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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 411 OF 2013

1. Arvind Kashinath Dadarkar,)

2. Manohar Kashinath Dadarkar,)

3. Sanjay Kashinath Dadarkar,)

through their Power of Attorney)

holder Ashok Jain, Age 49 years,)

Occupation : Business, residing at)

11/88, Navjyot Co-op.Hsg. Society,)

Unnat Nagar II, M.G.Road,)

Goregaon (W), Mumbai – 400 062)

..... Petitioners

VERSUS

1. Municipal Corporation of Greater)

Mumbai,)

a Corporation incorporated under)

the Bombay Municipal Corporation)

Act, 1888, through its Secretary,)

having office at Mahapalika Bhavan,)

Mahapalika Road, Fort,)

Mumbai 400 001)

2. Commissioner for Greater Mumbai)

Municipal Corp. of Mumbai,)

having office at Mahapalika Bhavan)

Mahapalika Road, Fort,)

Mumbai 400 001)

3. State of Maharashtra,)

Through Secretary, Mantralaya,)

Mumbai 400 032)

4. Arvind Kashinath Dadarkar,)

4-a) Jayesh Arvind Dadarkar,)

4-b) Ajay Arvind Dadarkar,)
4-c) Vaishali Arvind Dadarkar,)
All residing at C-209, Shila Bina CHS Ltd.,)
Eksar Road, Near Laxminarayan Temple)
Borivali (West), Mumbai – 400 091)

5. Manohar Kashinath Dadarkar,)
5-a) Milind Manohar Dadarkar,)
5-b) Paresh Manohar Dadarkar,)
5-c) Bharati Manohar Dadarkar,)
All residing at Parle Control,)
Municipal Staff Quarters,)
Room No.5, 48, M.G.Road,)
Opposite Bank of Baroda,)
Vile Parle (East), Mumbai – 400 057)

6. Sanjay Kashinath Dadarkar,)
6-a) Reema Sanjay Dadarkar,)
Both residing at C-108, A-1 Apartments)
Shivaji Road, Off. M.G.Road,)
Kandivali (West), Mumbai 400 067)

..... Respondents

Mr. Naresh Jain, a/w. Ms.Neha Anchlia, i/b. Mr.Yash Jariwala for the Petitioners.

Mr.Anil Sakhare, Senior Advocate, a/w. Ms.Sheetal Metakari, i/b. Mr.Sunil K.Sonawane for the Respondent No. 1 & 2.

**CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.**

RESERVED ON : 10TH OCTOBER, 2022

PRONOUNCED ON : 20TH OCTOBER, 2022

JUDGMENT (Per R.D. Dhanuka, J.):

Rule. Mr.Sakhare, learned senior counsel waives service for the respondent nos.1 and 2. Rule is made returnable forthwith. Writ petition is already disposed of between the petitioners and the

respondent nos. 4 to 6 by an order dated 20th August, 2022 vide consent terms dated 28th July, 2022. Some of the relevant facts for the purpose of deciding this writ petition are as under :-

2. The petitioners are the owners of the land bearing CTS no. 1104/02 of Village Kandivali at Kandivali (West), admeasuring 7396.10 sq.mtrs. The petitioners have applied for Development Right Certificates as their land was reserved for the purpose of D.P. Road. It is the case of the petitioners that in the year 2000, the petitioners were entitled to claim 100% TDR for their land. On 1st March, 2006, the petitioners applied for 100% TDR. On 26th March, 2003 the petitioners were granted 25% TDR. The Chief Engineer of the respondent no.1 issued a Letter of Intent in favour of the petitioners.

3. It is the case of the petitioners that on 17th May, 2006, the petitioners complied with all the necessary requirements of the respondents, paid a sum of Rs.20,24,770/- and provided a 150 mm CI water main in D.P. Road. The petitioners accordingly received 25% additional TDR for construction of 18.30 mtrs. wide D.P. Road and received TDR for 1849 sq.mtrs.

