IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6746 OF 2024
ALONG WITH
INTERIM APPLICATION NO.14169 OF 2024

Pawan Rajaramrao Kadam,].. Petitioner/
R/o. Panvel, Dist. Raigad] Applicant

Versus

1. The State of Maharashtra,]
   Thru Department of Urban Development]
2. Joint Director, Town Planning,]
   Konkan Division, Navi Mumbai]
3. Panvel Municipal Corporation, Panvel]
4. City Industrial & Develop. Corporation,]
   CBD Belapur, Navi Mumbai]
5. CREDAI BANM-RAIGAD Welfare Association]
   CBD Belapur, Navi Mumbai]
6. Okay Developers Pvt. Ltd., Mumbai]
7. Sharad Ghodke,]
   Social Worker, Sukhpar, New Panvel] .. Respondents

ALONG WITH

INTERIM APPLICATION NO.10964 OF 2025
IN
WRIT PETITION NO.6746 OF 2024

Okay Developers Pvt. Ltd., Mumbai] .. Applicant

ALONG WITH

WRIT PETITION (STAMP) NO.17210 OF 2024

Haresh Manohar Keni,]
R/o. Pethali, Taloje Majkur, Raigad] .. Petitioner

Versus

1. The State of Maharashtra,]
   Through Office of the Govt. Pleader]
2. The Principal Secretary (UD-1),]
   Urban Development Department]
   Government of Maharashtra]
3. Panvel Municipal Corporation,]
   Tal. Panvel, Dist. Raigad] .. Respondents

ALONG WITH

WRIT PETITION NO.12870 OF 2025

Mandar Mahesh Vaidya,]
R/o. Agar Bazar, Dadar, Mumbai].. Petitioner

Versus

1. The State of Maharashtra,]
   Through Dept. of Urban Development]
2. Joint Director, Town Planning,]
   Konkan Division, Navi Mumbai]
3. Panvel Municipal Corporation,]
   Panvel, Dist. Raigad]
4. City Industrial & Development Corpn.,]
   CBD Belapur, Navi Mumbai] .. Respondents

ALONG WITH

WRIT PETITION (STAMP) NO.31132 OF 2025

1. Anuj Mahendra Banthia]
2. Tanuj Mahendra Banthia]
3. Akash Mahendra Banthia]
4. Virendra Ratanchand Banthia]
5. Sunil Shashikant Banthia]
6. Neeta Anuj Bhandari]
7. Manoj Shashikant Banthia]
8. Rajendra Kantilal Banthia]
9. Narendra Kantilal Banthia]
10. Prakash Harakchand Banthia]
11. Suresh Harakchand Banthia]
12. Deepali Hemant Bafna]
13. Subhashchandra Motilal Banthia] .. Petitioners

Versus

1. The State of Maharashtra,]
   Through Dept. of Urban Development]
2. Joint Director, Town Planning,]
   Konkan Division, Navi Mumbai]
3. Panvel Municipal Corporation, Panvel]
4. City Industrial & Development Corpn.,]
   CBD Belapur, Navi Mumbai.] .. Respondents

Appearances in Writ Petition No.6746 of 2024

- Dr. Milind Sathe, Senior Advocate with Mr. Mayur Khandeparkar with Mr. Chinmay Acharya and Mr. Kevin Pereira, i/by Mr. Balkrishna G. Tangsali, Advocates for the Petitioner.

- Mr. Girish Godbole, Senior Advocate, with Mr. Rahul Soman, i/by Mr. Vijay Kumar Aggarwal, Advocates for the Respondent no.5-Credai Banm-Raigad.
- Mr. Pravin Samdani, Senior Advocate, with Mr. Sagheer A. Khan, Mr. Aqil Khan, Ms. Insha Shaikh, Adv. Sauda S. Nachan, Adv. Afsha Khan and Mr. Dawood Khan, Advocates, i/by Judicare Law Associates, for the Respondent no.6-Okay Developers Pvt. Ltd.
- Mr. Bharat R. Zaveri, Advocate for Respondent No.7.

Appearances in Writ Petition (Stamp) No.31132 of 2025

- Mr. Anil Y. Sakhare, Senior Advocate, with Mr. Adil L. Mirza, Advocate for the Petitioners.
- Mr. Rahul Sinha with Mr. Soham Bhalerao and Mr. Harshit Tyagi, Advocates, i/by DSK Legal, for the Respondent-CIDCO.

Appearances in Writ Petition (Stamp) No.17210 of 2024

- Mr. Anil V. Anturkar, Senior Advocate, with Mr. Yatin Malvankar, i/by Mr. Vaibhav Thorave, Advocates for the Petitioner.

Appearances in Writ Petition No.12870 of 2025

- Mr. Mandar Limaye with Mr. Adil L. Mirza, Advocates for the Petitioner.

Appearances in all the Writ Petitions

- Mr. Ashutosh A. Kumbhakoni, Senior Advocate, Special Counsel with Ms. Neha Bhide, Government Pleader, Ms. Shruti D. Vyas, Additional Government Pleader and Mr. Vaibhav Charalwar, 'B' Panel Counsel and Mrs. G.R. Raghuwanshi, Assistant Public Prosecutor for the Respondent-State of Maharashtra in all the Writ Petitions.
- Mr. Prasad S. Dani, Senior Advocate, with Mr. Sarang S. Aradhye and Ms. Gauri Velankar, Advocates for the Respondent-Panvel Municipal Corporation in all the Writ Petitions.
- Mr. R.M. Patne with Mr. Sameer Patil, Advocates for the Respondent-CIDCO.

CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.

Judgment is reserved on : 10th December 2025.

Judgment is pronounced on : 13th February 2026.

PER, GAUTAM A. ANKHAD, J.

The principal challenge in all these writ petitions is to the Notification dated 7th October 2024 issued under section 37(1AA)(c) of the Maharashtra Regional and Town Planning Act, 1966 (in short, "impugned Notification" and "MRTP Act") and the insertion of clause 10.16 in the Unified Development Control and Promotion Regulations (in short, "UDCPR"), which reads as under:

> *"10.16 Area within Panvel Municipal Corporation-*
>
> *In area of Panvel Municipal Corporation, 75% of the total permissible TDR component as mentioned in column 5 of the Table-6G in the Regulation No.6.3, may be utilised on payment of premium at the rate of 60% land rate mentioned in the Annual Statement of Rates subject to following condition. Balance 25% to be utilised in the form of TDR only.*
>
> *Condition:-This provision shall only be applicable till the sanction of the Development Plan of Panvel Municipal Corporation under section 31(1) of the Maharashtra Regional and Town Planning Act, 1966."*

2. As the issue involved in all these writ petitions is common, the petitions were heard together and are disposed of by this common judgment.

<u>Brief background leading to the passing of the impugned Notification</u>

3. On 2nd December 2020, the UDCPR was sanctioned for the State of Maharashtra. These regulations became the

development control regulations for the areas of the respondent no.3- Panvel Municipal Corporation. On 28th April 2023, a representation was made by the respondent no.5 to the Principal Secretary of the Urban Development Department-the respondent no.1 highlighting the difficulties faced on account of the non-availability of Transferable Development Rights (in short, "TDR") in the CIDCO areas forming part of the respondent no.3. Pursuant thereto, the Urban Development Department called for a report from the respondent no.3. By its letter dated 5th September 2023, the respondent no.3 *inter alia* opposed the introduction of a policy permitting consumption of the TDR component on payment of premium on several grounds. On 19th January 2024, the Urban Development Department addressed a letter to the Director of Town Planning stating that representations were received for permitting usage of TDR on payment of premium and recommended that appropriate steps be taken to consider the said representations. It is in this backdrop that on 15th March 2024, the respondent no.1 issued the notice (or draft notification) under Section 37(1)(AA) of the MRTP Act inviting suggestions and objections from the public at large in respect of the proposed impugned Notification. The proposed modification was to operate with immediate effect and was made applicable until the sanction of the development plan of the respondent no.3.

4. On 10th April 2024, the respondent no.3 again filed its objections to the proposed amendment on several grounds. It is *inter alia* recorded that if the FSI is allowed to be utilized on the payment of premium instead of TDR, the demand for TDR

will reduce and the respondent no.3 will not be in a position to the get the landowners to surrender their plots. This will also increase the financial burden on the respondent no.3. Around the same time, Writ Petition nos.6746 of 2024 and Writ Petition (St) No.17210 of 2024 were filed challenging the proposed amendment and this Court by an interim order dated 3rd July 2024 stayed the implementation and operation of clause 2 of the schedule seeking to implement the Notice forthwith. However, the planning authority was permitted to proceed with the process for the amendment of the development control regulations.

5. On 6th July 2024, the proposed amendment was published in both Marathi and English newspapers. Pursuant thereto, suggestions and objections were received from fourteen persons by the Joint Director of Town Planning, who had been appointed as the Designated Officer under the Notification. By a communication dated 29th July 2024, the Joint Director of Town Planning forwarded the said objections to respondent no.3, calling for its remarks. On 7th August 2024, the respondent no.3 opposed the proposed amendment and reiterated the objections earlier raised in its letter of 10th April 2024. On the same day, a hearing was conducted by the Joint Director of Town Planning, at which all objectors were heard.

6. On 8th August 2024, the respondent no.3 published the draft Development Plan, providing for various reservations and amenities liable to compulsory acquisition. Upon consideration of the suggestions and objections received from

the public as well as the respondent no.3, the Joint Director of Town Planning prepared his report and, by a communication dated 9th August 2024, submitted the same to the Director of Town Planning. The report was considered by the Director of Town Planning who recorded his recommendations and forwarded it to the respondent no.1 on 13th August 2024. Thereafter, upon considering all the suggestions and objections, the respondent no.1 issued the impugned Notification dated 7th October 2024.

Submissions of the petitioners

7. Writ Petition No.6746 of 2024 was initially filed challenging notice dated 15th March 2024 since it was brought into force with immediate effect. After the impugned Notification, the writ petition was amended to challenge the same and to incorporate additional grounds.

8. Dr. Sathe, learned senior counsel appearing for the petitioner in Writ Petition No. 6746 of 2024 (prior to his appointment as the Advocate General), submitted that the impugned Notification was contrary to Section 126 of the MRTP Act and was manifestly arbitrary and unreasonable. Section 126 of the MRTP Act provides for acquisition of private land required for public purposes. Such acquisition may be undertaken:

(a) by an agreement between the planning authority and the landowner upon payment of an agreed amount; or

(b) by granting TDR to the landowner in lieu of monetary compensation; or

(c) by compulsory acquisition under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

9. It is submitted that the landowners are incentivised under Section 126 to voluntarily surrender their plots in exchange for compensation in the form of TDR. This also reduces the financial burden on the planning authority. The value of the TDR granted as compensation is equivalent to twice the market area of the surrendered plot. The utilisation of TDR is governed by Table 6G read with Regulation 11 of the UDCPR.

