

(1995) 10 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 1615 of 1995

Shivkumar Gupta

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:

Development Control Regulations for Greater Bombay, 1991 — Regulation 13, 14, 33, 33(1), 34
Development Control Rules for Greater Mumbai, 1967 — Rule 10(2)
Maharashtra Regional and Town Planning Act, 1966 — Section 154(2), 31

Citation : (1996) 2 BomCR 243

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : K.K. Singhvi and S.S. Naphade, instructed by M.K. Nesari, for the Appellant; R.A. Dada, A.S.G., S.V. Bharuchanee and S.P. Daruwala for Respondent No. 1 and Aruna Savla, for the Respondent

Final Decision : Allowed

Judgement

D.R. Dhanuka, J.—The petitioner is the owner of a piece and parcel of land bearing C.T.S. No. 206 (plot No. 37) situate at Juhu Vile Parle Development Scheme, hereinafter referred to as "the said plot". The petitioner is interested in constructing a dwelling house on the said plot of land for his own use.

2. On 6th April 1994, the petitioner submitted the building plans for construction of building on the said plot of land to the Municipal Corporation of Greater Bombay on the footing that such construction would consume extra FSI of 0.4 (as permissible under Development Control Regulations for Greater Bombay, 1991) over and above the permissible FSI of 1.00 through his architect Shri B. G. Bhatt. Before submitting the said plan to the Municipal Corporation for its sanction, the petitioner had already acquired T.D.R. (i.e. transferable development rights) from plot bearing C.T.S. No. 176 (part) situate at village Mohili, J.M.M. Road, Ghatkopar under D.C.R. No. 000005 (admeasuring 350 sq. meters)as permissible under Development Control Regulations for Greater

Bombay, 1991.

3. On or about 24th August, 1994, the petitioner further acquired T.D.R. from plot bearing C.T.S. No. 883 of Mohili village Kurla vide letter of intent No. TDR/ES/L-30, dated 24th August, 1994 for 350 square metres. In view of the acquisition of additional T.D.R. by the petitioner as aforesaid, the petitioner submitted the amended building plans to the Municipal Corporation of Greater Bombay on 20th September, 1994 with a request that the petitioner be allowed to utilise additional FSI of 0.4 i.e. total FSI of 1.8 on the receiving plot of the petitioner i.e. on the plot of land bearing C.T.S. No. 206 (Plot No. 37) situate at Juhu Vile Parle Development Scheme, Bombay.

4. On 23rd November, 1994, the Municipal Corporation of Greater Bombay sanctioned the building construction plans submitted by the petitioner's architect allowing the petitioner to use FSI of 1.4 only. The Municipal Corporation of Greater Bombay issued a commencement certificate in this behalf on 31st January, 1995. The amended plans submitted by the petitioner through his Architect Shri B.G. Bhatt on 20th September, 1994 seeking to utilise additional FSI of 0.4 so as to consume total FSI of 1.8 at the receiving plot at Juhu Vile Parle Development Scheme was not sanctioned by the Municipal Corporation in view of the directives received by the Municipal Corporation from the Government of Maharashtra in this behalf copies whereof are Exhibit "A" and "B" to the petition. The Government directive contained in letter dated 27th September, 1994 and the Government Resolution dated 31st December, 1994 are impugned in this petition.

5. On 27th September, 1994, the respondent No. 1 issued the impugned clarificatory directive to the effect that "additional FSI of 0.4" in respect of land surrendered for road widening or construction of new roads could be allowed only if the same was to be utilised on the same very plot from which the plot for road widening or construction of new road was surrendered to the Municipal Corporation for Greater Bombay free of cost and not for development work of some other plot by use of T.D.R. or otherwise. By the said clarificatory directive, the Government of Maharashtra informed the Municipal Corporation of Greater Bombay that the additional FSI of 0.4 in lieu of surrender of the plot of land for road widening or construction of a new roads could not be allowed to be used on a receiving plot if the receiving plot was not the very plot from which the land was surrendered for road widening or construction of new roads. In substance, the impugned directive had effect of prohibiting transfer of development rights to some other plot situate elsewhere. The respondent No. 1 directed respondent No. 2 to review all the cases where the respondent No. 2 had permitted FSI of 1.8 at the receiving plot situate elsewhere on the footing of FSI of the receiving plot being 1 and extra FSI of 0.4 T.D.R. being made available on surrender of the "reserved plot" (like a garden plot) and additional FSI of 0.4 T.D.R. in respect of land surrendered for proposed road widening or construction of new roads.

