

(2020) 07 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 12285 Of 2015

Siddhi Real Estate Developers

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:

Maharashtra Regional And Town Planning Act, 1966 — Section 2, 2(2), 31, 44, 45, 47(2), 113A, 126, 126(1), 126(1)(b), 158
Development Control Regulations, 1994 — Regulation 47, 47(2)
Constitution Of India, 1950 — Article 226

Citation : (2020) 07 BOM CK 0003

Hon'ble Judges : S. J. Kathawalla, J;B. P. Colabawalla, J

Bench : Division Bench

Advocate : P.K Dhakephalkar, Pratik Kothari, Saurabh Oka, R.S Apte, A.R Pitale, S.D Vyas

Final Decision : Disposed Of

Judgement

,

B. P. Colabawalla, J",

1. RULE. Respondents waive service. By consent of parties, Rule made returnable forthwith and heard finally.",

2. This Petition has been filed under Article 226 of the Constitution of India seeking a declaration that the Petitioner is entitled to Transferable,

Development Rights (TDR) in the form of Floor Space Index (FSI) equivalent to the area of the DP Roads developed and paid for,

respectively by the Petitioner. Reliefs are also sought for quashing the rejection by the Respondents to grant TDR to the Petitioner as well as for a,

direction against the Respondents to grant TDR in the form of FSI to the Petitioner equivalent to the area of the DP Roads developed and paid for by,

the Petitioner.,

3. It is the case of the Petitioner that it is the owner of and otherwise well and sufficiently entitled to several pieces and parcels of the land,

admeasuring in aggregate to approximately 85,778 sq.mtrs. or thereabouts situated at village Dhokali, Thane (for short â??the said propertyâ?). The",

Petitioner has inter alia developed a residential project by the name â??Highland Residencyâ? on the said property. A portion of the said property,

admeasuring 6913.21 sq.mtrs. or thereabout were reserved under the development plan of Thane for the purposes of a 25 meter wide development,

plan road admeasuring 4169.05 sq.mtrs (the first DP Road) and a 15 meter wide development plan road admeasuring 2744.16 sq.mtrs (the second DP,

Road). According to the Petitioner, since it has paid the entire amount to Respondent No.2 (Thane Municipal Corporation) for construction of the first",

DP Road and have also constructed the second DP Road (at their own cost) and thereafter surrendered the same to Respondent No.2, the Petitioner",

is entitled to TDR in the form of FSI equivalent to the area of the said two DP Roads. It is the case of the Petitioner that Respondent No.2 is under a,

statutory obligation to grant TDR in the form of FSI equivalent to the area of said two DP Roads respectively in terms of clause 6 of Appendix-W to,

the Development Control Regulations for Municipal Corporation of the City of Thane, 1994 (for short â??DCR, 1994â?) and the applicable provisions",

of the Maharashtra Regional Town Planning Act, 1966 (for short â??the MRTTP Act, 1966â?). The Petitioner has requested Respondent No.2 to",

grant the aforesaid TDR to it and which request is rejected by Respondent No.2. It is on this basis that the present Petition is filed.,

4. Before we advert to the legal submissions advanced by counsel on both sides, it would be necessary to set out some facts which are really",

undisputed. As mentioned earlier, the Petitioner is the owner of pieces and parcels of land admeasuring in aggregate approximately 85,778 sq. meters",

situated at Dhokali, Thane (the said property). Since the Petitioner wanted to develop the said property, the Petitioner, vide its proposal dated 27th",

November, 2000, submitted building plans to Respondent No.2 for residential development on the said property.",

5. This Proposal of the Petitioner was sanctioned and plans for development were approved by Respondent No.2 on 14th December, 2000 on certain",

terms and conditions. One of the terms and conditions was that the said property was affected by the first DP Road and after construction of the, same it was to be handed over by the Petitioner before granting the commencement certificate. Thereafter, on 23rd February, 2001 pursuant to an", application bearing no. 6483 made by the Petitioner, Respondent No.2 amended the permissions with respect to the construction of the first DP Road", and granted the first commencement certificate. The first commencement certificate issued by Respondent No.2 was on 16th March, 2001 which", inter alia stipulated for construction of the first DP Road and stated that it was necessary to construct the first DP Road in the said plot of land along, with work of the remaining road of the Thane Municipal Corporation on or before obtaining the Occupation Certificate. This condition was reiterated, in the subsequent commencement certificates dated 2nd June, 2001 and 18th August, 2001 respectively."