10. Dr. Sathe submits that clause 10.16 was introduced on 15th March 2024 by way of a proposed amendment to address an alleged insufficiency in the generation of TDR for the respondent no.3. After the publication of the draft Development Plan, large tracts of land within the jurisdiction of respondent no.3 are now reserved for various public purposes and may be acquired. The impugned Notification seeks to dilute the value of TDR and in effect amends Table 6G by providing that, out of the permissible TDR component specified in column 5 of Table G—ranging from 0.40 to 1.40 depending on the width of the abutting road, 75% of such TDR may be utilised upon payment of a premium at the rate of 60% of the Annual Schedule of Rates (Ready Reckoner rate). By way of illustration, he submits that in the case of a plot abutting a road having a width in excess of 30 metres, the permissible FSI would be as follows:

	Pre-Amendment	Post Amendment
Base FSI	1.10	1.10
Premium	0.50	0.50
		+ 1.05(75% of 140)
		1.55
TDR	1.40	0.35 (25% of1.40)
Total Maximum	3.00	3.00

11. Thus, out of a permissible TDR of 1.40, as much as 75%, i.e. 1.05 FSI, can be utilised merely on payment of such premium. In contrast, TDR granted by way of compensation has a value equivalent to twice the market value of the land. This, according to Dr. Sathe, infringes the petitioners' right to property guaranteed under Article 300A of the Constitution of India. The impugned Notification is vitiated by Wednesbury principles of unreasonableness. It does not take into account the relevant factors such as availability of TDR and would eliminate any demand for TDR in the market. As a consequence, a landowner has no incentive to voluntarily surrender the land reserved for public purposes, as the compensation received by the landowner in the form of TDR is virtually valueless.

12. Dr. Sathe submits that the development control regulations framed under Section 22(m) read with Section 159 of the MRTP Act constitute delegated legislation and form an integral part of the development plan as is held by the Hon'ble Supreme Court in *"Pune Municipal Corportaion v. Promoters and Builders Association & Anr."*[1]. Placing reliance on *"Dental*

1 *(2004) 10 SCC 796*

Council of India v. Biyani Shikshan Samiti"[2], he submits that clause 10.16 can be challenged on the ground that it is ultra vires the MRTP Act as it alters the very substratum of Regulation 11 and Section 126 of the MRTP Act. It has the effect of increasing the base FSI. This constitutes a substantial modification of the development plan. Such a sweeping alteration could not have been introduced by way of the impugned amendment, particularly when the draft Development Plan has been published on 8th August 2024. The impugned Notification seeks to introduce a modification to the UDCPR without following the mandatory procedure prescribed under Sections 37 and 37(1AA)(a) of the MRTP Act. The objections raised by the petitioner have not been considered by the respondents. The amendment is drastic and violates the petitioner's rights under Article 14 of the Constitution of India.

13. The action of the State Government is neither bona fide nor in public interest and appears to have been undertaken at the behest of the respondent no.5, an association of developers, with the object of undermining the interests of landowners. The justification advanced by respondent no.1 that the impugned Notification seeks to dismantle an alleged cartel of landowners is untenable, as the issuance of the impugned Notification itself is driven by the demands of developers. Further, the specific objections raised by the respondent no.3 in its letters dated 10th April 2024 and 7th August 2024 have been disregarded by respondent no.1.

2 *(2022) 6 SCC 65*

14. In addition to the above, Mr. Mayur Khandeparkar, learned counsel appearing for the petitioner in Writ Petition No.6746 of 2024, submits that the impugned Notification effectively takes away the statutory option conferred upon landowners under Section 126 of the MRTP Act to accept TDR as a mode of compensation. Once the value of TDR is rendered commercially unviable, the statutory choice becomes illusory. The impugned Notification also fundamentally alters the underlying concept of TDR, which is intended to be granted strictly in lieu of compensation for surrender of land. TDR is not a tradable commodity in the hands of the State. It cannot be monetised through payment of premium. Such a mechanism is wholly alien to the MRTP Act and is therefore *ultra vires* the said Act.

15. Mr. Anil Anturkar, learned senior counsel appearing for the petitioner in Writ Petition (Stamp) No.17210 of 2024, submits that the challenge in this petition is limited for the period between the draft notification/ notice dated 15th March 2024 and the date of final notification dated 7th October 2024. The challenge to the retrospective implementation from 15th March 2024 and this petition survives even after the impugned Notification is published. The petitioner filed detailed objections to the draft amendment on 12th April 2024 including on the ground that the same is ultra vires the MRTP Act, but the same is not considered by the respondents. Hence the petition was filed on 21st June 2024. The learned senior counsel submits that the proposed modification could not have been brought into force by resorting to Section 154,

bypassing the procedural mechanism under Section 37 of the MRTP Act. Section 154 can be resorted to issue administrative directions and not to make any legislative changes. The immediate implementation was stayed by interim orders dated 3rd July 2024 and 8th August 2024.

