IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3816 OF 2004

Mr. Jayant Maniklal Lunawat]
Address at 1206/B-22, Shivaji Nagar,]
Pune : 411 004] .... Petitioner

Versus

1. Pune Municipal Corporation]
A Statutory Corporation,]
Incorporated under the Provisional]
Municipal Corporation Act having its]
at Shivaji Nagar, Pune]

2. The Commissioner]
Pune Municipal Corporation,]
Incorporated under the provisions]
of Bombay Provisional Municipal]
Corporation Act having its office at]
Shivaji Nagar, Pune]

3. The City Engineer]
Pune Municipal Corporation]
A Statutory Corporation]
Incorporated under the provisions of]
Bombay Provisional Municipal Corporation]
Act having its office at Shivajinagar, Pune]

4. The Central Railways]
Having its office at CSTM Compound]
Dr. D.N. Nagar, Fort, Mumbai-400 001]
And Divisional Office at Pune Railway]
Station, Sassoon Road, Camp, Pune-411 001]

5. State of Maharashtra]
Through the Secretary, Department of]
Irrigation, having its office at Mantralaya,]
Mumbai-400 032.]

6. Maharashtra Krishna Valley Development]
Corporation, Sinchan Bhavan, Barne Road,]
Pune-411 011.]... Respondents

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Mr. Naushad Engineer, Senior Advocate a/w Mr. Sharad Bansal Mr. Krishkumar A. Jain and Mr. Kalpesh Bandre i/b Ritesh K. Jain for the Petitioner.

Mr. Abhijit P. Kulkarni a/w Ms. Sweta Shah & Mr. Abhishek Roy for Respondent No.1 to 3-P.M.C.

Ms. Nisha Valani for Respondent No.4.

Mr. A.I. Patel, Addl. G.P. a/w Ms. D.S. Deshmukh, A.G.P. for Respondent No.5-State.

Mr. Nitin Gaware Patil a/w Mr. Shivkumar S. Jangwad and Mr. Yogesh Bhandarkar (Asstt. Engineer Grade-I, Khadakwasla Cannel Division Sub-2) for Respondent No.6.

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CORAM: M.S. KARNIK &
SANDESH D. PATIL, JJ.

RESERVED ON : 3rd SEPTEMBER 2026
PRONOUNCED ON : 16th SEPTEMBER 2026

JUDGMENT (Per Sandesh D. Patil, J.) :

1. By the present writ petition, the Petitioner is challenging the order passed by Respondent No.2, i.e. Municipal Commissioner of the Pune Municipal Corporation, dated 8th July 2005, the communication letter dated 9th December, 2005 issued by the Respondent No.3, i.e. City Engineer, Pune Municipal Corporation cancelling the 11 Development Rights Certificates (DRCs), aggregating to 3,690.01 sq. mtrs. The Petitioner is also seeking issuance of DRCs for the deficit area of 220 sq. mtrs. (hereinafter referred to as ("**the deficit area**")

2. The case of the Petitioner is that on 16th September, 2000, measurement was carried out in respect of the property in question bearing survey number 6A/1 at Bopodi, Pune (hereinafter referred to as **"the subject plot"**). The Respondent No. 1 (hereinafter referred to as the PMC) issued a notice to the predecessor in title of the Petitioner under Section 77 of the Bombay Provisional Municipal Corporation Act for the purpose of acquisition of the subject plot for the purpose of construction of the Sewage Treatment Plant

(hereinafter referred as **"STP"**). Pursuant to the said notice the Respondents were approached and the land was offered on the condition that TDR in respect of 13,117 sq. mtrs. would be made available to the Petitioner. In accordance to the agreement reached between the parties, the Respondent No. 1 on 17th October, 2000 issued two possession receipts, both dated 17th October, 2000, for the area admeasuring about 13,117 sq.mtrs. and 220 sq.mtrs, respectively, aggregating to 13,337 sq.mtrs. The Respondent No. 1 on 16th November, 2000, simultaneous to execution of the possession receipt, issued 27 DRCs in favour of the Petitioner, bearing serial numbers 2667 to serial number 2693, aggregating to 13,117 sq. mtrs.

3. Respondent No.1 addressed a letter to the Tashildar to include its name in the 7/12 extract to the extent of 13,117 sq. mtrs and 220 sq. mtrs., respectively. The name of the Respondent no. 1 was accordingly reflected in the 7/12 extract of the plot admeasuring about 13,117 sq. mtrs and the plot admeasuring about 220 sq. mtrs. The Petitioner learnt that the Corporation had issued an internal communication/circular directing withholding of use of TDR in

respect of 11 DRCs out of the total 27 DRCs. The Petitioner contended that till that juncture no notice was issued to the Petitioner. However, since the Petitioner became aware of the same, the Petitioner immediately, through his advocate, addressed a letter to respondent No. 1 calling upon Respondent No. 1 to withdraw the said communication and to permit utilization of the TDR covered under the 11 DRCs as lawfully granted. The notice was sent by the Petitioner on 7/4/2003. The Petitioner further addressed a letter to the corporation on 18th September, 2003 stating that the corporation could not insist on construction of the retention wall by the Petitioner as a condition for allowing the use of balance 11 DRCs and clarified that he was under no obligation to construct a retention wall and that his obligation was limited to handing over the property with fencing, which had already been done by him. The Land Acquisition Department of the PMC in its communication dated 23rd October, 2003 to the Additional Municipal Commissioner of PMC, expressly acknowledged that the area of the land of which possession has been taken on 17th October, 2000 for the Sewage Treatment Plant was 13,117 sq. mtrs. The Learned Counsel for the Petitioner submitted that the Petitioner, for the reasons that the 11 DRCs were

withheld, filed a Present Writ Petition on 18th April, 2004.

