

Kukreja Construction Company vs The State Of Maharashtra on 13 September, 2024

Author: B.V. Nagarathna

Bench: B.V. Nagarathna

2024 INSC 692

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9702 OF 2024

KUKREJA CONSTRUCTION COMPANY
& OTHERS

... APPELLANTS

VERSUS

STATE OF MAHARASHTRA & OTHERS

... RESPONDENTS

WITH

CIVIL APPEAL NO.9703 OF 2024

CIVIL APPEAL NO.9704 OF 2024

CIVIL APPEAL NO.9705 OF 2024

CIVIL APPEAL NO.9706 OF 2024

CIVIL APPEAL NO.9707 OF 2024

CIVIL APPEAL NO.9708 OF 2024

CIVIL APPEAL NO.9709 OF 2024

CIVIL APPEAL NO.9710 OF 2024

CIVIL APPEAL NO.9711 OF 2024

CIVIL APPEAL NO.9712 OF 2024

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Reason:

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JUDGMENT

NAGARATHNA, J.

These appeals have been filed against three impugned judgments and orders of the High Court of Judicature at Bombay, namely,

- i) Judgment dated 18.12.2018 whereby Writ Petition Nos. 1898/2009, 1823/2012, 839/2015, 2871/2015, 2107/2016, 2170/2016, 384/2017 and 541/2017 were rejected on the ground of delay and laches and the writ petitioners therein/appellants herein have filed an appeal. Writ Petition Nos. 203/2014 and 2262/2010 were allowed and Writ Petition No.1860/2017 was partly allowed.

As against Writ Petition No.203/2014, Municipal Corporation of Greater Mumbai (hereinafter referred as "Mumbai Municipal Corporation") has filed Civil Appeal No.9708/2024 arising out of Special Leave Petition (Civil) No.13365/2019. However, as against orders in Writ Petition

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No.2262/2010 and 1860/2017, there are no Special Leave Petitions filed by the Mumbai Municipal Corporation;

ii) Judgment and Order dated 18.10.2019/08.11.2019

whereby Writ Petition No.2531/2009 was allowed and the

Mumbai Municipal Corporation has filed Civil Appeal

No.9711/2024 arising out of Special Leave Petition (Civil)

No.10430 of 2020;

iii) Judgment dated 20.10.2022 whereby Writ Petition

No.411/2013 was allowed and the Mumbai Municipal

Corporation has filed Civil Appeal No.9712/2024 arising

out of Special Leave Petition (Civil) No.606 of 2023.

1.1 Thus, there are sets of judgments and orders of the Bombay High Court which have been considered together owing to their similarity.

1.2 The High Court considered the writ petitions on the issue concerning the implementation of the decision of this Court in Godrej & Boyce Manufacturing Company Limited vs. State of Maharashtra, (2009) 5 SCC 24 ("Godrej & Boyce I"). The

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said decision dealt with Regulation 34 read with Para 6 of Appendix-VII to the Development Control Regulations for Greater Bombay, 1991 ("the DCR" for short).

Relevant facts:

2. With regard to the order dated 18.12.2018, the writ petitioners before the High Court (appellants herein) were holding plots of land shown as reserved in the sanctioned development plan under the provisions of the Maharashtra

Regional and Town Planning Act, 1966 ("MRTP Act" for short) which were reserved for Development Plan Road ("DP Road" for short). According to the writ petitioners, they constructed DP Roads at their own cost and voluntarily surrendered the reserved lands to the Mumbai Municipal Corporation. In lieu thereof, in terms of clause (b) of sub-section (1) of Section 126 of the MRTP Act read with Regulations 33 and 34 as well as Para 5 of Appendix-VII of DCR, the writ petitioners were granted Floor Space Index ("FSI" for short) and/or Transferrable Development Rights ("TDR" for short) in the form of Development Rights Certificates ("DRC" for short) equal to the

gross area of the plots surrendered by them. Page 4 of 86
Para 6 of

Appendix-VII (as it stood prior to its amendment) provided that when an owner or a lessee also develops or constructs the amenities on the surrendered plot at his own cost and hands over the developed/constructed amenity to the Municipal Commissioner, he is entitled to DRC in the form of FSI or TDR equivalent to the area of construction/development done by him. The expression "amenity" has been defined in sub-section (2) of Section 2 of the MRTP Act as well as clause (7) of Regulation 3 of DCR.

2.1 For the purpose of implementation of the DCR, two Circulars were issued on 09.04.1996 and 05.04.2003. By Circular dated 09.04.1996, the DRC equivalent to 15% area of

the DP Road constructed by the owner or lessee on the surrendered plot was to be provided when the owner or lessee surrendered the developed amenity together with the reserved plot. By Circular dated 05.04.2003, the figure was enhanced to 25%.

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b.2 In *Godrej & Boyce I*, this Court held that the expression “equivalent” in Para 6 of Appendix-VII would entitle the owner or lessee to 100% FSI or TDR for the construction of an amenity at his cost. Therefore, FSI or TDR for construction of an amenity would not be confined to 15% or 25% of DP Road area and it would be equivalent to 100% of the area of the road constructed by the owner or the lessee.

2.3 The grievance of the writ petitioners before the High Court was that the Mumbai Municipal Corporation had declined to grant 100% additional TDR equivalent to the area of the amenity developed. By a notification issued on 16.11.2016, Regulation 34 of the DCR was amended. As a result, Appendix-VII was virtually obliterated from the DCR. The notification dated 16.11.2016 was assailed and question arose as to whether the modifications made by the notification amending Regulation 34 of the DCR would have retrospective or retroactive operation.

2.4 The High Court made a brief reference to the facts of each of the writ petitions and considered the detailed submissions

made on behalf of the writ petitioners, the Mumbai Municipal Corporation and the State Government.

Contentions before the High Court:

3. It was contended on behalf of the writ petitioners before the High Court that the unamended Regulation 33(1) of the DCR enabled the owner of the land to seek benefit of FSI of the land reserved for DP Road and utilize the same on the remaining land. Till 17.06.2010, there was no entitlement to seek FSI under Regulation 33 for construction of an amenity and the amenity TDR was available only under Regulation 34 read with Para 6 of Appendix-VII. The amendment made on 17.06.2010 to Regulation 33 resulted in the owner, who had constructed the road, instead of TDR, to opt for FSI to be utilized on the remainder of the land. He would then be entitled to an extent of 25% of the FSI. But if the owner constructed an amenity but did not avail FSI benefit on the remainder land, the benefit was separated from the land and given in the form of TDR under Regulation 34 read with Para 6 of Appendix-VII. That Para 6 of Appendix-VII was not amended as such on

a7.06.2010 after the decision of this Court in Godrej & Boyce I as no amendment was carried out as such. However, by the notification dated 16.11.2016, the entire Regulation 34 and Appendix-VII were substituted. As per the amended provision, the owner was eligible to obtain TDR for the land at the rate

mentioned in Para 4.1 of the amended Regulations as the owner who developed the amenity thereon became eligible to receive TDR in terms of Para 4.2 but by this, Regulation 33(1) did not undergo any amendment.

3.1 It was contended that the aforesaid amendment should be construed to be prospective as otherwise it would apply to cases where amenity was developed and surrendered earlier, and hence would be unconstitutional. It was pointed out that subsequent to the judgment of this Court in *Godrej & Boyce I*, in the case of *Municipal Corporation of Greater Bombay vs. Natwar Parikh & Co. Pvt. Ltd.*, Civil Appeal No.1748 of 2015, (“*Natwar Parikh*”) this Court had rejected the prayer of the Mumbai Municipal Corporation to revisit the decision in the case of *Godrej & Boyce I* and had also rejected the prayer for

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declaring that the said judgment would have only a prospective effect. In the said case, this Court had also rejected an argument of delay and laches.

3.2 It was further contended that the notification dated 16.11.2016 could not have a retrospective effect as the decision of this Court in *Godrej & Boyce I* could not have been nullified by taking away the vested right conferred, without altering the basis of the judgment.