16. Mr. Anturkar, learned senior counsel appearing for the petitioners in Writ Petition no.12870 of 2025, submit that this petition challenges the validity of the final Notification dated 7th October 2024. Mr. Anturkar contends that the concepts of "TDR" and "additional FSI" operate in distinct legal and factual domains. The UDCPR recognises this distinction. Additional FSI is generated upon payment of premium, whereas TDR is granted as compensation for surrender of land. The two cannot be conflated, nor can the regulatory framework governing one be superimposed upon the other. In the impugned Notification the "premium is for the utilisation of TDR", as distinct from "premium for grant of additional FSI". There is no provision in Section 126 which permits the levy of premium on utilization of TDR. The UDCPR which is in the nature of subordinate or delegated legislation cannot transgress the limits of the parent statute, namely the MRTP Act. Any attempt to impose or collect premium upon utilisation of TDR, in the absence of express statutory authority, is ex facie ultra vires, unconstitutional, and void. Such levy lacks statutory foundation and legal competence. Consequently, any demand or collection of premium for utilisation of TDR, whether by resolution, circular, administrative instruction, or decision of a statutory

authority, is liable to be declared null and void. Reliance is placed on the definition of "premium FSI" under Regulation 1.6(63), Regulation 1.8 (power to decide charges), and Regulation 11.2 of the UDCPR, as well as the judgments of this Court in *"Bharti Tele-Ventures Ltd. & Anr. v. State of Maharashtra & Anr.*[3]*"* and *"General Officer Commanding-In-Chief & Anr. v. Dr. Subhash Chandra Yadav & Anr.*[4]*"* and *Amit Maru and Anr. v. State of Maharashtra*[5] in support of the above submissions.

17. Mr. Anturkar submits that the imposition of premium on utilisation of TDR results in unjust enrichment of the planning authority and causes undue hardship to landowners and developers alike, in violation of the principles of lawful delegation, fair governance and Article 265 of the Constitution of India, which mandates that no tax or levy shall be imposed or collected except by authority of law.

18. Mr. A.Y. Sakhare, learned senior counsel appearing for the petitioners in Writ Petition (Stamp) No.31132 of 2025, adopted the arguments advanced by Dr. Sathe and submits that the impugned Notification causes serious and irreversible prejudice to the petitioners, inasmuch as it drastically diminishes the value of TDR. The objections raised by the petitioners have been ignored, and there is a complete lack of uniformity in the application of the development control regulations within the same municipal corporation area. He submits that by a notification dated 26th September 2016,

3 *2007(4) Mh.L.J. 105*
4 *(1988) 2 SCC 351*
5 2010 SCC Online Bom 774.

twenty-nine revenue villages were merged into respondent no.3 under the Mumbai Municipal Corporation Act, 1949. The petitioners' lands are fully developed, fenced and have internal roads. The TDR potential of the lands has been duly identified and the Zonal Certificate classifies the land as falling within an Industrial Zone. Despite this, the draft Development Plan irrationally imposes extensive reservations on the petitioners' lands, thereby rendering them unusable and effectively extinguishing their industrial potential. He submits that the proposed modification pursuant to the notice dated 15th March 2024 was objected to by the respondent no.3, citing its adverse impact on the development of rural villages. The draft Development Plan further reserves more than 10,000 square metres of the petitioners' land for solid waste management and garden reservations, without undertaking any feasibility study, environmental assessment, or soil suitability analysis. Such reservations are contrary to the mandatory statutory process prescribed under the MRTP Act. On these grounds, the impugned Notification dated 7th October 2024 is liable to be quashed and set aside.

19. Mr. Zaveri, learned counsel appearing for respondent no.7 in Writ Petition No.6746 of 2024, adopts the aforesaid submissions and supports the petitioners in the above writ petitions. He submits that Section 37(1AA)(c) of the MRTP Act is mandatory in nature. The State Government failed to place all relevant facts before the Director of Town Planning as part of the statutory consultation process. There was no justification for applying the impugned Notification uniformly

to the entire area of the respondent no.3. The insertion of clause 10.16 is contrary to the provisions of the MRTP Act and ought to be set aside. Reliance is placed on "*Pushpam vs. State of Madras*[6]" to submit that the respondent no.1 did not "consult" the Director of Town Planning as required under Section 37(1AA)(c) of the Act.

Submissions of the respondents

20. Mr. Ashutosh Kumbhakoni, learned senior counsel appearing for the respondent no.1 (State of Maharashtra) in all the petitions, denied the aforesaid contentions and opposed the petitions by placing reliance on the affidavits-in-reply dated 3rd December 2024, 23rd July 2025 and 12th August 2025 filed in Writ Petition no.6746 of 2024.

21. With specific reference to the petitioner in Writ Petition No. 6746 of 2024 (Pawan Rajarao Kadam), Mr. Kumbhakoni submits that the petitioner lacks locus to maintain the petition. The petitioner claims to be an agriculturist who has been offered TDR under Section 126 for the surrender of his land vide letter dated 21st April 2023 issued by the Deputy Director of Town Planning. However as on date, the petitioner is not an owner of any TDR and there is no compulsion on the petitioner to accept TDR. In the absence of any vested right, the petitioner lacks locus to challenge the impugned Notification. On this ground alone, he submits that the writ petition ought to be dismissed.

22. Without prejudice to the above, and addressing the

6 *66 L.W (part 2) 53*

merits of the challenge, the learned senior counsel submits that in view of the issuance of the Notification dated 7th October 2024, the challenge to the notice dated 15th March 2024 does not survive and has been rendered infructuous. He submits that the impugned Notification has been issued after following the due procedure prescribed under Section 37(1AA) of the MRTP Act as is noted in the earlier part of this judgment.