6. On 31st December, 1994, the Government of Maharashtra passed resolution

bearing No. TPS-394/2660/UD-11/RDP to the same effect stating therein that Clause 14 of Appendix VII appended to Development Control Regulations 1991 meant that "further 0.4 FSI" was available only where the T.D.R. receiving plot itself was affected by the proposed road widening or new road. It was further stated in the said resolution that the "concession of additional 0.4 FSI" was and could be given only in plots directly affected by such new roads and road widening and not elsewhere.

7. By this petition filed under Article 226 of the Constitution of India, the petitioner had impugned the directive issued by the respondent No. 1 to respondent No. 2 by its letter dated 27th September, 1994 addressed to the Director (ES & P) copy whereof is Exhibit "A" to the petition and also the Government Resolution bearing No. TPS-394/2660/UD-11/RDP dated 31st December, 1994 copy whereof is Exhibit "B" to the petition.

8. Before I summarise the relevant provisions of the Development Control Regulations for Greater Bombay 1991 and deal with the submissions made at the bar by the learned Counsel on either side, it deserves to be stated that the Municipal Corporation has always been interpreting the relevant regulations from inception of 1991 regulations coming into force that the additional FSI to the extent of 0.8 can be made available for being used in respect of development of a receiving plot on the condition precedent of surrender of plot needed for road widening or construction of roads free of compensation and free of encumbrance if the receiving plot was situate within the permissible area as specified in Appendix VII of the Development Control Rules. The Municipal Corporation of Greater Bombay i.e. the planning authority has always been interpreting the relevant regulations to the effect that the receiving plot at which extra FSI is to be used against the T.D.R. need not be itself affected by proposed road widening or new road and the benefit of extra FSI of 0.4 was transferable for being used on development of receiving plot situate even elsewhere in the permissible areas. The Municipal Corporation has sanctioned several building construction plans on the above footing during the course of years. The State Government has right to decide interpretational disputes. The State Government has reversed the interpretation of Municipal Corporation in this behalf i.e. in respect of case of extra FSI of 0.4 in lieu of surrender of land for road widening and new road construction.

9. The petitioner has stated in paragraph 12 of the petition that the Municipal Corporation has sanctioned large number of building plans on the footing of FSI of 1.8 being available at the receiving plot wherever situate in the permissible specified areas i.e. 0.4 extra FSI in respect of the land surrendered for reservation for public purpose (as for example - a garden plot) and 0.4 being the FSI of the land surrendered for road widening or for construction of new road. The averment made in paragraph 12 of the petition are not controverted in the affidavit in reply filed on behalf of the Municipal Corporation of Greater Bombay. The said averments are thus proved to be true. It is stated in the affidavit of

Sharadchandra Nagesh Thatte, Executive Engineer (Development Plan) being affidavit dated 19-9-1995 that the interpretation of the relevant regulations by the Municipal Corporation made from inception as summarised earlier was correct. The respondent No. 2 is however following the impugned interpretation of the relevant regulations contained in the Government directives copies whereof are Exhibit "A" and Exhibit "B" to the petition as a matter of statutory compulsion since the Government directives on the subject are binding on the Corporation.

10. I shall now summarise the relevant provisions of Development Control Regulations of Greater Bombay, 1991. A reference shall be made to the provisions contained in Maharashtra Regional and Town Planning Act, 1966 and also to the Development Control Rule, 1967.

11. Rule 10(2) of Development Control Rules, 1967 provided for grant of extra FSI to the owner of a land including a lessee thereof if the land required by the planning authority for road widening or for constructing new road proposed under the development plan was surrendered by the owner free of compensation as more particularly set out therein. The said rule provided that the Municipal Commissioner shall permit the additional floor space to the extent of 100% of the area required for road widening or for constructing new roads as aforesaid subject to such 100% of the area being limited to 40% of the area of the plot remaining after release of the part of land required for road widening or road construction. Under old Rule 10(2), additional FSI available on surrender of land required for road widening etc. could be used on development of the very land of which surrendered land formed a part and that too to the extent of 40% of area of such plot remaining with the owner after release of land needed for road widening or road construction.