3.3 It was next contended that clause (b) of sub-section (1) of Section 126 of the MRTP Act, which was incorporated into the

statute book with retrospective effect from 25.03.1991, would imply that prior to the said date, there was no provision for FSI/TDR for construction of a road by the owner. That for the first time w.e.f. 17.06.2010, provision was made for an additional 25% FSI for construction of DP Road. Since a road falls within the definition of amenity under the DCR as well as MRTP Act, compensation in the form of FSI/TDR for the construction of an amenity as provided by the relevant DCR ought to have been granted to the petitioners. This was having

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regard to Regulation 34 read with Appendix-VII which is a complete code for grant of TDR. It was submitted that the scheme of an additional 100% TDR on account of construction of an amenity was in lieu of payment of compensation in an acquisition proceeding.

3.4 The contention of the Mumbai Municipal Corporation, on the other hand, was that the decision of this Court in *Godrej & Boyce I*, was per incuriam as it ignored the effects of Regulation 33 of the DCR. It was contended that if the compensation had been paid partly or fully by any means, TDR could not be granted. That in the case of the writ petitioners, the compensation in the form of 10% or 25% additional TDR had already been granted and the notification dated 16.11.2016 had removed the basis of the decision of this Court in *Godrej & Boyce I* and there was now a prohibition for issuance of TDR in favour of the persons who had already been compensated. They

further contended that the impugned notification would apply even to cases pending before the High Court and the Mumbai Municipal Corporation as the judgment in Godrej & Boyce I

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had been nullified by the said notification. Further, there

cannot be 100% TDR in respect of the area of the amenity developed, and therefore, to cure the defect, the notification dated 16.11.2016 was enforced and that the DCR applicable on the date of deciding an application for grant of development permission would govern the decision on the application.

3.5 By way of reply, the writ petitioners contended before the High Court that the notification dated 16.11.2016 was not a validating Act. It was merely a delegated legislation which could not nullify the judgment of the Apex Court. The right to claim TDR on the development of the amenity vests in the owner the moment the permission is granted by the Municipal Corporation to construct the road/amenity. The judgment in Godrej & Boyce I is not per incuriam and had been applied in other subsequent cases. The object of giving a benefit under Regulation 34 is owing to lack of financial capacity of the Municipal Corporation to construct amenities by itself. Hence, the writ petitioners sought relief under Regulation 34 of the DCR.

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Consideration by the High Court:

4. On a consideration of the rival submissions and taking note of the fact that the contention of the Mumbai Municipal Corporation was that the decision of this Court in *Godrej & Boyce I* was per incuriam, the High Court considered the provisions of the Act and the Regulations in extenso. The High Court noted that in almost all the cases the action of surrendering the land and developing the amenities had been completed by 17.06.2010 when Regulation 33 underwent an amendment. Therefore, on a consideration of the erstwhile Regulation 33, the High Court observed that the same was applicable to a case where the owner, including a lessee, had surrendered the land or area required for road widening or for construction of a new road proposed under the development plan or those proposed under the Mumbai Municipal Corporation Act, 1888 ("the Act of 1888" for short). Thus, it would apply to the lands reserved in the development plan for construction of new roads or for road widening and also to the lands which were within the road-line as fixed under the Act of

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1888 on which a road had not yet been constructed. The said provision was not applicable to any other amenity. It was further observed that a part of FSI could be used on the plot remaining after such surrender and the balance FSI was to be permitted to be utilised as TDR by issuing DRC. Such TDR was to be governed by Regulation 34 as that is the provision for

grant of TDR. Thereafter, the road and land would stand transferred in the city survey record in the name of the Mumbai Municipal Corporation and vest in the Corporation.

4.1 Reference was then made to Regulation 34 and Appendix-VII, which deals with TDR. The concept of TDR is that FSI available in respect of one plot of land could be permitted to be utilised on another plot of land. Para 6 of Appendix-VII dealt with a case where the owner or lessee developed or constructed the amenity on the surrendered land. In such a case, it was relatable to clause (b) of sub-section (1) of Section 126 of the MRTP Act. The said Act defines "amenity" under sub-section (2) of Section 2 of the MRTP Act, as also in clause (7) of Regulation 3 of the DCR. The High Court observed that Regulation 33(1)

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gave effect to clause (b) of sub-section (1) of Section 126 of the MRTP Act. That Para 5 of Appendix-VII pertains to the extent of TDR to be granted against the surrender of a reserved land. Para 5 of Appendix-VII is significant inasmuch as it deals with a case where the owner or lessee develops or constructs an amenity on the surrendered plot at his own cost subject to such stipulation as may be prescribed by the Municipal Commissioner. That the expression 'amenity' would include a road and the construction or development of the road would have to be at the cost of the owner. In such an event, under Para 6 of Appendix-VII, the grant of additional FSI in the form DRC is equivalent to the area of construction/development

done by the owner as per the stipulations prescribed by the Commissioner. This is like a compensation granted for construction of an amenity as provided in clause (b) of sub-section (1) of Section 126 of the Act.

4.2 The High Court again considered the argument of the Mumbai Municipal Corporation made before this Court to the effect that the value of the amenity developed or constructed by

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the owner for which an additional TDR was sought must be commensurate to the value of the amenity and not the area of the amenity, which argument had been repelled by this Court in Godrej & Boyce I. Thus, the High Court on considering the judgment of this Court in Godrej & Boyce I observed that the additional TDR was required to be granted as per DCR and in particular Para 6 of Appendix-VII equivalent to the area constructed or developed and not on the basis of the value of the development of the amenity. Hence, the High Court observed that when a land which is reserved in the development plan under the MRTTP Act for a public purpose is surrendered by the owner or lessee free of cost and the amenity is developed thereon, on its surrender, the owner or lessee will be entitled to FSI/TDR equivalent to the area of the surrendered land and an additional TDR equivalent to the area of the amenity developed or constructed by him.

4.3 While considering the arguments on behalf of the Mumbai

Municipal Corporation with regard to Regulation 33, the High Court observed that the said Regulation provided that only a

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part of the land FSI can be used on the remaining portion of the land and the balance FSI had to be provided in the form of TDR, as per Appendix-VII. That Appendix-VII read with Regulation 34 dealt only with grant of TDR and the conditions on which TDR can be granted. Even the TDR available in terms of the Regulation 33(1) will be governed by Regulation 34 read with Appendix-VII. This is particularly so, as per Para 5 of Appendix-VII which applied to the grant of TDR in respect of land covered by Regulation 33(1). That Para 6 of Appendix-VII dealt with both situations, i.e., where the entire land held by the owner or lessee was reserved or a part thereof was reserved and the land was surrendered to the Corporation. Para 6 also dealt with grant of an additional TDR for construction of an amenity in terms of clause (b) of sub-section (1) of Section 126 of the MRTP Act. Regulation 33(1) dealt with FSI or TDR in lieu of surrender of land required for roads whereas Para 6 of Appendix-VII dealt with the grant of FSI or TDR in respect of the road developed at the cost of the owner or the lessee. That

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this Court in Godrej & Boyce I had considered Regulation 33 also.

4.4 Considering Regulation 33 which had undergone an

amendment on 17.06.2010, the High Court observed that prior to the amendment, the said Regulation did not deal with FSI or TDR in lieu of the construction of road. It dealt with only FSI or TDR against the surrender of land reserved for road. However, after amendment, when a road constructed as per the stipulation of the Commissioner was handed over to the Commissioner free of cost, an initial FSI equivalent to 25% of the area of construction of road can be granted. A part of the FSI can be consumed on the remaining land and the remaining part of the FSI will be provided in the form of TDR. Therefore, the amendment to Regulation 33(1) was applicable to reservation of road and not for any other amenity. It was also clarified that the amendment will not apply where the FSI granted in lieu of road had been utilized and full occupation certificate had been granted prior to 17.06.2010. Therefore, after 17.06.2010, in case of a land reserved for road or road

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widening which was surrendered, if the amenity being a road had been constructed by the owner on the land surrendered, the additional FSI as provided in clause (b) of sub-section (1) of Section 126 of the MRTP Act will be 25% of the area of the construction of road. Hence, Para 6 of Appendix-VII to Regulation 34 would apply and the owner or the lessee will not get TDR equivalent to entire area of the road constructed by him but it will be confined to 25% of the area.

