



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9392 OF 2017

Shri Chhatrapati Rajaram Co-operative }
Housing Society Ltd., }
Through it's Secretary, A Co-operative }
society registered under the provisions }
of Maharashtra Cooperative Societies }
Act, 1960 Having its office at Survey }
No.682A, Bibavewadi, Jethe Nagar, }
Pune – 411 037. }

...Petitioner

V/s.

1. The Municipal Corporation of City }
of Pune, Through its Municipal }
Commissioner having office at P.M.C. }
Building, Shivaji Nagar, Pune. }
2. The Director of Town Planning, }
State of Maharashtra Having its }
office at Pune. }
3. The State of Maharashtra, Through }
its Secretary, Urban Development }
Department Having office at }
Mantralaya, Mumbai. }

...Respondents

Mr. G.S. Godbole, Sr. Advocate, with Mr. Drupad S. Patil, for the
Petitioner.

Mr. Rajdeep Suresh Khadapkar for Respondent No.1.

Mr. Y.D. Patil, AGP for Respondent Nos.2 and 3-State.

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, J.J.

RESERVED ON : 27th JUNE, 2023.

PRONOUNCED ON : 15th SEPTEMBER 2023.

JUDGMENT: (PER SUNIL B. SHUKRE, J)

1. Heard. Rule. Rule made returnable forthwith, by consent of the learned counsel for the parties.

2. By this petition, the petitioner-society, which is owner of the land bearing Survey No.682/A, situated at Village Bibavewadi (Munjeri), Taluka Haveli, District Pune, is claiming relief of grant of TDR Certificate in favour of the petitioner in lieu of the land admeasuring 1206.61sq.mtrs. (*hereinafter called as “the subject land”*), from out of the land bearing Survey No.682/A owned by the society, on the ground that the subject land has been used by the Planning Authority of respondent no.1 for the purpose of construction of a Development Plan Road.

3. The larger piece of land bearing Survey No.682/A was subjected to a layout plan by the petitioner and it was sanctioned on 9th July 1973. As a result of the sanctioning of the layout plan, land bearing Survey No.682/A came to be divided into several plots. The

sanctioned layout plan also made a provision for internal roads. These internal roads were declared to be public streets in terms of the provisions of Section 224 of the Maharashtra Municipal Corporations Act, 1949 (***“Corporation Act, 1949”***, for short), which covered an area of 4007.99 sq.mtrs. as per the Declaration dated 3rd August 1973 and Certificate was issued in that regard on 4th September 1973. Their possession was also handed over to the Corporation.

4. As a later development, Government of Maharashtra sanctioned Development Plan for the City of Pune under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (***“MRTP Act”***, for short). In this plan, land admeasuring 1206.61 sq.mtrs. from out of the larger piece of land bearing Survey No.682/A, called the subject land, was designated for the purpose of Development Plan Road (***“D.P Road”*** for short). It was a proposed D.P. road having width of 30 mtr.

5. On 29th September 2006, the petitioner transferred all its rights to receive and sell TDR in respect of the subject land in favour of M/s. Prathamesh Construction and in consideration thereof, M/s. Prathamesh Construction agreed to construct the recreational hall free of costs for the petitioner-society. It was accordingly constructed by it and its possession was delivered to the petitioner-society.

6. On 23rd November 2006, in pursuance of the Agreement dated 29th September 2006, the Architect of the petitioner submitted a proposal to respondent no.1, thereby requesting it to grant the TDR contending that no award of compensation in respect of the subject land was passed by the competent authority. It appears that respondent no.1 referred the matter to its Legal Advisor for opinion and the Legal Advisor of respondent no.1 informed the respondent no.1 that the petitioner was entitled to get the Development Rights Certificate from the Corporation. Even the Assistant Engineer of Land Estate of respondent no.1 gave his report that upon obtaining possession of the subject land, compensation could be awarded to the petitioner. According to the petitioner, no compensation whatsoever had been awarded to it and this was also confirmed by the Special Land Acquisition Officer in his letter dated 22nd July 2005 that insofar as the D.P. road in question was concerned, the petitioner had not been granted any compensation. The Deputy Commissioner, Land Acquisition, also gave his opinion that since the D.P. road had already been developed, compensation can be granted to the petitioner in accordance with law. The petitioner, all the while, had been claiming compensation in terms of grant of TDR, but, by the letter dated 10th

December 2008 issued by the Assistant City Engineer of respondent no.1, the request of the petitioner for grant of the TDR was rejected on the ground that TDR could not be granted as per the provisions of Rule No. N.2.4.1(A) of Development Control Rules.