4. It is the contention of the Petitioner that thereafter the City Survey Officer carried out the survey dated 06th August, 2004 as per the application of the Petitioner, wherein it was observed that the wall constructed by the Respondent No. 1 does not coincide with the subject plot acquired by PMC from the Petitioner and that the area falling outside the wall does not form part of the riverbed. The Municipal Commissioner of the Respondent No. 1 on 08th July, 2005 passed an order whereby a decision was taken to cancel the 11 DRCs, admeasuring about 3690.01 sq.m., granted to the Petitioner in lieu of surrender of his land. The Respondent No. 1, according to the Petitioner, further issued a letter communication on 09th December, 2005, mentioning that the 11 DRCs bearing numbers 2667, 2676, 2677, 2680, 2686, 2687, 2688, 2689, 2691, and 2692, 2693, admeasuring 3,690.01 sq.m., stood cancelled. It is the contention of the Petitioner that no reasons were given in the said communication dated 09th December, 2005 for cancellation of the said DRCs and no hearing was given or any explanation was sought from the Petitioner before issuance of the said communication.

5. It is the case of the Petitioner that on 18th May, 2006, the Tahsildar had submitted a report stating that the subject plot is 1 hectare 37 acres. The same coincides with the original survey record of Survey No. 6A/1 and its boundaries. It was clarified that no portion of the land was alluvial land. On 28th January, 2016, the Respondent No. 1 issued a notification modifying the Development Control Regulations of 1997, including the provision on the utilization of TDR. Regulation 8(a) of the notification stated that the utilization of TDR shall be governed by the amended Development Control Rights. On 02nd May, 2016, the Respondent No. 1 issued an addendum to the notification dated 28th January, 2016, holding that TDR could be utilized as per the old regime for a period of one year.

6. The Division Bench of this Court had heard this petition at length and ultimately, on 01st August, 2023, allowed the said Writ Petition by quashing and setting aside the impugned order dated 08th July, 2005 and 09th December, 2005. Being aggrieved and dissatisfied with the judgment and order passed by this Court, both the Petitioner and Respondent No. 1 filed Special Leave Petitions before the Hon'ble Supreme Court challenging the order dated 01st August,

2023. The Hon'ble Supreme Court, on 22nd November, 2024, appointed a Court Commissioner to conduct a fresh measurement of the subject plot to re-verify the exact measurements at the site and constituted a high-power committee comprising of the Court Commissioner, City Survey Officer, Pune, Engineer of the PMC, and a representative of the Petitioner for the purpose of fresh measurement. In pursuance to this order passed on 07th December, 2024, the Learned Court Commissioner carried out the survey and submitted his report before the Hon'ble Supreme Court on 17th January, 2025. The Petitioner had filed his objection to the said Commissioner's report. After considering the Commissioner's report and hearing the parties at length, on 17th February, 2025, the Supreme Court passed an order and noted that, as per the Learned Commissioner's report, an area of 9,948 sq. mtrs. had been utilised by Respondent No. 1. It further noted that there was a dispute about two strips of land situated on the north and north-west side of the plot. It was observed during the course of the inspection by the Court Commissioner that the Railway authorities had claimed that the disputed land belonged to them but failed to produce any documentary evidence in this regard. The Order also noted that the

Irrigation Department, on the other hand, claimed the land to be a river bed. The Supreme Court observed that, since all these questions were not considered by the High Court in its order dated 01st August, 2023, the matter required reconsideration. The Supreme Court, therefore, with the aforesaid observation, remanded the matter back to this Court.

7. After the matter was remanded back to this court, the learned counsel appearing for the State had submitted that it was the Maharashtra Krishna Valley Development Corporation who should be heard in this matter. Therefore, at his instance, the Petitioner was directed to amend the petition to implead the Maharashtra Krishna Valley Development Corporation as party No. 6. Notice was given to the learned counsel appearing for the Respondent No. 6. The learned counsel for the Respondent No. 6 appeared before this court pursuant to the notice. The learned counsel appearing for the Respondent No. 6 stated that said Respondent did not assert any proprietary rights, title, or ownership claim over the portion of the subject land. The learned counsel appearing for Respondent No.6 stated that Respondent No.6 has nothing to say in this petition and

that appropriate orders may be passed.