4.5 It was clarified that pursuant to notification dated 16.11.2016, Para 4.2 of the Schedule to the notification would be the only clause applicable to the grant of TDR against construction of amenity and that from 16.11.2016, Para 6 of Appendix-VII would not apply to the lands with amenity surrendered after that date. In other words, Regulation 34 stands substituted by the Schedule to the said notification. It was further observed by the High Court that the said notification dated 16.11.2016 did not have a retrospective operation and it also did not take away the basis of the decision in Godrej & Boyce I.

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d.6 It was further clarified by the High Court that in the case of Natwar Parikh & Co. Pvt. Ltd. vs. State of Maharashtra, 2014 SCC Online Bom 495 ("Natwar Parikh & Co. Pvt. Ltd."), 25% TDR was granted to the petitioner therein in the year 2006-2007. Subsequent to the decision of this Court in Godrej & Boyce I, the petitioner therein had filed a petition. On the facts of the case in Natwar Parikh & Co. Pvt. Ltd., it was observed that there was no delay or laches. The said decision of the High Court was sustained by this Court in Civil Appeal No.1748 of 2015. This Court had also rejected the argument that the judgment in Godrej & Boyce I should apply prospectively.

4.7 Finally, it was held that additional FSI or TDR in terms of Para 6 of Appendix-VII as well as in terms of clause (1) of

Regulation 33 becomes available on surrender of the land reserved with or without amenity, as the case may be. After 17.06.2010, if there is surrender of land reserved for road or road widening on which road is constructed by the owner or lessee, the FSI or TDR will be available in respect of amenity of

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road as per Regulation 33(1) as amended. Therefore, the right to get FSI or TDR accrues at the time of surrender.

4.8 Thereafter, the High Court went into the facts of each of the writ petitions. Accordingly, the High Court passed the following order:

- i) We hold that the notification dated 16th November 2016 is legal and valid. However, the said notification will not have retrospective or retroactive application to a land reserved under the development plan which is surrendered and amenity is developed on the said land by the owner or lessee thereof at his own cost prior to 16 th November 2016. Such cases will be governed by the Regulation 33(1) and clauses (5) and 6 of Appendix VII. In case of a land reserved for a road, either in development plan under the MRTTP Act or under the provisions of the said Act of 1888 and surrender is made and road is developed on or after 17th June 2010 but before 16th November 2016, the FSI or TDR in lieu of amenity will be governed by the Regulation 33(1) as amended on 17th June 2010.
- ii) We reject the argument that the decision of the Apex Court in the case of Godrej & Boyce Manufacturing Company Limited (supra) is per incuriam.
- iii) We hold that whether the writ jurisdiction of this Court under Article 226 of the Constitution of India can be allowed to be invoked on the basis of the said decision or not depends upon the facts of each

case and the conduct of the petitioners especially the delay and laches on their part;

- iv) Writ Petition No.203 of 2014 is allowed. We direct the third respondent-MMRDA to make recommendation to the Mumbai Municipal Corporation for grant of 75% additional FSI/TDR in terms of the aforesaid decision of the Apex Court within a period of two months from today. The Municipal Corporation shall examine the said recommendation and if the petitioners are otherwise entitled to TDR for amenity in terms of the aforesaid decision of the Apex Court, necessary DRC shall be issued within a period of two months from the date on which recommendation of MMRDA is received.
- v) Writ Petition No.1898 of 2009 is rejected;
- vi) In Writ Petition No.2262 of 2010, the petitioners will be entitled to additional 100% amenity FSI in terms of the aforesaid decision of the Apex Court provided by producing the documents, they satisfy the Mumbai Municipal Corporation that work was actually carried out by them for developing the recreation grounds and the ground;
- vii) Writ Petition No.1823 of 2012 is rejected.
- viii) Writ Petition No.839 of 2015 is rejected.
- ix) Writ Petition No.2871 of 2015 is rejected.
- x) Writ Petition No.2107 of 2016 is rejected.
- xi) Writ Petition No.2170 of 2016 is rejected.
- xii) Writ Petition No.384 of 2017 is rejected.

- xiii) Writ Petition No.541 of 2017 is rejected.
- xiv) Writ Petition No.1860 of 2017 is partly allowed. We direct the Mumbai Municipal Corporation to grant additional FSI in respect of amenity of road as provided by Regulation 33(1) as amended with effect from 17th June 2010.

- xv) We make it clear that wherever we have held that the petitioners are entitled to 100% amenity TDR in accordance with clause 6 of Appendix VII in terms of the aforesaid decision of the Apex Court, the Mumbai Municipal Corporation will have to examine whether the petitioners are otherwise eligible for grant of TDR."

4.9 Out of all the writ petitions disposed of, Writ Petition No.203 of 2014 was allowed and a direction was issued to the MMRDA to make recommendations to Mumbai Municipal Corporation for grant of 75% additional FSI/TDR in terms of the decision of this Court in Godrej & Boyce I within two months from the said date of disposal. A further direction was issued to Mumbai Municipal Corporation to consider the said recommendation and to pass orders for issuance of DRC within a period of two months from the date on which recommendation of MMRDA was received, provided the writ

petitioner was otherwise entitled to TDR for amenity in terms of the judgment of this Court in Godrej & Boyce I.

4.10 Similarly, in Writ Petition No.2262 of 2010, additional FSI to the extent of 100% on amenity was granted in terms of the decision of this Court in Godrej & Boyce I provided the writ petitioner therein produced the documents and satisfied the Mumbai Municipal Corporation that work was actually carried out for developing the recreation grounds and ground.

4.11 Writ Petition No.1860 of 2017 was partly allowed to the effect that Mumbai Municipal Corporation ought to grant

additional FSI in respect of amenity of road as provided by Regulation 33(1) as amended with effect from 17.06.2010. It was also observed that the petitioners therein are entitled to 100% amenity TDR in accordance with Para 6 of Appendix-VII in terms of the aforesaid decision of this Court in Godrej & Boyce I and Mumbai Municipal Corporation was to examine whether the petitioners therein were otherwise eligible for grant of TDR.

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d.12 With regard to those cases which were dismissed on the ground of delay and laches, appeals have been filed by the private petitioners therein. Appeal has been filed by Mumbai Municipal Corporation against the order in writ petition No.203 of 2014 but no appeal has been filed against the order in Writ Petition Nos.2262/2010 and 1860/2017.

There are two more impugned judgments in Writ Petition Nos.2531/2009 and 411/2013 against which the Mumbai Municipal Corporation has filed its appeals.

4.13 At this stage, it may be mentioned that where the writ petitions were dismissed by the High Court on the ground of delay and laches, there is no observation in those writ petitions denying the benefit on merits. Insofar as in three cases where the writ petitions were allowed, there is only one appeal filed by the Mumbai Municipal Corporation as the orders in Writ Petition No.2262 of 2010 and Writ Petition No.1860/2017 have been accepted by it.

d.14 The details of the three cases in which appeals have been filed by the Mumbai Municipal Corporation are noted as under:-

- (i) WP No.2531 of 2009 – Starwing Developers Private Limited vs. Municipal Corporation of Greater Mumbai - disposed of on 18.10.2019
- (ii) WP No.203 of 2014 – Apurva Natvar Parikh and Co. Private Ltd. vs. State of Maharashtra and Others - disposed of on 18.12.2018
- (iii) WP No.411 of 2013 – Arvind Kashinath Dadarkar and Others vs. Municipal Corporation of Greater Mumbai and Others – disposed of on 20.10.2022.