4. In the year 2000, Godrej & Boyce Mfg.Co.Ltd. had filed a Civil Writ Petition bearing No. 323 of 2000 against the State of Maharashtra and others for various reliefs. The said writ petition was disposed of by this Court by judgment delivered on 18th October, 2005. On 6th February, 2009, the Supreme Court allowed the Civil Appeal No. 1746 of 2007 and also the writ petition filed by the said Godrej & Boyce Mfg.Co.Ltd. The Supreme Court held that the area referred in Regulation (3) of the D.C. Regulations does not refer to that of the area of the plot. The term “equivalence” is defined in the Black’s Law Dictionary to mean “equal in value, force, measure, volume, power and effect or having equal or corresponding import, meaning of significance; alike; identical”. The equivalence in case of construction activity cannot be ascertained by merely referring to the carpet area of the land occupied by the construction but it has to take into consideration the total quantity as well as the quality of the construction.

5. On 28th August, 2009, the petitioner made an application to the Chief Engineer for the remaining 75% TDR out of the 100% TDR in

total after excluding the 25% TDR that was already granted to the petitioners on 17th May, 2006. Since the respondents did not grant the balance 75% TDR to the petitioners, the petitioners filed a Writ Petition bearing no. 934 of 2010. By an order dated 12th July, 2011, this Court directed the respondent nos.1 and 2 to decide the said application made by the petitioners for the grant of 100% TDR.

6. On 18th October, 2011, the respondent nos. 1 and 2 passed an order rejecting the application made by the petitioners for the balance 75% TDR on the ground that the petitioners had already availed 25% TDR as per the prevalent policy and thus had no further right to claim any additional TDR. The petitioners thus filed this Writ Petition on 9th May, 2012 for further reliefs. During the pendency of this petition, the petitioners and the respondent nos. 4 to 6 filed consent terms dated 28th July, 2022. In view of the said consent terms, this writ petition came to be disposed of by an order dated 20th August, 2022 between the petitioners and the respondent nos. 4, 4A, 4C, 5A to 5C, 6 and 6A (Respondent nos. 4 to 6).

7. Mr. Naresh Jain, learned counsel for the petitioners invited our

attention to the applications made by the petitioners, the impugned order passed by the respondent nos. 1 and 2 and the averments made by the Municipal Corporation in the affidavit in reply. He placed reliance on the following judgments :-

(a) Judgment of Division Bench of this Court in case of ***Apurva Natvar Parikh & Co. Private Limited vs. The State of Maharashtra & Others in Writ Petition No. 203 of 2014*** with connected matters dated 18th December, 2018.

(b) Judgment of Division Bench of this Court in case of ***Natvar Parikh & Co. Private Limited vs. The State of Maharashtra & Others in Writ Petition No. 451 of 2010*** dated 22nd April, 2014.

(c) Judgment of Supreme Court in case of ***Municipal Corporation of Greater Mumbai & Anr. vs. Natvar Parikh & Co. Pvt. Ltd. & Anr., in Civil Appeal No. 1748 of 2015*** dated 5th May, 2016.

(d) Judgment of Supreme Court in case of ***Union of India (UOI) & Others vs. I.T.C.Limited in Civil***

Appeal No. 3178 of 1982 dated 16th July, 1993.

(e) Judgment of Division Bench of this Court in case of ***M/s.Siddhi Real Estate Developers vs. State of Maharashtra & Anr., in Writ Petition No. 12285 of 2015*** dated 3rd July, 2020.

(f) Judgment of Division Bench of this Court in case of ***Starwing Developers Private Limited vs. State of Maharashtra & Ors., in Writ Petition No. 2531 of 2009*** dated 18th October, 2019.

(g) Judgment of Supreme Court in case of ***Godrej & Boyce Manufacturing Co. Ltd. vs. State of Maharashtra & Ors., in Civil Appeal No. 1746 of 2007*** with connected matters.