12. On 25th March, 1991, the Development Control Regulations for Greater Bombay, 1991 came into force. The said regulations were duly sanctioned by the Government of Maharashtra in exercise of the powers conferred on it by sub-section (1) of section 31 of Maharashtra Regional and Town Planning Act, 1966. On the said Regulations coming into force, the Development Control Rules, 1967 ceased to be operative. The Development Control Regulations for Greater Bombay, 1991 evolved a new scheme for grant of transferable development rights (T.D.R.) as more particularly set out in Regulation 34 and Appendix VII thereto. The Development Control Rules, 1967 did not contain any provision for the grant of transferable development rights. The relevant provisions of Development Control Regulations, 1991 are not thus comparable with the provisions of the Development Control Rules, 1967. The relevant regulations forming part of 1991 regulations must be interpreted without any aid from 1967 Regulations. The object of 1991 was to make liberal provisions for transfer of development rights so as to encourage owners to surrender plots needed for road widening or road construction free of compensation and free of compensation.

13. Regulation 2(42) of 1991 Regulations define the expression "floor space index" (FSI) as a quotient of the ratio of the combined gross floor area of all floors, excepting areas exempted from the purview of the regulations, to the total area of the plot as set out therein. The above referred 1991 Regulations are hereinafter referred to as "the said Regulations". Regulation 32 of the said Regulations prescribe the maximum permissible floor space indices and tenement density for various occupancies and locations and for various use zones as set out in Table 14 thereunder. Different floor space index was prescribed by Regulations 32 for development of plots in residential zones and residential zones with shop line etc. situate in island city on the one hand and the plots of land situate in suburbs and extended suburbs of Greater Bombay on the other hand. In this petition, the Court is concerned with the entitlement of floor space index as set out in Clause 1(b)(iii) of Regulation 32 i.e. FSI 1.00 in normal course. It means that FSI of 1.00 is available in respect of the plot of the petitioner described in paragraph 1 of the petition i.e. FSI of 1.00 in normal course. It means that FSI of 1.00 is available in respect of the plot of the petitioner described in paragraph 1 of the petition apart from extra FSI under Regulation 34 read with Regulation 14 of Appendix VII thereto. The dispute between the parties however is only in respect of extra FSI of 0.4 claimed by the petitioner under later part of Regulation 14 of Appendix VII. A reference to the relevant regulation would be made by me little later.

14. Regulation 33(1) of the said Regulations is directly relevant for our purpose. The said Regulation reads as under :

"33. Additional Floor Space Index which may be allowed in certain categories-

(1) Road widening and construction of new roads:-The Commissioner may permit additional floor space index on 100 per cent of the area required for road widening or for construction of new roads proposed under the development plan or those proposed under the Bombay Municipal Corporation Act, 1888, excluding areas of internal means of access, if the owner (including the lessee) of such land surrenders such land for road widening or new road construction without claiming any compensation in lieu thereof and hands over the same to the Corporation free of encumbrances to the satisfaction of the Commissioner. Such 100 per cent of the FSI on land so surrendered to the Corporation will be utilisable on the remainder of the land upto a limit of 40 per cent of the area of the plot remaining after such surrender and the balance FSI remaining thereafter shall be allowed to be utilised as a Development Right in accordance with regulations governing Transfer of Development Rights (TDRs) in Appendix VII, or the full FSI on the land is surrendered to the Corporation may be allowed to be used as a Development Right in accordance with the regulations governing Transfer of Development Rights (TDRs) in Appendix VII. Thereafter the road land shall be transferred in the city survey records in the name of the Corporation and shall vest it in becoming part of a public street as defined in sub-section (3) of section 288 of the Bombay Municipal Corporation Act, 1888." It is of considerable