Starwing Developers Private Limited:

5. In Starwing Developers Private Limited vs. State of Maharashtra (“Starwing Developers Private Limited”), Writ Petition No.2531 of 2009 disposed by the High Court on 18.10.2019, unamended Regulation 33 and Regulation 34 as

they stood prior to 2010 were considered in depth. It was observed that Regulation 34 as it stood at the relevant time provided that in certain circumstances, the development potential of a plot of land could be separated from the land

itself and could be made available to the owner of the land in the form of TDR which would be subjected to Regulation 34 and Appendix-VII. It was observed that Appendix-VII titled "Regulations for the grant of Transferable Development Rights (TDRs) to owners/developers and conditions for grant of such rights" had a scheme for the award of TDR to the owner of the plot of land which was reserved for public purpose and for additional amenities in the form of FSI. As per the conditions set out therein, such award would entitle the owner of the land to FSI in the form of DRC which he could use for himself or transfer to any other person. Para 5 of the Appendix provided that the built-up area for the purposes of FSI credited 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 where the TDR has

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originated. Para 6 provided that when an owner or a lessee also developed or constructed an amenity on the surrendered plot at his own cost, subject to such stipulations which may be prescribed and to the satisfaction thereof and hands over the developed or constructed amenity to the Commissioner or the appropriate authority free of cost, he would be granted further DR in the form of FSI equivalent to the area of construction/development done by him, utilisation of which would be subject to the regulations contained in the said Appendix.

5.1 Contrasting Regulation 34 with Regulation 33, it was observed that the latter pertained to additional FSI which may be allowed to certain categories. Sub-regulation (1) as it stood at the relevant time, provided that the Commissioner could permit the additional FSI on 100% of the area required for road widening or for construction of new roads under the development plan. Such FSI so surrendered would be utilisable on the remainder of the land up to a limit of 40% in respect of the plots situated in Mumbai city and 80% in respect of the

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plots situated in suburbs and extended suburbs. The balance FSI remaining thereafter was allowed to be utilised as a development right in accordance with the regulations governing TDRs. In the said case, it was again contended on behalf of the Mumbai Municipal Corporation that the petitioner therein having utilised 100% FSI for surrender of land without cost on the same layout, was governed by Regulation 33 and therefore, could not claim any additional FSI/TDR for having constructed the amenities. This contention, in fact, was squarely identical to those in the case of Apurva Natwar Parikh & Co. Pvt. Ltd which case is discussed later.

5.2 It was pointed out that till the amendment on 17.06.2010, there was no provision in Regulation 33 for claiming FSI for construction of amenities and the same could be claimed only in terms of Regulation 34 read with Para 6 of Appendix-VII. On

the other hand, it was contended by the Municipal Corporation that Regulation 33 was not brought to the notice of this Court in Godrej & Boyce I and that by notification dated 16.11.2016 the Regulation was amended to restrict the benefit of additional

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TDR for development of amenities which was to cure a defect in the legislation. The said contention was considered in light of the amendment to Regulation 33 with effect from 17.06.2010, by which a clause was added to sub-regulation (1) and it was observed that the amendment to Regulation 33(1) was applicable to roads and not to any other amenity. Moreover, this portion of the amendment would not apply where the FSI granted in lieu of road is utilised and full occupation certificate was granted prior to 17.06.2010. Therefore, from 17.06.2010 in case of a land reserved for road or road widening which was surrendered, if the amenity of the road was constructed by the owner of the land surrendered, the additional FSI as provided in clause (b) of sub-section (1) of Section 126 will be 25% from the area of the construction of the road. Therefore, for such amenity, in terms of Para 6 of Appendix-VII, the owner or a lessee will not get TDR equivalent to entire area of the road constructed by him. It will remain confined to 25% of the area. It was observed that Regulation 33(1) as amended on

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a7.06.2010 was not modified by the impugned notification

dated 16.11.2016.

Apurva Natwar Parikh & Co. Pvt. Ltd.:

6. In the case of Apurva Natwar Parikh & Co. Pvt. Ltd. vs. State of Maharashtra, Writ Petition No.203 of 2014 filed before the High Court, the surrender of land was in the form of deed of conveyance and handing over of possession was in February, 2007 and within three years from the surrender i.e. February, 2010, the writ petitioner/appellant herein requested an officer of MMRDA to recommend to the Mumbai Municipal Corporation to issue 100% additional TDR in respect of construction of amenity. In December, 2010, DRC of 25% of the amenity was granted. The balance 75% had not been paid. Hence, the writ petition was filed in October, 2013. Actually, within one month from the date of decision in the case of Godrej and Boyce I, the petitioner applied to the respondent-MMRDA for recommending to the Mumbai Municipal Corporation for grant of 100% TDR in respect of the amenity and the said application was acted upon and 25% FSI was

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granted in December, 2010. Therefore, the High Court held that conduct of the petitioner is not such that it will prevent the Writ Court from granting relief in terms of the decision in Godrej & Boyce I.

Arvind Kashinath Dadarkar:

7. In Arvind Kashinath Dadarkar vs. Municipal

Corporation of Greater Mumbai, Writ Petition No.411 of

2013 (“Arvind Kashinath Dadarkar”), disposed of on 20.10.2022, another Division Bench of the High Court of Bombay while adverting to Godrej & Boyce I and Apurva Natvar Parikh & Co. Pvt. Ltd., and Starwing Developers Private Limited, allowed the writ petition and directed that TDR be issued to the petitioner therein.

Submissions:

8. We have heard the arguments of the respective Senior Counsel and other Counsel on both sides and perused the material on record.

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Submissions on behalf of the Appellants:

8.1 Learned senior counsel, Sri Pravin Samdani, contended that the impugned judgment dated 18.12.2018 has, in fact, upheld petitioners’ right to 100% additional TDR and has applied the judgment of this Court in Godrej & Boyce I. However, reliefs were declined to certain writ petitioners on the ground of delay and laches in claiming the additional TDR in time. Consequently, the writ petitions were dismissed by the High Court. Being aggrieved by the dismissal of the writ petitions, the writ petitioners before the High Court have preferred these appeals. Therefore, this Court may reverse the finding of the High Court on the issue of the delay and laches and grant the reliefs to these appellants as the other writ petitioners have been granted by the High Court.

8.2 In this regard, it was submitted that the compensation payable to the landowners/lessees for acquisition of their land for a public purpose is, in fact, held in trust by the acquiring body, i.e., the Mumbai Municipal Corporation in the instant case. Once the compensation is determined, the same was

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payable and the reliefs could not have been denied by the High Court on the ground of delay or laches. In this context, reliance was placed on Noida Entrepreneur Association vs. NOIDA, (2011) 6 SCC 508 (Para 38-39) ("Noida Entrepreneur Association").

8.3 It was next submitted that the State is the guardian or custodian and protector of the rights of the citizens. This casts a duty and obligation on the State to pay compensation to land losers for lands compulsorily acquired. The right to receive a fair compensation is a constitutional right guaranteed under Article 300A of the Constitution of India which can also be traced to Article 21 of the Constitution of India as a citizen cannot be deprived of his property, save in accordance with law. It was contended that the mandate of Section 126(1)(b) of the MRTTP Act and the DCR be complied with by the respondent - Mumbai Municipal Corporation vis-à-vis the appellants herein. Otherwise, the denial of compensation would amount to usurping the citizens' property without authority of law and in breach of the constitutional rights of the citizens. In this

context, reliance was placed on Vidya Devi vs. State of Himachal Pradesh, (2020) 2 SCC 569 (Para 12.9 to 12.14); Sukh Dutt Ratra vs. State of Himachal Pradesh, (2022) SCC OnLine SC 410, (Para 13-27); and Lalaram Vs. Jaipur Development Authority, (2016) 11 SCC 31, (Para 124 & 129); Kazi Moinuddin Kazi Bashiroddin vs. Maharashtra Tourism Development Corporation (2022) SCC OnLine SC 1325, (Para 26).

