IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3454 OF 2022

1. Jaynil Realtors Private Limited,
   A Company , duly registered under
   the provisions of the Companies Act, 1956
   Having its Registered Office at C/3
   Rameshwar Society, Opp. Khira Nagar,
   S. V. Road Santacruz (W), Mumbai 400 054

2. Anant Dwellers (India) LLP
   Previously known as Anant
   Dwellers (India) Private Limited
   Limited liability Partnership, registered
   under the provisions of LLP Act 2008
   having LLP identification No.AAH-6934
   and having its registered office at C/3
   Rameshwar Society, Opp. Khira Nagar,
   S. V. Road, Santacruz (West), Mumbai 400 054

3. Nakul Pravin Mehta
   Director and Shareholder of Petitioner No.1
   and also partner of Petitioner No.2
   Having his office at C/3 Rameshwar Society,
   Opp. Khira Nagar, S. V. Road,
   Santacruz (West), Mumbai 400 054 ... Petitioners

Vs.

1. State of Maharashtra,
   Through the Principal Secretary,
   Urban Development Department
   Mantralaya, Mumbai 400 032

2. Municipal Corporation of Greater Mumbai
   A statutory body constituted under the
   Provisions of Mumbai Municipal Corporation
   Act, 1888 having its office at Municipal Head
   Office, Mahapalika Marg, Mumbai 400 001

3. Municipal Commissioner,
   Municipal Corporation of Greater Mumbai
   Municipal Head Office, Maharashtra Marg,
   Mumbai 400 001

4. Chief Engineer (Development Plan)
Municipal Corporation of Greater Mumbai
Municipal Head Office, Mahapalika Marg
Mumbai 400 001 … Respondents

Dr Milind Sathe, Senior Advocate with Ms Akanksha Patil, Mr Maulik Vora and Ms Ketki Prajapati, i/by Pramodkumar & Co., for the petitioners.
Mr Amit Shastri, Assistant Government Pleader for respondent No.1-State.
Mr Yashodeep Deshmukh Advocate with Ms Pooja Yadav, Advocate for respondent Nos.2 to 4 - MCGM.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.
DATE : February 17, 2023

Oral Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

Challenge raised in this writ petition is to the decision taken by the Chief Engineer (Development Plan) Municipal Corporation of Greater Mumbai on 17/11/2021 by which the request made by the petitioners for grant of Transferable Development Right (TDR) in lieu of the land falling under existing Nalla was not accepted in view of Regulation No.32 of the Development Control and Promotion Regulation 2034 (for short, DCPR 2034). It is the case of the petitioners that possession of the concerned lands under Nalla was handed over to the Corporation on 28/09/2016, 14/10/2016 and 03/01/2017. Possession receipts in that regard were issued to the petitioners followed by issuance of Development Right Certificates on 21/10/2016 and 22/12/2017. According to the petitioners the date of surrender of the said lands is the relevant date that has to be taken into consideration while considering the request for grant of TDR. In other words, the Development Control Rules operating on the date of surrender would govern the entitlement to grant of such TDR. Since DCPR 2034 came into force on 08/05/2018, the Municipal Corporation was not justified in turning down the petitioners' request for grant of TDR by relying upon DCPR 2034. The petitioners seek grant of TDR under Regulation 34 of the Development Control Rules, 1991 (for short, DCR 1991.)

2. Dr Milind Sathe, learned Senior Advocate for the petitioners by relying upon the judgment of the Division Bench in Writ Petition No.203/2014 *(Apurva Natwar Parikh & Co. Private Ltd. vs. The State of Maharashtra and ors. with connected petitions)* decided on 18/12/2018 as well as the judgment in Public Interest Litigation No.06/2009 *(Arun Ganesh Deo vs. The State of Maharashtra and ors.)* decided on 01/10/2015 submitted that the lands of the petitioner having been surrendered to the Municipal Corporation on 28/09/2016, 14/10/2016 and 03/01/2017, DCR 1991 was in force on those dates and it would be the relevant DCR that ought to be considered the basis for grant of TDR. DCPR 2034 having come into force subsequently on 08/05/2018 and the same not having retrospective effect, it could not have been relied upon for denying the petitioners' request.