8. The learned counsel appearing for Respondent No.4-Central Railways, Miss Nisha Valani, stated that the railway authorities do not have any claim over the portion of land belonging to the Petitioner and that she has filed an affidavit to that effect. Thus, after the remand, both the Maharashtra Krishna Valley Development Corporation (Respondent No. – 6) as well as the railways (Respondent No. -4), who had contended before the Court Commissioner appointed by the Hon'ble Supreme Court that they had got certain rights in the property, stated before us that they do not have any rights over the said property. The learned counsel appearing for the State Government, the Addl. GP, submitted that even the State government does not claim to have any right, title, or interest over the property in question and that it is the Respondent No. 1, the municipal corporation, who should deal with the contentions raised by the Petitioner in the petition.

SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR PARTIES

9. The learned counsel appearing for the Petitioner argued that the cancellation of the 11 DRCs is *ex facie* arbitrary, illegal, unlawful, and *non est*. He contended that the DRCs were issued to the Petitioner towards compensation for the land that was surrendered by the Petitioner to the corporation, and that the corporation, under no circumstances, could take away that compensation after it was already paid. Such an act, in his submission, amounts to a gross violation of the Petitioner's right under Article 300A of the Constitution of India. The Petitioner was not even given an opportunity to contest the claim and put his stance before the Respondent No. 1. The DRCs were cancelled unilaterally and without observing the principles of natural justice. He submitted that there is no provision in the Municipal Corporation Act that allows Municipal Commissioner to cancel the DRCs. In the absence of such a provision, the act of cancellation of the DRCs, is ex facie illegal.

10. The learned counsel for the Petitioner further contended that he is entitled to DRCs in respect of the balance 220 sq. mtrs. He

stated that the PMC had issued DRCs only in respect of an area admeasuring about 13,117 sq. mtrs., and that Respondent No. 1 had not paid the DRC to the extent of 220 sq m. He stated that, since the possession of the land which was surrendered included the area of land admeasuring about 220 sq. mtrs. and that the possession receipt was issued to the extent of 220 sq.mtrs also, the Petitioner is entitled to the deficit area of DRCs of 220 sq. mtrs. He submitted that the Petitioner had surrendered the land in favor of Respondent No. 1 and that the right to receive compensation in the form of DRCs got crystallized in favor of the Petitioner on 17th October 2000, the day on which the land was surrendered. The DRCs were issued by the PMC in favor of the Petitioner on 16th November, 2000. Respondent No. 1 cancelled 11 DRCs in 2004-2005. The cancellation of such DRCs was arbitrary, illegal, and unlawful and if it was not for the cancellation, the Petitioner would have utilized the DRCs as per the regime that prevailed in the year 2004- 2005. Therefore, once the cancellation of 11 DRCs is found to be illegal, the Petitioner ought to be permitted to utilize them as per the regime prevailing in 2004-2005. In order to substantiate his contention, he placed reliance on the judgment of ***Brihanmumbai Municipal Corporation vs.Vijay***

Nagar Apartment, reported in 2026 SCC Online SC 904.

11. The Learned Counsel Mr. Kulkarni appearing for Respondent 1 to 3 – PMC, submitted that the petition was not maintainable. He argued that the possession of the property was taken on 17th November 2000, DRCs were issued thereafter. The contentions of the Petitioner is that the petitioner was entitled to the DRCs of the entire area of land is contested by the Respondent No. 1. He submitted that it was the consistent stand of the PMC that the initial possession receipt and the subsequent DRCs were issued on the basis of the area reflected in the 7/12 extract without actual physical measurement of the area. He relied upon the demarcation annexed to the petition, which is at page no. 146 of the petition. He submitted that upon subsequent physical verification and Plain Table Survey, the PMC found that the area which was actually taken into possession and utilised for the STP was substantially lesser, than the entire area of survey numbers on the basis of which the DRCs had originally been generated. It was recorded in the PMCs Plain Table Survey carried out in the year 2004 that the actual area utilised for the STP was 9, 218.96 sq. mtrs., which was inside the barbed wire compound and

the said survey further recorded that the remaining area fell outside the compound. The said area was towards the river bed and was not in actual and physical possession of the Respondent No. 1. He drew our attention to the possession receipt to argue that it showed that the possession has been taken for construction of the STP and thus the area which actually came in possession has been utilised for the construction of the STP. He stated that the area which was actually utilised for the construction of the STP was 9,218.96 sq. mtrs. only. He relied upon the Ld. Court Commissioner's report dated 17th January, 2025, which was prepared pursuant to the directions of the Hon'ble Supreme Court in its order dated 22nd November, 2024 to buttress his contention. He argued that the Ld. Court Commissioner had visited the site, along with the person/officers mentioned in the order dated 18th December, 2024 passed by the Hon'ble Supreme Court, and upon verification of the boundaries physically, prepared and placed on record a detailed report. The Court Commissioner had further identified another parcel of land admeasuring about 671 sq. mtrs. which was, though outside the compound wall, was also found to be in possession of the Municipal Corporation and is stated to be owned by the Petitioner. He contended that thus, according to the

measurements carried out by the learned court commissioner, the total area of the Petitioner's land presently found to be utilised, and possessed by PMC is 9,948 sq. mtrs. only. He argued that since the Petitioner was not happy with the report of the Learned Court Commissioner and therefore filed objections, which are seen from the record of the court.

