



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

WRIT PETITION NO.1395 OF 2024

Bluestone Properties Private Limited,
a company incorporated under
Companies Act, 1956, having its
registered office at 15th Floor,
Nariman Bhavan, Nariman Point,
Mumbai – 400 021

... Petitioner

Versus

1. The Chief Engineer
(Development Plan)
Municipal Corporation of
Greater Mumbai, having office
at Municipal Head Officer, 5th
floor, Annexe Building,
Mahapalika Marg,
Mumbai – 400 001.
2. Municipal Corporation of
Greater Mumbai,
a statutory body, constituted
under the M.M.C. Act, 1888,
having office at Municipal
Head office, Mahapalika Marg,
Mumbai – 400 001 through its
Municipal Commissioner.
3. The Commissioner
Municipal Corporation of
Greater Mumbai
Chief Executive Officer of
Respondent No.2 having
office at Municipal Head

office, Mahapalika Marg,
Mumbai – 400 001

4. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032.

.... Respondents

Mr. Girish S. Godbole, Senior Advocate a/w Adv. Jai Kanade,
Adv. Ujwala Deshmukh i/b. Pradhan & Rao, for the petitioner.

Adv. Joel Carlos a/w Adv. Anjali Ghuge, for respondent Nos.1 to 3
BMC/MCGM.

Mr. Dipesh Siroya, AGP for respondent No.4-State.

**CORAM : M. S. KARNIK &
S. M. MODAK, JJ.**

DATE : 7th MAY 2026

JUDGMENT (PER M. S. KARNIK, J.) :

1. The petitioner has filed this writ petition invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a direction to the respondent No.1-Corporation to allow de-utilisation of TDR from Building Proposals File No.CE/2115/WS/AH.

2. The facts of the case in brief are that the petitioner is a company incorporated under the provisions of the Companies Act,

1956 engaged in the business of construction, marketing and trading in real estate. Plot Nos. 290 and 291 of the Bombay Suburban Development Scheme No.VII, Khar, admeasuring 1513.10 square metres of Village Danda, Khar (West), Mumbai (“Larger Land”, for short) was owned by Khar Milton Cooperative Society Limited (“the Society” for short). Between the period 1984-85, M/s. Ajay Builders obtained peaceful vacant possession of Plot No.290, on which a structure namely Virendra Villa stood, which came to be demolished and a building ‘Milton Tower’ came to be constructed on the said plot. A structure ‘Janu Kunj’ situated on Plot No.291 continued to be occupied by one Maganlal Chhaganlal Kapadia.

3. Vide Indenture of Lease dated 11/09/1986, M/s. Ajay Builders and the Society demised the leasehold rights in respect of Janu Kunj bungalow and the portion of the land under and appertaining to the said bungalow and forming a part of the Larger Land, admeasuring 436.86 square metres (“Suit Property”, for short), in favour of M/s. NCK Sons Corporation (“the Firm”, for short) and Tanuben Nemjibhai Kapadia. On 26/05/1995, the Firm

availed credit facilities from State Bank of Saurashtra for its business against mortgage of their leasehold rights in Janu Kunj Bungalow. However, the firm defaulted in repayment, leading to the Bank's taking possession of the said Bungalow under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2002 ("SARFAESI Rules", for short).

4. On 30/03/2000 vide Sale of Reversion between the Society, M/s. Ajay Builders and Vaghani Family Trust and Realty Investment Trust, the Society sold, transferred, assigned and assured unto the Trust by way of absolute sale its reversionary right, title and interest in the Suit Property. On 24/04/2005, the petitioner entered into an MOU with Tanuben Kapadia, Ramesh Kapadia (in their personal capacity as well as in their capacity as Partners of the Firm) and Ramesh Gowani, whereby the petitioner agreed to pay the entire dues and further acquire reversionary rights and Transferrable Development Rights ("TDR" for short) in respect of the Suit Property. As such, the petitioner paid off the dues to the tune of Rs.6 crores along with interest to the Bank.