significance that Regulation 33 (1) confers two different rights on the owners intending to develop their properties and it is open to the owner to avail of either of the two rights specified therein. The second right which is conferred by later part of Regulation 33(1) is of some significance for purpose of resolving the controversy which is the subject matter of this petition. By Regulation No. 33 of the said regulations it was provided that the Municipal Commissioner was empowered to permit additional floor space index on 100% of the area required for road widening or for construction of new roads proposed under the development plan or which is proposed under the Bombay Municipal Corporation Act, 1888 (excluding areas of internal means of access) provided the owner including the lessee of the land surrendered such land for road widening or new road construction without claiming any compensation and handed over the same to the Corporation free of encumbrances to the satisfaction of the Commissioner. By the first part of Regulation 33(1) of the said Regulations it was provided that such 100% of the FSI of the land surrendered by the owner or the lessee to the Corporation will be utilisable on the remainder of the land upto the limit of 40% of the area of the plot remaining after such surrender and the balance as a development right in accordance with the Regulations governing the transfer of development rights in Appendix VII. The first part of Regulations 33(1) of the said Regulations does not set out both the rights of the owner or the lessee who claims extra FSI in lieu of surrender of land for road widening etc. as discussed above. The extra FSI in lieu of surrender of land for road widening or for construction of new road is available also in the form of issue of a development rights certificate in accordance with Regulations governing transfer of development rights (TDRs) in accordance with the procedure prescribed in Appendix VII thereto. Thus the owner of land has an option to avail either of the two rights referred to hereinabove flowing from Regulation 33(1) of the said Regulations.

15. Regulation 34 of the said Regulations provide that in certain circumstances the development potential of a plot of land may be separated from the land itself and may be made available to the owner of the land in the form of transferable development rights. The said Regulation further provides that these rights may be made available and be subject to the Regulations in Appendix VII thereto. Appendix VII is relevant for our purpose. Appendix VII deals with the subject matter of regulation for grant of "transferable development rights" (TDRs) to owners/developers and prescribes conditions for grant of T.D.R. Under the said regulations the Municipal Commissioner is entitled to issue development rights certificates in favour of the owner including the lessee of the land who surrenders the reserved plot etc. to Municipal Corporation free of compensation. Appendix VII empowers the Municipal Commissioner to issue development rights certificates allowing the owner including the lessee thereof to avail of extra FSI as more particularly set out therein, where the owner or the lessee of the land surrenders the plot of land affected by proposed road widening or by proposal of construction of new roads to the Municipal Corporation free of compensation.

Regulation 8 of Appendix VII provides that the rights of original holder of development rights certificates are transferable and development rights certificates could be or can be transferred to the transferee in whose favour the necessary endorsement is made by the Municipal Commissioner on receipt of the appropriate application for endorsement of new holders" name i.e. transferee on the said certificate.

16. Regulations 10, 11 and 12 of the said Regulations provide that a holder of the development rights certificate is entitled to use the extra FSI or the extra FSI certificate on receiving plot of land within the parameters of the said Regulations. No development right certificate can be used in the island city. No development right certificate can be used on receivable plot in the areas specified in Regulation 11 of Appendix VII. The development rights certificate can be used only within the areas specified in Regulation 12.

17. Regulation 13 and Regulation 14 are directly relevant for our purpose. Regulation 13 of the said Regulations provides that development rights certificate may be used on one or more plots of land whether vacant or already developed or by the erection of additional storey or any other manner consistent with the Regulations but not so as to exceed in any plot a total built-up FSI higher than that prescribed in Regulation 14 in this Appendix. Regulation 14 of the said Regulations is reproduced in extenso. Regulation 14 of Appendix VII reads as under :

"14. The FSI of a receiving plot shall be allowed to be exceeded by not more than 0.4 in respect of a DR available in respect of the reserved plot as in this Appendix and upto a further 0.4 in respect of a DR available in respect of land surrendered for road-widening or construction of new roads according to sub-regulation (i) of Regulation 33. (The underlining is done to supply emphasis)

18. The learned Counsel for the Municipal Corporation of Greater Bombay has supported the submissions made by the learned Counsel for the petitioner, without prejudice to her statement that the Municipal Corporation is duty bound to follow the clarificatory directives issued by the State Government in respect of interpretation of these Regulations unless the said directives are quashed by this Court. The real contest is thus between the petitioner and the State Government in respect of interpretation of Regulation 14 of Appendix VII of the said Regulations in light of Regulation 33(1) and other regulations.