6. Thereafter, Respondent No.2 decided to construct the first DP Road themselves and hence by a letter dated 2nd March, 2002, Respondent No.2", informed the Architect of the Petitioner that the cost of construction of the first DP Road amounted to Rs.31,67,670/- which amount would have to be", deposited with Respondent No.2. It is not in dispute that this amount has been duly deposited between the period 2005 to 2007. It is also not in dispute, that this amount was deposited by the Petitioner with Respondent No.2 for the construction of the first DP Road.,

7. Thereafter, further commencement certificates were granted by Respondent No.2 dated 20th March, 2002, 22nd October, 2002 and 25th March", 2003 respectively. All the above three commencement certificates stipulated that the Petitioner shall construct the second DP Road and also pay the, cost of construction of the first DP Road before obtaining the Occupation Certificate. These commencement certificates can be found at pages 44 to, 59 respectively.,

8. It is not in dispute that the Petitioner not only paid for the construction of the first DP Road but also completed the construction of the second DP, Road and handed over the entire area of 6913.21 sq. mtrs (total of the first and second DP Roads) to Respondent No.2. In fact, the Town", Development Department has also issued a possession receipt acknowledging the same and which can be found at page 60 of the Petition.,

9. In furtherance of handing over of possession of the two DP Roads, Respondent No.2 vide its letter dated 25th June, 2003 addressed to the",

Tahsildar, Thane inter alia recorded that the Petitioner has handed over possession of the lands of the DP Road to Respondent No.2 and that the",

ownership of these lands (namely the DP Roads) should be transferred in the name of Respondent No.2 in the records of rights and a separate 7/12,

extract be issued in the name of Respondent No.2.,

10. As mentioned earlier, between the year 2005-2007, the Petitioner paid Respondent No.2 an amount of Rs.31,81,670/- towards the cost of",

construction of the first DP Road and Respondent No.2 has even issued payment receipts towards the same from time to time. These receipts can be,

found at Exhibits F-1 to F-5 of the Petition.,

11. We must also mention here that there is no dispute that the TDR for surrendering the land for the DP Roads has been given/paid over/allotted to,

the Petitioner. The dispute in this Petition only relates to the grant of TDR in the form of FSI for the construction and development of the amenities,

being the aforesaid two DP Roads.,

12. In these circumstances, under their letter dated 17th October, 2013 the Petitioner appraised Respondent No.2 with respect to the facts pertaining",

to (a) handing over of the DP Roads; (b) the development/construction of the second DP Road as an amenity; and (c) payment of the cost of,

construction for the first DP Road (Rs.31,81,670/-) duly borne and paid for by the Petitioner and deposited with Respondent No.2. In view thereof, the",

Petitioner requested Respondent No.2 to grant to the Petitioner TDR in the form of FSI equivalent to an area admeasuring 6913.21 sq.mtrs. for the,

construction and development of the amenities being the first and second DP Roads.,

13. Subsequently, another letter was also written on 20th December, 2013 by the Architect of the Petitioner reiterating the facts and pointing out the",

relevant legal provisions entitling the Petitioner to amenity TDR for the construction of /payment towards the aforesaid two DP Roads.,

14. In reply to the aforesaid letters, Respondent No.2 by its letter dated 18th November, 2014 inter alia sought to contend that there was no provision",

in the DCR, 1994 regarding grant of TDR against the payment deposited for the cost of construction of the first DP Road. According to the Petitioner,"

since this was wrongly contended by Respondent No.2, it has been continuously following up with the office of Respondent No.2 for the grant of the",

aforesaid TDR but they have not received any justice from Respondent No.2. It is in these circumstances that the Petitioner has approached this,

