

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**930 WRIT PETITION NO.9994 OF 2022**

**JAY BHAURAO KHANDAGALE  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH DEPARTMENT OF URBAN  
DEVELOPMENT AND OTHERS**

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Advocate for Petitioners : Mr. Palodkar Devdatt P.  
AGP for Respondents/State: Mr. S. B. Yawalkar  
Advocate for Respondent Nos.5 & 6: Mr. S. S. Tope

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**CORAM : NITIN W. SAMBRE &  
S. G. CHAPALGAONKAR, JJ.**

**DATE : 18.04.2023**

**PER COURT :**

1. Heard.
2. It is the contention of the learned counsel for the petitioner that the application for grant of sanction to commence construction via approval of building plan was moved on 17<sup>th</sup> October, 2012 and the demand was paid to the respondent/planning authority on 9<sup>th</sup> June, 2016. In this background, he would urge that the embargo created by the respondent/Municipal Corporation, of non permitting loading of TDR on a road having 7.5 meters of width is artificial.
3. Learned counsel Mr. Palodkar would urge that the building control regulation as were existing prior to the Unified Development Control & Promotion Regulations of 2020 [UDCPR-2020] will not be attracted in the case in hand as the said regulation will have prospective application.

4. He has drawn support from clause 11.2.13 which provides for effect of the said regulation which reads thus:

*“Effect of this Regulation*

*DRC issued under the old regulations as per TDR zone, shall be utilised as per these regulation considering the year of generation of TDR mentioned on the original DRC and accordingly land rate in the relevant ASR shall be considered.*

*Provided also that old TDR purchased as per TDR zones for utilisation on a specific plot with registered documents of sale and / or specific proposal for utilisation of such TDR pending in the ULBs, shall be allowed completely as per the old regulations.”*

5. As such, he would urge that respondents are duty bound to permit the petitioner to upload TDR even if the front road of the property of petitioner is having 7.5 meters of width.

6. The aforesaid submissions are disputed by the learned counsel Mr.Tope for respondent Nos.5 & 6. According to him, since the commencement certificate sought is as on today i.e. after the UDCPR – 2020 has been given effect to, the loading of the TDR is not permissible in view of narrow width of the frontal road. He would as such urge that the petition deserves to be dismissed.

7. We have considered the rival submissions.

8. In view of the clause 11.2.13 which provides for effect of the regulation which is prospective in nature and the same is given effect to post 2020, Mr. Palodkar is justified in contending that the loading of TDR has to be considered under the earlier building control regulation. The fact remains that the petitioner has applied for grant of sanction of building plan on 17<sup>th</sup> October, 2012 and demand issued against the aforesaid request was satisfied on 9<sup>th</sup> June, 2016.

9. In this view of the matter, it cannot be said that the embargo created of non loading of TDR on a property having 7.5 meters of frontal road is attracted in the facts of this case.

10. In this view of the matter, we deem it appropriate to direct the respondent/Corporation to process the request of the petitioner for issuance of commencement certificate in the backdrop of observations made herein above as expeditiously as possible and shall communicate the decision to that effect within a period of six weeks from the date of production of this order.

11. The writ petition stands allowed in the above terms.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

Sameer