19. Before I discuss the submissions made by the learned Counsel for the petitioner and the learned Counsel for respondent No. 1, it is necessary for the Court to remind itself of the well settled principles of interpretation of statutes laid down by the Supreme Court in its judgment in the case of Sri Ram Ram Narain v. State of Bombay, reported in AIR 1969 S.C. 459. In this case N.H. Bhagwati, J., speaking for the Apex Court observed as under :-

"If the language of the enactment is clear and unambiguous it would not be legitimate for the courts to add any words thereto and evolve therefrom some

sense which may be said to carry out the supposed intentions of the legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the courts for effectuating a supposed intention of the Legislature."

The proposition of law laid down in this judgment is far too obvious and must be followed by the Court while resolving the controversy which is the subject matter of this petition.

20. The learned Counsel for the petitioner has submitted that the State Government had no jurisdiction to issue the clarificatory directives dated 27th September, 1994 or to pass the impugned resolution dated 31st December, 1994 copy whereof is Exhibit "B" to the petition invoking Regulation 62(3) of the said Regulations as no reference was made by the Municipal Corporation to the State Government in respect of any dispute arising with regard to interpretation of the Regulations and the State Government issued the impugned directives by itself. The learned Counsel for the petitioner has invited the attention of the Court to the language of Regulation 62(3) of the said Regulations. The learned Counsel for respondent No. 1 has invited the attention of the Court to the provisions of law contained in section 154(2) of the Maharashtra Regional and Town Planning Act, 1966. Section 154(2) of the Act provides that if in connection with the exercise of its powers and discharge of its functions by any planning authority any dispute arises between the planning authority and the State Government, the decision of the State Government on such dispute shall be final. The dispute between the State Government and the Municipal Corporation in respect of interpretation of Regulation 33(1) as well as Regulation 14 of Appendix VII is far too obvious. In my opinion, it would be too technical to contend that the State Government can exercise its powers of control to issue the necessary directives only if a specific reference is made by the State Government in respect of dispute pertaining to interpretation of Regulations. In my opinion, the State Government has ample jurisdiction to interpret the Regulations even in absence of specific reference by the planning authority and even suo moto and the clarificatory directives of the State Government are binding on the Planning Authority unless the directive issued by the State Government are shown to be contrary to law and quashed by the Court. I have no hesitation in rejecting this preliminary submission urged by the learned Counsel for the petitioner. On merits of the controversy the petitioner appears to be right.

21. The learned Counsel for respondent No. 1 endeavoured to derive support for development of his arguments justifying the impugned action of the Government from the language and content of Rule 10(2) of Development Control Rules 1967. In my opinion, Regulations 33, 34 and Appendix VII are liable to be interpreted on their own terms having regard to the scheme, object and content of 1991 Regulations having regard to the language in which the said Regulations are couched. The Development Control Rules, 1967 did not contain any provision for the grant of transferable development right at all. The scheme of

Development Control Rules, 1967 was radically different from the scheme of Development Control Regulations, 1991. I am not prepared to hold that rule 10(2) of the Development Control Rules, 1967 is directly or indirectly re-enacted in Regulation 33(1) or Regulation 14 of Appendix VII of the above referred regulations. Regulations 33, 34 and Appendix VII shall be interpreted by the Court having regard to the language of these regulations and the scheme disclosed by the 1991 Regulations and not with reference to 1967 Rules. I do not agree that the objective of relevant 1991 regulations is the same as the objective of Rule 10(2) of Development Control Rules, 1967. The 1991 Regulations make more liberal provision for grant of extra F.S.I. in certain cases than 1967 Rules. The said regulations make provision for issue of transfer of Development rights.