8.4 In the above backdrop, learned senior counsel, Sri Pravin Samdani submitted that the High Court was not right in dismissing the writ petitions on the ground of delay and laches when the respondent – Mumbai Municipal Corporation had not proved that:

- (i) the delay amounted to laches;
- (ii) owing to delay and during the interregnum, the respondent – Mumbai Municipal Corporation had altered its position to its prejudice; and

- (iii) certain rights had accrued which could not be disturbed by grant of reliefs to the writ petitioners/appellants herein.

In this context, reliance was placed on Moon Mills Ltd. vs. M.R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450, (Para 9); M/s Dehri Rohtas Light Railway

Company Limited vs. District Board, Bhojpur, (1992) (2)

SCC 598, (Para 13); Hindustan Petroleum Corporation Ltd.

vs. Dolly Das, (1999) 4 SCC 450] (Para 8); and Tukaram

Kana Joshi vs. Maharashtra Industrial Development

Corporation (2013) 1 SCC 353, (Para 12); and Mohar Singh

(Dead) Thr. LRs. vs. State of UP Collector, 2023 INSC 1019

(Para 12).

8.5 It was further urged that the Mumbai Municipal Corporation has not asserted that owing to the alleged delay on the part of the appellants herein in making their claim under Section 126(1)(b) of the MRTP Act, there was any prejudice caused to it.

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8.6 It was also submitted that the observations of the High Court in the impugned judgment that there was a waiver or an abandonment of their rights by the writ petitioners/appellants herein are contrary to the facts and law. In this regard reference was made to Godrej & Boyce Manufacturing Co. Ltd. vs. Municipal Corporation of Greater Mumbai, (2023) SCC OnLine SC 592, (Paras 8, 15 and 18) ("Godrej & Boyce II"); G.T. Lad vs. Chemical and Fibres of India Ltd., (1979) 1 SCC 590, (Para 5 & 6); A.P. SRTC vs. S. Jayaram, (2004) 13 SCC 792, (Para 5); and State of Punjab vs. Davinder Pal Singh Bhullar, (2011) 14 SCC 770, (Para 37 to 42).

8.7 Petitioners' counsel therefore sought for allowing these appeals by setting aside that portion of the order of the High

Court declining to grant relief on the ground of delay and laches.

8.8 On the merits of the case, Sri Samdani submitted that Section 2(2) of the MRTP Act defines an amenity which is also defined under Regulation 3(7) of DCR. Section 126(1)(b) of MRTP Act provides for compulsory acquisition, wherein

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compensation is provided in the form of FSI or TDR in two parts: (i) for the land; and (ii) for development/construction of the amenity at the cost of the owner on the surrendered land in terms of the DCR. That Regulations 33(1) and 34 prior to their amendment in the year 2010 provided a mechanism for grant of TDR for both the first as well as the second component. This Court had interpreted the aforesaid provisions in the case of Godrej & Boyce I. This Court observed that the grant of additional TDR was for construction or development of the amenity. However, in the year 2010, there was an amendment which stated that in addition to the land component of FSI/TDR, the land owner would be entitled to receive only additional 25% FSI/TDR for construction of road. However, the additional 25% could be used as FSI on the remainder of the plot if the remainder of the plot could consume to the extent of 40/80% of the remaining land after surrender. The balance FSI/TDR was eligible to be paid as TDR under Paras 5 and 6 of Appendix-VII-A and Regulation 34 of the DCR. This amendment of 17.06.2010 was subsequent to the judgment of this court in

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Godrej & Boyce I. However, there was no alteration to Regulation 34 and Paras 5 and 6 of Appendix-VII-A of the DCR. This amendment was in the form of delegated legislation and was only prospective in nature. But by the amendment of 16.11.2016, the entire Regulation 34 and Appendix-VII-A was amended. As a result of the amendment, if the land owner desired to obtain TDR for the land component, the owner was eligible to do so at the rate mentioned in Para 4.1 of amended Regulation. If the landowner also developed the amenity, the owner became eligible to receive compensatory TDR in terms of Para 4.2 of the amended Regulation.

8.9 According to learned senior counsel, this amendment is also prospective. It was further submitted that by the amendment of Regulation 34 of the DCR, the basis of the judgment in Godrej & Boyce I was not removed. The intention of the amendment was to grant additional compensation to the landowner in view of the enforcement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and not to remove

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the basis of the judgment in Godrej & Boyce I. There was no intention to validate any action of the Corporation of curtailing amenity TDR to 25% or to validate Circulars based on which it

was sought to be curtailed to 25%. Therefore, the judgment of this Court in Godrej & Boyce I remains intact.

8.10 It was further submitted that the right to receive compensation for acquisition is a vested right and a constitutional right and the same cannot be taken away by an amendment to the statute.

8.11 It was next submitted that the attempt of the Mumbai Municipal Corporation to deny balance 75% TDR in view of the notification dated 16.11.2016 is unsustainable. This is because the writ petitioners' right to receive the balance TDR is a vested right which arose under the old DCR and continues even after the amendment. Further, a person cannot be denied compensation by a subsequent legislation when the entitlement is recognized under a prior legislation. The High Court has rightly held that the DCR amended was prospective and not retrospective.

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Submissions on behalf of the Respondents:

9. Per contra, learned senior counsel Sri Nadkarni, appearing for the respondent – Mumbai Municipal Corporation submitted a chart giving details of each of the appellants/writ petitioners before the High Court. The relevant chart is extracted hereinbelow:

| SR. NO./ RELEVANT REGULATION | PARTICULARS | DATE OF HANDING OVER OF AMENITY | WHETHER HANDED OVER AMENITY COMPLIES WITH ALL | APPLICATION FOR ADDITIONAL AMENITY FSI/TDR AFTER | DELAY |
|------------------------------------|-------------|--|--|---|-------|
|------------------------------------|-------------|--|--|---|-------|

(06.02.2009)

1. KUKREJA 28.01.1994 --NO-- 31.08.2009 6-15 years REGULATION CONSTRUCTION In the (calculated 34 CO. & ORS. VS. constructed from the date STATE OF road the sewer of handing MAHARASHTRA lines were not over of & ORS. laid down nor amenity) the street SLP (C) lights were laid NO.5273.2019 down. On failure to WP(C) comply parties NO.1898/2009 are required to pay prorated charges. As regard to street lights the prorated charges were paid after delay, Sewer lines were not paid.

2. NANABHOY 1. YES For 6 cases – 8-16 years REGULATION JEEJEEBHOY 13.04.2004 11.07.2014 (calculated 33(1) PVT. LTD. & ANR. 2. from the date VS. STATE OF 20.03.2001 For 4 cases – of handing MAHARASHTRA 3. 19.08.2014 over of & ANR. 27.03.2002 amenity)

4. For one case 06.09.2001 – 26.08.2014 SR. NO./ PARTICULARS DATE OF WHETHER APPLICATION DELAY RELEVANT HANDING HANDED FOR REGULATION OVER OF OVER ADDITIONAL AMENITY AMENITY AMENITY COMPLIES FSI/TDR WITH ALL AFTER CONDITIONS GODRIJ & BOYCE JUDGMENT (06.02.2009) SLP (C) 5.

| | |
|--------------|-------------|
| NO.8664/2019 | 13.02.2006 |
| WP (C) | 27.10.1997 |
| NO.541/2017 | 7. |
| | 27.10.1997 |
| | 29.10.1997 |
| | 21.12.2002 |
| | 14.12.2001 |
| | /22.05.2002 |
| | 14.08.2002 |

| | | | | | |
|------------|-----------------|------------|-----|------------|---------------|
| 3. | JITENDRA | 05.03.2005 | YES | 24.02.2009 | 4 years |
| REGULATION | AMRITLAL SETH | | | | (calculated |
| 33(1) | & ORS. VS. | | | | from the date |
| | STATE OF | | | | of handing |
| | MAHARASHTRA | | | | over o |
| | & ORS. | | | | amenity) |
| | SLP (C) NO.8204 | | | | |
| | / 2019 | | | | |