12. The learned counsel appearing for the Respondent – Corporation invited our attention to the objections which were raised by the Petitioner to the Court Commissioner's report. The sum and substance of the objection, was that the Corporation had enclosed only that part of the land which was acquired by it, leaving a portion of the land outside the boundary wall. He contended that this alone would make the Petitioner unworthy of compensation. An objection was taken to the report of the Court Commissioner stating that it erroneously excluded an area of 770 sq. mtrs. in their measurement report, despite being part of the acquired land. These were, in a nutshell, the objections which were raised by the learned counsel appearing for the Petitioner.

13. After inviting our attention to all these objections, the learned counsel appearing for the Corporation argued that this itself shows that the entire land was not in possession of the Municipal Corporation. He stated that, while setting aside the earlier judgment and order passed by this court, the Hon'ble Supreme Court directed fresh consideration of all the issues after impleading of the railway authorities and the State of Maharashtra through the Irrigation Department. This direction itself demonstrates that it was on the basis of the Court Commissioner's report and the claim put forth by the railway authorities as well as the irrigation authorities that the case was remanded back for reconsideration. It was argued that the Court Commissioner's report dated 17th January, 2025 constituted a significant piece of evidence regarding actual physical possession and utilization of the land to find out if there was any difference between the area mentioned in the possession receipts and the actual area which was in possession of the Corporation. He submitted that the Municipal Commissioner rightly suspended the DCRs. He submitted that the petition was never challenged initially for cancellation of DCRs and that the petition was amended subsequently. He submitted that the possession receipt were given without physical

measurements and thus reliance placed on the possession receipts is totally misplaced. He argued that the burden cannot be discharged by the Petitioner merely by producing possession receipts and upon relying upon the earlier measurement, which was subsequently found to require re-verification. He argued that the subordinate officials of the Corporation had committed mistakes in issuing possession receipts, and thereafter, upon satisfaction of his conscience, the Municipal Corporation Commissioner, who was a senior IAS officer, passed the final order cancelling the unutilized DR14Cs. He argued that the entire land in the survey number falls in the blue line, and the original owner therefore had no chance to develop the said land, as it was in a no-development zone.

14. Mr. Kulkarni, the learned Counsel appearing for PMC argued that the Commissioner's report assumes significant importance in these proceedings, and it has to be considered while passing appropriate orders. He further argued that there cannot be any estoppel against statute. An administrative act contrary to the statutory scheme cannot create a vested right, nor can it operate to defeat or override an express provision of law. He thereafter relied

upon Rule N. 2.4.12 of the applicable Development Control Rules and Regulation 11.2.4 (b) of the UDCPR in order to contend that the DRCs were issued only after the reserved land is surrendered to the Corporation free of cost and free of encumbrances after the owner or lessee had leveled the land to the surrounding ground level, and he has constructed a 1.5 m high compound wall with a gate at the cost of the owner and to the satisfaction of the Commissioner. He further submitted that the Corporation was required to incur an expenditure of Rs. 16,80,025/- for construction of the compound wall as the Petitioner merely handed over the land with barbed - wire fencing. Thus, it was for the Petitioner to have constructed the compound wall as per the Development Control Rules as well as the UDCPR in order to be entitled to the balance DRCs. The Corporation contended that the Petitioner has already utilized 21 DRCs for 9846.99 sq. mtrs. as of 2022. The Corporation submitted that the PMC is in possession of 9,948 sq. mtrs. of the land and thus the Petitioner can be granted DRCs for the balance of 101.01. sq. mtrs. (9948 – 9846.99 = 101.01). In the end, he submitted that the writ jurisdiction under Article 226 ought not be exercised in order to compel the PMC to issue or recognize the DRCs in respect of the area whose physical

possession, legal character, acquisition, status, and eligibility for TDR remained disputed. He prayed for dismissal of the petition.

REASONING AND ANALYSIS

15. We have heard the learned Senior Counsel Mr. Engineer appearing for the Petitioner, Mr. Kulkarni, the learned counsel appearing for the Pune Municipal Corporation, Mr. Patel, the learned Additional Government Pleader for the State of Maharashtra, Ms. Nisha Valani, the learned counsel appearing for the Railways, and Mr. Nitin Ghaware Patil, the learned counsel appearing for the Maharashtra Krishna Valley Development Corporation.

16. We have perused the documents on record. We have gone through the judgment and Order passed by the Hon'ble Supreme Court dated 17th February, 2025, whereby the matter was remanded back to this court. Before proceeding forward, we must note that the Hon'ble Supreme Court had specifically observed that effective adjudication would not be possible unless the Railway authorities and the State of Maharashtra through the irrigation department are

accorded a reasonable opportunity to produce their case before the High Court.