7. In response thereof, Power of Attorney Holder of the petitioner sent a letter to the Corporation making a request for supplying information about the manner in which compensation in respect of the D.P. road would be given to the petitioner. Assistant City Engineer of the Respondent-Corporation informed the Power of Attorney Holder of the petitioner that compensation in terms of money or compensation in terms of FSI could be granted in lieu of the land affected by the D.P. road. That was by the letter dated 03.03.2010. Again Power of Attorney Holder of the petitioner sent a letter to the Corporation and made a request to grant TDR for the land affected by D.P. road and by its letter dated 31.12.2012 the Corporation rejected request of the petitioner for grant of TDR contending that grant of TDR was not permissible as the land affected by the D.P. road had been retained for user by the society.

8. The Power of Attorney Holder of the petitioner filed a Writ Petition No.9766 of 2023 seeking a direction to the Corporation for

releasing the TDR, but the High Court found that the petition was not filed by the owner i.e. society and was filed by a person not properly constituted as Attorney Holder of the society and therefore, it rejected the petition. The High Court in its order dated 28.11.2014 held that the petitioner was not independently entitled to claim the TDR in respect of the land in question. The society, as a owner of the land affected by the D.P road again renewed its proposal for grant of TDR and sent a proposal-cum-representation dated 14.07.2015 to the respondent no. 1. The respondent no.1 again replied in the same manner. The Superintendent Engineer of the Corporation by his letter dated 17.06.2016 informed the petitioner that there was already a road which was in the nature of “existing user or retention user” of the Society and which was under the possession of the society, and therefore, the society was not entitled to get any TDR.

9. Being aggrieved by the above-referred rejections, the petitioner society is before this Court through this petition. It has prayed for quashing and setting aside of the Communications dated 10.12.2008, 03.03.2010, 31.12.2012 and 17.06.2016. It has also prayed for issuance of necessary direction to the Corporation to grant TDR Certificate in favour of the petitioner in respect of the land

admeasuring 1206.61 sq.mtrs. from out of larger piece of land bearing Survey No.682/A situated at Village Bibavewadi (Munjeri), Taluka Haveli, District Pune, affected by D.P. road.

10. The petition is strongly opposed by the respondent no.1- Corporation, taking primarily two objections. It submits that there are latches and inordinate delay in filing the petition. It further submits that the land stated to be affected by D.P. raod has already been used by the petitioner as a road even before sanctioning of the development plan in the year 1987 and that the petitioner never objected to the use of the road in question in public interest. In support, the respondent no.1 relies upon existing land use map which shows, according to it, the existence of a road on the subject land. It also relies upon the measurement plan prepared by the Land Record Department on 28.02.2005 which indicates that there is a land termed in Marathi as “PADRASTA”, meaning thereby that there is a pedestrian road which is the same road as D.P. road, already in use by the petitioner-society and members of public.

11. Now, let us deal wit the rival contentions in the light of the facts and circumstances of the case and the applicable law.

