IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1493/2025

PETITIONER : Shramik Co-operative Housing Society, Through its Secretary Mr. Ramrao s/o Rajaram Tagade, Aged 75 Years, Occ. Private, R/o Bungalow No.50, NADT College Chindwada Road, Mankapur, Nagpur.

...VERSUS...

RESPONDENTS :
1. State of Maharashtra, through its Principal Secretary urban Development Department Mantalaya, Mumbai – 32.
2. Nagpur Municipal Corporation through its Commissioner having office at Civil Lines, Nagpur – 01.

Mr. S.P. Dharmadhikari, Senor Advocate i/b H.R. Gadhia, Advocate for petitioner
Mrs. M.H. Deshmukh, AGP for respondent No.1
Mr. G.A. Kunte, Advocate for respondent No.2

CORAM : NITIN W. SAMBRE AND SACHIN S. DESHMUKH, JJ.
DATE : 23/06/2025

ORAL JUDGMENT : (PER : SACHIN S. DESHMUKH, J.)

1. Heard. Rule. Rule made returnable forthwith. Assistant Government Pleader Mrs. M.H. Deshmukh waives service of notice for the respondent No.1 and Advocate Mr. G.A.Kunte waives service of notice for the respondent No.2. By consent of the parties, the petition is heard finally.

2. The petitioner - Society and its members are the owners of land bearing Survey Nos.276, 277, 277/2, 277/3, 279/1, 279/2, 279/3, 278, 280/1, 280/2, City Survey No.1298 admeasuring area about 5.04. H.R. of Mouza Zingabai Takli, Tahsil and District Nagpur (for short hereinafter referred to as “the said land”).

3. The respondent No.2 – Corporation issued Development Plan for Nagpur city and in that process, the land belonging to the petitioner – Society has been impacted on account of 24 meters Development Plan road (D.P. road). The Corporation had proposed the said road of 24 meters under the Integrated Rural Development Program (IRDP) Scheme (Awasthi Nagar Chowk to Borgaon Chowk) for an area admeasuring about approximately 5200 sq. meters, which came to be acquired.

4. Accordingly, the contentions raised on behalf of the petitioner – Society by Mr. S.P. Dharmadhikari, learned Senior Counsel are that the Corporation through its Executive Engineer, building section informed the petitioner - Society that 24 meters of the aforestated area of the land owned and possessed by the petitioner- Society would be impacted in the widening of Development Plan road under the IRDP Scheme. As such in that regard the communication dated 02/08/2001 was issued on behalf of the Corporation committing that in lieu of the compensation the grant of Transferable Development Right (TDR)

would be conferred upon the petitioner- Society herein for surrender of the said land for construction of road under the IRDP Scheme. Admittedly, no compensation was ever offered and only it was assured by virtue of the communication dated 02/08/2001 that the TDR rights would be conferred upon the petitioner- Society. Having assured the conferring of the TDR, which is duly communicated to the petitioner- Society herein, it was incumbent upon the respondent – Corporation to act upon the same. Followed by issuance of aforestated communication development rights certificates were issued in favour of the petitioner – Society and its members (page 61 to 70 of the petition) by the respondent – Corporation in the year 2017, 2018 and 2020. Admittedly, the communication dated 02/08/2001 was issued coupled with the issuance of TDR certificates in favour of the members of the petitioner – Society, which is registered under the provisions of the Maharashtra Cooperative Societies Act. Being the lawful owners and possessors of the land in question, it was incumbent upon the respondent – Corporation to act in letter and spirit of the said assurance and issuance of certificates in favour of the petitioner- Society and its members way back in the year 2001 vis-a-vis while issuing the TDR certificates in the year 2017, 2018 and 2020. While accepting and acting in accordance with the assurance of conferring the TDR in lieu of compensation, which is impacted in development plan for 24 meters D.P. road under the IRDP

Scheme, the Corporation ought to have acceded to the request of the petitioner- Society to confer TDR as is assured on two successive occasions. Having assured and eventually issued the TDR certificates it was not open for the respondent – Corporation to retract from its assurance in any case, which was in lieu of compensation for using the land belonging to the petitioner – Society and its members. As stated hereinabove it was not open for the respondent – Corporation to retract from its assurance, however, making a serious departure from the said assurance, the communication dated 05/12/2024 has been issued by the Corporation, rejecting the request of the petitioner - Society to confer the TDR which is already assured on two successive occasions on unsustainable grounds. In the aforesaid backdrop, the petitioner – Society has presented the petition before this Court with the following prayers.