8. It is submitted by the learned counsel for the petitioners that the issues raised by the respondents in the affidavit in reply are already negatived by this Court and also by the Supreme Court. The learned counsel for the petitioners submitted that the **Godrej & Boyce Mfg.Co.Ltd.** (supra) had already filed a writ petition in this Court on

identical issues in the year 2000 itself. The said petition was pending for quite some time and then was rejected. The Supreme Court has quashed and set aside the order passed in the said **Godrej & Boyce Mfg. Co. Ltd.** (supra) case.

9. It is submitted that the Supreme Court in the said judgment granted various reliefs and as a result thereof, the petitioners became entitled to claim the balance 75% of TDR. He submitted that the petitioners thereafter made an application for the balance 75% of TDR at the earliest. The Corporation however rejected the said application for additional TDR on flimsy grounds. The petitioners immediately filed this writ petition for quashing and setting aside the said order passed by the Municipal Corporation at the earliest.

10. The learned counsel for the petitioners submits that this Court in case of **Apurva Natvar Parikh & Co. Private Limited** (supra) after adverting to the judgment in case of **Godrej & Boyce Mfg.Co.Ltd.** (supra) and the order of Supreme Court rejecting the prayer of the Corporation to revisit the decision in case of **Godrej & Boyce Mfg.Co.Ltd.** (supra) and in case of **Municipal Corporation of Greater**

Mumbai & Anr. vs. Natvar Parikh & Co. Pvt. Ltd. & Anr. (supra) allowed the writ petition filed by various parties and held that the notification dated 16th November, 2016, issued by the Municipal Corporation is legal and valid. However, the said notification will not have retrospective or retroactive application to a land already reserved under the development plan which is surrendered and where the amenity is developed on the said land by the owner or the lessee thereof at his own cost prior to 16th November 2016.

11. This Court held that in case if a land is reserved for a road, either in the Development Plan under the MRTP Act or under the provisions of the said Act of 1888 and is surrendered and the road is developed on or after 17th June 2010 but before 16th November 2016, the FSI or TDR in lieu of that amenity will be governed by the Regulation 33 (1) as amended on 17th June 2010.

12. The learned counsel submitted that another Division Bench of this Court in a judgment delivered on 22nd April, 2014 in case of ***Natvar Parikh & Co. Private Limited vs. The State of Maharashtra & Others*** (supra) held that the cause of action was still continuing and

thus there was no question of any delay and/or laches. He relied upon the order passed by the Supreme Court on 5th May, 2016 in Civil Appeal No. 1748 of 2015 arising out of the judgment delivered by this High Court in Writ Petition No. 451 of 2010 and submitted that the Civil Appeal filed by the Municipal Corporation came to be disposed of.

13. It is submitted that since this Court has already taken a view that the said notification dated 16th November, 2016 would apply with prospective effect and not retrospective effect, the petitioners are entitled to seek TDR to the extent of the remaining 75% as well and such claim could not have been rejected by the Corporation. He submitted that the view taken by the Municipal Corporation is contrary to the principles of law laid down by this Court in the above referred catena of judgments.

14. The learned counsel for the petitioners submits that another Division Bench of this Court in the judgment delivered on 3rd July, 2020 in case of *M/s.Siddhi Real Estate Developers* (supra), after adverting to the judgment of Supreme Court in case of **Godrej &**

Boyce Mfg. Co. Ltd., has rejected the contentions of the Municipal Corporation on the issue of delay. He submits that all the contentions raised by the respondents in the affidavit in reply are already negated by this Court or the Supreme Court.

15. The learned counsel for the petitioners submitted that this Court in case of *Starwing Developers Private Limited* (supra) has followed the judgment of this Court in case of *Apurva Natvar Parikh & Co. Private Limited* (supra) and has granted reliefs in favour of the petitioner therein.