12. The first objection of respondent no. 1 is about the delay

and latches which have occurred in filing of the present petition. However, in the facts and circumstances of the case and as rightly submitted by learned Senior Advocate for the petitioner that there is in reality no delay nor any latches in filing of this petition by the petitioner-society. This is borne out from the correspondence between the constituted attorney of the petitioner and the respondent-Corporation that was going on since the year 2006. The facts admitted by the respondent-Corporation show that architect of the petitioner-society on 23rd November 2006, had made a request to the Corporation to grant the TDR. The request was rejected by the Corporation on 10th December 2008. Thereafter, the power of attorney holder of the petitioner-society by his letter dated 19th January 2010 sought to know as to how the compensation for the subject land could be paid to the transferee of the petitioner- society. The Assistant City Engineer of the respondent-Corporation had, on 3rd March 2010, informed that compensation in terms of money or compensation in terms of FSI could be granted in lieu of the subject land. Again a request was made to the respondent-Corporation by power of attorney holder to the petitioner, to grant TDR on 3rd October 2012. On 31st December 2012, the Corporation rejected the request. This correspondence which went on

between Power of attorney holder of the petitioner society and the respondent-Corporation shows that from November 2006 to December 2012 the matter of grant of TDR in lieu of the subject land was being pursued with respondent-Corporation.

13. The above referred events were followed by a few more developments in the subsequent years. The Power of Attorney holder of the petitioner- society filed a Writ Petition No. 9706 of 2013 in this Court seeking a direction to the Corporation to release the TDR in lieu of the subject land to the petitioner-society. However, the High Court rejected the petition on the ground that the Power of Attorney Holder was not entitled to claim the TDR independently of the owner of the subject land and it were only the owner of the subject land which could do so. The order of rejection of the petition was passed on 28th November 2014. Thereafter, the petitioner society renewed its request by sending a letter to the respondent-Corporation on 24th July 2015 which was rejected by the respondent-Corporation on 17th June 2016. It was thereafter, that this petition came to be filed on 1st July 2017.

14. In the facts and circumstances narrated above, we find that, there is no room left for anyone to say that the petitioner society was lethargic, and did not pursue its cause of action diligently. The

objection taken in this regard by the respondent-Corporation, therefore, deserves to be rejected.

15. Of course, the learned counsel for the respondent-Corporation has submitted that the facts and circumstances of the case do not justify the latches and inordinate delay which have occurred in the present case. He submits that it is held in the case of “*State of Maharashtra vs Digambar*.”¹ that whenever there is no justification for the inordinate delay, the petition must be dismissed on the ground of delay and latches. We must say it here that the argument of the learned counsel is clearly contrary to the facts and circumstances narrated hereinabove, which, in our considered opinion do explain satisfactorily the latches and undue delay occurred in the present case and therefore, in our respectful submission, the said case of ‘*Digambar*’ (supra) would not assist the respondent-Corporation in any manner.

16. There is another perspective available here to examine the issue of delay and latches. In the case of “*Tukaram Kana Joshi and Others (through power of attorney holder) vs. Maharashtra Industrial Development Corporation and Others*”², it is held that the question of delay and latches is one of discretion and has to be decided on the basis of the facts of the case at hand, which may vary from case to

1 (1995) 4 SCC 683

2 (2013) 1 SCC 353

case. This would mean that whenever it comes to exercise of judicial discretion, there would be a duty imposed upon the Court to exercise it by carefully considering all the facts and circumstances of the case. This would call for weighing aggravating circumstances against mitigating ones and if it is seen that mitigating circumstances outweigh the aggravating ones, the judicial discretion must tilt towards entertaining the petition. Mitigating factors have been stated illustratively in the said case of ***“Tukaram Kana Joshi”*** (Supra). They are in the nature of continuity of cause of action, nature of the impugned decision or order, particularly if it shocks the judicial conscience, deprivation of fundamental or constitutional or human right and so on. In the case of ***“Vidya Devi vs State of Himachal Pradesh and Others”***³, it is held that Constitutional right under Article 300-A of the Constitution obligates the State to not dispossess a citizen of his property except in accordance with the procedure established by law and that the obligation to pay compensation, though not expressly included in Article 300-A, can be inferred from Article 300-A of the Constitution. Referring to the observations made in the case of ***“Hindustan Petroleum Corpn. Ltd vs Darius Shapur Chenai & Ors”***⁴, the Supreme Court observed, *“to forcibly dispossess a person of her/his*

3 (2020) 2 SCC 569

4 (2005) 7 SCC 627

private party, without following due process of law, would be violative of human right. It also held that whenever, a person is forcibly expropriated of his or her property, it would provide a continuing cause of action for that person to assert his or her right to pay compensation". Here, there is no dispossession of the petitioner-society of its property, but there is imposed upon the petitioner society a restriction to use its property only for a public purpose and this way, the petitioner-society has been deprived of its right, as a private citizen to enjoy its property in a manner, it liked, within the boundaries of law. In our view it is this restriction which has led to accrual of continuing cause of action to the petitioner-society.