17. In compliance to that order, the State of Maharashtra was heard. The Railway authorities were also heard. The learned Counsel, Ms. Valani, appearing for the Railways, had filed an affidavit stating that the Central Railways had got no concern with the subject property. The learned Counsel appearing for the State of Maharashtra, Addl. Government Pleader Mr. Patel, contended that even the irrigation department does not have any claim over the property in question and that it would be in the fitness of things if Maharashtra Krishna Valley Development Corporation is made a party to this petition. Accordingly, we directed the Petitioner to make Maharashtra Krishna Valley Development Corporation a party to the petition. The notices were issued to the said respondent. Mr. Nitin Ghaware Patil, learned counsel, appeared on behalf of the said added Respondent made a submission that he had got no claim to the property in question and that he was not even objecting that the property lay within the blue line. He contended that this was a dispute purely between the Petitioner and the Respondent No. 1, i.e.

the Pune Municipal Corporation, and that Respondent No.6 does not claim any right, title, or interest over the property in question.

18. This court *vide* judgment and order dated 01/8/2023, Coram : (Sunil B. Shukre and Rajesh S. Patil, JJ) had allowed the petition. Both the parties were not happy with the judgment and therefore, the Petitioner as well as the Respondents 1 to 3, had preferred SLPs before the Hon'ble Supreme Court. While hearing the SLP, the Supreme Court felt that, since the controversy was regarding the measurement of the land, hence it was necessary to appoint a Court Commissioner to resolve the factual controversy. Accordingly, Mr. Shreeyash U. Lalit, learned advocate of the Supreme Court, was appointed as the Court Commissioner *vide* order dated 22nd November 2024. The learned Court Commissioner submitted his report, dated 17th January, 2025 to the Hon'ble Supreme Court. The observations of the Supreme Court in paragraph numbers 10 to 13 of order dated 17th February, 2025 are very important to decide the issue in controversy, and the same are quoted as under:

> *"10. It emerges from the detailed survey/site plan prepared by the learned Court Commissioner that the land shown in pink*

colour, within the compound wall, is in physical possession of PMC. The area of that plot is 9,277 sq. mtrs. According to learned Court Commissioner, there is another parcel of land measuring 671 sq. mtrs., which is, though not included within the compound wall, also under the possession of the PMC. That land is also owned by the cross-appellant - land owner. In this manner, according to learned Court Commissioner, land measuring 9,948/- sq. mtrs. of the cross-appellant - land owner has been utilized by the PMC.

11. There is, however, a serious dispute between the parties in respect of a strip of land, which falls within the Railway Bridge and the Compound Wall. Another part of the land in dispute is also a strip on the North-West side where four manholes are stated to be in existence. It is pointed out by learned Court Commissioner that during the course of inspection by him, Railway Authorities came forward and raised their claim over this disputed land, however, no documentary proof in support of the ownership rights was produced. Similarly, officers of the Irrigation Department of the Government of Maharashtra claimed that the aforesaid land is, in fact, a riverbed. If that is so, we doubt whether such land can 4 be utilized for any public purpose as it might be required to be maintained as an open area being the riverbed.

12. Since none of these questions find answers in the impugned order of the High Court, for the reason that the Railway or State of Maharashtra through its Irrigation Department were not party respondents, we are of the view that the matter requires reconsideration by the High Court.

13. It goes without saying that the effective adjudication will not be possible unless the Railway Authorities and the State of Maharashtra through Irrigation Department are accorded a reasonable opportunity to produce their records before the High Court."

19. The Learned Court Commissioner had given a report that about 9,948 sq. mtrs. of the land has been utilized by the Pune Municipal Corporation. However, according to the Supreme Court, there was a serious dispute between the parties in respect of strip of land which fell within the railway bridge and the compound wall. There was also a dispute regarding the strip on the North-West side where four manholes were stated to be in existence. The Court relied upon the report of the Court Commissioner that during the inspection, the railway authorities came forward and raised their claim over this disputed land. However, no documentary proof in support of ownership rights was produced. Similarly, officers of the Irrigation Department of the Government of Maharashtra claimed that the aforesaid land was in fact a riverbed. The Supreme Court, in light of all these observations, felt that it was necessary to hear the Irrigation Department as well as the Railway Autho21rities.

20. It is very significant to note that the Irrigation Department as well as the Railway Department at one stage raised a claim over the strip of land, which is the subject matter of this dispute. After they were made parties pursuant to the order passed by the Hon'ble Supreme Court, they filed an affidavit stating that they do not claim to have any right over the property. We are also surprised by the submission made by Mr. Patel, learned Additional Government Pleader, who now stated that it is not the Irrigation Department, but it is the Krishna Valley Development Corporation, which is a necessary party. It is pertinent to note that this submission was never made when the objection was recorded before the Court Commissioner appointed by the Hon'ble Supreme Court.

21. Turning to the issue in hand, the land in question was acquired by the PMC by an agreement and ultimately on 17th October, 2000, two possession receipts both dated 17 October, 2000, of area admeasuring at about 13,117 sq. mtrs. and 220 sq. mtrs., both aggregating to 13,337 sq. mtrs. were issued. The PMC does not deny issuing such possession receipts. The only contention of the PMC is that merely issuance of the possession receipt would not mean that