23. Mr. Kumbhakoni submits that in the area of the respondent no.3 it was found that approximately 76.08% of the land was not covered by any sanctioned development plan. As a result, there was negligible generation of TDR, leading to a serious imbalance between demand and supply, with a likelihood of TDR being concentrated and cartelised. In order to address this situation, the State Government introduced clause 10.16. The said clause merely provides an option to developers and does not force any landowner from surrendering their land to the respondent no.3. He submits that there is no diminution in the value of TDR, as utilisation of TDR to the extent of 25% is mandatory. Even with respect to the remaining 75%, the developers retain the option to utilise TDR. The utilisation and valuation of TDR continues to be governed by market forces of demand and supply. The petitions are devoid of merit and ought to be dismissed.

24. Mr. Kumbhakoni concurs that the UDCPR constitutes delegated legislation but submits that the scope of judicial review in respect thereof is extremely limited. Regulation 10.16 has been introduced in the UDCPR in furtherance of

the powers conferred under Section 22(m) of the MRTP Act, which permits regulation of TDR through development control regulations. There is no violation of Articles 14 or 19 of the Constitution of India, nor have the petitioners demonstrated that the impugned Notification is ultra vires the provisions of the MRTP Act. In support of his submissions, Mr. Kumbhakoni also placed reliance on the judgments in "*Pune Municipal Corporation and another. v. Promotors and Builders Association & Another*", "*Dental Council of India v. Biyani Shikshan Samiti and Another*".

25. Mr. Girish Godbole, learned senior counsel appearing for respondent no.5–CREDAI BANM–Raigad, and Mr. Praveen Samdani, learned senior counsel appearing for respondent no.6–Okay Developers Pvt. Ltd., in Writ Petition No.6746 of 2024, reiterated the submissions advanced by Mr.Kumbhakoni and in addition, submitted that neither the regulations nor the governing statutes prescribes any fixed or guaranteed value for TDR which is a saleable and transferable development instrument, the value of which is governed by market factors. In support of this submission, reliance was placed on *"Green Garden Apartments CHS Ltd vs. Nitin Chaudhari & Ors"*[7]. The grant of TDR under Chapter 11.2 of the UDCPR is not based on the Annual Schedule of Rates (in short "ASR"), but on the exact area of land surrendered. In terms of Chapter 11.2.4, TDR is granted in the range of two to three times the area of the land surrendered. Therefore, the methodology adopted by the petitioners of first determining the notional value of TDR by applying ASR and thereafter

7 *Interim Application (L) No. 5342 of 2025 in Commercial Suit (L) No. 5307 of 2025*

comparing it with 60% of the ASR value of land purportedly sold by the respondent no.3 is flawed. The optional purchase price fixed by the respondent no.3 is at 60% of the ASR. If TDR available in the open market is cheaper, a developer is always free to purchase such TDR from the market. The impugned Notification seeks to address the chronic problem of under-supply of TDR in the open market, which has resulted in cartelisation and artificial inflation of prices by a limited class of land-holders, thereby impeding housing projects. The landowner whose land is sought to be acquired continues to have multiple statutory options under Section 126 of the MRTP Act to claim compensation. It was emphasized that the impugned Notification is not mandatory and provides an option to developers either to utilise premium FSI/acquire TDR up to the extent of 1.40 or to avail partial TDR from the respondent no.3 against payment of premium. The impugned Notification cannot be characterised as ultra vires the MRTP Act or arbitrary.

26. The Notification is stated to be in public interest, as it facilitates affordable housing and simultaneously augments the revenue of the respondent no.3, which can be utilised for infrastructure development. Merely because the market value of TDR held by certain parties may be affected cannot, by itself, be a ground to strike down a piece of delegated legislation. Reliance was placed on the judgment of the Hon'ble Supreme Court in *"Indian Express Newspapers (Bombay) Private Ltd. v. Union of India"*[8] in support of the submissions to oppose the petitions.

8 *(1985) 1 SCC 641*

Reasons and Findings

27. Having considered the rival submissions and examined the record, we find no merit in the challenge to the notice dated 15th March 2024 or the impugned Notification dated 7th October 2024. We do not find that the said notice or the impugned Notification is arbitrary, illegal and ultra vires the MRTP Act.

28. It appears to us that Writ Petition no.6746 of 2024 proceeds on an incorrect premise that the petitioner's land has been compulsorily acquired. Paragraph 4 of the petition asserts as under:

> *"4. Land of the petitioner has been acquired compulsorily under the provisions of section 126 of the said Act for the construction of a road. The petitioner is to receive TDR in lieu of compensation towards the acquisition of his land. Hereto annexed and marked Exhibit "C" is a copy of the notice dated 21st April 2023 issued to the petitioner by the Deputy Director, Town Planning, Panvel Municipal Corporation proposing to acquire the petitioner's land and offering him TDR as compensation."*

29. A perusal of Exhibit "C" to the said petition does not disclose any element of compulsion. On the contrary, it seems to be a communication requesting the petitioner to hand over the land to the respondent no.3 for the purpose of construction of a road to alleviate traffic congestion. We find that the assertion of compulsory acquisition is incorrect and cannot be accepted. However since we have extensively heard the parties in all petitions, we have proceeded to decide this matter on merits.