5. On 10/08/2005, a Deed of Conveyance and Assignment was executed by the Bank in favour of the petitioner. Further on 01/10/2005, the petitioner obtained reversionary right, title and interest in the Suit Property from the Trusts, thus becoming the sole and exclusive owner of the suit property. On 04/10/2005, Articles of Agreement were executed between the Society, the Trusts and the petitioner, granting rights in favour of the petitioner to develop and utilise balance FSI of the Larger Land and TDR not exceeding 6000 square feet of the TDR rights of the Society in the Suit Property. On 02/02/2006, the petitioner received redevelopment approval (IOD) and TDR of 1178.68 square metres was duly loaded onto the suit property.

6. However, the occupant of Janu Kunj Bungalow refused to vacate the suit property. Due to prolonged litigation between the petitioner and the Occupant of the suit property, the petitioner could not proceed with redevelopment, having been unable to obtain vacant possession of the suit property. Ultimately in 2019, the Occupant vacated the suit property and the said Bungalow was demolished by the Corporation. Meanwhile, vide letter dated

23/05/2019, the Society terminated the Articles of Agreement dated 04/10/2005 executed in favour of the petitioner, terminating the development rights citing petitioners failure to obtain Commencement Certificate (CC) and Occupation Certificate (OC) within the agreed timeline. Vide order of the Tahsildar (Revenue), Office of the Collector of Mumbai Suburban dated 05/05/2022, the Larger Land admeasuring 1513.10 square metres was officially divided, allotting area admeasuring 889.83 square metres to the Society and the balance area admeasuring 623.27 square metres to the petitioner.

7. Mr. Girish S. Godbole, learned Senior Advocate for the petitioner submitted that due to termination of the Articles of Agreement, the project became unviable but the TDR to the extent of 1180 square metres already loaded on the suit property could not be used. Thus, vide letter dated 31/08/2023, the petitioner requested respondent No.1 to de-utilize the TDR from the property and for revalidation of the Development Rights Certificate ("DRC", for short) and also sought permission to utilise the said TDR on another property. As no response was forthcoming from

respondent No.1 despite a reminder letter dated 09/10/2023 having been sent, the petitioner has approached this Court.

8. We have heard Mr. Joel Carlos, learned counsel appearing for the respondent-Corporation who vehemently opposed the writ petition. It is submitted that once the TDR is loaded on the said land, the question of de-utilisation cannot arise. It is submitted that not only is the IOD issued but on 31/01/2007 the commencement certificate was also issued and therefore once DRC is utilised there is no provision in the statutory framework which allow such de-utilisation. It is submitted that therefore the Corporation by its letter dated 04/06/2021 had already brought this issue to the notice of the State Government requesting that appropriate directives to that effect may be issued. Inviting our attention to the affidavit-in-reply filed on behalf of the Corporation, Mr. Carlos submitted that in the present case the petitioner has requested to revalidate the original DRC issued in the name of Mr. Vyomesh M. Shah being the representative of M/s. Hiranandani Akruti JV so as to delete the entry regarding the utilisation of the subject TDR from the DRC.

9. It is next submitted that as per general terms and conditions for issue of DRC's it has been stated therein that, "The DRC shall be valid for a period of 5 years. However, the same will be revalidated for further period of 5 years subject to payment of prescribed revalidation fees. The DRC however, shall lapse expiry of 10 years period from the date of issue." The DRC was issued on 26/12/2005. The Corporation by its letter dated 04/06/2021 has already requested the State Government for appropriate directives in this regard. Mr. Carlos was therefore at pains to point out that the reliefs of the present nature, not envisaged by any of the provisions of the Development Control and Promotion Regulations ("DCPR", for short) ought not be granted.

10. Heard learned counsel. We have perused the memo of the writ petition, the annexures, affidavit-in-reply of the Corporation, the rejoinder and the additional affidavit. The petitioner claims to be the exclusive owner of the suit property by virtue of a registered deed of conveyance-cum-assignment dated 10/08/2005 duly executed by State Bank of Saurashtra in favour of the petitioner and by virtue of Indenture of Sale of Reversionary Rights dated

04/10/2005 executed by the Trust of the First Part, the Society of Second Part and the petitioner of the Third Part, under which the petitioner acquired reversionary right, title and interest in the suit property from the Trust.