16. Mr. Sakhare, learned senior counsel for the Municipal Corporation on the other hand submitted that there is a gross delay on the part of the petitioners in applying for TDR for the balance 75%. He submitted that the petitioners were granted TDR in the form of the D. C. Regulation on 17th May, 2006. The said 25% TDR granted by the Corporation was accepted by the petitioners without raising any protest. The petitioners thus could not have applied for the balance 75% TDR on the basis of the judgment of Supreme Court in case of *Godrej & Boyce Mfg.Co.Ltd.* (supra). He submitted that the

petitioners had no right to apply for the balance TDR on 28th August, 2009 that is after three years from 17th May, 2006 as the same was time barred. Thus, the petitioners are estopped from claiming additional TDR.

17. It is submitted by the learned senior counsel that the petitioners had earlier filed Writ Petition No. 934 of 2010 in view of the judgment delivered by the Supreme Court in case of ***Godrej & Boyce Mfg. Co. Ltd.*** (supra). The said writ petition was disposed of by this Court by an order dated 12th July, 2011. The petitioners were given full opportunity by the Municipal Corporation to submit the documents, if any. The petitioners were thereafter granted a personal hearing on 21st August, 2011.

18. It is submitted by the learned senior counsel that the petitioners did not make a regular application for the grant of the balance 75% TDR in the prescribed format. It is submitted by the learned senior counsel that a ***Special Leave Petition (Civil) Diary No(s) No. 17895 of 2019*** has been filed by the Municipal Corporation arising out of the impugned final order and judgment dated 18th December, 2018 in Writ

Petition No. 203 of 2014 and the same is pending before the Supreme Court. He submitted that the Special Leave to Appeal (C) No. 5273 of 2019 filed by the Kukreja Construction Company & Ors. against The State of Maharashtra and others is also pending and is likely to be heard shortly.

REASONS AND CONCLUSIONS:-

19. It is not in dispute that the petitioners were granted 25% TDR by the Municipal Corporation on 17th May, 2006. M/s.Godrej & Boyce Mfg. Co. Ltd. had already filed a writ petition in this Court for similar reliefs in the year 2000. The said writ petition was dismissed by this Court. The said M/s. Godrej & Boyce Mfg.Co.Ltd. had filed a Special Leave Petition which was converted into Civil Appeal No. 1746 of 2007. The Supreme Court decided the said Civil Appeal by a judgment delivered on 6th February, 2009. The petitioners thus became entitled to claim the balance 75% TDR on the basis of the interpretation of the provisions of the Regulations by the Supreme Court.

20. Based on the said judgment delivered by the Supreme Court in case of Godrej & Boyce Manufacturing Co. Ltd., the petitioners made an application on 28th August, 2009 for the balance 75% TDR. Since

the said application was not decided by the Municipal Corporation, the petitioners had filed a writ petition bearing no. 934 of 2010 in this Court. This Court directed the Municipal Corporation to consider the said application. Though the judgment of Supreme Court was already delivered as far back as in the month of February 2009, the Municipal Corporation rejected the claim for the balance TDR contrary to the principles of law laid down by the Supreme Court in case of **Godrej & Boyce Manufacturing Co. Ltd.** (supra).

21. The Division Bench of this Court in case of **Apurva Natvar Parikh & Co. Private Limited** (supra) in Writ Petition No. 203 of 2014 and in batch of the petitions delivered on 18th December, 2018 decided identical issues. The Municipal Corporation contended before this Court that the decision of the Supreme Court in case of **Godrej & Boyce Manufacturing Co. Ltd.** (supra) is *per incurium* on various grounds. This Court in the said judgment after adverting to the various judgments, rejected the contentions raised by the Municipal Corporation about delay and laches for making an application for the balance TDR and for filing a writ petition.