the possession of that said land was taken. Another contention of the Respondent is that the Respondent had constructed a boundary only to the extent of 9,948 sq. mtrs. and the same was in possession and utilization of the Sewage Treatment Plant. The contention of the Respondent was that possession of a lesser area was taken. Although possession receipt was issued in respect of the land admeasuring at about 13,337 sq. mtrs. Factually the possession was of much lesser area. In the entire argument of the learned counsel appearing for PMC, who has also tendered written submission, it is not pointed out as to why the area of 13,337 sq. mtrs. was entered by the Respondent Nos. 1 to 3 in the 7/12 extract of the said property. The Respondent PMC not only issued the possession letter to the extent of 13,337 sq. mtrs., but also issued DRCs on 16/11/2000 in favor of the Petitioner bearing serial number 2667 to 2693 (27 DRCs) aggregating to 13,117 sq. mtrs. Thereafter, we have also perused that there is an internal note of the Respondent no. 1 to 3 dated 16th November, 2000 which clearly stated that the total area under reservation for STP was 21,850 sq. mtrs. and out of this possession of area admeasuring about 13,117 sq. mtrs. had already been taken. Not only that, the Respondent no. 3, had addressed a letter to

Tahsildar to include the name of the corporation in the 7/12 extract to the extent of 13,117 sq. mtrs. and 220 sq. mtrs., aggregating to 13,337 sq. mtrs. This letter was written on 2nd November, 2001. Accordingly, the name of the municipal corporation was reflected in the 7/12 extract of the plots admeasuring about 13,117 sq. mtrs. and 220 sq. mtrs., aggregating to 13,337 sq. mtrs.

22. This being the position, it can hardly be heard from the Corporation that the area which was in fact surrendered by the Petitioner was far less than what was mentioned in the possession receipts. One can understand that the possession receipts were issued by inadvertence or there were typographical or arithmetical mistakes while issuing the said possession receipts. But the act of the corporation in asking the Tahsildar to mutate their names to the extent of 13,337 sq. mtrs. in respect of the 7/12 extract means that Petitioner's land was acquired. It is nobody's case that after 17th October, 2000, the Petitioner was using the land in question. The Petitioner had surrendered the possession of the land to the Corporation on 17th October, 2000, and thereafter the Petitioner was issued 27 DRCs. Not only that, the Petitioner utilised the DRCs till

the time when the DRCs in question were suspended by the municipal corporation. All this happened in the year 2003.

23. It is further pertinent to note that at the time of surrendering the possession of the land and at the time when the names of the Respondent corporation were entered into the 7/12 extract of the property in question, and further at the time when the measurement was carried out of the property in question, the Respondent corporation never raised a contention that the land to the extent of 13,337 sq. mtrs. was not acquired. As a matter of fact, the City Survey Officer had carried out measurement of the land in presence of the representatives of the Respondent no. 1 to 3 on 16th September, 2000, wherein it was stated that as per the measurement, the total area of the plot bearing survey number 6A/1 was 13,880 sq. mtrs. The Petitioner, however, is not raising his claim to the extent of 13,880 sq. mtrs., but is limiting his claim only to the extent of the area ad measuring at about 13,337 sq. mtrs.

24. The Land Acquisition Department of the corporation, in the

communication dated 23rd October, 2003, which is on record and annexed to the petition, addressed to the Additional Municipal Commissioner of the Respondent corporation, expressly acknowledged that the area of the land whose possession had been taken for the STP was 13,117 sq. mtrs. and not 9218.96 sq. mtrs. as is now sought to be contended by Respondent no. 1 to 3. The Assistant Engineer of the corporation, in an internal communication addressed to the Deputy Commissioner on 19th November 2005, acknowledged that the area of the Petitioner's land of which possession has been taken was 13,117 sq. mtrs. as per the possession receipt. It is further recorded that this possession was in accordance with the joint measurement plan prepared by the PMC and DILR Office, Pune. The Assistant Engineer of the Respondent PMC also confirmed that he has checked all the measurements of the land acquired, and it tallied with the area mentioned in the 7/12 extract. This crucial document of the officer of the Respondent no. 1 to 3, who happens to be a very responsible officer, cannot be ignored in any circumstances. Interestingly enough, the corporation has offered no explanation to this document. The Tahsildar in its report dated 18th May 2006 has also confirmed that the area of survey No. 6A/1 is

13,700 sq. mtrs.

25. The reliance of the Counsel for the Respondent no. 1 to 3 on the report of the Commissioner for the purpose of contending that there was an area outside the boundary wall and therefore the entire area of 13,337 sq. mtrs. was not acquired by the corporation, without any materials on record to substantiate the claim, is totally a figment of imagination. The measurement of the court commissioner was carried out in the year 2024. The property in question was acquired on 16th September, 2000. Even going by the report of the commissioner as it stands, it is clear that all that the court commissioner had contended that there was an area of the land which was outside the boundary which was constructed by the Petitioner. The area outside the boundary cannot, in any circumstances, be considered to be the area of the Petitioner.

26. We had put a specific question to the learned counsel appearing for the Petitioner as to whether he claims any area outside the boundary wall to which, on instructions, it is categorically stated that the position was that the land was already acquired in the year

2000 and that he had delivered the possession of the same to the corporation. Therefore, he is not claiming any right over the land which is outside the boundary of the STP and which was acquired by the Corporation. Coupled with this fact, it was the irrigation department of the State of Maharashtra and the Railways department which had claimed their right in respect of the said property. It was never the Petitioner who had claimed right over the said property. Today, also the Petitioner admits that he has got no right over the property.