Due process under the MRTP Act has been followed

30. The MRTP Act provides for the planned development and use of land in various regions of the State. It contemplates, inter alia, the constitution of Regional Planning Boards, preparation of Development Plans by local authorities, establishment of New Town Development Authorities, and the making of provisions for reservations, allocations, and designations of land for public purposes. Section 22 of the MRTP Act enumerates the contents of a Development Plan. Section 26 of the MRTP Act provides for the preparation of a draft Development Plan and the publication of notice thereof. Section 31 deals with the sanction of the draft Development Plan and stipulates that, upon such sanction, the plan attains the status of a final Development Plan. Section 37 prescribes the procedure for modification of a final Development Plan, either by the concerned planning authority or at the instance of the State Government. Section 37(1AA), which specifically confers power upon the State Government to effect modifications in a Development Plan reads as follows:

a. *Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of or any proposal made in a final development plan of such a nature that it will not change the character of such development plan, the State Government may, on its own, publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.*

b. *The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the Government.*

c. *The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modifications with or without changes and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final development plan shall be deemed to have been modified accordingly.*

31. As held by the Hon'ble Supreme Court in paragraphs 75-78 of *Indian Express,* the challenge to a delegated legislation must be confined to the grounds on which plenary legislation may be questioned, i.e, MRTP Act in this case or that it is arbitrary as due process required under the statute is not followed or that it offends Article 14 of the Constitution. The Hon'ble Supreme Court in *"Dental Council of India"* has succinctly summarized the legal position governing challenges to subordinate legislation as follows:

> *"26. It will be relevant to refer to the following observations of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] : (SCC p. 689, para 75)*
>
> > *"75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."*
>
> *27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it*

does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.

28. *It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.*

29. *The judgment of this Court in Indian Express Newspapers (Bombay) [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] has been followed by a three-Judge Bench of this Court in Khoday Distilleries Ltd. v. State of Karnataka [Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304] . It will be apposite to refer to the following observations of this Court in the said case : (Khoday Distilleries case [Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304] , SCC p. 314, para 13)*

> *"13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] (SCC p. 689, para 75) this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is*

unreasonable; 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, 'Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

30. *In State of T.N. v. P. Krishnamurthy [State of T.N. v. P. Krishnamurthy, (2006) 4 SCC 517] after considering the law laid down by this Court earlier in Indian Express Newspapers (Bombay) [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , Supreme Court Employees' Welfare Assn. v. Union of India [Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187 : 1989 SCC (L&S) 569] , Shri Sitaram Sugar Co. Ltd. v. Union of India [Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223] , St. Johns Teachers Training Institute v. NCTE [St. Johns Teachers Training Institute v. NCTE, (2003) 3 SCC 321 : 5 SCEC 391] , Ramesh Chandra Kachardas Porwal v. State of Maharashtra [Ramesh Chandra Kachardas Porwal v. State of Maharashtra, (1981) 2 SCC 722] , Union of India v. Cynamide India Ltd. [Union of India v. Cynamide India Ltd., (1987) 2 SCC 720] and State of Haryana v. Ram Kishan [State of Haryana v. Ram Kishan, (1988) 3 SCC 416] , this Court has laid down certain grounds, on which the subordinate legislation can be challenged, which are as under : (Krishnamurthy case [State of T.N. v. P. Krishnamurthy, (2006) 4 SCC 517] , SCC p. 528, para 15)*

"Whether the rule is valid in its entirety?

15. *There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:*

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) *Violation of any provision of the Constitution of India.*

(d) *Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*

(e) *Repugnancy to the laws of the land, that is, any enactment.*

(f) *Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).”*

32. As held in *“Pune Municipal Corporation”*, the Development Control Regulations have statutory force. Further, as held in *“General Officer Commanding-In-Chief”*, two conditions are required to be fulfilled before a rule can have the effect of a statutory provision, namely; (i) it must confirm to the provisions of the statute under which it is framed and; (ii) it must come within the scope of purview of the rule making power of the authority framing such rule. In our view, the rule making power is available to the respondent no.1 under sections 22(m) read with section 37(1AA) of the MRTP Act. The next question which arises is whether the steps mandated under Section 37(1AA) have been followed by the respondent no.1? For the purpose of undertaking the exercise contemplated under Section 37(1AA) of the MRTP Act, the respondent no.1 appointed the Joint Director of Town Planning as the Designated Officer. In accordance with sub-clause (a), upon publication of the notice dated 15th March 2024, objections and suggestions in respect of the proposed modification were invited from the general public. In response thereto, fourteen objections were received including objections of respondent no.3 dated 10th April 2024. The Joint Director forwarded all the objections and suggestions to the

respondent no.3 by its letter dated 29th July 2024, calling upon the respondent no.3 to offer its remarks thereon. Respondent no.3, by its letter dated 7th August 2024, submitted its response and reiterated the objections earlier raised in its letter of 10th April 2024. On the same day, the Joint Director afforded a hearing to all objectors. Upon completion of the hearing, the Joint Director prepared a report and forwarded the same to the Director of Town Planning by his letter dated 9th August 2024. After considering the said report, the Director of Town Planning recorded his recommendations and submitted the same to the respondent no.1 on 13th August 2024. In this backdrop we find that the requirements prescribed under clauses (a), (b), and (c) of Section 37(1AA) of the MRTP Act are complied and due process has been followed by the respondent no. 1 prior to the issuance of impugned Notification. We find no procedural infirmity or arbitrariness in the decision-making process of the respondent no.1.

33. For the same reason, we find no merit in the submissions of Mr. Jhaveri. The judgment in *"Pushpam"* is of no assistance as we find that the mandatory procedure under the MRTP Act has been followed by the respondent no.1. The said judgment was in the context of elections to Municipal Councils and allotment of reserved seats in wards. The government order was challenged on the ground that the same failed to comply with the provisions of section 43 of the District Municipalities Act which provide for consultation with Municipal Council. Admittedly, there was no such consultation with respect to suitability of allotment of a

reserved seat to a particular ward. It was in that factual background that the Court held that the government had failed to comply with the statutory requirement of consultation. We do not find such a situation in the present case. As observed above, the impugned Notification confirms to the requirements under section 37(1AA) of the MRTP Act.

