

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4331 OF 2021

1. Ravi Developments
a registered Partnership firm,
having address at Laxmi Palace, 76,
Mathuradas Road, Kandivali(West),
Mumbai-400067

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2. Jayesh Tokershi Shah
adult, of Mumbai, Indian Inhabitant,
one of the Partners of Petitioner No.1
having his address at Laxmi Palace,
76, Mathuradas Road, Kandivali(West),
Mumbai-400067.

... Petitioners.

Vs.

1. Mira Bhayander Municipal Corporation
having its office at : Indira Gandhi Bhavan
Chhatrapati Shivaji Maharaj Marg,
Bhayander(West), Dist:Thane.

2. Municipal Commissioner
Mira Bhayander
Municipal Corporation,
having office at : Indira Gandhi Bhavan,
Chhatrapati Shivaji Maharaj Marg, Bhayander
(West), Dist :Thane

3. The State of Maharashtra
through its Secretary
Urban Development Department
Mantralaya, Mumbai 400 032

... Respondents.

.....

Mr Atul Daga a/w Mr. Dileep Satale i/b Mr Santosh Sitap for the
for the Petitioners.

Mr Mayuresh S. Lagu for Respondents No.1 and 2.

Ms Rupali M Shinde, AGP for State/Respondent No.3.

.....

**Coram : G. S. Kulkarni &
R.N.Laddha, JJ.**

**Reserved on : 19 April, 2023.
Pronounced on: 19 August 2023.**

Judgment (Per R.N.Laddha, J.)

The Petitioners are challenging the rejection of their claim for an additional 100% TDR in the form of FSI by the Mira-Bhayander Municipal Corporation ('MBMC'). The claim is for the amenities such as the DP road, playground, and recreation ground which were either developed by the Petitioners or paid for by them. This Petition, filed under Article 226 of the Constitution of India, seeks to quash and set aside the rejection, which is the impugned order dated 29.01.2021, and to direct the Respondent Authorities to grant TDR in the form of FSI equivalent to the area of the above amenities.

2. The first Petitioner is a partnership firm, of which the second Petitioner is a partner. The Petitioners claimed that the first

Petitioner owns and has developed a large layout in the Mira, Navghar and Ghodbunder areas within the jurisdiction and management of MBMC. This layout has been developed in phases since 1993-94 and includes reservations such as playgrounds, recreation grounds and DP roads.

3. The Petitioners state that they have given possession of the land to the Respondent Authorities at no cost, in compliance with Regulation 33 of the Development Control Regulations (DCR). As a result, the Respondent Authorities have issued Development Right Certificates (DRC) to the Petitioners. However, the Respondent Corporation has only issued DRCs for the surrendered reserved lands, not for the amenities built on them. The Petitioners claim that they have registered various agreements/declarations with the Sub-Registrar of Assurances, in Thane, as per the policy of the Respondent Corporation for transferring the reserved land ('Navghar Reservation Lands'), the details whereof are reproduced below :

S r	Village	Survey No.	Reservation No. & type of reservation	Registered Documents No.	Area transferred as per agreement (Sq.mtrs.)	DRC and Date	Area as per DRC (sq.mtrs.)
	Navghar	417/5 (Old) 124/5 (New)	R.No.300 (Play Ground)	TNN4-5277- 2006 dated 12.06.2006	2230.00	46 dt. 16.8.2006	2115.93
	Navghar	449/3 (Old) 123/3 (New)	R.No.300 (Play	TNN4-5043- 2006 dated	1620.00	47dt. 16.8.2006	1620.00