Mr Yashodeep Deshmukh, the learned counsel for the Municipal Corporation opposed aforesaid submissions and sought to justify the issuance of the impugned communication dated 17/11/2021. He urged that the petitioners were not entitled to grant of TDR, be it under DCPR 2034 or Regulation 34(1) of DCR 1991. The decision taken by the Authority was just and proper not requiring any interference. Since the benefit of TDR for the lands had already been given to the petitioners, the rejection of their request for grant of TDR with regard to land falling under the Nalla was justified. Since the surrender of the lands had taken place long back, there was delay on the part of the petitioners in seeking the reliefs sought in the present writ petition.

A similar contention was raised by the learned Assistant Government Pleader appearing for respondent No.1 by relying upon the affidavit filed by the Deputy Director of Town Planning.

3. We have heard the respective counsel for the parties. The issue with regard to the date relevant for consideration of grant of benefit of TDR was considered in *Apurva Natwar Parikh & Co. Private Ltd.* (supra). It was held that in the matter of grant of retrospective operation of a sub-ordinate legislation, the law was clear and there was no power under which the Development Control Regulation could be given retrospective operation. Referring to the provisions of Section 126(1) of the Maharashtra Regional and Town Planning Act, 1966 it was held that the DCR prevailing on the date of surrender of land when such surrender takes place by mutual agreement would be the date of consideration for grant of TDR. It is thus clear in view of aforesaid decision that DCPR 2034 that has come into force

from 08/05/2018 would have prospective effect and it would not be permissible to rely upon DCPR 2034 if the surrender of the land is prior to that date. In other words, the DCR prevailing on the date of surrender of the land would have to be considered for issuance of TDR. Viewed in this context, we find that in the present case the lands in question were handed over to the Municipal Corporation between September 2016 and January, 2017. On those dates DCPR 2034 was not in force. Since the petitioners' applications dated 24/05/2021 and 18/06/2021 seeking grant of TDR have been rejected soley on the ground that those were not within the provisions of Regulation 32 of DCPR 2034, the impugned communication is unsustainable on that count. Since the rejection of the applications is only on this count and the matter has not been examined in the context of the DCR that was applicable when the lands were surrendered, that exercise would be required to be undertaken again by the Municipal Corporation.

4. Though it was urged by the learned Senior Advocate for the petitioners that this Court may issue a writ of mandamus to the respondents to grant TDR under Regulation 34 of DCR 1991, we are of the view that the initial exercise of consideration of the petitioners' entitlement to such TDR ought to be undertaken by the respondents. After consideration of the petitioners' request for grant of such TDR, would the Court consider that adjudication if such request is refused on merits. As of today the only reason for refusing to grant TDR is by relying upon DCPR 2034 which admittedly

came into force after the lands in question were surrendered to the Municipal Corporation. For these reasons we are not inclined to undertake the original exercise of determining the entitlement of the petitioners to grant of TDR under the DCR 1991. That exercise would have to be first undertaken by the Municipal Corporation.

5. Hence for aforesaid reasons, the following order is passed :

(i) The impugned communication dated 17/11/2021 issued by the Chief Engineer (Development Plan) of the Municipal Corporation of Greater Mumbai is set aside.

(ii) It is directed that the petitioners' application dated 24/05/2021 for grant of TDR shall be re-considered by the said authority in accordance with law within a period of eight weeks from receipt of copy of this judgment. This shall be done after granting an opportunity of hearing to the representative of the petitioners.

(iii) Keeping all contentions of either parties on merits open, the Writ Petition is allowed in the aforesaid terms.

Rule accordingly with no order as to costs.

(M. W. CHANDWANI, J.) **(A. S. CHANDURKAR, J.)**

AARTI G PALKAR Digitally signed by AARTI G PALKAR Date: 2023.02.24 12:11:33 +0530

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