17. From this view point as well, we find that there are no delay and laches on the part of the petitioner - society in filing this petition. We, therefore, reject the objection of the respondent-Corporation taken in this regard.

18. Now let us consider the merits of the petition. The only ground on which request of the petitioner-society for grant of TDR to it in lieu of the subject land is rejected is that the D.P. road against which the TDR has been claimed was in existence at the time when the layout of the larger piece of the land belonging to the petitioner society was

sanctioned on 9th July 1973. This road, according to the respondent-Corporation was shown in the sanctioned layout as 30 mtr. wide road, (Bibavewadi to Pune) admeasuring 1206.61 sq.mtrs and it was so shown in addition to the other internal roads admeasuring in total of 4007.12 sq.mtrs The respondent-Corporation submits that in the year 1982, there was an existing land use map which showed this 30 mtr. wide road to be an existing road in the layout of the petitioner society and when a draft development plan was prepared under Section 26 of the MRTP Act, in the draft development plan, this 30 mtr. wide road was shown as existing road which became a development plan road ultimately when the development plan was sanctioned on 5th January 1987 under section 31 of the MRTP Act. The Corporation submits that even according to the petitioner society this road was already existing for many years and this could be seen from the proposal submitted by the society for release of the TDR in respect of subject land admeasuring 1206.61 sq.mtrs, which was of the date of 23rd November 2006. The corporation submits that along with the said proposal, a measurement map prepared by the Land Record Department dated 20th December 2005 was submitted by the petitioner-society and this measurement map also indicated one road which was shown as

‘PADRASTA’ in Marathi, which only showed that the 30 mtr. wide road was in existence for many years.

19. With all these contentions, we must say, the Corporation admits that even though the possession of the other internal roads shown in the layout admeasuring 4007.12 sq mtrs. in total was taken over by the Corporation in terms of section 224 of the MMC Act, the possession of the said 30 mtr. wide road (Bibavewadi to Pune) was not taken by the respondent-Corporation. But, according to the respondent-Corporation, the said 30 mtr. wide road being an existing road, its subsequently being declared as a D.P. road would not entitle the petitioner-society to get any TDR in lieu of the subject land which is affected by the said 30 mtr. wide D.P. road in view of the provisions contained in Regulation N.2.4.1 (A) of Development Control Regulations (DCR) for Pune which dis-entitle a owner or lessee of a plot of land reserved for a public purpose to any TDR in case of “an existing or retention user”.

20. Shri Godbole, learned Senior Advocate for the petitioner submits that whenever any land is reserved for a public purpose in a development plan, as a general principle of law, as enunciated in section 126 of the MRTP Act, compensation in terms of FSI or TDR, if

there is an agreement between the owner and the planning authority has to be granted and when there is no agreement between the owner and the planning authority, compensation in terms of money only has to be granted, which shall be determinable according to the provisions of the applicable law. He further submits that even under DCR for Pune, or to be precise under Regulation N. 2.4.1 (A), compensation in terms of TDR is permissible against the land reserved for a public purpose in the development plan. He relies upon the law laid down by the Apex Court in the cases of *“Pune Municipal Corporation & Anr Vs. Kausarbag Co-op. Housing Society Ltd and Anr.”*⁵ in Civil Appeal No. 4580 of 2010 decided on 9th October 2014 and *“PT Chet Ram Vashist vs Municipal Corporation of Delhi”*⁶. He further submits that the admitted facts of the case would show that in this case, while the D.P road has been shown as comprising the subject land, which forms part of the larger piece of the land belonging to the petitioner society, the subject land was never taken into possession by the respondent-Corporation nor any award of compensation whatsoever has been passed in respect of the subject land and therefore, just because the subject land was shown as existing road at the time of sanction of the