			Ground)	05.06.2006			
	Navghar	449/2 (Old) 123/2 (New)	R.no.300 (Play Ground)	TNN4-5232- 2006 dated 09.06.2006	3270.00	48 dt. 16.8.2006	2760.93
	Navghar	448/1 pt.(Old) 125/1 pt. (New)	R.No.300 (Play Ground) R.No.299 (Garden)	TNN4-5235- 2006 dated 09.06.2006	6000.00	49 dt. 16.8.2006	3955.00
	Navghar	448/3 (Old) 125/3 (New) 417/3 (Old) 124/3 (New)	R.No.300 (Play Ground)	TNN4- 5236- 2006 dated 09.06.2006	2420.00	50 dt. 16.8.2006	2420.00
	Navghar	405/1 pt.,2, 406/2, 172/1pt.,2, 171/2	R.No.300 (Garden) & D.P. Road	TNN4-6084- 2006 dated 11.07.2006	3931.00	51 dt. 16.8.2006	3021.00
	Navghar	444/5 (Old) 128/5 (New)	D.P. Road	TNN4-6750- 2006 dated 22.08.2006	568.69	161 dt. 19.7.2007	568.69
	Navghar	421/4, 5 (Old) 117(New)	R.No.300 (Play Ground)	TNN4-5276- 2006 dated 12.06.2006	1992.40	162 dt. 19.7.2007	1623.50
	Navghar	282 pt.	R.No.273 (Garden)	TNN4- 10645-2007 dated 10.12.2007	4000.00	267 dt. 20.2.2009	3760.00
	Total				26032.09		21845.05

4. The Petitioners have handed over various reserved land areas to the Respondent Corporation in accordance with the agreements' terms and conditions. The Petitioners have spent a significant amount of money on the construction of amenities such as DP road, playground, and recreation ground, including land levelling, compound walls construction, debris filling, street lights installation, bitumen road laying, and SWD work. They also paid

Rs.12,85,250/- to the Respondent Corporation.

5. The Petitioners also handed over portions of land in various survey numbers under DP road reservation ('DP Road Reservation Land') to the Respondent Corporation by executing various registered agreements/declarations under various approvals/CC in their layout. The petition provides details and appears below :

Sr. No.	Village	Survey No.	CC Approval No. & Date	Area (Sq.mtrs)	Documents No.
	Mire	158/2, 159	NAPA/NAR/1081/4459/ 95-96 dt.09.08.1995 & 3452/07-08 dt. 20.02.2007	3693.85	
	Mire	156/2, 154/2,4, 152/2	MANAPA/NAR/676/ 2008-09 dt. 29.05.2008	1261.00	
	Ghodbunder	81/1,2,3/pt., 5,6	NAPA/NAR/94/6972/ 97-98 dt. 07.11.1997	1385.00	TNN-9/5730/ 2019 dt.04.05.19
	Ghodbunder	86/1	NAPA/NAR/1882/9023/ 97-98		
	Ghodbunder	27/1, 10A, 28/5, 29/3, 27/2	MANAPA/ NAR/ 4103/ 07-08 dt 11.02.2008	892.51	TNN-9/5731/ 2019 dt.06.05.19
	Ghodbunder	72/2, 73/1, 2, 3, 4, 74/1,2, 75/1, 79/1, 2,3,4	MANAPA/NAR/4637/ 07-08 dt. 12.03.2008	8082.00	TNN-4/2164/ 2011 dt.11.03.11
	Ghodbunder	88/1/1, 89/1,3	MANAPA/ NAR/ 847/ 05-06 dt.11.07.2005	2643.00	TNN-4/3454/ 2011 Dt. 25.04.11
	Ghodbunder	225/part	MANAPA/NAR/4261/ 06-07 dt. 29.03.2007	185.41	TNN- 4/3453/ 2011 dt. 25.4.11
	Navghar	435, 436/2, 437/1 to 3, 5 to 11, 438/1 to 3,5, 439/1pt., 6, 8,	MANAPA/NAR/2943/ 07-08 dt. 30.11.2007	7044.00	1)TNN-5922/ 2013 dt. 02.08.13 2)TNN-5920/ 2013 dt.02.08.13

