

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6254 OF 2019

1. Santacruz Contractors and Builders Pvt. Ltd.
A Private Limited Company registered
under the Companies Act, 1956 and
having its registered office at : 501, Golden
Bungalow, 26, Juhu Road, Santacruz(West),
Mumbai – 400 054.
 2. Sanjay K. Patel
of Mumbai Indian Inhabitant,
Having his office at 501, Golden Bungalow,
26, Juhu Road, Santacruz(West),
Mumbai – 400 054.
- Petitioners

.Vs.

1. Thane Municipal Corporation of City of Thane
having its office at Mahapalika Bhavan,
Chandanwadi, Panchapakhadi,
Thane – 400 062.
 2. Municipal Commissioner
Thane Municipal Corporation
having its office at Mahapalika Bhavan,
Chandanwadi, Panchapakhadi,
Thane – 400 062.
 3. The State of Maharashtra
through Secretary Urban & Town Planning
Department, Government Pleader,
Appellate Side, High Court,
Mumbai – 400 032.
- Respondents

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Dr. Milind Sathe, Senior Counsel a/w Mr. Aditya Shiralkar,
Mr. Vivek Shiralkar, Ms Yashoda Desai & Mr. Vijay Poojari i/b. M/s.
Shiralkar & Co., Advocate, for the Petitioners

Mr. N. R. Bubna, Advocate, for Respondent Nos. 1 & 2 – Corporation

Ms M. S. Srivastav, AGP, for Respondent No. 3 – State

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**CORAM : S. B. SHUKRE AND
M.W. CHANDWANI, JJ.**

**RESERVED ON : 10th JANUARY, 2023.
PRONOUNCED ON : 12th APRIL, 2023.**

JUDGMENT (PER : M.W. CHANDWANI, J.)

. The short question arose in this Petition as to whether the case of the Petitioners for grant of Development Right Certificate (for short ‘DRC’) in the form of Transferable Development Rights (for short ‘TDR’) is governed by the Development Control Regulations 1994 for Thane (for short ‘the Old Regulations’) or by the New Regulations enumerated in notification dated 29.01.2016 (for short ‘the New Regulations’) framed under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short ‘MRTP’ Act).

2. The facts germane to dispose of this Petition can be summarized as under:-

The Petitioners are owners of the land admeasuring 16,482,42 Sq. meters, out of which 15040 Sq. meters is affected by reservation in sanctioned development plan of Respondent No.1 for the city of Mumbai. On 09.09.2010, the Petitioners submitted their proposal to Respondent No.1 for grant of TDR in lieu of surrender of their property affected by reservation. In the year 2013, the necessary declaration was executed and the land was also mutated in the name of Respondent No. 2. Even the possession receipt of land was issued in the year 2013.

3. Since, the Respondent No. 2 did not act on the application of the Petitioners for grant of DRC in the form of TDR, the Petitioners filed Writ Petition No.8012 of 2014. The land of the Petitioners was affected by Coastal Regulation Zone (for short 'CRZ'), therefore, the Writ Petition was disposed of by giving directions to the Respondents to issue TDR/DRC within two months from the date of permission granted by the Maharashtra Coastal Zone Management Authority (for short 'MCZMA') to construct the road.

4. The Respondents did not comply with the directions issued in Writ Petition No.8012 of 2014. Therefore, the Petitioners filed the Contempt Petition No.193 of 2017 against the Respondents. Meanwhile,

by way of Notification dated 29/10/2016, the New Regulations for grant of TDR came into force. Pending the Contempt Petition, by the impugned communication dated 11.05.2017, Respondent No. 1 informed the Petitioners about sanctioning of TDR/DRC in accordance with the New Regulations and directives of the State of Maharashtra dated 14.03.2017. Accordingly, the contempt petition came to be disposed of.

5. Feeling aggrieved with the grant of TDR/DRC as per the New Regulations, the present Petition came to be filed for quashing the communications dated 11.05.2017 and for declaration that the case of the petitioners is governed by the Old Regulation and the New Regulations are not applicable to the Petitioners. Though, the challenge was also made to the notification dated 29.01.2016 claiming as *ultra vires*, no argument was advanced in this regard.

6. We have heard learned Senior Counsel, Mr. Milind Sathe appearing on behalf of the Petitioners and Mr. N. R. Bubna for Respondent Nos. 1 & 2-Corporation and Ms. M. S. Srivastav, AGP for Respondent No.3-State.

7. The grievance of the Petitioners is that since all the formalities of acquisition i.e. surrender of land, possession receipt, execution of indemnity deed and mutation in revenue record are completed, prior to date on which the New Regulations came into force, therefore, the grant of TDR will be governed by the Old Regulations which were applicable prior to 29.01.2016. The New Regulations are not applicable retrospectively. Therefore, the petitioner claims TDR under the Old Regulations as per their application dated 9th September 2010.