5 (2014) 15 SCC 753

6 (1995) SCC (1) 47

layout plan of the petitioner-society, it could not be held to be “an existing or retention user” as contemplated under DCR N.2.4.1 (A). He submits that such road shown in the layout plan qualifies itself to be a road of the nature of “an existing or retention user” only when it is declared to be a public street in terms of section 224 of the MMC Act, for which purpose taking over of the possession of the road by fulfilling the conditions prescribed in Section 224 of the MMC Act, is necessary. He submits that after following the procedure of section 224 of the MMC Act, only that such a road would become a public street and vest in the Corporation as such. He thus submits that this is a fit case wherein the petitioner must be found to be entitled to receive the TDR as per the relevant regulations of the DCR for Pune in lieu of the subject land.

21. Before we proceed further in the matter, we need to accept the fact here that the law in regard to payment of compensation either in terms of money or grant of FSI or TDR under section 126 of the MRTP Act, is well settled and, therefore, it needs no elaboration here. This law has also found its specific expression in DCR for Pune and for the purpose of this petition, the relevant provision thereof being N.2.4.1 (A), is reproduced here as under:

“The owner (or lessee) of a plot of land which is reserved for a public purpose, or road construction or road widening, in the development plan and for additional amenities deemed to be the reservations provided in accordance with these Regulations, excepting in the case of an existing or retention user or to any required compulsory or recreational open space, shall be eligible for the award of transferable Development Rights (TDRs) in the form of Floor Space Index (FSI) to the extent and on the condition set out below. Such award will entitle the owner of the land, to FSI in the form of a Development Right Certificate (DCR) which he may use for himself or transfer to any other person”.

22. A bare perusal of the above referred provision would show that the owner or lessee of a plot of land reserved for a public purpose or road construction or road widening, in the development plan and for additional amenities deemed to be the reservations provided in accordance with these Regulations, would be eligible for the award of Transferable Development Rights (TDRs) in the form of Floor Space Index (FSI) to the extent and on the conditions set out in the DCR. So, as a general rule, the owner or lessee of a plot of land reserved for any public purpose in the development plan is entitled to receive TDR in

the form of Floor Space Index (FSI) by way of compensation for such reservation imposed on the land. This is of course subject to exceptions indicated in the said provision.

23. The general effect of this regulation has been interpreted in the case of *“Kausarbag”* (Supra) by the Supreme Court where it held that this regulation entitles the owner or lessee of the plot of land reserved for a public purpose in the Development Plan to the award of TDR in lieu of the compensation upon surrender of the land free of cost.

24. Learned counsel for the Corporation, however, submits that *‘Kausarbag’* (supra) has been decided in the context of different facts and circumstances and therefore, it would have no application to the facts of the present case. The factual matrix of *‘Kausarbag’* (supra), as rightly submitted by learned counsel for the Corporation was somewhat different and it was in reference to not only the provisions made in Regulation N.2.4.1(A) but also to Regulation N.2.4.17. But, it must be understood that the Apex Court before dealing with Regulation N.2.4.17 had also considered the effect of Regulation N.2.4.1(A) and found, as a general principle of law, that it makes eligible the owner or lessee of the plot reserved for a public purpose in the Development