WP (C)

| | | | | | | |
|------------|---------------|-------|------------|-----|-------------|---------------|
| 4. | GEETA | ALIAS | 20.05.2005 | YES | For Balance | 4½ years |
| REGULATION | CHANDANI | | | | 75% | (calculated |
| 34 | UMESH | | | | additional | from the date |
| | GANDHI | | | | TDR on | of handing |
| | | | | | 01.12.2009, | over |
| | SLP | (C) | | | 20.06.2014, | amenity) |
| | NO.15702/2019 | | | | 01.12.2014, | |
| | | | | | 20.02.2016 | |

WP (C)

| | | | | | | |
|------------|--------------|----|------------|-----|---------------|---------------|
| 5. | MCGM | V. | 07.02.2007 | YES | Balance 75% | No delay case |
| REGULATION | APURVA | | | | TDR | as High |
| 34 | NATWAR | | | | 14.12.2011 | Court |
| | PAREKH & CO. | | | | (Godrej & | allowed the |
| | PVT. LTD & | | | | Boyce case – | WP |
| | ORS. | | | | after 2 years | |
| | | | | | applied) | |

| SR. NO./ RELEVANT REGULATION | PARTICULARS | DATE OF HANDING OVER OF AMENITY | WHETHER HANDED OVER AMENITY COMPLIES WITH ALL CONDITIONS | APPLICATION FOR ADDITIONAL AMENITY FSI/TDR AFTER GODRIJ & BOYCE JUDGMENT (06.02.2009) | DELAY |
|------------------------------------|-------------|--|--|--|-------|
| | SLP (C) | | | | |

WP (C)

| | | | | | | |
|------------|---------------|--|-------------|-----|------------|--------------|
| 6. | OBEROI | | 1. 26.05.04 | YES | 10.06.2016 | 8 years |
| REGULATION | REALITY LTD. | | 2. 16.04.08 | | | (calculated |
| 33(1) | ANR. VS. MCGM | | 3. 29.03.08 | | | from the dat |
| | & ANR. | | | | | of handin |
| | SLP (C) | | | | | over |
| | | | | | | amenity) |

WP (C)

| | | | | | |
|----|---------------|------------|-----|------------|----------|
| 7. | GIRDHARLAL D. | 13.12.1995 | YES | 05.08.2014 | 18 years |
|----|---------------|------------|-----|------------|----------|

| | | | | | | |
|------------------------------------|---|------------------------------------|----------|--|--|--|
| REGULATION 33(1) | RUGHANI ALIAS THAKAR HUF & ANR. VS. STATE OF MAHARASHTRA & ORS. | | | | | (calculated from the date of handing over amenity) |
| | SLP | (C) | | | | |
| | WP(C) | | | | | |
| 8. REGULATION 33(1) | JAMEEL A. & HUSSAIN ORS. V. STATE OF MAHARASHTRA & ORS. | 29.07.2004 | YES | 28.07.2014 | | 4 years from notification dated 17.06.2010 |
| | SLP | (C) | | | | |
| | WP(C) | | | | | |
| 9. REGULATION 34 | BYRAMJI JEEJEEBHoy PVT LTD. ANR. VS. STATE OF MAHARASHTRA | 05.06.2007 | YES | No Application made for 75% additional. | | 9 years (wrt the WP filed) |
| SR. NO./ RELEVANT REGULATION | PARTICULARS | DATE HANDING OVER AMENITY | OF OF | WHETHER HANDED OVER AMENITY COMPLIES WITH ALL CONDITIONS | APPLICATION FOR ADDITIONAL AMENITY FSI/TDR AFTER GODRIJ & BOYCE JUDGMENT (06.02.2009) | DELAY |
| | SLP | (C) | | | | |
| | WP(C) | | | | | |
| 10. REGULATION | MCGM STARWING | V. 29.12.2007 | YES | | | 1½ years (calculated |

33(1)

SLP (C)
NO.10430/2020

WP (C)
NO.2531/2009

from the date
of rejection
by the State
Government
on
15.07.2008
and
thereafter WP
filed on
05.12.2009)

9.1 Insofar as the appellant – M/s Kukreja Construction

Company, it was submitted that the conditions which are required to be complied with for seeking compensation under Section 126(1)(b) of the MRTP Act have not been met and therefore, unless and until the said conditions are complied with, the said appellant would not be entitled to compensation under the scheme of the Act and the Regulations made thereunder. As far as the other appellants are concerned, he fairly submitted that even according to the Mumbai Municipal Corporation they have complied with the conditions as required under the scheme and therefore, their cases could be considered if they are otherwise eligible for compensation being paid to them in case they are successful in these appeals. 9.2 Learned senior counsel also strenuously sought to buttress the submissions made on behalf of the Mumbai Municipal Corporation before the High Court regarding the judgment of this Court in Godrej & Boyce I, but did not persuade himself to do so. Ultimately, he supported the order of the High Court in denying the reliefs to the writ petitioners who had delayed in making their claims. He contended that the High Court was right in declining to grant the relief to the said parties.

9.3 Sri Nadkarni contended that firstly, the High Court was right in declining relief based on the judgment of this Court in Godrej and Boyce I owing to delay, as those developers who already availed of the TDR and accepted the same without any protest or demur could not again agitate the matter after the judgement of this Court in Godrej and Boyce I. Secondly, there was a crystallisation of the compensation payable in the form of FSI/TDR as on the date of the notice of acquisition which in this case could be either the publication of the development plan or the date of preliminary notification under the Acquisition Act and that the owner or lessee could not have returned for a second helping or make an additional claim of 100% TDR since the value of the land as on the date when the project was conceived or when the benefits were received would have been lesser than the value of the land on the date of the filing of the writ petition. Thirdly, any grant of additional TDR despite there being a delay would result in unjust enrichment of the owner and the lessee who could get an advantage of escalation in price of land which is contrary to public interest. Therefore, for this reason also, the High Court was justified in declining to grant relief on the ground of delay and laches. Hence, there is no merit in these appeals. 9.4 Learned senior counsel submitted that in the event this Court is to condone the delay and laches and thereby modifies the impugned judgment of the High Court then, in the case of the appellants in CA No. 9702 of 2024, (Kukreja Construction company and others) this Court may direct that only on complying with the mandatory requirements could the said appellant avail of the benefits of additional FSI/TDR in accordance with

law as indicated in the table above. 9.5 Learned senior counsel, Sri Nadkarni, with reference to our order dated 06.08.2024, sought further instruction on Estate Investment Company Ltd. and Ever-smile Construction being granted relief of 100% of TDR rights in terms of Section 126(1)(b) of the MRTP Act as well as the DCR. He fairly submitted that there is no dispute that the aforesaid two entities were indeed granted 100% TDR rights. Further, there has been no appeal filed with regard to the order of the High Court in Writ Petition No. 1860 of 2017 and Writ Petition No.2262 of 2010. Learned senior counsel, Sri Nadkarni, also submitted that insofar as the judgment of the High Court assailed in Civil Appeal Nos.9711/2024 and 9712/2024, they may be disposed in light of the prevalent law. Reply arguments:

10. By way of reply, learned senior counsel, Sri Samdani and other learned counsel contended that the Mumbai Municipal Corporation cannot be permitted to raise any contention contrary to the judgment of this Court in Godrej & Boyce I which is holding the field and there is no contention raised by the Municipal Corporation either before the High Court or this Court which can lead to a reconsideration of the said judgment. Hence, they sought for application of the judgment of this Court in Godrej & Boyce I to their cases as well.