8. We have carefully read the New Regulations, which are made applicable from 29th January 2016 and the directive dated 17th March 2017 issued by the State Government. These do not refer to application of these regulations retrospectively. Rather, there is no dispute that the New Regulations will have application from the date of its publication i.e. with effect from 29/01/2016. Here, the dispute is, whether the case of the Petitioners is governed by the Old Regulations or the New Regulations.

9. Evidently, the proposal of surrender of land by the Petitioners is made in the year 2010. The necessary declaration in the form of indemnity bond has been completed in the year 2013. Even, the

land was mutated in the name of Respondent No.1 as well as the possession receipt was also issued by Respondent No. 1 in the year 2013. However, the physical possession of the land has not been taken over by the Respondent no.1 before the New Regulations came into force.

10. We may refer to the decision dated 09.02.2016 of this Court in Writ Petition No. 8012 of 2014 filed by the Petitioners against very same Respondents, seeking directions to the Respondents to grant TDR. The Division Bench of this Court in para 4 and 5 has observed as under:

4. We must note that there is some controversy associated with the possession receipt referred earlier. The stand taken by the first Respondent – Municipal Corporation in the affidavit-in-reply of Shri Pramod R. Nimbalkar, Town Development and Planning Officer is that though there is a possession receipt duly signed by the Municipal Officer, in fact, the possession was not taken over by the Municipal Corporation. Considering the stand taken in the said affidavit, this Court had directed the Municipal Commissioner to personally remain present in the Court. Order dated 26th November, 2015 records that the possession receipt signed by the Municipal Officers clearly records that vacant possession of the said land has been handed over to the Municipal Corporation.

5. Thereafter, the Municipal Commissioner personally remained present in the Court and explained to the Court that it was a consistent practice followed by the Municipal Corporation to take such advance possession receipts and only after the proposal is approved, actual physical possession is taken over. The Municipal Commissioner assured the Court to change the said practice as reflected from affidavit of Shri Pradeep Laxmidas Gohil, working as the Assistant Director of Town Planning of the said Municipal Corporation. Office noting prepared by the Municipal Commissioner is annexed to the said affidavit.

11. The Division Bench in the said Writ Petition, while disposing of the petition on 09/02/2016 gave directions to the Respondents, which are reproduced as under:

(iv) If a permission is granted by the third Respondent, within a period of two months from the date on which communication of grant of permission is issued to the first Respondent, all procedural compliances shall be made by the first Respondent by actually taking over the physical possession of the said land affected by the Development Plan road reservation under the sanctioned Development Plan.

(underlined by us)

12. This takes us to the impugned communication dated 11/05/2017 issued by the respondent no.2 in compliance of the above direction, wherein the Respondent No.2, while crystallizing the TDR in

wake of the New Regulations, requested the Petitioners to hand over possession of the land covered under reservation.

13. The facts mentioned above, unequivocally demonstrate that though the Respondent no.2 had issued the possession receipt, the physical possession of the land was not taken at least till 11/05/2017, the date of impugned communication, i.e. which is after the date of enforcement of the New Regulations i.e. 29/01/2016 and directives issued by the Government on 17/03/2017.

14. As stated above, this Court in Writ Petition had directed to the Respondent no.1 herein to complete all procedural compliance by actually taking over the physical possession of the said land affected by the Development Plan of road reservation under the sanctioned Development Plan. Thus, the physical possession of land as directed by the Court was demanded by Respondent no.2 by the impugned communication dated 11/5/2017. This itself is evident that the acquisition proceedings in respect of the land of the Petitioners were not completed till 14/03/2017, when directives were issued by the State Government, much less before 29/01/2016, when the New Regulations came into force. Needless to mention that grant of TDR against the

acquisition proceedings completed after 29/01/2016 will be governed by the New Regulations and not by the Old Regulations. Therefore, the case of the Petitioners will be governed by the New Regulations. The Petitioners are not entitled to the TDR as per the Old Regulations.

15. So for as the case of **Godrej Boyce Manufacturing Limited and Ors. Vs. The State of Maharashtra & Others [2009(5) SCC 24]**, relied by the Petitioners is concerned, the Supreme Court has held that the sub-ordinate legislation would apply prospectively, unless the statute provides for the same. Here is not a case of applicability of the New Regulations, retrospectively. It is case of Respondents that the acquisition proceedings were not completed till the New Regulations came into force and therefore, case of **Godrej Boyce Manufacturing Limited and Ors.**(supra) does not apply to the case in hand.

16. In view thereof, the Writ Petition is dismissed. No order as to cost.

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(M.W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)