

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8586 OF 2018**

Prasad P. Tapkir and anr. V/s. The Assistant Director of Town Planning and ors.	... Petitioners ... Respondents
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Mr. T.D. Deshmukh for the Petitioners.
Ms K.N. Solunke, AGP for the Respondents – State.
Mr. Sudhkar Bhanse, Asst. Town Planning, Pune present.

**CORAM : B.P. DHARMADHIKARI &
 N.R. BORKAR, JJ.
DATE : JANUARY 15, 2020.**

P.C.

1] Heard respective Counsel. Perused the order dated 3rd October 2019.

2] For convenience, we have reproduced that order below:

“ . By placing reliance on GR dated 14/3/2016, learned counsel states that when the entire FSI is not utilized there is provision for refund of 90% of the premium. He submits that in the present matter, the petitioner has not utilized any FSI and no letter of intent was issued.

2. We find that the claim arises out of application made in the year 2012.

3. Issue notice to respondents returnable on 15/1/2020. Learned AGP waives service of notice for respondents.

4. If application for refund is already received by respondents or if it is still pending it is open to

respondents to take decision upon it as per law without prejudice to their rights and contentions in the matter.”

3] Contention of the petitioners is that the premium was required to be paid for excess FSI to be utilised as per sanctioned Plan at Exhibit-B. However, that construction was never made and plan was never used. The plot of land has been subdivided in accordance with law as per sanction given by Assistant Director of Town Planning on 11th March 2014 and even today, the entire land which has been subdivided into about 7 plots and the amenity place is still lying vacant. No FSI, therefore, has been utilised.

4] As such prayer is to grant refund for additional FSI which was proposed to be used in Plan at Exhibit-B.

5] Learned AGP, upon instructions from Assistant Director of Town Planning, states that the decision as directed by this Court on 3rd October 2019 will be taken within four weeks from today.

6] This Court has still not applied its mind to the merits of controversy, question of eligibility for relief of refund and other questions need to be looked into, we, therefore, permit the respondents time as prayed for.

7] We direct the petitioners to appear before respondent No.1 on 29th January 2020 and to abide by his further instructions in the matter. The said authority shall without getting influenced by this order and in its own wisdom take decision on question of refund within next four weeks.

8] With aforesaid directions, the petition is disposed of.

(N.R. BORKAR, J.)

(B.P. DHARMADHIKARI, J.)