11. We make it clear that we are not deciding the issue of title. Suffice it to observe that the building proposal on which the TDR was loaded had already been terminated/rescinded/cancelled, there is no valid proposal pending with the BMC for construction of a building in respect of which the said TDR purchased and owned by the petitioner can be utilised. It is not seriously disputed that the petitioner was the purchaser and has the TDR loaded on the aforesaid file. There is no other person, including the society, who has made the claim of the TDR.

12. It is a matter of record that under the commencement certificate dated 31/01/2007, the work never actually commenced and the said commencement certificate expired on 31/01/2008. There was a prolonged litigation between the parties and factually the TDR which was loaded was never utilised. The respondent

No.1 in the reply has admitted that IOD was duly sanctioned in favour of the petitioner on 02/02/2006. The building plan submitted at the time of such sanction explicitly reflected the area forming part of the suit property and upon which the petitioner proposed development. Furthermore, the TDR in question, purchased by the petitioner by virtue of a valid agreement to assign TDR dated 04/01/2006 is annexed as a part of the additional affidavit of the petitioner.

13. Under DRC, The TDR was issued in the name of the petitioner and was in fact loaded upon the suit property as per the sanctioned plans and permissions. The petitioner is thus a lawful owner of the TDR by virtue of a duly executed and valid agreement to assign TDR dated 04/01/2006. TDR is a development entitlement capable of lawful transfer. The question is whether in case where the TDR remains unutilised due to non commencement of the development, can it be treated as extinguished as contended by learned counsel for the Corporation. The Corporation itself by its letter dated 04/06/2021, acknowledged the existence of an administrative and regulatory

gap with respect to the issue at hand.

14. It is not the case of the Corporation that the TDR which was loaded was actually utilised. In fact because of the litigation, the development did not commence even though the commencement certificate was issued. It is the contention of the learned counsel for the respondent-Corporation that de-utilisation of TDR is impermissible due to absence of a specific provision in law. Thus, we find that there is no prohibition in law for de-utilisation of the TDR which has remained unutilised. The present is a case of complete abandonment of the project even before any actual development commenced and non-utilisation of the TDR.

15. We are of the opinion that merely because there is no provision in the DCPR for de-utilisation of the TDR cannot be a ground to deprive the petitioner the benefit of the TDR which he owns, on its remaining unutilised. Present is a case where the construction activity did not even commence and therefore we are of the view that though the TDR was loaded but it did not result in its utilisation. It is not that the petitioner, or the society or any person has benefited because it was simply loaded. There is no

reason to deprive the petitioner the benefit of unutilised TDR in the present facts.

16. It is not in dispute that the TDR which is subject matter of DRC has not been utilised by the petitioner or the society or any other developer.

17. The TDR thus purchased by the petitioner could not be utilised due to circumstances beyond the petitioner's control. The DRC certificate expressly records the petitioner as the holder of the TDR of 1180 square metres. No third party has any right, title or interest in the said TDR which was purchased by the petitioner at its own cost. The said TDR has not been utilised on the subject land or any other land. Therefore, in our opinion, the petitioner is entitled to de-utilisation of the said TDR of 1180 square metres under old DCPR 1991. To deny the petitioner relief would be arbitrary and unjustified.

18. The petitioner has filed an additional affidavit dated 02/04/2026 wherein it is stated thus :-

“3. I say that the Petitioner hereby agrees and undertakes to keep and shall always keep the Respondent No.2 indemnified in case any adverse claims are made by

third parties or if the Respondent No.2 suffers any loss due to grant of deutilisation and revalidation of Development Right Certificate bearing No.SRA/539/Const. (“DR Certificate”) to the extent of TDR of 1180 sq.meters in favour the Petitioner. For easy reference, the copy of the DR Certificate is annexed and marked as Exhibit “T”.

4. I further say and submit that the Petitioner will also execute an Indemnity Bond in favour Respondent No.2 corporation to the aforesaid effect if required.”

19. The statement made on affidavit is accepted as an undertaking to this Court. The petitioner shall execute an Indemnity Bond in favour of the respondent No.2-Corporation within a period of three weeks to the aforesaid effect.

20. We have therefore no hesitation in allowing the writ petition in terms of prayer clauses (b) and (c).

21. The aforesaid direction is of course subject to the general terms and conditions for issue of DR certificate. The writ petition is disposed of with no order as to costs.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)