10.1 Learned counsel for the respondents in the three appeals filed by the Mumbai Municipal Corporation supported the impugned order passed by Bombay High Court and contented that having regard to the judgment of this Court in Godrej & Boyce I and the order passed in Civil Appeal No. 1748 of 2015 which arose from the judgment of the Bombay High Court in the case of Natwar Parikh & Co. Pvt. Ltd, there is no merit in these appeals. Hence, they contended that the appeals filed by the Mumbai Municipal Corporation may be dismissed. Points for consideration:

11. In light of the aforesaid contentions, the following points would arise for our consideration: -

(i) Whether the High Court was right in declining to grant relief to the writ petitioners/appellants herein on the ground of delay and laches?

(ii) Whether the appeals filed by the respondent-

Mumbai Municipal Corporation would call for any interference by this Court?

(iii) What order?

Godrej & Boyce I:

12. At the outset, it would be useful to refer to the dictum of this Court in Godrej & Boyce I which has been followed by the High Court in these cases. In the said case, this Court considered the scheme of development rights in respect of land acquired for the purpose specified in plans under Section 126 of the MRTP Act. Three modes of acquisition of land required for a public purpose specified in the plan are contemplated under Section 126 of the MRTP Act, which reads as under:

“126. Acquisition of land required for public purposes specified in plans.— (1) Where 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 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 may be, 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 and 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

(c) by making an application to the State Government for acquiring such land under the provisions of the Right and Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the provisions of the Right and Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under Section 49 and except as provided in Section 113-A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in Section 19 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

Provided that, subject to the provisions of sub- section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(3) On publication of a declaration under the said Section 19, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,—

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as undeveloped area; and

(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft Town Planning Scheme:

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972:

Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of Section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement. (4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration, is not made, within the period referred to in sub-

section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993, the State Government may make a fresh declaration for acquiring the land under the provisions of the Right and Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.” In this case, we are concerned with Section 126(1)(b) of the MRTP Act.

12.1 Under Section 126(1) of the MRTP Act, when land is required or reserved for any of the public purposes specified in any plan or scheme under the Act at any time, the Planning Authority, the Development Authority, or as the case may be, any Appropriate Authority may acquire the land by agreement by paying an amount agreed to landowner or lessee [Section 126(1)(a)]; the second mode

is, in lieu of any such amount as mentioned above, by granting the landowner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, the Development Authority or Appropriate Authority, as the case may be, 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 Land Acquisition Act, 1894, Floor Space Index (FSI) or Transferable Development Rights (TDR):

(i) against the area of land surrendered free of cost and free from all encumbrances, and also

(ii) further additional FSI or TDR against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in that behalf provide [Section 126(1)(b)].

The third mode being by acquisition of the land under the relevant Act [Section 126(1)(c)]. 12.2 Thus, it is open to the landowner to surrender the plot of land “free of cost” and “free from all encumbrances” to the appropriate authority who may acquire the land by granting to the owner FSI or TDR against the area of the surrendered land. The scheme further provides for additional FSI or TDR against the development or construction of amenities (for which the plot is shown reserved in the plan) by the owner at his own cost. 12.3 In *Godrej & Boyce I*, the appellants therein had their plots covered under the development plan as reserved for roads, which they voluntarily surrendered. In addition, they constructed on their respective pieces of land the development plan roads at their own cost and as per the specifications stipulated in the relevant rules. In the said case, there was no dispute between the parties in regard to the FSI or TDRs granted to them for the surrendered plots of land. The controversy was with regard to the FSI or TDRs for roads constructed on the surrendered lands at the owner's cost. The landowners claimed that for constructing the roads they were entitled to FSI or TDRs for the whole of the surface area of the roads. They relied upon Para 6 of Appendix-VII to the DCRs. The Mumbai Municipal Corporation however relied upon a Circular dated 09.04.1996 issued by the Municipal Commissioner, Municipal Corporation of Greater Bombay, which envisaged a graded scheme for grant of additional development rights for construction of amenities by the landowner, e.g. in case of amenities like general hospital, municipal primary school, etc. which allowed FSI equal to the built-up area of the structure but in case of DP road only 15% of the area of the road surface. The Circular was assailed by the landowners.

12.4 In the said case, the Bombay High Court had accepted the contention advanced on behalf of the State of Maharashtra to the effect that by introducing a graded scheme for grant of additional FSI or TDR the Circular had eliminated the possibility of any discriminatory or arbitrary action on the part of the authority competent to issue the development right certificate. It was contended that grant of further additional TDR was commensurate to the value of the amenity constructed/developed on the surrendered land. Therefore, it was contended that Para 6 of the Appendix-VII, unlike Para 5 didn't use the words “equal to the gross area of the reserved plot” or “equal in area”. Instead, Para 6 used the words “equivalent to the area of construction/development”. That, Para 6 of Appendix-VII to the Regulations must be read with Section 126(1)(b) of the Act. It was evident that the said provision used the words “against the area of the land surrendered” and “against the development or

construction of amenity on the surrendered land”. Therefore, the grant of additional development right was proportionate to the value of the amenity constructed by the owner at his own cost and the Circular issued by the Municipal Commissioner simply quantified the exchange value of different kinds of amenities in percentage terms depending upon their cost of construction and other relevant considerations.

12.5 However, the aforesaid submission, which was accepted by the Bombay High Court was not agreed to by this Court and the judgment of the Bombay High Court was set-aside. While doing so, the submission on behalf of the appellants therein was accepted that the provision clearly envisaged grant of the FSI or TDR under two separate heads: one, for the land, and the other, for the construction of the amenity for which the land was designated in the development plan at the cost of the owner. The Court also held that Section 2(9-A) defined “development right” to include TDR and Section 126(1)(b) provided for:

- (i) grant of FSI or TDR against the area of land surrendered free of cost, and
- (ii) further, additional FSI or TDR against the development or construction of the amenity on the surrendered land at the owner's cost as the final Development Control Regulations should provide.

12.6 In the case of (i) above, FSI or TDR would be equal to the gross area of the surrendered plot, and for (ii) above i.e. for construction of the amenity, the extent of the FSI or TDR would be equivalent to the area of the construction/development made on the land.

12.7 That Regulation 34 made provisions for transferability of the development rights and Appendix-VII referred to in Regulation 34 provided for the extent of FSI or TDR admissible under the two heads. That the expression “equivalent to the area” of the construction or development made on the surrendered land in Para 6 of Appendix-VII would mean “equivalent to the area of construction/development”, that is to say, the additional DR would be the same in area as the amenity constructed/developed on the surrendered land. Hence, there cannot be a differentiation in the grant of additional TDR on a variable and sliding scale on the surrendered land for amenities constructed on the basis of the Circular issued by the Municipal Commissioner. Also, the Circular cannot override the provisions of the Regulations. It was further observed that the expressions “against the area of the land surrendered free of cost” and “against the development or construction of amenity on the surrendered land” would mean “in exchange for, in return for; as an equivalent or set-off for; in lieu of, instead of”. Section 126(1)(b) was a recompense to the landowner proportionate to the area of development or construction of the amenity on the surrendered land. Thus, in Para 5 of Appendix-VII to the Regulations, the expression “equal to the gross area of reserved plot” was relatable to the bare land and in Para 6 of the Appendix, the expression “equivalent to the area of the construction/development” would mean that “the area of construction or development” is the measure of equivalence. Therefore, there could be no other basis for determining the equivalence. Hence, the Circular was held to be without authority of law.

Natwar Parikh & Co. Pvt. Ltd.:

13. Prior to the impugned judgments of the High Court, in Natwar Parikh & Co. Pvt. Ltd., a writ petition was filed before the Bombay High Court seeking a direction for grant of additional TDR/development rights certificate (DRC) for the balance 75% area as set out in the Schedules annexed to the writ petitions. In that case also, admittedly, the respondents therein had been granted 25% TDR/DRC in lieu of the construction of the specified DP Road and there was no challenge about the actual work done at the relevant time. Subsequent to the judgment of this Court in Godrej & Boyce I, the petitioner therein filed the petition. The respondent Mumbai Municipal Corporation sought to deny the same on a twofold contention: firstly, there was delay and laches; and, secondly, an attempt was made to reopen the issues on facts about the construction of the DP Road. The same were repelled by the High Court by holding that already 25% TDR had been granted and therefore, there could be no reopening of the controversy on that basis and the only question which remained was the entitlement of the petitioner to remaining 75% TDR/DRC as prayed.