		440/1, 2, 3 to 8, 11, 12, 13			3)TNN-5919/ 2013 dt.02.08.13 4)TNN-5917/ 2013 dt.02.08.13 5)TNN-9490/ 2013 dt.17.12.13 6)TNN-9735/ 2009 dt.24.12.09 7)TNN-9489/ 2009 dt.17.12.09 9)TNN-5921/ 2013 dt.02.08.13
	Navghar	444/5	MANAPA/NAR/2563/ 08-09 dt.19.09.2008	894.53	TNN-7/1376/ 2007 dt.14.02.07
	Navghar	443/1pt	MANAPA/NAR 1257/ 04-05 dt.23.09.2004	3355.15	TNN-4/5193/ 2019 dt.08.05.19
	Navghar	443/2pt., 418/3, 4, 444/1,3	MANAPA/NAR/1424/ 06-07 dt.29.07.06	420.12	TNN-4/9736/ 2009 dt.24.12.09
	Navghar	418/2	MANAPA/NAR/4616/ 07-08 dt.12.03.2007	998.00	TNN-4/4364/ 2011 dt.23.05.11
	Navghar	429/5	MANAPA/NAR/921/09- 10 dt.11.06.2009		
	Navghar	409/3	NAPA/NAR/4752/254/ 95-96 dt.15.04.1995	153.00	TNN-4/9679/ 2009 dt.23.12.09
	Navghar	396/7	MANAPA/NAR/3540/ 06-07 dt. 31.01.2007	1305.88	
	TOTAL			32313.45	

(sic)

6. According to the Petitioners, they have already transferred and surrendered the DP Road Reservation Lands to the Respondent Corporation without seeking compensation before obtaining Commencement Certificates. In lieu of these transferred lands, the Respondent Corporation granted the Petitioners an FSI

of 1.0 as per DC Regulations.

7. The Petitioners claim that they have complied with conditions No.5, 8, and 9 of the Commencement Certificate, and only after doing so, the Respondent Corporation issued Occupation Certificates to various buildings at regular intervals.

8. The Petitioners claim that they are entitled to 100% Floor Space Index (FSI) or Transferable Development Rights (TDR) for the construction of amenities, and in view thereof, by way of two letters, both dated 28.10.2009, the Petitioners requested the Respondent Corporation to issue additional 100% TDR in the form of FSI for construction of amenities on Navghar Reservation Lands and DP Road Reservation Lands, respectively. However, the respondents replied on 3.12.2009 stating that the owners/developers are only permitted to use 40% of the FSI or DCR granted in lieu of surrendered land in the same project, while the remaining 60% can be used in any other layout plan in the form of TDR/DRC. Respondent No.2 also stated that once FSI or DCR is sanctioned in the development plan, no further FSI or DCR can be permitted in the same layout plan. The respondents also directed the petitioner to submit papers and particulars of land surrendered and documents pertaining to the development of

amenities. They also informed them that their request has been forwarded to Administration for consideration and guidance for further action.

9. It is submitted that in Writ Petition No.902 of 2010, the Respondent Authority undertook to decide the Petitioner's application dated 28.10.2009. However, the Petitioner's application remained pending, which constrained them to file another petition bearing Writ Petition (Stamp) No.92264 of 2020. In this petition, the Respondent Authority was directed to decide the Petitioner's aforesaid application on or before 30.1.2021. After that, the Respondent Authority, by an order dated 29.1.2021, rejected the Petitioner's application. Aggrieved thereby, the Petitioners filed the present writ petition. The impugned order dated 29.01.2021 passed by the second Respondent rejecting the Petitioner's application reads thus:

“After observing the views of all the three departments of the Corporation, namely the Town Planning Department, Public Works Department and the Law Department, I am giving the following decision.

- 1) M/s Ravi Developments has been transferred the land under reservation mentioned in the letter dated 28.10.2009 to the Corporation by a registered agreement and in return M/s Ravi Developments has been given a development rights certificate.