27. This being the position, it would be inequitable to deny the rights which the Petitioner has got to utilize the DRCs. The Petitioner had surrendered the property in question. There was admittedly no acquisition under the Land Acquisition Act, and that the acquisition was by agreement. Accordingly, 27 DRCs were issued in favor of the Petitioner and that land admeasuring at about 13,337 sq. mtrs. was acquired by the corporation. In view of the said fact, it was for the corporation, who had validly acquired the land and issued possession receipt on 17th October, 2000, to ensure that the area of the land which was acquired coincides with the possession notice. As a matter

of fact, the corporation is estopped today from contending that the possession receipts were bad in law and that they were not in conformity with the actual area which was handed over to the corporation. The act of the corporation, as noted above, coupled with the measurements which were carried out by the officers of the corporation itself, clearly shows that the total area of land which was handed over to the corporation was 1337 sq. mtrs.

28. In this premise, it would be equitable, just, fair and proper to quash and set aside the order of the Municipal Commissioner whereby the 11 DRCs were cancelled by the municipal corporation. As far as the issuance of DRCs to the extent of 220 sq. mtrs., we must add at this junction that the corporation has utilized the said area and the possession which was handed over to the corporation included the area admeasuring at about 220 sq. mtrs. The DRC was however issued only to the extent of 13,117 sq. mtrs. It would therefore be appropriate for the Petitioner to prefer a fresh application to the corporation for the purpose of getting DRCs to the extent of 220 sq. mtrs.

29. The next question which falls for consideration is that since the DRCs are cancelled what would be the position of the DRCs after they are restored. The learned counsel appearing for the Corporation stated that assuming the order is passed restoring the 11 DRCs which were cancelled, it would be appropriate to direct the Petitioner to use the said DRCs as per rules prevailing on the day on which the DRCs are restored. The learned counsel appearing for the Petitioner however strongly objected for the same. The learned counsel for the Petitioner contended that if the DRCs were issued in the year 2000 and were cancelled in the year 2005 then the DRCs should be permitted to be used as per the regime of 2000 or at the highest 2005 and not as per the current regime. He pointed out that it was without any mistake of the Petitioner that the DRCs were cancelled and that if this court comes to a conclusion that the corporation was wrong in cancelling the said DRCs then the equitable consideration would follow. The DRCs should be permitted to be used as per the regime which stood at the time of its cancellation.

30. The Hon'ble Supreme Court in the Judgment of **Brihanmumbai Municipal Corporation and Others Vs. Vijay Nagar Apartments and**

Others reported in ***2026 SCC online SC 904*** in paragraph number 17.6 and 37 has observed as under -

> *17.6. Regarding the application of DCPR, 2034, they have argued that right to receive additional amenity TDR under Section 126 of the MRTP Act accrued in favour of the Landowner way back in 2002 when the DCR, 1991 was applicable and as such, it cannot be said that coming into force of the DCPR, 2034 had any effect on the rights of the Landowner which had already crystallized. Reliance is again placed on the judgment in Kukreja Construction (supra).*
>
> *37. Most recently, the claim for additional TDR against construction of amenity on land surrendered by the landowner under Section 126(1)(b) of the MRTP Act was the subject matter of dispute before this Court in Kukreja Construction (supra). This round of litigation was initiated after the judgment of this Court in Godrej and Boyce I (supra). Several writ petitions were filed before the High Court by landowners, claiming grant of 100% additional TDR in respect of the amenity developed on the land surrendered by them under Section 126(1)(b) of the MRTP Act. Most of the writ petitions were dismissed on the ground of delay and laches, while in some cases the High Court allowed the claim. All those judgments of the High Court were challenged, either by the Corporation or by the respective landowners in a batch of special leave petitions which were disposed of by this Court in a common judgment. By this time, the DCR, 1991, specifically Regulation 34 thereof, was amended by the State, issuing a notification dated 16.11.2016, which amended the mechanism for*

grant of additional TDR against construction or development of amenity. The Corporation endeavoured to prove that the said amendment could be made operable retrospectively and sought to apply it to the case of the landowners in that case, it was also contended that the judgment in Godrej & Boyce I (supra) was in fact per incuriam, since it did not notice Regulations 33 of the DCR, 1991. Ultimately, this Court analysed various judgments and held that delay and laches could never be the ground to defeat the claim for additional TDR against construction of an amenity by the landowner on the land surrendered. The Corporation was directed to consider the case of the landowners in light of the judgment of this Court in Godrej & Boyce I (supra) and that it shall release the balance of FSI/TDR within a period of three months from the date of the judgment. Relevant portion of the said judgment is quoted herein for reference:

> *"69. In all these cases, we find that the writ petitioners/appellants herein had surrendered the reserved land and had also been granted 25% TDR and a representation for additional TDR was made after the judgment of this Court in Godrej & Boyce (1) [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] and in some cases, the representation was made early but in other cases, the representations were made after some time. It is also noted in Civil Appeal No. 1748 of 2015, in Natvar Parikh [Municipal Corpn. of Greater Mumbai v. Natvar Parikh & Co. (P) Ltd., (2024) 14 SCC 644], this Court had stated that the decision in Godrej & Boyce (1) [Godrej & Boyce Mfg. Co.*

Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] could not be revisited inasmuch as the Mumbai Municipal Corporation could not seek to reargue the matter. Also, the facts in each case on the questions of delay was to be considered as observed by this Court. The issue of abandonment of claim has also been considered and negatived in the judgment of this Court in Godrej & Boyce (2) [Godrej & Boyce Mfg. Co. Ltd. v. Municipal Corpn. of Greater Mumbai, (2023) 15 SCC 110].