Court under article 226 of the Constitution of India by filing the present Petition in this Court and which was lodged on 29th October, 2015.",

15. In this factual background, Mr. Dhakephalkar, the learned Senior Counsel appearing on behalf of the Petitioner, submitted that in the present case",

the Petitioner has admittedly (a) surrendered the land of the first DP Road and also paid the cost of the construction of the first DP road to,

Respondent No.2; and (b) surrendered the land of second DP Road and also constructed the same at its own costs. He submitted that Respondent,

No.2 had refused to grant TDR in the form of FSI to the Petitioner for the area equivalent to the construction of the amenity (namely the construction,

of the two DP Roads) mainly on two grounds. They are:- (a) that there is no provision in the DCR, 1994 to grant TDR for the consideration paid",

towards the construction of the first DP Road; and (b) the plot holder (namely the Petitioner) is responsible to provide the approach road to the plot of,

land as per Regulation 47 of the DCR, 1994 and hence TDR asked for by the Petitioner towards construction of such a road is not permissible. Mr.",

Dhakephalkar submitted that both the aforesaid contentions are without any basis and contrary to the statutory provisions of the DCR, 1994 as well as",

the MRTTP Act, 1966.",

16. In this regard, Mr. Dhakephalkar brought to our attention the definition of the word "Amenity" (under the MRTTP Act, 1966) which means",

roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and",

secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage,",

public works and includes other utilities, services and conveniences. Mr. Dhakephalkar then brought to our attention the provisions of Section 126 of",

the MRTTP Act, 1966 which deals with acquisition of land required for public purposes specified in plans and placed reliance on Section 126(1)(b)",

which inter alia states that if any land is required or reserved for any public purpose, specified in any plan, the Planning Authority may, acquire the",

land by an agreement by paying the agreed amount; or in lieu of such amount, by granting the land owner FSI or TDR against the area of land",

surrendered free of cost and free from all encumbrances and also further additional FSI or TDR against the development or construction of the,

amenity on the surrendered land provided the same is developed / constructed at his own cost. Mr Dhakephalkar therefore submitted that the MRTP,

Act, 1966 itself contemplated the grant of further additional FSI or TDR against the development or construction of an amenity.",

17. Mr. Dhakephalkar thereafter brought to our attention Appendix-W of the DCR, 1994 which deals with Regulations for the grant of TDR to the",

owners/developers and conditions for grant of such TDR. He placed reliance on Clauses 5 and 6 of Appendix-W to show that the built-up area for the,

purpose of FSI credit in the form of DRC shall be equal to the gross area of the reserved plot to be surrendered and will proportionately increase or,

decrease according to the permissible FSI of the zone wherefrom the TDR has originated. Mr. Dhakephalkar submitted that Clause 6 of Appendix-W,

clearly states that when an owner or lessee also develops or constructs the amenity on the surrendered plot at his own cost subject to such stipulations,

as may be prescribed by the Commissioner or the appropriate authority, as the case may be and to their satisfaction, and hands over the said",

developed/constructed amenity to the Commissioner/appropriate authority free of cost, he may be granted by the Commissioner further Development",

Rights (DR) in the form of FSI equivalent to the area of the construction/development done by him, utilisation of which etc will be subject to the",

Regulations contained in Appendix-W. He submitted that it can hardly be disputed and in fact it is not even the case of Respondent No.2 that a road is,

not an amenity as per the provisions of Section 2(2) of the MRTP Act, 1966. The DCR, 1994 itself is framed and notified under Section 158 of the",