> *"(A) Quash and set aside the communication/order dated 05.12.2024 issued by respondent No.2/NMC thereby rejecting the application of the petitioner for grant of TDR.*
>
> *(B) Declare that, the petitioner is entitled for grant of TDR in lieu of surrender of land for the construction of 24 mtr. wide D.P. Road in respect of Survey No.277, 278, 279/1, 280/1 admeasuring area about 5150 sq. mtr. of Mouza : Zingabai Takli under IRDP Scheme (Awasthi Nagar Chowk to Borgaon Chowk)*
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> *(C) Declare that, the petitioner is entitled for grant of TDR as per Regulation No.11.2.2(i) & 11.2.4 (e) of UDCPR-2020*

on account of commitment of grant of TDR and also on the ground of parity.

(D) Direct the respondent No.2/NMC to issue TDR Certificate in favour of petitioner within a stipulated time."

5. The following are undisputed facts :

(A) Ownership and possession of the petitioner- Society and its members of the land bearing Survey Nos.276, 277, 277/2, 277/3, 279/1, 279/2, 279/3, 278, 280/1, 280/2,City Survey No.1298 admeasuring area about 5.04. H.R. of Mouza Zingabai Takli, Tahsil and District Nagpur.

(B) Acquisition of land of the petitioner- Society for 24 meters D.P. road under IRDP Scheme (Awasthi Nagar Chowk to Borgaon Chowk) by the respondent- Corporation.

(C) Issuance of communication dated 02/08/2001 by the respondent – Corporation assuring TDR in favour of the petitioner- Society herein.

(D) Issuance of TDR certificates in favour of the members of the petitioner – Society in the year 2017, 2018 and 2020 (pg. 61 to 70).

6. In the aforestated backdrop, it is submitted on behalf of the petitioner- Society by the learned Senior Counsel that admittedly the petitioner – Society is the owner of the said land which is put to use by

the respondent – Corporation to the extent of 5200 sq. meters for the purpose of 24 meters D.P. road. While doing so, it was assured that as per the Unified Development Control and Promotion Regulations for Maharashtra State, 100% TDR would be conferred upon the petitioner-Society. The said assurance was rather express in nature. In any case the respondent – Corporation is under constitutional vis-a-vis statutory obligation to compensate the petitioner-Society since the right to property is a constitutional right by virtue of Article 300-A of the Constitution of India. Equally by virtue of statutory obligation as per Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (for short hereinafter "MRTP Act"), entails the petitioner-Society to claim the compensation against the acquisition of land, which is used by the Corporation for 24 meters DP road. Apart from above aspect even Clause 11.2.4 (e) of UDCPR ensures compliance of commitment of granting TDR/DRC in past.

7. Having issued the communication on 02/08/2001 assuring that the TDR would be conferred upon the members of the petitioner-Society, same eventually culminated into the issuance of the TDR certificates by and on behalf of the respondent – Corporation in the year 2017, 2018 and 2020 respectively. Our attention is further invited to the provisions of Section 126 (1) (b) of the MRTP Act, which in unequivocal terms obligate the planning authority for compensating the owners

when the land is acquired for public purposes specified in the plans. Section 126 (1) (b) of the Maharashtra Regional and Town Planning Act, 1966 being relevant is reproduced below:

> ***"126. Acquisition of land required for public purposes specified in plans***
>
> *"(1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, [any Appropriate Authority may, except as otherwise provided in section 113A] [acquire the land, -*
>
> *(a) ……*
>
> *(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned [on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of and surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide."*

