

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11475 OF 2019

1. Pravin Vasudeo Khadke
Age 56 years, Occu. Business,
R/o 470/8, Opp. Bhaskar Market,
M.J. College Road, Jalgaon
 2. Liladhar Pundlik Chaoudhari,
Age 56 years, Occu. Business,
R/o Flat No.7, Shalini Apartment,
Adarsh Nagar, Jalgaon
 3. Shamkant Pandharinath Chinchole,
Age 59 years, Occu. Business,
R/o Plot No.10, Lokmanya Housing Society,
Ring Road, Jalgaon
 4. Sudhakar Pundalik Toke,
Age 60 years, Occu. Business,
R/o Flat No.7, Abhiram Apartment,
Near Girna Water Tank, Jalgaon
 5. Sau. Pratibha Satish Kale,
Age 52 years, Occu. Business,
R/o Flat No.4, Swastil Apartment,
Adarsh Nagar, Jalgaon
 6. Shamkant Kisanrao Rane,
Age 56 years, Occu. Business,
R/o Flat No.1, Parijat Sankul,
Opp. Church, Girna Water Tank Road,
Jalgaon
 7. Sunil Bhimsen Khade,
Age 59 years, Occu. Business,
R/o Flat No.2, Aaradhya Apartment,
Adarsh Nagar, Jalgaon
 8. Smt. Ujwala Vinod Khachane,
Age 52 years, Occu. Business,
R/o Plot No.27 – Tulsi, Hareshwar Nagar,
Ring Road, Jalgaon
- ... PETITIONERS

VERSUS

1. The State of Maharashtra
through Minister for Revenue,
Urban Development Department,
Mantralaya, Mumbai – 400 032

(Copy to be served on Govt. Pleader,
High Court of Bombay,
Bench at Aurangabad)
2. The Jalgaon City Municipal Corporation,
through its Commissioner,
Jalgaon City Municipal Corporation,
Jalgaon
3. The Assistant Director of Town Planning,
Jalgaon City Municipal Corporation,
Jalgaon, Tal. & Dist. Jalgaon ... **RESPONDENTS**

.....
Shri S.P. Brahme, Advocate for petitioners
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri L.V. Sangit, Advocate for respondents No.2 and 3
.....

WITH

WRIT PETITION NO.11439 OF 2019

1. Sudhakar Pundalik Toke,
Age 58 years, Occu. Business,
R/o Abhiram Apartment,
Near Girna Water Tank,
Jalgaon, Tal. & Dist. Jalgaon
2. Satish Tukaram Deshmukh,
Age 58 years, Occu. Business,
R/o C/o Shamkant Chinchole,
Ramkripa, Lokmanya Housing Society,
Ring Road, Jalgaon
3. Smt. Ujwala Vinod Khachane,
Age 52 years, Occu. Household,
R/o 470/8, Opp. Bhaskar Market,
M.J. College Road, Jalgaon

4. Anil Jagannath Khadke,
Age 54 years, Occu. Business,
R/o Khadke Accident Hospital,
Near Bhaskar Market,
M.J. College Road, Jalgaon ... **PETITIONERS**

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2. The Jalgaon City Municipal corporation,
through its Commissioner,
Jalgaon City Municipal Corporation,
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3. The Assistant Director of Town Planning,
Jalgaon , B.J. Market, Jalgaon,
Tal. & Dist. Jalgaon ... **RESPONDENTS**

.....
Shri S.P. Brahme, Advocate for petitioners
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri L.V. Sangit, Advocate for respondents No.2 and 3
.....

WITH

WRIT PETITION NO.11477 OF 2019

1. Vithal Girdhar Khadke,
Age 80 years, Occu. Business,
R/o 143, Vithal Peth, Jalgaon,
Tal. & Dist. Jalgaon
2. Sau. Suman Pralhad Kale,
Age 35 years, Occu. Business & Agril.,
R/o Vithal Peth, Jalgaon,
Tal. & Dist. Jalgaon

3. Rekhabai Ananda Khadke,
Age 40 years, Occu. Business & Agril.,
R/o Vithal Peth, Jalgaon,
Tal. & Dist. Jalgaon
 4. Kum. Narayan Ananda Khadke (minor),
through under guardian of petitioner No.3,
through Power of Attorney
Pravin Vasudev Khadke,
Age 55 years, Occu. Business,
R/o 477/8, Opp. Bhaskar Market,
M.G. College Road, Jalgaon,
Tal. & Dist. Jalgaon
- ... PETITIONERS

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 2. The Jalgaon City Municipal Corporation,
through its Commissioner,
Jalgaon City Municipal Corporation,
Jalgaon
 3. The Assistant Director of Town Planning,
Jalgaon , B.J. Market, Jalgaon,
Tal. & Dist. Jalgaon
- ... RESPONDENTS

.....