MRTP Act, 1966 and the DCR, 1994 forms part of the development plan under Section 31 of the MRTP Act. He submitted that, therefore, the rules /",

regulations framed under the provisions of the Statute (in the present case the DCR, 1994 which are framed under the MRTP Act, 1966) form",

part of the Statute and have statutory force. He submitted that the DCR, 1994 and any amendments / modifications thereto are made as per the",

provisions contained in the MRTP Act, 1966 and have to be read in consonance with the MRTP Act, 1966. He submitted that it is the responsibility of",

the Planning Authority (in the present case Respondent No.2) to develop public amenities like roads etc made for use of the public at large and, reserved as amenity space in the development plan. In the present case, Mr. Dhakephalkar submitted that the amenities are the two DP Roads. He", submitted that the intention of the Legislature for providing additional FSI/TDR to the developer/owner of the land for construction of an amenity on, the said land is in the nature of an incentive since such developer/owner develops such amenity or pays the cost of construction of such development," which otherwise is the obligation of the Planning Authority. In the facts of the present case, Mr. Dhakephalkar submitted that admittedly the cost of", the construction of the first DP Road was paid entirely by the Petitioner to Respondent No.2. As far as the second DP Road is concerned, Mr.", Dhakephalkar submitted that the same was duly constructed by the Petitioner at his own cost. After this, both the DP Roads were handed over to", Respondent No.2, namely the Planning Authority. These facts are undisputed. He, therefore, submitted that looking at the undisputed facts and", juxtaposing them with the provisions of the MRTP Act, 1966 as well as Appendix-W of the DCR, 1994, the inescapable conclusion is that the", Petitioner was entitled to TDR in the form of FSI for the area equivalent to the aforesaid two DP Roads as the same has been duly either constructed, by the Petitioner (second DP Road) or was paid for by them (the first DP Road). He submitted that in the facts of the present case, the Petitioner has", been issued a Development Rights Certificate (DRC) for TDR in respect of only the land surrendered towards the first DP Road and the second DP, Road and not towards the payment / construction of the first DP Road and the second DP Road, and which the Petitioner is entitled to under the", provisions of the MRTP Act, 1966 and the DCR, 1994. Mr. Dhakephalkar submitted that in these circumstances and reading the provisions of the", MRTP Act, 1966 and the DCR, 1994, it was incorrect on the part of Respondent No.2 to contend that because the Petitioner had paid for the cost of", the construction of the first DP Road, it is not entitled to TDR as there was no provision in the DCR, 1994 for grant of TDR for the cost paid towards", the construction of first DP Road. He submitted that this is very clear from the provisions of Section 126(1)(b) itself which clearly states that the, Petitioner would be entitled to further FSI or TDR against development or construction of the amenity on the surrendered land at his costs. He,

submitted that the first DP Road was constructed at the cost of the Petitioner. This is undisputed. In these circumstances, it was totally incorrect on",

the part of Respondent No.2 to contend that the Petitioner was not entitled to TDR because there was no provision in the DCR, 1994 to grant TDR",

for the costs paid towards the construction of the first DP Road.,

18. As far as the second contention of Respondent No.2 is concerned, namely, that the plot holder was responsible to provide the approach road to the",

plot of land as per Regulation No. 47 of DCR, 1994 and hence the Petitioner was not entitled to TDR, Mr. Dhakephalkar submitted that the reliance",

placed on the aforesaid Regulation is wholly misplaced. Mr. Dhakephalkar submitted that admittedly the lands that were surrendered for the two roads,

and which were subsequently constructed were development plan roads and not private/internal access roads. Mr. Dhakephalkar submitted that the,

DP Roads that are the subject matter of the present Petition run within the Petitioner's land and the same is not an access road as sought to be,

contended by Respondent No.2. In the present case, the Petitioner has constructed and paid for two DP Roads which are to be used by the public at",

large and is not a private access road. This is also clear from the fact that the possession of these roads have been handed over to Respondent No.2,

and thereafter transferred in the records of the rights and in the 7/12 extracts in the name of Respondent No.2. Mr. Dhakephalkar submitted that even,

the proviso to Regulation 47 is of no assistance to Respondent No.2 which inter alia stipulates that permission may be granted on the plots facing a,

proposed DP Road provided the owner undertakes responsibility to construct a partial DP Road and/or alternate means of access. He submitted that,

the proviso to Regulation 47 does not provide that the construction of such DP road and/or alternate means of access would be free of cost or without,

any compensation to the owner/developer. This is obvious because it is the obligation of the Planning Authority to construct the amenity and not by a,

private individual. If such an obligation is discharged by the private individual (other than the Planning Authority), then, the Planning Authority is",

required to compensate the said individual for the same as provided under Section 126 (1) (b) of the MRTP Act, 1966. He submitted that Regulation",

