

9. Mr. P.R. Patil, learned counsel for respondent No.2 – the JMC would, on the other hand, submit that the possession receipt does not mention the amenities allegedly provided by the petitioners. The certificate issued by the City Engineer has been duly explained. The said certificate has never been issued as a compliance of the TDR Rules. For grant of additional TDR in view of Regulation 16.4.6 of the Development Control Regulations, the following conditions are *sine qua non* :-

- (i) It should be according to stipulations prescribed by the Commissioner or appropriate authority.
- (ii) It should be to the satisfaction to the said authority i.e. the Commissioner.
- (iii) Such developed area should be handed over to the Commissioner free of cost.

None of the aforesaid conditions have been complied

with. According to the learned counsel, when a statutory authority is required to do a particular thing in a particular manner, the same must be done in that manner alone. There can be no estoppel against the Statute. In support of the legal propositions, the learned counsel relied on the following authorities :-

- (a) ***Tata Chemicals Limited Vs. Commissioner of Customs (Preventive), Jamnagar***
(2015)11 SCC 628
- (b) ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and others***
(2003 2 SCC 111
- (c) ***Jasvinder Singh and others Vs. State of J&K and others***
(2003)2 SCC 132

10. Instead of detaining ourselves to the submissions advanced by the learned counsel appearing on behalf of the parties to this petition, let us advert to the material on record.

11. 1245 sq.mtrs. of land forming part of Survey No.351/2B/2 was acquired by the JMC for the purpose of 24 mtrs. wide D.P. road. The possession receipt, evidence of handing over the possession of the said land, was executed on 30th April, 2008. True, the possession receipt is silent to state the petitioners to

have constructed D.P. road, laid RCC gutters and erected street lights. There are, however, two certificates issued by the City Engineer, admitting the claim of the petitioners. The first such certificate is dated 26th June, 2009, while the other is dated 14th July, 2009. By issuing the first certificate, the City Engineer certified construction of roads and laying of RCC gutters. The City Engineer did not stop there. He went on to certify that the quality of the work was satisfactory. The details of the roads given in the certificate are as under :-

Sr.No.	Description of Roads	Measurement
1	Plot No.5 to 12	24 mtrs.x 52 mtrs.
2	Plot No. 1 to 4	9 mtrs. X 53.50 mtrs.
3	Plot No. 5 to 8	9 mtrs. X 51.95 mtrs.
4	Plot No.13 to 14	6 mtrs. X 20.20 mtrs.

The City Engineer, by his another certificate dated 14th July, 2009, acknowledged erection of street lights as per the specifications prescribed by the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL).

In the first affidavit filed on behalf of the JMC, no explanation was offered for issuance of both the

certificates by the City Engineer. When the Court called upon the JMC to explain the certificates, it came with an affidavit contending that the certificates had not been issued as a compliance of the TDR Rules. The said explanation has been offered by another City Engineer and not by the one who issued these certificates. Mere explanation sans material in proof thereof would be of no avail to the JMC, when there is material on record that runs counter to the case of JMC.

12. It is true that there is no certificate issued by the Municipal Commissioner, acknowledging the amenities to have been as per the specifications under the relevant rules. There is, however, nothing on record to indicate the City Engineer to have had no authority to issue such certificates or any mischief has been played by issuing those certificates. There can be no two views over legal propositions that there is no estoppel against law and when a Statute requires a particular thing to be done in a particular manner, the same must be done in that manner alone. The fact, however, remains that the petitioners have constructed the amenities at their costs and handed them over to the JMC.

It was contended on behalf of the JMC that the construction and development of the D.P. Roads, which are generally involved various civil items, such as construction of W.B.M. Road with asphaltting, road side drains, foot paths, road divider, street lighting, etc. The Corporation may be true in contending the same. The fact, however, remains that its responsible officer namely the City Engineer has certified the amenities to have been satisfactory.

13. The conduct of the petitioners would vouch for their claim. Soon after providing the amenities, the petitioners made various communications/correspondence with the JMC for grant of further TDR. When the petitioners' request was not paid heed to, the petitioners filed the writ petition, being Writ Petition No.10723 of 2010. The petitioners did not press for hearing of the writ petition on merits. The Division Bench of this Court disposed of the said writ petition, vide order dated 16th December, 2011, directing the respondent JMC to consider the representation made by the petitioners for grant of additional TDR, in accordance with its regulations, within a period of

eight weeks from the date of that order. The JMC, in turn, turned down the claim of the petitioners on 27th January, 2012. The order rejecting the petitioners' claim is silent to deny the petitioners to have provided the amenities, which stand the JMC took in this writ petition. Last paragraph of the order, turning down the petitioners' claim, in no uncertain terms, admitted the petitioners to have constructed internal roads of W.B.M., laid RCC gutters and erected the street lights and made fencing around the open space, is the work required to be done by each and every developer. As such, the JMC admitted the petitioners to have provided the amenities.

14. Since the petitioners' claim was turned down, they preferred the writ petition. One more writ petition was filed by the petitioners for grant of FSI as a consideration for voluntary surrender of the land in favour of the JMC for construction of D.P. Road. Since the petitioners had already preferred writ petition, that was disposed of by this Court on 16th December, 2011, the JMC cannot be heard to say the petitioners to have suppressed the said claim while they preferred Writ Petition No.5605 of 2012.

15. True, the Assistant Director of Town Planning, Jalgaon had paid visit to the site and submitted site inspection report. The site inspection was made in the absence of the petitioners much less without giving them notice of the proposed visit. The site inspection was made on 5th September, 2014. The site inspection report suggests - that 24 mtrs. wide D.P. road has been covered by shrubs and vegetation, some kaccha road was prepared, but it could not be ascertained whether it was constructed upto the standard of W.B.M. It also appears that the road side drains were constructed. However, question remains whether those were upto the standard or not. Whenever any amenity is to be constructed, it should be as per the norms prescribed by the concerned Authority i.e. the Commissioner, JMC. It seems that there was no such approval to norms by the said Authority. The report further states that the construction and development of the D.P. Road should generally involve various civil items, such as construction of W.B.M. roads with asphaltting, road side drains, foot paths, road divider, street lighting, etc. Therefore, construction of the road in the case at hand could not be treated as road amenity is developed fully.

16. The fact that the said inspection was made about seven years after construction of the amenities could not be lost sight of. The photograph of the site inspection indicates that the vicinity was of no man's land. When the area was not under habitation and use, the position as is depicted in the photograph is bound to develop.

17. There is one more site inspection report. A team of experts from the Government Polytechnic college, Jalgaon made the site inspection on 18th September, 2014. The Principal, Government Polytechnic College, Jalgaon reported - "the WBM road provided in Survey No.351/2B/2, Jalgaon, Taluka and District Jalgaon, has been verified and observed to be as per the layout of this survey no." The drawing section of the road has also been provided alongwith the report.

18. Thus, the material on record would undoubtedly indicate the petitioners to have constructed WBM roads, laid RCC gutters, fencing to open site and erected the street lights.

19. As such, the petitioners have made out a case for grant of further TDR in view of the provisions of

Section 126(1)(b) of the MRTTP Act and Regulation No.14.3(A)(6) of the Development Control Regulations.

20. For the reasons given hereinabove, the writ petition succeeds. The same is, therefore, allowed in terms of prayer clause (B) of the Writ Petition. Rule is made absolute accordingly. No costs.

[R.G. AVACHAT]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

npj/WP5606-2012