70. 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 the 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 these appellants are concerned.

71. In view of the aforesaid discussion, we hold that the Bombay High Court was not right in dismissing [Apurva Natvar Parikh & Co. (P) Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 6436], [Starwing Developers (P) Ltd. v. State of Maharashtra, 2019 SCC OnLine Bom 13411], [Arvind Kashinath Dadarkar v. Municipal Corpn., Greater Mumbai, 2022 SCC OnLine Bom 11962] the writ petitions on the ground of delay and laches. Hence, those portions of the impugned order of the High Court are set aside.

72. We also do not find any merit in the three appeals filed by the Mumbai Municipal Corporation. Having regard to the earlier judgments of this Court, we find that the reasoning of the High Court on merits in the three impugned decisions [Apurva Natvar Parikh & Co. (P) Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 6436], [Starwing Developers (P) Ltd. v. State of Maharashtra, 2019 SCC OnLine Bom 13411], [Arvind Kashinath Dadarkar v. Municipal Corpn., Greater Mumbai, 2022 SCC OnLine Bom 11962] discussed above is just and proper which would not call for any interference by this Court.

73. Consequently, the civil appeals filed by the writ petitioners/appellants herein are allowed as under:

73.1. Those portions of the impugned order dated 18-12-2018 [Apurva Natvar Parikh & Co. (P) Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 6436] by which the writ petitions were dismissed on the ground of delay and laches are set aside and the respondent Mumbai Municipal Corporation is directed to consider the case of those writ petitioners/appellants herein in light of the judgments of this Court in Godrej & Boyce (1) [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] and release the balance FSI/TDR to the appellants.

73.2. However, in the case of the appellant Kukreja Construction Company and others, the Mumbai Municipal Corporation is directed to consider the nature of the amenities constructed and thereafter to consider their case for additional FSI/TDR.

73.3. The said exercise shall be carried out as expeditiously as possible and within a period of three months from today.

74. The civil appeals filed by the Mumbai Municipal Corporation are dismissed and the cases of the respondents in those civil appeals shall be considered in terms of the judgments of this Court in Godrej & Boyce (1) [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] and the balance FSI/TDR shall

be released to the respondents therein within a period of three months from today."

(Emphasis supplied)

31. Taking into consideration the law laid down by the Supreme Court in the judgment of ***Brihanmumbai Municipal Corporation vs. Vijay Nagar Apartment (supra)***, we are constrained to observe that once the compensation for the acquisition of the land was in the form of FSI/TDR/DRC in the case, the same was payable to the party as per the regime prevailing on the date on which the said cancellation was made. Once we have expressed our opinion that the cancellation of the DRCs was totally illegal without any basis of law, then the logical consequences must follow. The Petitioner should be allowed to use the DRCs which were cancelled in the year 2005, as per the regime prevailing in the year 2005. There is no reason why the Petitioner who is without any fault should be put to a loss, and directed to use DRCs as per the current regime.

32. We therefore have no hesitation in allowing the Petition. Hence, the following Order -

: ORDER :

(1) The Writ Petition is allowed.

(2) The DRCs which were issued by the Pune Municipal Corporation bearing DRCs number 2667, 2676, 2677, 2680, 2686, 2687, 2688, 2689, 2691, 2692, 2693 to the petitioner in lieu of acquisition of his land bearing survey number 6A/1 situated at Bopodi, Pune are hereby restored. The impugned letter communication dated 9th December, 2005 and the impugned order dated 8th July, 2005 are quashed and set aside.

(3) Since the DRCs could be utilized by the Petitioner within one year from the date of such issuance of DRCs in accordance with clause 8 (a) of the notification dated 28th January, 2016 and addendum dated 2nd February, 2016, the said DRCs which now stand restored, are permitted to be utilised as per the regime which stood in the year 2005. Accordingly, the restored DRCs be utlised within a period of one year from today as per the regime applicable on the date of its cancellation.

(4) The Petitioner is at liberty to apply for the DRCs to the extent of 220 sq. mtrs. Such an application be made within a period of 8 weeks

from the date of passing of this order. After such application is made, the Respondent No. 1– Pune Municipal Corporation to decide the application within a period of further eight weeks from the date of making of such application.

33. Writ Petition is disposed of in the above terms. No order as to costs.

34. We make it clear that this Court has not gone into the question of claim of the Corporation regarding sharing of the expenditure for construction of compound wall and all rights and contentions in this regard are kept open.

(SANDESH D. PATIL, J.) **(M.S. KARNIK, J.)**

RAJESH VASANT CHITTEWAN

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