2) M/s Ravi Developments, the Developer was not developed the reservation of S.No.299 (garden), S.No.300 (play ground), S. No.255 (garden) and S.No.273 (garden) as shown in the development plan as well as development plan road shown in the approved layout prior to 2009 therefore, the developer will not be entitled the benefit of 100% additional carpet area.

3) As well as M/s Ravi Developments have used development plan road carpet area shown in the approved layout is used in the same layout. So they won't be entitled the extra carpet area.

4) The reservations and development plan roads mentioned in M/s Ravi Developments letter dated 28.10.2009 have been developed by the Corporation, the said reservations and development plan roads were not developed by M/s Ravi Developments before 28.10.2009. In this regard M/s Ravi Developments have not sought permission from the corporation for development of reservation/development plan road and no work orders have been issued in this regard to M/s Ravi Developments. As well as M/s Ravi Developments have not submitted any statutory documents, evidences no objection of the concerned department regarding development of reservations/development plan roads.

5) In view of all the above, the demand made by the developer cannot be accepted. Therefore, the proposal submitted by the developer is being rejected.”

10. The petitioner's objection to applying the formula for granting TDR/DRC as per Notifications dated 29.1.2016 and 23.4.2018 was pending, so they accepted part TDR/DRC under protest and in lieu of the work order to construct further amenities with conditions following DRC were issued by Respondent Corporation for building cement concrete roads in different areas in Ghodbunder and Navghar villages, which were not related to the development of amenities prior to 2009.

11. According to the Petitioners, the DRC/TDR was issued by the Respondents following the work order and construction of the DP Road after 2011. However, the Petitioners' request for FSI/TDR for amenities work carried out before 2011 was intentionally left pending by the Respondent Corporation.

12. The Petitioners have expressed their concerns that the Respondent Authority has been obstructing the execution of a fresh work order and withholding DRC/TDR for various reasons. The Petitioners made a grievance that despite constructing amenities such as a playground and garden, measuring approximately 21845.05 sq.meters, and handing them over to the Respondent Corporation, they have not received FSI/TDR for their work.

13. The Petitioners' application for the issuance of FSI/TDR was based on two grounds. Firstly, they requested 100% FSI or TDR equivalent to the area of construction of amenities such as the playground and recreation ground. Secondly, they asked for 100% FSI or TDR equivalent to the area of construction of amenities such as the DP road.

14. The Respondent Corporation has filed a reply affidavit objecting to the petition. They claim that the amenities mentioned in the letter dated 28.10.2009 were developed by the Corporation through various Contractors and not by the Petitioners. The Respondent Corporation also states that they never permitted the Petitioners to develop the recreation ground/playground amenities, and therefore, the Petitioners could not have developed them without prior approval from the Respondent Corporation. Additionally, the Respondent Corporation pleads that there is an alternate remedy available for filing a suit, as there are many disputed facts involved in this matter.

15. Heard Mr Atul Daga, learned Counsel appearing on behalf of the Petitioners, Mr Mayuresh Lagu for second and third Respondents and Miss Rupali Shinde, learned AGP for third Respondent/State. With the assistance of learned Counsel for the

parties, we have perused the material on record, including the pleadings in the form of an affidavit in reply filed on behalf of Respondent Corporation and the affidavit-in-rejoinder in response to the reply from Respondent Corporation.

16. Mr Atul Daga, learned Counsel for the Petitioners, submitted that the Maharashtra Regional & Town Planning Act 1966 defines amenities to include roads, playgrounds, and recreation grounds. Section 126 of the MRTP Act specifies that land required for public purposes in plans can be acquired. If the land is required for public purposes after the publication of a draft regional plan, the Planning Authority, Development Authority, or appropriate authority can acquire the land by agreement, paying an agreed amount or granting the landowner FSI or TDR against the area of land surrendered free of cost and free from encumbrances. Additional FSI or TDR can be granted if the amenity is developed/constructed at the owner's cost on the surrendered land. The MRTP Act 1966 allows for further additional FSI or TDR to be granted for the development or construction of amenities. Clauses 5 and 6 of Appendix IV of DCR 1995 state that if the owner or lessee develops or constructs the amenities on the surrendered plot at their costs and hands it over to the Commissioner/appropriate authority free of costs, they may be granted further development

rights (DR) in the form of FSI equivalent to the area of construction/development done by them. The utilisation of these rights is subject to regulations contained in Appendix IV.