8. Learned Senior Counsel for the petitioner-Society also submitted that the provisions of Section 126 (1) (b) of the MRTP Act

have been considered by the Hon'ble Apex Court in the case of ***Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra, 2009 (6) Mh.L.J. (S.C.) 354 : (2009) 5 SCC 24***. In the aforesaid decision the land acquisition that is based on the concept of TDR against the area of land surrendered free of cost and free from all encumbrances and a further additional FSI or TDR against the development or construction on the surrendered land by the landowners (or the lessee) at his own cost, has been considered. It is also submitted by the learned Senior Counsel for the petitioner- Society that the development right which is contemplated under Section 2 (9A) of the MRTP Act includes Transferable Development Right and Section 126 (1) (b) of the MRTP Act provides for grant of FSI or TDR against the development or construction of the amenity on surrendered land at the owner's cost as the final Development Control Regulations should provide. Para Nos.51 and 52 of the judgment by the Hon'ble Apex Court in ***Godrej and Boyce Manufacturing Company Limited*** (supra) being relevant are reproduced below.

> *"51. Section 126 (1) (b) of the Act uses the word "against": it speaks of granting FSI or TDR "against the area of land surrendered" and further additional FSI or TDR "against the development or construction of amenities on the surrendered land". Now, one of the meanings of the word "against" is given as "in turn of something" e.g. the exchange rate against Franc" (Chambers 21st Century Dictionary, 1st published in India 1997, reprinted 1999).*

> *Webster's Third New International Dictionary gives the meaning of the word "against" as "in exchange for: in return for". Concise Oxford English Dictionary gives one of the meanings of the word as "in exchange for, in return for; as an equivalent or setoff for; in lieu of, instead of'.*
>
> *52. Thus, on the basis of the language used in section 126 (1) (b) it could be legitimately argued that what is contemplated is to recompense the landowner proportionate to the value of the development or construction of the amenity on surrendered land. But the matter does not stop there. As seen above in Appendix VII to the Regulations Para 5 uses the words "equal to the gross area of reserved plot". Therefore, insofar as the bare land is concerned there appendix, however, uses the words "equivalent to the area of the construction/development" and much argument is made on the meaning of the word equivalent."*

9. It was further submitted by the learned Senior Counsel on behalf of the petitioner- Society that it is not open for the respondent – Corporation to defy the constitutional mandate under Article 300-A of the Constitution vis-a-vis the statutory provisions of the MRTP Act. The same obligates the respondent – Corporation to ensure that the members of the petitioner – Society are compensated in lieu of the land which is acquired by the respondent – Corporation for 24 meters D.P. road under the IRDP Scheme. Lastly, it was prayed for allowing the petition as prayed in terms of the prayer clause. Learned Senior Counsel for the petitioner- Society also invited our attention to the Unified Development Control and Promotion Regulations For Maharashtra State

particularly Clause 11.2.4 (e) thereof, so as to substantiate that commitment of granting TDR/DRC must be complied with, which is already committed by the respondent-Corporation in the wake communication of 02/08/2001 as well as certificates of TDR.

10. While countering the submissions made on behalf of the petitioner – Society, Mr. G.A. Kunte, learned Counsel for the respondent No.2 – Corporation has filed reply. Although accepted the fact that the land of the petitioner-Society has been utilized by the respondent – Corporation for construction of 24 meters vide D.P. road under the IRDP Scheme (Awasthi Nagar Chowk to Borgaon Chowk). It is further submitted by the learned Counsel for the respondent No.2-Corporation that the communication dated 02/08/2001 was issued by the then Executive Engineer, building section, by and on behalf of the Municipal Corporation in favour of the petitioner-Society granting TDR in lieu of the compensation as against the land which is impacted for construction of the road. It is further admitted and accepted that the TDR certificates attached to the petition (page 61 to 70) were issued by the Commissioner of the Municipal Corporation. Having accepted the aforestated position, it is submitted in paragraph 5 of the reply that the request of the petitioner- Society to confer TDR upon the members of the petitioner – Society was not accepted due to non-eligibility. It is further submitted on behalf of the respondent – Corporation that the

claim raised by the petitioner- Society is rather delayed one and stale, as such, the same deserves to be rejected since the communication is issued in the year 2001, whereas the petition is filed in the year 2024 at the belated juncture.