Scheme of the MRTP Act and the UDCPR

34. Section 126 of the MRTP Act provides for acquisition of land required for public purpose specified in the draft regional plan or any other plan or town planning scheme. The three modes of compensation on such acquisition are (i) by an agreement between the parties (section 126(1)(a)); or (ii) by agreement in lieu of cash by grant of FSI/TDR (Section 126(1)(b)); or (iii) by compulsory acquisition (Section 126(1)(c)). As held by the Full Bench of this Court in *Shree Vinayak Builders"*, the agreement in sub-clause (a) and (b) is by way of mutual agreement and not the sole option of the authority:

> *"17. While concurring with the above proposition, we would like to emphasize that the mode of acquisition of land under section 126(1)(a) and (b) of the MRTP Act is by 'an "agreement". The word agreement connotes offer and acceptance and signifies that the agreement is not an unilateral act but a bilateral act which is concluded with communication of acceptance of the offer. Thus, acquisition of land reserved for public purpose under section 126(1)(a) and (b) cannot be by any unilateral proposal of the Acquiring Authority to acquire the land with an offer of compensation or FSI/TDR. It is a mutual agreement between the Acquiring Authority and the land owner whereunder the land is acquired by the concerned authority by agreement either by paying an amount agreed to or by granting, in lieu of any agreed amount, FSI or TDR against the area of land surrendered free of cost, and free of all encumbrances. That being so, the modes of acquisition of land under section 126(1)(a) and (b) of the MRTP Act, can be resorted to only when there is a*

consensus between the parties; when the parties are ad idem and not when there is dissension; not when they are at variance. That means these modes of acquisition are essentially at the choice of either of the parties and not just the acquiring authority, and are taken to their logical end when the consensus is arrived at between these parties. In the absence of such concord, the only option available to the Acquiring Authority is to take recourse to section 126(1)(c) of the Act and make an application to the State Government under the provisions 2013 Act.

19. There can be no dispute that section 126 clothes the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority with the authority to acquire the land reserved for public purpose.

Clauses (a) and (b) of sub-section (1) of section 126 envisage agreement between the land owner/lessee and the acquiring authority. The intention of the legislature, as it comes out from the plain reading of these provisions is that wherever possible, land acquisition by agreement, either by payment of agreed amount or in lieu of such amount by grant of FSI/TDR, should be encouraged as these modes of acquisition are faster, more effective, and more economic in the long run. Their object seems to be three fold viz, efficacy, economy and expedition, and, therefore, the parties to acquisition of land process under the MRTP Act are given these options placing emphasis upon agreement. This being the position, interpreting the word 'agreement' as unilateral act or decision of the acquiring authority, where the land owner has no say in the acquisition, will be violative of the provisions of the Act, the language of which is plain and unambiguous/Further, such interpretation will set at naught the legislative intent expressed in the statutory provision."

35. In view of the above judgment, Mr. Kumbhakoni is right in his submission that it is for the landowner whose land is affected by a reservation, to decide whether such land is to be surrendered in lieu of TDR. If the landowner chooses not to avail of the option under Section 126(1)(a) or Section 126(1)(b), the authority may then proceed in accordance with Section 126(1)(c). Equally, there is no compulsion under Clause 10.16 or any other provision of the UDCPR to utilize TDR.

36. The respondent no.1 has sought to justify the impugned Notification in its additional affidavit dated 12th August 2025. It states that the area of the respondent no.3, as it exists today, comprises of diverse regions, including areas that earlier formed part of the Panvel Municipal Council. The total area of the respondent no.3 is approximately 110.06 square kms. Prior to its expansion, development plans were prepared only for areas aggregating to 26.33 square kms, constituting about 23.92% of the total area. Consequently, in the remaining 76.08% of the respondent no.3 area, there was no sanctioned development plan, resulting in absence of TDR generation from such lands. The imbalance between demand and supply of TDR and its concentration in a limited segment also caused apprehensions of price cartelisation. It was in this backdrop that representations came to be received from the respondent no.5. The formulation of policies to address such situations lies within the domain of the State. While it continues to remain open to a developer to utilise TDR to the full extent permissible under Table 6(G) of Regulation 6.3, the amendment merely provides an additional option to carry out development to the extent of 75% of the TDR component by payment of premium. The balance 25% of the permissible TDR component is required to be procured by a developer from the open market or from landowners such as the petitioner. The said provision is transitory in nature and is intended to operate only until the final Development Plan for the respondent no.3 is sanctioned under Section 31(1) of the MRTP Act.

37. We may note that the scope of judicial review in matters concerning delegated legislation and town-planning policy is limited. Such measures carry a presumption of constitutionality, competence, and reasonableness. Unless the impugned action is shown to be manifestly arbitrary, ultra vires the parent statute, or violative of constitutional guarantees, the Court would not substitute its own judgment for that of the rule-making authority. It is well settled that, while examining the validity of delegated legislation, the Court does not sit in appeal over the policy underlying it. The scrutiny is confined to an examination of the provisions of the statute conferring the power to frame rules or regulations, read in the context of the object and purpose of the Act. So long as the delegate acts within the limits of the authority conferred and the regulations bear a rational nexus with the object sought to be achieved, the Court would not enquire into their wisdom or efficacy. The determination of policy and the choice of computation or measures for implementing it lie exclusively within the domain of the Legislature and its delegate.