Shri S.P. Brahme, Advocate for petitioners
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri L.V. Sangit, Advocate for respondents No.2 and 3

.....

WITH

WRIT PETITION NO.11495 OF 2019

1. Shamkant Pandharinath Chinchole,
Age 58 years, Occu. Business,

((5))

R/o Ramkripa, Lokmanya Housing Society,
Ring Road, Jalgaon,
Tal. & Dist. Jalgaon.

2. Anil Jagannath Khadke,
Age 54 years, Occu. Business,
R/o Khadke Accident Hospital,
Near Bhaskar Market,
M.J. College Road, Jalgaon. ... PETITIONERS

VERSUS

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through Minister for Revenue,
Urban Development Department,
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2. The Jalgaon City Municipal Corporation,
through its Commissioner,
Jalgaon City Municipal Corporation,
Jalgaon
3. The Assistant Director of Town Planning,
Jalgaon , B.J. Market, Jalgaon,
Tal. & Dist. Jalgaon ... RESPONDENTS

.....
Shri S.P. Brahme, Advocate for petitioners
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri L.V. Sangit, Advocate for respondents No.2 and 3
.....

WITH

WRIT PETITION NO.11510 OF 2019

1. Pravin Vasudeo Khadke,
Age 55 years, Occu. Business,
R/o 470/8, Opp. Bhaskar Market,
M.J. College Road, Jalgaon.
2. Liladhar Pundlik Chaoudhari,

((6))

Age 55 years, Occu. Business,
R/o Flat No.7, Shalini,
Adarsh Nagar, Jalgaon

3. Shamkant Pandharinath Chinchole,
Age 58 years, Occu. Business,
R/o Ramkripa, Lokmanya Housing
Society, Ring Road, Jalgaon

4. Sudhakar Pundalik Toke,
Age 58 years, Occu. Business,
R/o Abhiram Apartment,
Near Girna Water Tank, Jalgaon

5. Sau. Pratibha Satish Kale,
Age 52 years, Occu. Business,
R/o Swastik Apartment,
Adarsh Nagar, Jalgaon

6. Shamkant Kisanrao Rane,
Age 55 years, Occu. Business,
R/o Parijat Sankul, Opp. Church,
Girna Tank Road, Jalgaon

7. Sunil Bhimsen Khade,
Age 55 years, Occu. Business,
R/o Aradhya Apartment,
Adarsh Nagar, Jalgaon

8. Smt. Ujwala Vinod Khachane,
Age 55 years, Occu. Business,
R/o 470/8, Opp. Bhaskar Market,
M.J. College Road, Jalgaon

... PETITIONERS

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Urban Development Department,
Mantralaya, Mumbai – 400 032

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2. The Jalgaon City Municipal Corporation,
through its Commissioner,

((7))

Jalgaon City Municipal Corporation,
Jalgaon

3. The Assistant Director of Town Planning,
Jalgaon , B.J. Market, Jalgaon,
Tal. & Dist. Jalgaon ... RESPONDENTS

.....
Shri S.P. Brahme, Advocate for petitioners
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri L.V. Sangit, Advocate for respondents No.2 and 3
.....

WITH

WRIT PETITION NO.11745 OF 2019

1. Pravin Vasudev Khadke,
Age 55 years, occu. Business,
R/o 470/8, Opp. Bhaskar Market,
M.J. College Road, Jalgaon
2. Lalita Liladhar Chaudhari,
Age 52 years, Occu. Household,
R/o Flat No.7, Shalini,
Adarsh Nagar, Jalgaon
3. Anil Jagannath Khadke,
Age 54 years, Occu. Business,
R/o Khadke Accident Hospital,
Near Bhaskar Market,
M.J. College Road, Jalgaon
4. Sanjeev Nilkanth Zambre,
Age 58 years, Occu. Business,
R/o Shikshak Wadi, Ring Road,
Jalgaon, Ta. & Dist. Jalgaon ... PETITIONERS

VERSUS

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through Minister for Revenue,
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Shri S.P. Brahme, Advocate for petitioners
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri L.V. Sangit, Advocate for respondents No.2 and 3
.....

**CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.**

DATE : 15th DECEMBER, 2020.

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

Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, taken up for final hearing.

2. This group of Writ Petitions is decided by this common judgment since common question of facts and law arise therein.

3. These petitions have been filed for directions to respondent No.2 Jalgaon City Municipal Corporation (JMC) to grant the petitioners further Transferable Development Right

(TDR) by issuing necessary Development Right Certificates (DRCs) to the extent of the lands delivered to the JMC along with construction of amenities thereon.

FACTS:

4. Petitioners were owners of the lands described in the respective Writ Petitions. The petitioners handed over possession of these lands to the JMC for the purpose of Development Plan Roads. In consideration thereof, the petitioners have been provided TDR in the form of DRCs as a compensation under Section 126(1)(b) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act, 1966). The petitioners claim to have provided amenities along with the lands delivered in possession of the JMC. The amenities are in the nature of construction of D.P. Roads, laying of R.C.C. Gutters, erection of street lights and fencing open spaces. According to the petitioners, they are entitled to grant of further TDR as a compensation/ consideration for providing of such amenities. The petitioners had requested the JMC to grant them further TDR. Since their requests were turned down, petitioners are before this Court.

5. Shri Shailesh P. Brahme, learned counsel for the petitioners took us through Section 126 of the MRTP Act and the relevant Development Control Regulation to submit that

the petitioners are entitled to grant of additional TDR. Learned counsel has also referred to the certificate issued by the City Engineer, certifying the amenities provided by the petitioners to be satisfactory and as per the standard specifications. He has relied on judgment of the Apex Court in case of *Godrej Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra and others, (2009) 5 SCC 24* and the judgment of this Court in Writ Petition No.5606/2012 (*Pravin Vasudeo Khadke & others Vs. The State of Maharashtra & others*).

6. Shri L.V. Sangit, learned counsel for respondents No.2 and 3 would, on the other hand, submit that the petitioners had submitted a lay-out for sanction of their respective lands. The lay-outs have been sanctioned on certain conditions. The petitioners have provided the amenities as compliance of one of the conditions of sanction of the lay-outs. The petitioners have been granted TDR as a consideration for surrender of lands for D.P. Roads. The petitioners have not constructed W.B.M. or tar roads. The Municipal Commissioner has not issued a certificate, certifying the amenities to be as per standard specifications. Since the amenities have been provided in compliance of a condition of sanction of lay-out, the petitioners are not entitled for grant of additional TDR.

7. Learned counsel would further submit that, in case of Writ Petition No.11745/2019, the petitioners have given up their claim for additional TDR, in writing. Learned counsel relied on a possession receipt dated 4/1/2007 executed by these petitioners (Writ Petition No.11745/2019). Learned counsel ultimately urged for dismissal of the petitions.

8. Section 126 of the Maharashtra Regional and Town Planning Act, 1966 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 113A acquire the land,

(a) by 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) by making in application to the State Government for acquiring such land under the provisions of the right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,

and the land together with the amenity, if any, so developed or constructed so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2)

9. 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."

10. The Apex Court, in case of Godrej Boyce Manufacturing Co. Ltd. (supra) observed as follows :-

"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.

11. Section 126 of the Maharashtra Regional and Town Planning Act provides for grant of FSI 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.

12. The submissions made by the learned counsel for the JMC that the petitioners provided the amenities as a compliance of a condition of sanction of a lay-out cannot be accepted in the face of statutory provision, namely Section 126 of the MRTP Act. The similar contentions raised by the learned counsel for the Municipal Corporation for Greater Bombay has been negated by the Apex Court in *Godrej Boyce Manufacturing Co. Ltd.'s case* (supra). It has been observed thus :-

"47. The submission of Mr. Shishodia is completely unacceptable. The conditions, that is to say, the mutual rights and obligations subject to which the land owner may offer to surrender the designated plot of land to municipal authority and the latter may accept the offer are enumerated in detail in the statutory provisions. Beyond those conditions there can be no negotiations for surrender of the land, particularly in derogation to the land owner's statutory rights. Having regard to the nature of the law the submission advanced on behalf of the municipal authority would lead to palpably unjust and inequitable results. The land owner whose land is designated in the development plan as reserved for any of the purposes enumerated in Section 22 of the Act or for any of the amenities as defined under Section 2(2) of the Act or regulation 2(7) of the Regulations is not left with many options and he does not have the same bargaining position as the municipal authority. Therefore, surrender of the land in terms of clause (b) of Section 126(1) of the Act cannot be subjected to any further conditions than those already

provided for in the statutory provisions.”