47 of DCR, 1994 does not and in fact cannot provide for anything which is contrary to the parent Act, namely the MRTP Act, 1966. He, therefore,"

submitted that the justification for not granting TDR to the Petitioner by placing reliance on Regulation 47 is wholly misconceived and misplaced.,

19. In support of his submissions, Mr. Dhakephalkar relied upon following decisions:-",

(a) (2009) 5 Supreme Court Cases 24 [Godrej & Boyce Manufacturing Co. Ltd. v/ s State of Maharashtra and Others.],

(b) Judgement of a Division Bench of this Court dated 20/07/2011 in WP/4172/2010 [Shrikant H. Soni v/s. Asst. Director, Town Planning Authority", Nashik Municipal Corporation & Ors].,

(c) Judgment of a Division Bench of this Court dated 20/03/2019 passed in WP/7204/2016 [M/s. Siddhi Real Estate Developers V/s. State of, Maharashtra & Others].,

(d) Judgment of a Division Bench of this Court dated 18/10/2019 in WP/2531/2009 [Starwing developers Pvt. Ltd. v/s State of Maharashtra & Others].,

20. In conclusion, Mr. Dhakephalkar submitted that the Petition be allowed and Respondent No.2 be directed to grant TDR in the form of FSI to the",

Petitioner for the area equivalent to the aforesaid two DP Roads admeasuring 6913.21 sq. mtrs.,

21. On the other hand, Mr. Apte, the learned Senior Counsel appearing on behalf of Respondent No.2, submitted that the request of the Petitioner for",

grant of TDR equivalent to the area of the said two DP Roads was rejected by Respondent No.2 as far back as on 18th November, 2014. Despite",

this, the present Petition has been filed on 29th October, 2015 which is almost after one year from the date of rejection. Mr. Apte submitted that the",

Petitioner has not given any explanation whatsoever for the aforesaid delay and laches and hence the Petition be dismissed on this ground alone.,

22. Without prejudice to the aforesaid argument, Mr. Apte submitted that the TDR for construction of a road is granted under the provisions of",

Appendix-W to DCR, 1994. In the present case, the first DP Road was not constructed/developed by the Petitioner but the same was constructed by",

the Public Works Department of Respondent No.2. The development of the said road was a condition of the Commencement Certificate and it is in,

these circumstances that the Petitioner has paid a sum of Rs.31,81,670/- towards the cost of construction of the said road to enable it to get further",

permissions for its residential project. Mr. Apte submitted that the Municipal Commissioner of Respondent No.2 has issued a circular dated 7th July,"

2014 dealing with the policy for grant of TDR for construction of a road. This policy makes it clear that no application shall be entertained by,

Respondent No.2 for TDR in lieu of any cost paid for development of an amenity. Mr. Apte submitted that neither has the said circular, nor its",

relevant clauses, been challenged in the present Petition. This circular will, therefore, bind the Corporation and the Petitioner and in these",

circumstances no TDR could be granted to the Petitioner for and towards the construction of first DP Road.,

23. Thereafter, Mr. Apte submitted that even otherwise, under Regulation 47 of DCR, 1994 it was mandatory for the Petitioner to construct an",

approach road. Mr. Apte brought to our attention and placed heavy reliance on the proviso to Regulation,

47 and submitted that the above provisions in the DCR, 1994 fixes the responsibility on the owners/developers to provide access to the development",

project and the Corporation is duty bound to ensure proper access to the developed project whilst granting any development permission. Mr. Apte,

submitted that the Corporation has imposed condition for construction of the two DP Roads in the Commencement Certificates themselves with a,

view that the development proposal mooted by developer would be approvable as per the requirements of the DCR, 1994 and ensure a proper access",

road to the Petitioner's development project. He submitted that undisputedly, the Petitioner has accepted the said condition and also executed an",

undertaking to that effect. In these circumstances, the Petitioner is not entitled for TDR for construction of the aforesaid two DP Roads, was the",

submission.,

24. Mr. Apte then submitted that it is important to note that when the development proposal was submitted by the Petitioner, there was neither any DP",