38. Apart from the option of 75%, under the impugned Notification the developers likewise retain the liberty to utilize TDR to the full permissible extent under the existing framework. Regulation 6.3 of the UDCPR prescribes the permissible FSI and the extent to which TDR may be loaded on buildings. The impugned amendment does not alter the base FSI nor does it disturb the fundamental TDR framework. It does not change the character of the development plan. Out

of 3 FSI, the permissible TDR is 1.40. By the amendment, there is no change in the total buildable/permissible FSI. The statutory distinction between "TDR" and "additional FSI" remains unaltered, and no transgression of Section 22(m) or any other provision of the MRTP Act is made out. Only an option is given to the developer/owner to buy TDR to the extent of 1.40 or take partial TDR from the respondent no.3 against premium. It is just one more source of acquisition of TDR. The challenge founded on allegations of extinguishment of statutory choice or dilution of vested rights is misconceived and cannot be accepted.

39. We also find no merit in the contention that the impugned amendment renders TDR illusory or valueless. Neither the MRTP Act nor the UDCPR prescribes or guarantees any fixed value for TDR. The value of TDR is governed by market forces of demand and supply. A regulatory measure that incidentally impacts commercial expectations or market valuation cannot, by itself, be a ground to invalidate delegated legislation under Article 14 of the Constitution of India, particularly when the measure is aimed at correcting distortions in the planning framework. Similarly, the contention that such devaluation of land violates the petitioners' rights under Article 300A of the Constitution of India is devoid of merit.

40. We are also unable to accept the submission of Mr. Anturkar that the impugned amendment levies a "premium for utilisation of TDR" in the absence of statutory authority. The maximum permissible TDR of 1.40 remains

unaltered. What the impugned amendment introduces is an option in Column 5 permitting utilisation of up to 75% of the permissible TDR component by sourcing it from respondent no.3 upon payment of a premium. The utilisation of TDR continues to be governed by Table 6(G). In substance, it is only the "source" of TDR that has been modified, i.e, whether it is procured from the open market or obtained from respondent no.3. Section 2(9)(a) of the MRTP Act defines "development right" to mean the right to carry out development of land or building or both, and expressly includes TDR in the form of the right to utilise FSI. Further, Section 22(m) empowers the planning authority to regulate development, including the imposition of fees, charges, and premiums at such rates as may be fixed by the State Government or the planning authority. In our view, the amendment through the impugned Notice and the impugned Notification falls squarely within the statutory framework. The amendment does not impose a premium for utilisation of TDR, as sought to be contended. Nor does it partake the character of a tax within the meaning of Article 265 of the Constitution. Since we are of the view that the final impugned notification is valid, the challenge to the draft notification dated 15th March 2024 does not survive. We have already referred to the proposition of law in paragraph 31 of "*General Officer Commanding-In-Chief & Anr. v. Dr. Subhash Chandra Yadav & Anr.*". We may only note that the said judgment was dealing with rule 5-C of the Cantonment Fund Servants Rules, 1973 which provided for the transfer of the services of the employees of the Cantonment Boards from one post in

one Board to another post in another Board within the same state. In this context the Hon'ble Supreme Court held that for a rule to have a statutory effect, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. The rule was struck down for being beyond the rule-making power of the Central Government as contained in section 280 of the Cantonments Act which provided for power to make rules only for region in respect to which a particular Cantonment Board has jurisdiction. On facts the present case bears no similarity. We do not find that the impugned amendment is beyond the rule making powers as laid down under the MRTP Act.

41. The reliance by Mr. Anturkar in *Bharati Tele-ventures* is misplaced as the challenge was to a demand or levy of premium for installation of mobile tower or construction of a cabin on the rooftop of buildings was on the ground that there is no such power under Section 19-B read with Section 4 of the Telegraph Act. In this context, the Division Bench considering the sections 22(m) (as unamended) and 124A of the MRTP Act held that section 124A did not cover the subject matter of the notification as it related to those which can be charged for development or use of the land. In the case of *Amit Maru*, by an amendment to the DCR, the premium FSI to the extent of 33% of the TDR component was allowed optionally to be taken from the Corporation whilst keeping the overall cap of the TDR within limit. The challenge was on the

ground that under MRTP Act or under section 22(m), there is no power to levy fee or a premium. It is in this context, the Division Bench in paragraphs 79, 80 and 81 held that the levy of premium was ultra vires. This judgment was delivered on 10th June 2010. After the aforesaid judgment, the legislature amended the MRTP Act [Maharashtra Act XXIX of 2010 w.e.f. 21st September 2010]. Section 22(m) has now been amended to include the levy of fees, charges and premium. This amendment is with retrospective effect from 11th January 1967. Hence this judgment is of no assistance to the petitioners.

42. For all the aforesaid reasons, we hold that the impugned notice dated 15th March 2024 or the impugned Notification dated 7th October 2024 is neither ultra vires the provisions of the MRTP Act nor violative of Articles 14, 19, 265, or 300A of the Constitution of India. All the writ petitions, being Writ Petition No.6746 of 2024, Writ Petition (Stamp) No.17210 of 2024, Writ Petition No.12870 of 2025 and Writ Petition (Stamp) No.31132 of 2025, are accordingly dismissed. There shall be no order as to costs. In view thereof, Interim Application No.14169 of 2024 and Interim Application No.10964 of 2025 also stand disposed of as infructuous.

[GAUTAM A. ANKHAD, J.] **[CHIEF JUSTICE]**

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