Plan, to get the TDR in lieu of compensation upon surrender of the land free of cost. After having laid down the general principle of law, the Apex Court went on to consider the other regulation namely Regulation N.2.4.17 and held that in addition to the situation contemplated under Regulation N.2.4.1(A), the Regulation N.2.4.17 takes into consideration two other situations wherein grant of TDR in lieu of compensation upon surrender of the land free of cost is permissible. We are not concerned with the situations referred to in Regulation N.2.4.17 here. Therefore, it is not necessary for us to consider what the Supreme Court has held in respect of the situations contemplated in Regulation N.2.4.17 and what is relevant for us here is the situation envisaged under Regulation N.2.4.1(A) of DCR for Pune. Therefore, we find that it is not right on the part of the learned counsel for the respondent-Corporation to say that '*Kausarbag*' (Supra) has no relevance here. Even in the case of '*PT Chet Ram Vashist*' (supra) the Apex Court has held that once a land in the layout plan is reserved for a public purpose, the owner ceases to be its legal owner and he holds the land for the benefit of the society or the public in general and such reservation may result in creating an obligation in the nature of trust upon the land owner and may preclude the owner from

transferring or selling his interest in it. The Supreme Court has, however, also, held that the obligation so imposed upon the owner of the land does not entitle the Corporation to claim that land as owner thereof without paying any compensation to the owner of the land. A useful reference in this regard may be made to the observations of the Supreme Court appearing in Para 6 of its judgment, which are reproduced as under:

6. ...Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of

the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law”.

25. In the present case, the admitted facts are that no award or compensation in respect of subject land has been made or paid nor its possession has been taken by the Corporation. This can be seen from the communication of Deputy Commissioner Land Acquisition dated 23.04.2007, addressed to City Deputy Engineer, Pune of respondent Corporation and reply of the respondent-Corporation and also the communication dated 17.06.2016 addressed to the petitioner-society by the Corporation. Then, there is also a clarification issued to the Commissioner of Mumbai Municipal Corporation, Greater Mumbai by the State Government with its copy marked to Director of Town Planning, Maharashtra State, Pune which shows that in respect of a land reserved for a public road in the Development Plan, grant of TDR

would be permissible if no award of compensation has been made and the land affected by the D.P road has not been taken into possession by the Corporation or the Planning Authority.

26. The petitioner- society in normal course of circumstances, thus would be eligible to be get compensation in terms of TDR against surrender of the subject land free of cost reserved for D.P road under the Development Plan, if one goes by the admitted facts and the law discussed above along with the clarification issued by the State Government. The respondent-Corporation here, however, is laying emphasis upon the non-eligibility of the petitioner society to get the TDR by taking recourse to the provisions made in Regulation N.2.4.1 (A) which in its opinion a special circumstance present in this case, which dis-entitles the petitioner from receipt of the TDR.

27. The above referred contention of the respondent-Corporation would have to be considered in the light of the general principles of law discussed above and the meaning of expression “an existing or retention user” used in the relevant regulation which is Regulation N. 2.4.1(A), if we are to reach any definite conclusion in the case.

28. We have already discussed the general principles of law

applicable to grant of compensation in terms of section 126 of the MRTP Act, read with Regulation N.2.4.1(A). Now, what remains is the question as to what is the meaning of the expression “an existing or retention user” used in Regulation N.2.4.1(A). This expression is not defined anywhere in the DCR for Pune and, therefore, our quest to know its meaning may bear fruits if we examine the nature of the right of the Corporation to declare a private street as a public street under section 224 of the MMC Act. This is also for reason that a Development Plan road is necessarily a road meant for public purpose, hence for a public user. It would then mean that a D.P. road must have the quality of it being a public street, rather it perforce possesses it by its character as a D.P. road. There is thus an intrinsic connection between a D.P. road and a public street referred to in section 224, there being a commonality of purpose for which a D.P. road shown in the Development Plan is sanctioned finally under section 31 of the MRTP Act, and a private street, is declared to be a public street in terms of section 224 of the MMC Act. This is the reason why we say that consideration of the provisions of section 224 of the MMC Act, is necessary. Section 224 of the Maharashtra Municipal Corporation, Act reads as under:

“224. When any private street has been levelled, metalled, flagged or paved, sewered, drained, channelled and made good to the satisfaction of the Commissioner, he may and, upon the request of the owners or of any of the owners, of such street, shall, if lamps, lamp-posts and other apparatus necessary for lighting such street have been provided to his satisfaction and if all land revenue payable to the State Government in respect of the land comprised in such street has been paid, declare the same to be a public street by notice in writing put up in any part of such street, and thereupon the same shall become a public street and vest in the Corporation as such:

provided that no such street shall become a public street if, within one month after such notice has been put up, the owner of such street or the greater part thereof shall, by notice in writing to the Commissioner, object thereto.”