11. Mrs. M.H. Deshmukh, learned Assistant Government Pleader for the respondent No.1 adopted the submissions made on behalf of the respondent No.2 - Corporation and prayed for rejection of the petition.

12. Having considered the rival submissions on behalf of the litigating side, we find considerable force in the submissions made by learned Senior Counsel on behalf of the petitioner- Society, in the wake of admitted facts which are stated hereinabove.

13. Apart from the accepted and admitted position in relation to the acquisition of the land for 24 meters for D.P. road by the Corporation, constitutional and statutory provisions also support the case of the petitioner- Society in an unequivocal terms since the land of the members of the petitioner – Society is put to use by the respondent – Corporation for the aforesaid purpose. However, no compensation is paid by the Corporation while undertaking the acquisition proceedings. In lieu of the same what was assured is to confer TDR in favour of the members of the petitioner – Society which is rather express in the communication dated 02/08/2001. Coupled with issuance of the said

communication, the respondent - Corporation itself has issued TDR certificates in the year 2017, 2018 and 2020 in favour of the members of the petitioner-Society restating that TDR would be conferred as indicated in those certificates. Thus, the claim of the petitioner- Society is well supported in the wake of provisions of Article 300-A of the Constitution of India. Although the right to property has migrated from the fundamental rights, by virtue of 44th amendment, however, the same cannot be tinkered, being constitutional and human right, as is attempted by the respondent-Corporation while issuing the communication rejecting the request of the petitioner- Society. Equally conferring the TDR as per provisions of Section 126 of the MRTP Act would assist the claim of the petitioner- Society herein since the land belonging to the petitioner- Society is acquired for public purposes. The same does not absolve the respondent – Corporation from retracting its promise/assurance that in lieu of compensation the TDR would be conferred in favour of the members of the petitioner- Society.

14. The respondent No.2 – Corporation has retracted from its assurance which is reiterated on two successive occasions i.e. while issuing the communication dated 02/08/2001 vis-a-vis the issuance of TDR certificates dated 30/01/2017, 30/07/2017, 30/08/2018, 22/10/2018 and 11/09/2020. Apart from the constitutional and statutory obligation, the same is also impermissible in the light of the

fact that the petitioner- Society herein has acted upon the assurance on behalf of the respondent – Corporation while surrendering their land in lieu of compensation and availing the benefits of TDR, therefore, is legitimately entitled to claim it.

15. Thus, having acted upon the same, it is not open for the respondent - Corporation to retract from the same and alter its decision which is prejudicial to the interest of the petitioner- Society and its members. The valuable right is constitutionally and statutorily recognized, therefore, the same cannot be tinkered with. The Hon'ble Apex Court in the case of ***The State of Jharkhand and others Vs. Brahmaputra Metallics Ltd. and others 2020 (13) SCALE 500*** has endorsed the principle of doctrine of legitimate expectation as well as promissory estoppel and has held that State and its instrumentalities are under obligation to act fairly and in a transparent manner and the rights of the private citizens alike the petitioner- Society cannot be taken way on the ground that those are unsustainable in law and contrary to the statutory provisions. Equally necessary reference can be made to the provisions of the Unified Development Control and Promotion Regulations For Maharashtra State [UDCPR] particularly Clause 11.2.4 (e) thereof. It states that the authority, which has taken possession of the reserved land in development plan with the commitment of granting TDR/DRC in the past, has not issued DRC, therefore, in such cases, DRC

shall be issued for the quantum as per this UDCPR. Thus, the regulations also unequivocally bind the respondent – Corporation to issue DRC. Nevertheless unequivocally it has been assured that TDR would be conferred in favour of the members of the petitioner – society is leave of compensation.