22. This Court adverted to the judgment of Supreme Court in case of ***Godrej & Boyce Manufacturing Co. Ltd.*** (supra) in which it was held that there was no question of any delay and/or laches as contended. The approach of a person/party immediately and/or after coming to know about the judgment of the Supreme Court cannot be stated to be guilty of any laches to claim/reliefs so prayed and/or is barred by the limitation. The petitioners have filed this petition in view of the judgment delivered by the Supreme Court in case of ***Godrej & Boyce Manufacturing Co. Ltd.*** (supra)

23. This Court in the said judgment clearly held that the said notification dated 16th November, 2016 issued by the Municipal Corporation will not have retrospective or retroactive application to a land reserved under the development plan which is surrendered and where amenity is developed on the said land by the owner or lessee thereof at his own cost prior to 16th November 2016. If the land is surrendered and road is developed on or after 17th June, 2010 but before 16th November, 2016, the FSI or TDR in lieu of such amenity will be governed by the Regulation 33 (1) of the D.C. Regulations. This Court accordingly directed the authority therein to make a

recommendation to the Mumbai Municipal Corporation for the grant of 75% additional FSI/TDR in accordance with the decision of the Supreme Court in case of ***Godrej & Boyce Manufacturing Co. Ltd.*** (supra). Facts of this case are identical to the facts in case of ***Apurva Natvar Parikh & Co. Private Limited*** (supra).

24. The Division Bench of this Court in case of ***Natvar Parikh & Co. Private Limited*** (supra) has held that the fact that the respondents have granted 25% TDR itself justified and proved the case that the Petitioner had developed the amenities on the surrendered land at its own cost and is entitled to additional amenities of the TDR for the same. The cause of action is still continuing. The rights of the petitioners are crystalized on the basis of the judgment of the Supreme Court in case of ***Godrej & Boyce Manufacturing Co. Ltd.*** (supra) and cannot be taken away though claimed since long. This Court in the said judgment also rejected the plea of delay and laches raised by the Municipal Corporation. The Civil Appeal No. 1748 of 2015 filed by the Municipal Corporation against the said judgment before this Court came to be dismissed. The judgment delivered by this Court is merged with the judgment delivered by the Supreme Court in Civil Appeal No.

1748 of 2015.

25. The Supreme Court in case of ***Union of India (UOI) & Others*** (supra) has considered the issue of delay in seeking a refund of the amount paid under mistake of law. The Supreme Court held that such claim could not be considered as time barred as it could be filed only after a mistake of law came to the notice of the assessee.

26. The Division Bench of this Court in case of ***M/s.Siddhi Real Estate Developers*** (supra) after adverting to the judgment of Supreme Court in case of ***M/s.Godrej & Boyce Manufacturing Co. Ltd.*** (supra) has rejected the arguments similar to the arguments advanced by the learned senior counsel for the Municipal Corporation in this case and rejected the plea of delay raised by the Corporation. This Court directed the Corporation to grant TDR to the petitioner in the form of FSI equivalent to the area of the two DP Roads strictly in accordance with the provisions of the MRTP Act, 1966.

27. The Division Bench in case of ***Starwing Developers Private Limited*** (supra) has after adverting to the judgment of this Court in

case of *Apurva Natvar Parikh & Co. Private Limited* (supra) has held that the petitioner therein was entitled to additional amenities FSI/TDR of the area of constructed road. The principles laid down by the Supreme Court and this Court in the judgment referred to aforesaid apply to the facts of this case. In our view, the view taken by the Municipal Corporation is already negated in the catena of judgments referred to aforesaid. In our view, there is no substance in any of the submission made by Mr. Sakhare, learned senior counsel for the Municipal Corporation.

28. We accordingly pass the following order :-

- (a) Writ Petition No. 411 of 2013 is allowed in terms of prayer clause (a). The TDR of 5547.10 sq.mtrs. shall be issued to the petitioners within four weeks from today without fail.
- (b) Rule is made absolute in the aforesaid terms. No order as to costs.
- (c) The parties to act on the authenticated copy of this order.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]