29. It would be clear from above referred provisions of law that there is distinction between an internal layout road shown in the sanctioned layout plan of the land of the owner, in this case the petitioner society, and an internal road declared to be a public street in terms of section 224 of the MMC Act. This would also mean that an internal road remains to be a private road catering to private needs of

the society till the time it is declared to be a public street by notice in writing put up in any part of such street after fulfillment of the conditions mentioned in the said provisions of law. Once an internal road is declared to be a public street, it would be a road meant for public user just as a D.P. road. For the land affected by a D.P. road compensation is payable in terms of section 126 of the MRTP Act. But, for the private internal road in the sanctioned layout plan, when declared to be a public street under section 224 of the MMC Act, no compensation is payable, and the public street vests in the Corporation, without the Corporation paying any compensation in terms of money or FSI or TDR. This is an anomaly apparent on the face of the provisions of section 224 of the MMC Act. It creates a situation of possible conflict with the provision of compensation made in Section 126 of the MRTP Act, read with Article 300-A of the Constitution of India. This situation of conflict would lead to complications, unless resolved appropriately. In our considered opinion, the legislature has resolved it satisfactorily by inserting an exception in Regulation N.2.4.1(A) of the DCR for Pune, when it says that the land owner would be eligible to receive, for a plot land reserved for public purpose, the TDR in the form of FSI, “excepting in the case of an

existing or retention user”. When the legislature says “excepting in the case of an existing or retention user”, in the context of a road, it necessarily refers to a road for which no compensation is payable. The only road used for public purpose in a sanctioned layout for which no compensation is payable is the public street declared as such under section 224 of the MMC Act, and which vests in the Corporation. Regulation N.2.4.1(A) is deficient in appropriate words but the deficit has to be made up by reading down it so as to constrict its meaning to existing or retention user of a road which is a public road, which would happen only when it is reserved as a D.P. road or declared to be a public street under section 224 of the MMC Act. If such a meaning is not assigned to said expression by applying the principle of reading down this provision of law in N.2.4.1(A) of the DCR for Pune, there would remain an irresolvable conflict between it and section 126 of the MRTP Act. It would also lead to denial of right to property, a human right, without paying any compensation in terms of Section 126 of the MRTP Act, or without giving some benefits for the sacrifice made by the owner like those eligible for a public street under section 249 (public street lighting) and section 250 (public street watering) of MMC Act. However, such is not the intention of the legislature. The

intention of the legislature cannot be comprehended in a manner as to infer that it intends to not pay compensation or give some admissible benefit for converting a private land into a public land meant for public user in violation of Article 300-A of the Constitution, of which payment of reasonable compensation in one form or the other is a facet. This is for the reason that there is a presumption of validity of a legislation. But here, Regulation N.2.4.1 (A) is somewhat ambiguous in its use of expression “excepting in the case of an existing or retention user” and, therefore, there is a need for reading it down.

30. Reading down a provision of law is permissible, as held by Supreme Court in **“Delhi Transport Corporation v/s. DTC Mazdoor Congress and Ors.”**⁷, in following two situations:-

- Firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible- one rendering it constitutional and the other making it unconstitutional the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution.

⁷ AIR (1991) SCC 101

- The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made.

31. Here, first situation does not exist. But the second situation does. There is an ambiguity in Regulation N.2.4.1(A) which needs to be removed. It can be removed by considering the purpose of Regulation N.2.4.1(A), which is to enable the land owner to get compensation in the form of TDR/FSI for sacrifice of his land for public purpose, though in a regulated manner. This is what we have done here in this case.