22. Regulation 34 of the said Regulations provides that the development potential may be made available to the owner of the land in the form of transferable development rights. The transferable development rights are made available to the owner including the lessee of the land on issue of development rights certificate. The development rights certificates are made in terms transferable on the endorsement made by the Municipal Commissioner as set out in Regulation 8 of Appendix VII. The first question which is required to be asked is as to whether Regulation 14 of Appendix VII contains any words of limitations in respect of user of the extra FSI of 0.4 so as to restrict its availability and user to the same very plot of which surrendered plot formed a part. The first part of Regulation 14 of the said Regulations provides that the FSI of the receiving plot shall be allowed to be exceeded by not more than 0.4 in respect of development right available in respect of reserved plot (as for example- a garden plot). It is not disputed that extra FSI of 0.4 for which provision is made by the first part of Regulation 14 can be utilised on development of a receiving plot wherever situate provided the same is situate within the area specified in Appendix VII of the said Regulations and not in the area where user of T.D.R. is forbidden. The question to be asked is as to whether the Regulation 14 contain expressly or by necessary implication any limitation in respect of the plot on which extra FSI to the extent of 0.4 can be availed of and utilised in lieu of surrender of the land for road widening or construction of new roads. It is far too obvious to me that Regulation 14 of the said Regulations does not contain any such limitation expressly or by necessary implication as is carved out for the first time, in the impugned directives Exhibit "A" and Exhibit "B" to the petition. If the plain language of Regulation 14 of Appendix VII is required to be considered as it should be, it follows that the said regulation does not restrict the availability and user of development right certificate or T.D.R. in lieu of surrender of land for road widening or construction of new roads, to the very plot of land of which the surrendered land formed a part. The learned Counsel for respondent No. 1 has submitted that the intention and object of the Government in providing for extra FSI in lieu of surrender of land for road widening or construction of new road should be deduced from the scheme of Rule 10(2) of Development Control Rules, 1967. The learned Counsel for respondent No. 1 submitted that the scheme and

objective of 1967 Regulations and 1991 Regulations in this behalf is identical. I do not agree. It is not possible to imply such a limitation on availability and user of extra FSI of 0.4 in Regulation 14 of Appendix VII. Such an implication would be contrary to and inconsistent with plain language of Regulation 14 and its objective. The learned Counsel for the petitioner interpreted Regulation 14 of Appendix VII and Regulation 33(1) of the said regulations in light of Rule 10(2) of 1967 Rules referred to hereinabove. I am unable to accept the submission of the learned Counsel for respondent No. 1. The later part of Regulation 14 does use the words "According to sub Regulation (1) of Regulation 33". The learned Counsel for respondent No. 1 was right to a limited extent when he submitted that Regulation 14 of Appendix VII ought to be interpreted in light of the provisions of law contained in sub-regulation (1) of Regulation 33. Sub-Regulation (1) of Regulation 33 confers two separate and distinct rights on the owner of the land and empowers the Municipal Commissioner to permit additional floor space index as set out in the first part of sub-regulation (1) of Regulation 33 or in the form set out in the second part of sub-regulation (1) of Regulation 33. By later part of sub-regulation (1) of Regulation 33 it is clearly provided that the Municipal Commissioner may grant full FSI on the land surrendered to the Corporation to be used as a development right in accordance with the regulations governing transfer of development rights in Appendix VII. If the submission made by the learned Counsel for respondent No. 1 is to be accepted, the second part of sub-regulation (1) of Regulation 33 would have to be treated as otiose. In other words, the owner is entitled to use the extra FSI on the remainder of the plot from which the land is surrendered for road widening or construction of new road upto limit of 40% of the area of the plot remaining after such surrender of the land or seek to obtain a development right certificates in full in respect of the land surrendered to the Corporation for road widening or construction of new road and obtain transfer of such development right as provided in Regulation 8 of Appendix VII. Thus the learned Counsel for respondent No. 1 does not appear to be right in respect of his interpretation of Regulation No. 33(1) also. The impugned directives are not in conformity with true interpretation of Regulation No. 33(1) of Regulation No. 14 of Appendix VII.

23. The learned Counsel for respondent No. 1 submitted that if the interpretation of the above referred regulations put forward on behalf of the petitioner were to be accepted by the Court, it would lead to absurd results as in that event the owner of the receiving plot may use FSI to the extent of 2.2 if the receiving plot was also affected by proposed road widening or by proposal of construction of new road. With respect, this submission overlooks the language and content of Regulation 13 of Appendix VII. Regulation 14 of Appendix VII is liable to be read along with Regulation 13 of Appendix VII. A ceiling is put on use of extra FSI on the receiving plot and the said ceiling is to the extent FSI of 0.8. If Regulation No. 13 is also to be borne in mind, while interpreting regulation 14 of Appendix VII, it would be quite clear that extra FSI of 0.8 can be used on any one or more plots of land as set out in Regulation No. 13. Regulation No. 14 of Appendix VII

does not make any distinction in respect of availability and use of T.D.R. or concession of extra FSI attached thereto between the availability of extra FSI of 0.4 on surrender of reserved plot further extra FSI of 0.4 on surrender of land for road widening or road construction.