17. According to the learned Counsel, this regulation performs a balancing act, where benefits accrue to the land owner if they voluntarily surrender land reserved or designated for public purposes in a development plan. Further benefits accrue if the amenities are developed by the Developer directly or if the Corporation develops them at the cost of the Developer by collecting cost charges from them. He argued that the first Petitioner has developed a large layout in the Mira, Navghar, and Ghodbunder areas, which they have been developing in phases since 1993-94. These areas included reservations like playgrounds, recreation grounds, and DP roads. The Petitioners handed possession of these reserved portions to the Respondent Corporation free of cost in compliance with Regulation 33 of the DCR, for which the Respondent Authorities issued DRC Certificates in favour of the Petitioners.

18. The learned Counsel, however, complained that though the Petitioners incurred huge expenses for constructing the amenities, the Respondent Corporation issued Development Rights

Certificates in lieu of surrendering the reserved lands only and not for constructing amenities on those reserved lands.

19. It is submitted that the Petitioners have handed over various portions of lands in different survey numbers under DP road reservation by executing registered agreements/declarations under various commencement certificates/approvals in their layout to the Respondent Corporation. He claimed that the Petitioners have complied with conditions No.5, 8, and 9 of the commencement certificate, and only then did the Respondent Corporation issue occupation certificates to various buildings at regular intervals, as it is an ongoing layout.

20. According to the learned counsel, as per Condition No.9 of the Commencement Certificate, the Petitioners have completed all work related to roads, drainage, sewerage, and recreation ground as per the rules laid down by the Respondent Corporation. Only then were occupation certificates issued for each of the above lands. The counsel argued that without complying with the CC conditions, the OC could never have been issued.

21. The learned Counsel submitted that the rejection of the grant of TDR in the form of FSI for the DP road, which was either

developed by the Petitioners or for which they paid development costs, is unjustified. The Respondent Authorities claim that the Petitioners are not entitled to the grant because the DP road was developed in the same layout. However, he contends that this argument is in complete violation of the relevant legal provisions. The learned Counsel stated that the surrendered lands are not private or internal access roads but rather DP roads that run within the Petitioners' properties and have been developed. These roads are intended for public use and are not private access roads. It is the responsibility of the Planning Authority to construct amenities such as DP roads, not private individuals. However, if a private individual fulfils this obligation, they must be compensated according to Section 126(1)(b) of the MRTP Act. According to the learned Counsel, Respondent Corporation cannot take away the benefit of statutory provisions by adding conditions in the CC. The reliance on PIL No.15 of 2016 is misplaced and without merit. The work orders dated 27.2.2011 and 31.1.2011 do not pertain to the period prior to 2011, whereas the claim made by the Petitioners relates to amenities developed and handed over to the Corporation prior to 2010. These work orders relate to additional work carried out by the Petitioners, for which they are entitled to claim additional benefits.

22. In support of his contentions, the learned Counsel relied upon the following cases; i) **Cosmos Realtors JV Vs. Thane Municipal Corporation (2019) 6 BCR 43**; ii) **Riddhi Real Estate Dev Vs. State of Maharashtra in WP No.12285/2015**; iii) **Godrej & Boyce Manu Co. Vs. State of Maharashtra (2009)5 SCC 24**; iv) **Siddhi Real Estate Dev Vs. State of Maharashtra & Ors. WP No.7204 of 2016**.