32. In the present case, as already stated by us, the admitted facts show that neither any monetary compensation has been paid nor any possession of the subject land has been taken by the Corporation nor is there any declaration of it as a public street, under Section 224 of the MMC Act, and therefore, petitioner-society would be entitled to receive the TDR against surrender of the subject land free of cost to the respondent-Corporation.

33. The subject land may have been shown as 30 mtr. wide

road in the layout plan and may have been shown in the land use map or measurement map as 'PADRASTA', but it remains a private internal road till it is declared to be a public street under section 224 of the MMC Act. Here, as said earlier, it is not declared to be so. But, under 1987 D.P. plan, it is now affected by a reservation as D.P. road, for which no compensation has been paid. Therefore, it is not covered by the expression "existing or retention user" employed in Regulation N.2.4.1 (A), and thus the petitioner is entitled to receive the FSI/TDR upon its surrender free of cost.

34. There is one development which needs to be considered here. The DCR applicable to Pune were modified by the notification dated 28.01.2016 issued by Urban Development Department of the State Government. But, even under the said modified DCR, we find that the petitioner-society is entitled to receive the TDR in terms of Clause 2.1, Annexure-B of the notification.

35. Clause 2.1 of the said notification prescribes that compensation in terms of Transferable Development Rights (TDRs) shall be permissible for the lands under various reservations for public purposes, new roads or road widening etc, which are subjected to acquisition, proposed in Draft or Final Development Plan, prepared

under the provisions of Maharashtra Regional and Town Planning Act, 1966.

36. Clause 3.0 of the said notification mentions the cases not eligible for Transferable Development Rights (TDR) and Clauses 3(iii) and 3(vii), in particular, are relevant for the purpose of the present discussion. Clause 3(iii) deals with cases where layout has already been sanctioned and layout roads are incorporated as Development Plan roads prior to coming into force of the modified DCR and lays down that in such cases no TDR would be permissible. Here it is nobody's case that any internal layout road shown in the sanctioned layout plan has been incorporated as Development Plan Road. Clause 3 (vii) lays down that TDR would not be admissible in a case where there is an existing user or retention user or there is required any compulsory open space or recreational open space or recreation ground in the sanctioned layout. We have already found that the expression "an existing user or retention user" in the context of a private road affected by a D.P. road reservation, would only mean to be a road which has stood vested in the Corporation after following the procedure prescribed in section 224 of the MMC Act. But, admittedly, that procedure has not been completed in the present case and 30 mtr.

wide road shown in the sanctioned layout plan of the petitioner-society continues to be a private street, which has been now continued affected by its reservation as a D.P road as provided in the Development Plan sanctioned in the year 1987. Had it been the case that this private road was also incorporated as a Development Plan road, it would have been so specifically mentioned in the Development Plan sanctioned on 05.1.1987. But that is not the case here. Then, it has also not been vested in the respondent-Corporation in terms of section 224 of the MMC Act. This would only show that the petitioner is entitled to receive the TDR in lieu of compensation for the subject land against its surrender free of cost to the respondent- Corporation, in terms of the DCR applicable to Pune City.

37. It is now clear that the ground taken by the Corporation for denying the entitlement of TDR to the petitioner-society is without any basis in law and therefore, the impugned communications sent to the petitioner-society rejecting its multiple requests for grant of TDR are illegal and deserve to be quashed and set aside. Consequently, this petition has to be allowed by this Court and we pass the following order:-

ORDER

i). The petition is allowed. Impugned communications are hereby quashed and set aside.

ii). The respondent nos. 1 and 2 are hereby directed to grant the TDR certificate in favour of the petitioner in lieu of the compensation upon surrender of the land admeasuring 1206.61 sq.mtrs. from out of larger piece of land bearing Survey No. 682/A situated at Bibavewadi (Munjeri), Taluka-Haveli, District-Pune, affected by reservation of D.P. road, free of cost to the respondent nos. 1 and 2.

iii) The entire exercise of grant of the TDR certificate to the petitioner-society shall be completed within a period of three months from the date of the judgment.

38. Rule is made absolute in the above terms.

39. Writ Petition is disposed of accordingly. No costs.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)