24. The learned Counsel for the petitioner has submitted with considerable force that if the interpretation of Regulation 14 of Appendix VII as set out in impugned directives Exhibit "A" and "B" were to be accepted by the Court, such an interpretation would lead to discrimination between different category of owners and would expose the relevant regulations to the vice of Article 14 of the Constitution of India. In a given case the owner of the land may have surrendered larger portion of land for road widening or construction of new roads and in another case, he may have surrendered a smaller portion of the land for the same purpose. In certain situation, the entire plot may have been effected by road widening etc. and no part of the plot may remain with the owner for development thereof after surrender of plot of land so affected. The owner surrendering larger portion of plot for road widening or surrendering entire plot for the said purpose would be the worst sufferer if the Government interpretation of relevant regulations is to be accepted by the Court. If the Government directives are to be upheld by the Court, the following result would follow: If the owner of the land surrenders a small portion of the land for road widening, such owner of the land will be able to utilise the entire FSI of the land surrendered to the Municipal Corporation by developing the remaining land of which the surrendered land formed a part. If however the owner of the land surrendered a major part of his land for road widening or new construction of road, such owner of land will not be able to utilise the FSI of the land surrendered by him to the Municipal Corporation on par with the owner of the land who had surrendered smaller portion of the land to the Municipal Corporation for road widening. The learned Counsel for the petitioner therefore submitted that the Municipal Corporation was right in taking a view on interpretation of relevant regulations as set out in its affidavit in reply. The Municipal interpretation of the regulations does not suffer from any such anomaly and is consistent with the language of relevant regulations. According to the above referred interpretation of Municipal Corporation, which I accept, the owner of the plot surrendering the reserved plot is entitled to use extra FSI of 0.4 in lieu of such surrender free of compensation on development of a receiving plot wherever situate provided the said plot is situate within the permissible areas specified in the said regulations. According to the interpretation of the relevant regulations by the Municipal Corporation, which I accept, the owner of the plot surrendering the land for road widening or construction of new roads is equally entitled to extra FSI of 0.4 for being used on the footing of TDR on receiving plot wherever situate (not necessarily on the land surrendered form a part) provided the receiving plot is situate within any of the permissible are a specified in the said regulations. Regulation 14 of Appendix VII is to be read subject to ceiling as spelt out from Regulation 13 of the said regulations.

25. After careful consideration of all the submissions both oral and written made by the learned Counsel on either side. I have reached the conclusion that the impugned directives dated 27th September, 1994 contained in Exhibit "A" to the petition and the impugned resolution dated 31st December, 1994 copy whereof is Exhibit "B" to the petition suffer from clear and patent errors of law and the same are totally illegal and opposed to law. In my opinion, the impugned directives and the impugned resolution are liable to be quashed by this Hon"ble Court in exercise of its jurisdiction under Article 226 of the Constitution of India. It is the plain duty of this Court to render justice to the parties and declare the impugned directive or the impugned resolution as void ab initio. The Municipal Corporation has already sanctioned large number of building construction plans on the basis of correct interpretation of the above referred regulations which is upheld by this Court as a Writ Court.

20. In the result, the rule is made absolute. It is hereby declared that the clarificatory directive dated 27th September, 1994 (copy whereof is Exhibit "A" to the petition) and the resolution dated 31st December, 1994 (copy whereof is Exhibit "B" to the petition) is void ab initio. The respondents are restrained from enforcing the said directives and the said resolution. The rule is also made absolute in terms of prayer (c) of the petition. The respondent No. 2 is directed to comply with prayer (c) of the petition latest by 30-11-1995. The respondents shall follow the ratio of this judgment in respect of cases of all the parties equally situate.

27. Having regard to the facts and circumstances of the case, there shall be no order as to costs.

28. Issue of certified copy expedited.

Petition allowed