Road in existence nor was there any access road. It is in these circumstances and as per Regulation 47 of the DCR, 1994, the Corporation being duty",

bound to ensure proper access to the Petitioner's development project, imposed the conditions for construction of the two DP Roads. In these",

facts, Mr. Apte submitted that the Petitioner was not entitled to claim TDR against the construction of the aforesaid two DP Roads.",

25. As far as the judgments relied upon by the Petitioner are concerned, Mr. Apte submitted that none of the judgments relied upon by the Petitioner",

refer to Regulation 47 of DCR, 1994. In fact, according to Mr. Apte, the judgment delivered by a Division Bench of this Court in Writ Petition No.",

7204 of 2016 pertains to the conditions imposed by the Municipal Commissioner and which were held to be arbitrary and contrary to the provisions of,

Appendix-W. Even this judgment does not make any reference to Regulation 47 and hence is inapplicable to the facts of the present case. He further,

submitted that this judgment of the Division Bench (passed in Writ Petition No. 7204 of 2016 on 15th March, 2019) is questioned before the Apex",

Court and the SLP filed, is pending. He, therefore, submitted that even the judgments relied upon by the Petitioner are of no assistance and the",

rejection of the grant of TDR to the Petitioner vide Respondent No.2's letter dated 18th November, 2014 was fully justified. He therefore",

submitted that as a consequence there was no merit in the Writ Petition and the same be dismissed with costs.,

26. We have heard the learned counsel for the parties at length and have perused the papers and proceedings in the above Writ Petition as well as the,

written submissions submitted by the advocates for the Petitioner as well as the advocates for Respondent No.2. We have also considered the case,

law cited on behalf of the Petitioner. As seen from the discussion above, the controversy in the present Petition is the non-grant of the TDR in the",

form of FSI to the Petitioner for the area equivalent to the construction of the amenity (the first and second DP Roads) on the surrendered land. As,

far as the first DP Road is concerned, though, initially the same was to be constructed by the Petitioner, it was later decided that the same would be",

constructed by Respondent No.2 and for construction of the same, the Petitioner would deposit with Respondent No.2 a sum of Rs.31,81,670/-. It is",

not in dispute that this cost of construction has been duly deposited by the Petitioner with Respondent No.2. As far as the second DP Road is,

concerned, it is also not in dispute that the same was duly constructed by the Petitioner on the surrendered land at its own cost and thereafter both the",

DP Roads were handed over to Respondent No.2. In fact, after possession of the aforesaid two DP Roads was taken over by Respondent No.2, it",

has also got the same transferred in its name in the records of rights and a separate 7/12 extract was also issued in the name of Respondent No.2,

showing Respondent No.2 as the owner of the aforesaid two DP Roads.,

27. In these facts, we have to examine whether the Petitioner would be entitled to TDR in the form of FSI for the area equivalent to the construction",

of the DP Roads and which comes to approximately 6913.21 sq. mtrs. In this regard, before we proceed further, it would be necessary to refer to",

certain statutory provisions in the MRTP Act, 1966 as well as in the DCR, 1994. Section 2 of the MRTP Act, 1966 is the definitions section. Section",

2(2) defines the word "Amenity" and reads thus:-,

2. Definitions,

In this Act, unless the context otherwise requires,---",

"2(2) "Amenity" means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens,"

markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply,"

street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences."

28. On a plain reading of the aforesaid Section it is apparently clear that a road would fall within the definition of the word "Amenity". In fact, it",

has not even been disputed before us that a road would be an amenity as contemplated under Section 2(2) of the MRTP Act, 1966."