23. Based upon the aforesaid contentions, Mr Atul Daga urged that the rule in this petition may be made absolute.

24. On the other hand, the learned Counsel for the Respondent Corporation submitted that the Petitioners have already been compensated with a grant of TDR for the amenities of the DP road, which were constructed and developed by them as per the orders of the Respondent Corporation dated 31.1.2011 and 22.2.2011. He further stated that the Petitioners never applied for permission to construct or develop the reservation or amenity mentioned in their letter dated 28.10.2009, and the Respondent Corporation never granted any permission for the same. There was no permission or objection from the concerned department of the Corporation. The amenities mentioned in the letter dated 28.10.2009 were developed by the Corporation, as specifically stated in the order

dated 29.1.2021 passed by the then Municipal Commissioner, by inviting various tenders, and were not developed by the Petitioners. Therefore, the Petitioners are not entitled to receive TDR for the development of these reservations or amenities.

25. The learned Counsel for the Respondent Corporation submitted that, as directed by this Court in PIL No.15 of 2016, the Petitioners have already been compensated with TDR for the amenities/reservations they developed. However, since they did not develop certain reservations/amenities mentioned in Clause 2 of the impugned order, they are not entitled to claim TDR. The Petitioner's claim that they developed a recreation ground and playground is false, incorrect, and misleading. The Respondent Corporation never allowed/granted permission to the Petitioners to develop these reservations, so they could not have done so without the Corporation's prior approval. The PWD has established various stipulations and conditions for developing recreation/playgrounds. The learned Counsel pointed out that a joint inspection report dated 26.1.2014 which shows that an Officer from the Respondent Corporation conducted a joint inspection with a representative of the Petitioners and found that the Petitioners had not developed the specified amenities/reservations as claimed by them. The Petitioners were required to apply for permission to develop

reservations. Only after obtaining such permission could they develop the reservations according to the norms and conditions specified in the permission. The Petitioners could only claim equivalent FSI/TDR if they developed the reservations according to the terms and conditions of the permission, subject to the satisfaction of the Respondent Authority.

26. The rival contentions now fall for our determination.

27. The records show that on 28.10.2009, the Petitioners sent two letters to the Respondent Corporation requesting an additional 100% TDR in the form of FSI for the construction of amenities on Navghar Reservation Land and DP Road Reservation Land. The Petitioners complained that despite constructing and handing over the amenities to Respondent Corporation, they had not received FSI/TDR for their work. However, this claim is disputed by the Respondent Corporation. According to them, the amenities mentioned in these letters, both dated 28.10.2009, were developed by the Corporation through various Contractors and not by the Petitioners. The record shows that on 26.1.2014, an Officer from the Respondent Corporation conducted a joint inspection with a representative of the Petitioners and found that the Petitioners had not developed the specified amenities/reservations as claimed by

them. Despite the Petitioners' claim that they developed these reservations, an inspection revealed a contrasting situation. Furthermore, the Respondent Corporation also claims that they never gave permission to the Petitioners to develop the recreation ground/playground amenities and therefore, the Petitioners could not have developed them without prior approval.

28. The record bears out that the present petition involves several disputed factual questions that need to be investigated and examined, as the parties are disputing the factual claims made by their opponents. Such disputed factual questions cannot ordinarily be addressed in exercising our summary and extraordinary jurisdiction under Article 226 of the Constitution of India.

29. As reiterated in a long line of decisions, including ***Mazda Constructions Company & Ors. Vs. Sultanabad Darshan CHS Ltd & Ors. 2013 (2)ALL MR 278***, this Court would not examine disputed issues and complex questions of entitlement under the guise of examining the legality, validity, and correctness of the order in the exercise of writ jurisdiction. In our considered view, the facts of this case do not warrant a different approach as the disputed factual questions involved in this Petition would require investigation and enquiry, since the parties are disputing the factual

claims made by their opponents.

30. The petition is accordingly dismissed. However, it is clarified that if the Petitioners intend to file a suit, they are free to do so. If such a suit is filed, all contentions of all the parties are left open. No costs.

[R.N.Laddha, J.]

[G.S.Kulkarni, J.]