13. However, in Writ Petition No.11745/2019, the petitioners have given up their claim for further TDR in no uncertain terms. A copy of the possession receipt has been placed on record. Relevant portion of the contents of the possession receipt is reproduced below for ready reference :-

"स. नं. ११/२ मौजे खेडी बु ॥ शिवारातील मंजूर ले - आउट मधील ओपन स्पेस (खुली जागा), रस्ते, गटारी, डी. पी. रोड हे बांधकाम विभागाने निर्देशित केले प्रमाणे तयार करून आज दि. ०४.०१.२००७ रोजी आयुक्त, जळगांव शहर महानगरपालिका यांचे ताब्यात D.C. Regulation 2000 - 14.3 (A) मधील तरतुदींच्या आधीन राहून डी. पी. रोडच्या अनुषंगाने नियमानुसार लागू असलेला T.D.R. देऊन Development Right Certificates देण्याचे अटीवर विनामूल्य ताब्यात देत आहोत. उक्त बाबीकरिता आमची काही एक हरकत नाही व राहणार नाही तसेच खुल्या जागेच्या क्षेत्राच्या हस्तांतरना पोटी व रस्ते गटारीच्या हस्तांतरीत करण्याच्या पोटी आम्ही महानगरपालिकेकडे कुठल्याही प्रकारच्या नुकसान भरपाईचे मागणी भविष्यात करणार नाही. सदर ताबा पावती ही आम्ही राजीखुशीने लिहून देत आहे."

14. It needs no mention that a statutory right can be waived. Waiver of statutory right is contractual. It gives a cause of action. Since the petitioners in Writ Petition No.11745/2019 have, in no uncertain terms, given up claim for additional TDR, in our view, they are not entitled to claim the same.

15. The details of the lands surrendered with

amenities are given in tabular form below :

Sr. No.	Writ Petition Nos.	Survey Nos.	Area handed over	Amenities
1	11439/2019	2714E/2	872.13 sq.mt.	Side Drain
2	11475/2019	349/17	2112 sq.mt.	Side Drain, Elec. Poles
3	11477/2019	8862	1078.06 sq.mt.	Side Drain & Fencing
4	11495/2019	352/2	1597.09 sq.mt.	Side Drain, Elec. Poles & Fencing
5	11510/2019	351/2B/1/ & 351/2B/1/2	604.50 sq.mt.	Side Drain & Fencing
6	11745/2019	11/2	2379.75 sq.mt.	Side Drain, Fencing & Elec. Poles

16. There are on record certificates issued by the City Engineer, JMC, certifying the amenities provided by the petitioners to be as per standard specifications. It would, therefore, not be permissible for the JMC to turn around to contend that the amenities provided are not to the satisfaction of the Municipal Commissioner.

17. Since the petitioners have constructed the amenities and handed them over to JMC, along with land surrendered, they are entitled for grant of additional TDR as per the Development Regulation No.14.3(A)(6), the extent of additional TDR shall be equivalent to the area of construction/

development done by the petitioners. In the Writ Petitions, there are no exact details of measurements of construction of D.P. Roads and R.C.C. Gutters. The petitioners would be entitled for additional TDR equivalent to the exact area of the roads and gutters, erection of polls etc. done by them.

18. In view of the above, the Writ Petitions except Writ Petition No.11745/2019, are allowed in terms of the following order :-

19. Writ Petitions No.11475/2019, 11439/2019, 11477/2019, 11495/2019 and 11510/2019 are allowed. The Jalgaon Municipal Corporation is directed to grant the petitioners in the respective petitions additional TDR in the nature of Development Right Certificates (DRCs) of the area equivalent to the area of construction/ development (amenities) done by them. Rule in the said writ petitions is made absolute in above terms.

20. Writ Petition No.11745/2019 is dismissed. Rule is discharged.

(R. G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/-