29. The next provision which would be relevant for our purpose would be Section 126 of the MRTP Act, 1966 and which inter alia deals with",

acquisition of land required for public purposes specified in plans. Section 126, insofar as it is relevant for our purposes, is reproduced hereunder:-",

"126.Acquisition of land required for public purposes specified in plans,

"(1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or",

reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or",

as the case may be, any appropriate Authority may, except as otherwise provided in section 113-A, acquire the land",

(a) by an agreement by paying an amount agreed to or",

(b) in lieu of any such amount, by granting the land-owner or, the lessee, subject, however, to the lessee paying the lessor or depositing with the",

Planning Authority, Development Authority or Appropriate Authority, as the case maybe, for payment to the lessor, an amount equivalent to the value",

of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Right to Fair,

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Floor Space Index (FSI) or Transferable",

Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space",

Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final",

Development Control Regulations prepared in this behalf provide, or",

Access Length,Area Served (sq.m..)

In meters (m),Less than 1500- 4000- Over 1500 4000 10000 10000

1,Width in meters (m) 2 3 4 5

Less than 75 Above 75 to 150 Above 150 to 3000

Over 3000",6.0 7.5 9.0 12.0 7.5 7.5 9.0 12.0 9.0 9.0 9.0 12.0

12.0 12.0 12.0 12.0

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21. Now, this condition, if juxtaposed with Appendix A and Regulation No.6, it will be apparent that the regulation refers to a

situation where an owner or lessee also develops or constructs an amenity on the surrendered plot, at its cost, subject to such stipulations as

may be prescribed by the authority, as the case may be, and to their satisfaction and hands over the said developed or constructed amenity

to the Commissioner/appropriate authority, free of cost, he may be granted, by the Commissioner, further development rights in the form of

FSI equivalent to the area of construction/development done by him, utilisation of which will be subject to the regulations contained in this

Appendix. Thus, the development and construction of the amenity and which may include a road, at the cost of the owner or lessee, entitles

him to claim this further development right. However, it is subject to such stipulations as may be prescribed by the Commissioner or the",

appropriate authority, as the case may be. No stipulation prescribed by the Commissioner or appropriate authority has been referred in the

impugned order/communication nor is it brought to our notice. Similarly, we have nothing on record which would indicate that the

Commissioner/appropriate authority was dissatisfied with the development or construction of the amenity. In fact, this is not a matter of

dispute between the parties. It is undisputed that the amenity was surrendered and on surrendering that amenity, the development right

certificate was issued. After that, the claim is for further development right in terms this regulation and that can be claimed upon

development or construction of the amenity on the surrendered plot at the cost of the owner or lessee. How this right, as claimed, can be

denied on the touchstone of Condition No. 12 is not clear to us at all. Condition No.12 deals with asphaltting of road. A development or

construction of a road and surrendering a road is a distinct matter altogether. The cost of asphaltting can never be claimed by the

petitioner/ builder/ Developer in terms of this Condition No.12. When this asphaltting is done at the cost of the owner/lessee, then, no

compensation is payable and that is what Condition No.12 says. The asphaltting should be done at the cost of the owner or lessee before

applying for first commencement certificate of the layout or three months after monsoon is the condition. Properly understood, that has no

connection with Regulation No.6. That is an independent right, which can be claimed. Merely because such a condition is imposed and

which is accepted cannot, therefore, be a justification to deny this right.",

requirement of providing storm water drain, water harvesting, the other safeguards and which would ensure that the structure is stable.

Once the structure/ the building that is to come up to be termed as authorised or legal, these conditions have to be complied with. So long as

these conditions are complied with, the development will be in terms of the law. These conditions, therefore, are traceable to the power

conferred in the Planning Authority in terms of sections 44 and 45 of the MRTP Act. As far as the DCRs are concerned, they are traceable

to the development plan itself and once a regulated development is the aim and object of the plan as also the enactment, then, consistent",

therewith, the DCRs contain these provisions. Thus, a balancing act is performed and so long as the land or a portion thereof, reserved or",

designated for a public purpose in a development plan, is voluntarily surrendered, then, a benefit accrues for such surrendering of the",
land. The further benefit accrues if the amenity is developed by the developer at his own cost. This is how the right to develop one's own,
property vesting in the owner or other right claimed by the lessee is balanced with the requirement of the Planning Authority. It subserves,
larger public interest and we achieve a balanced and regulated so also controlled development.â??,