16. So far as the submission on behalf of the respondent – Corporation that the claim is delayed, deserves no consideration, since in the wake of constitutional and statutory mandate, the respondent-Corporation is under obligation to compensate the owners having acquired the land. Further support can be drawn from the observations made in paragraph 18 by the Hon'ble Apex Court in the judgment in the case of ***Kukreja Construction Company and others Vs. State of Maharashtra and others 2024 SCC OnLine SC 2547***. Paragraph 18 of the judgment in ***Kukreja Construction Company*** (supra) reads as under :

> *"…..We have referred to the decisions of this Court where the question of delay and laches would not arise in matters such as the present cases. When relief in the nature of compensation is sought, as in the instant case, once the compensation is determined in the form of FSI/TDR, the same is payable even in the absence of there being any representation or request being made. In fact, a duty is cast on the State to pay compensation to the land losers as otherwise there would be a breach of Article 300-A of the Constitution. As rightly contended by the learned senior counsel for the writ petitioners/appellants herein, the respondent – Mumbai Municipal*

> *Corporation has not established that owing to a short delay even if it has occurred in any of these cases owing to uncertainty in law, the Corporation has been prejudiced by the same or that the third party rights had been created which could not be disturbed owing to delay or laches. The calculation of period of delay in the table submitted by learned senior counsel for the Mumbai Municipal Corporation is not acceptable in view of our discussion above. The decisions referred to by us above would clearly indicate that neither the doctrine of delay and laches nor the principle of abandonment of claim or waiver would apply in these cases. Rather the delay has occurred on the part of the Mumbai Municipal Corporation in complying with the Regulations insofar as the appellants are concerned."*

17. Thus, in the light of the aforestated findings rendered by the Hon'ble Apex Court, the question of delay and laches would not arise when the relief in the nature of compensation towards acquisition of land is sought. Once the compensation is determined in the form of TDR, as has been done by the respondent – Corporation, as indicated in the certificates, the same is payable even in absence of there being any representation or request being made. In fact, a duty is cast upon the Corporation to pay the compensation to the land losers, otherwise there would be a breach of Article 300-A of the Constitution of India. Thus, it is rather apparent that there is no escape route for the Corporation to avoid conferring the TDR upon the members of the petitioner – Society, as it has been assured by the respondent - Corporation initially in the year 2001 and coupled with the same, the issuance of TDR certificates

in the year 2017, 2018 and 2020. So far as the provision of Section 126 (1) (b) of the MRTP Act is concerned, the grant of TDR under the said section accrues or flows from the surrender of the area covered by the TDR. Admittedly, the members of the petitioner – Society have surrendered their land, therefore, the same entails the petitioner-Society to claim TDR in lieu of the compensation. In any case it is for the respondent - Corporation to compensate the petitioner–Society in light of mandate of Article 300-A of the Constitution of India. Thus, the TDR is regarded as a statutory grant. Therefore, in our considered opinion, the justification on behalf of the respondent - Corporation that TDR cannot be granted in favour of the petitioner- Society deserves no consideration.

18. In the result, the writ petition is allowed. The communication dated 05/12/2024, issued on behalf of the respondent No.2- Corporation is quashed and set aside directing the respondent – Corporation to confer TDR, as assured and indicated in the certificates.

19. We further make it clear that we have not considered any other aspect of the matter including the extent of entitlement of TDR. However, we endorse the entitlement of the members of the petitioner-Society for conferment of TDR, in lieu of the rights in the land surrendered by the members of the petitioner-Society without

compensation for construction of 24 meters vide D.P. road (Awasthi Nagar Chowk to Borgaon Chowk).

20. Rule is made absolute in the above terms. No order as to costs.

(SACHIN S. DESHMUKH, J.) **(NITIN W. SAMBRE, J.)**

Wadkar