13.1 A contention was also sought to be raised by the respondent-Corporation that the petitioner therein had not built upon the amenity as contemplated under Regulation 34 Appendix-VII Paras 5 and 6. The said contention was also repelled by holding that the right of the petitioner has already been crystallised and the cause of action was a continuing one and hence there was no question of delay and laches. Consequently, a direction was issued to grant additional TDR for the balance 75% area. It was also observed that the issues which were raised in the said case had been concluded by the judgment of this Court in the case of Municipal Corporation of Greater Bombay vs. Yeshwant Jagannath Vaity, (2011) 11 SCC 88 (“Yeshwant Jagannath Vaity”), “for other amenity” also.

13.2 In Civil Appeal No.1748 of 2015 (Municipal Corporation of Greater Mumbai vs. Natwar Parikh and Co. Pvt. Ltd.), this Court by order dated 05.05.2016 has categorically observed that it was too late to re-visit the entire issue and to take a decision whether the judgment delivered earlier in Godrej & Boyce I should apply prospectively and not retrospectively. That is a matter which should have been agitated when Godrej & Boyce I was being heard. It was further observed that insofar as the 89 applicants who were then waiting to take an advantage of the aforesaid decision rendered by this Court, on the facts of the cases the applications ought to be considered and if a dispute arises the appropriate Court would take a decision in the matter. Consequently, the Civil Appeal filed by the Mumbai Municipal Corporation were dismissed.

Godrej & Boyce II:

14. It would be useful to refer to another decision of this Court in the case of Godrej & Boyce II. In the said case, two questions arose for consideration in the context of grant of DRC for a total area of 31,057.30 sq. metres, for the construction and development of the amenity namely, Recreation Ground. One of the questions considered was whether the High Court was right in concluding that there was an abandonment of claim by the appellants therein. Touching upon the facts of the case, this Court took note of the rejection of the claim by the Corporation vide communication dated 27.11.1998 for the grant of additional TDR made by application dated 17.04.1998; the resolution of the dispute of the said entity with the decision of this Court dated 06.02.2009 in Godrej & Boyce I (its own case); application being made for the grant of additional TDR on 03.11.2009 being rejected and a fresh writ petition being filed in the year 2010. This Court considered the law of abandonment

in the context of the contention raised by the Mumbai Municipal Corporation and it was observed in paragraphs 15 to 18 as under:

“15. The law of abandonment is based upon the maxim *invito beneficium non datur*. It means that the law confers upon a man no rights or benefits which he does not desire. In *P. Dasa Muni Reddy v. P. Appa Rao*, this Court held that “abandonment of right is much more than mere waiver, acquiescence or laches.... Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege....”. In paragraph 13 of the said decision, this Court put the law pithily in the following words:

“13.... There can be no waiver of a non-

existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver. ...”

16. Irrespective of whether the respondents concede or not, the Circular dated 09.04.1996 curtailed the rights of the owners to have additional TDR in certain circumstances. The Circular came under challenge before this Court and the decision of this Court in *Godrej and Boyce Manufacturing Company Limited* was delivered on 06.02.2009. As we have stated earlier, the decision in *Godrej and Boyce Manufacturing Company Limited* was in the case of the very appellant No. 1 herein though in respect of some other property.

17. To put it differently, what was cited by the Municipal Corporation in their order of rejection dated 27.11.1998 as an impediment for the grant of additional TDR was the subject matter of challenge in the first round. It was made by the very appellant No. 1 herein, though in respect of another property. If the said decision in the first round had gone against appellant No. 1 herein, the rejection of the claim of the appellants for additional TDR on the basis of “prevailing policy” would have become final and unquestionable.

18. In other words, during the period from 1996 to 2009, the right to claim additional TDR was in suspended animation. Therefore, the appellants had to necessarily wait till the cloud over their right got cleared. To say that the wait of the appellants during the period of this cloudy weather, tantamount to abandonment, is clearly unjustified and unacceptable.

Therefore, the finding recorded by the High Court on question No. 1 is not in tune with the law or the facts of the present case and hence question No.1 has to be answered in favour of the appellants herein.” (underlining by us) 14.1 The next question considered was whether the finding of fact arrived at by the High Court that the appellant therein did not and could not have developed the amenity, calls for any interference, especially in light of the statutory provisions and the facts of the case. The statutory provisions in Section 126(1)(b) were adverted to on the approach that the

authorities ought to have in these matters and this Court observed as under:

“21. As we have noted earlier, clauses (a), (b) and (c) were inserted by way of substitution in sub-section (1) of Section 126 under Maharashtra Act 10 of 1994 with effect from 25.03.1991.

22. As per Section 126(1), whenever the Planning Authority or Development Authority finds after the publication of a draft Regional Plan or a Development Plan that any land is required or reserved for any of the public purposes mentioned in the plan, such authority may acquire the land for the said public purpose. This acquisition can be made by three different methods, indicated in clauses (a), (b) and (c). The methods of acquisition prescribed in clauses (a), (b) and (c) of sub-

section (1) of Section 126, in simple terms are as follows:—

(i) The acquisition may be through an agreement entered into with the owner, by paying an amount agreed to;

(ii) Alternatively, the acquisition may be by the grant of FSI or TDR in lieu of any payment, along with Additional FSI or Additional TDR against the development or construction of the amenity on the surrendered land at the cost of the owner; or

(iii) The acquisition may also be by requesting the State Government to initiate the process of land acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

23. We are concerned in this case with the second method of acquisition of land indicated in clause (b) of sub-section (1) of Section 126. Under this clause, the owner and the planning authority are granted the leverage to agree that the compensation for the acquisition of the land will be for a consideration, not paid in the form of cash but granted in kind, in the form of two things, namely, (i) FSI or TDR for the area of land surrendered; and (ii) additional FSI or additional TDR against the development or construction of the amenity on the surrendered land.

24. Once the parties are ad idem on the fact that the case is covered by clause (b), then what is necessary to be seen by Courts is : (i) whether the parties had agreed to give/take FSI or TDR in lieu of the amount of compensation?; and (ii) whether there was a valid claim for the grant of additional FSI or additional TDR towards the development or construction of the amenity on the surrendered land at the cost of the owner?.” 14.2 This Court observed therein that there was no dispute on facts that the appellants therein had surrendered the land and accepted TDR in lieu of compensation. The only question was whether parties had satisfied the last limb of clause (b) which reads as under:

“26.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,” 14.3 It was observed that the owner of the land is under an obligation to develop or construct the amenity on the surrendered land at his cost and the Planning Authority has to reciprocate the same by granting additional FSI or additional TDR. While considering the said issue, both on facts as well as in law, this Court referred to the definition of the word “amenity” and “development” in Section 2(2) and 2(7) respectively of the Act and observed that the word “amenity” means several things including recreational grounds in respect of which the controversy arose in the said case. There was a dispute as to whether the appellant therein had not developed the recreational grounds. While considering the expression “development”, it was observed that the same was of wide import and in fact clause (b) of sub-section (1) of Section 126 of the Act has used both the expressions, namely (i) development;

and (ii) construction. Therefore, the word “development” has to be understood to mean any activity which may or may not include construction. Therefore, the question in the said case was, whether, the appellant therein had developed or constructed any amenity which ought to be tested with reference to the final DCR. While referring to the definition of amenity in Regulation 2(7) which includes recreational grounds, reference was made to Regulation 34 and it was observed that Appendix-VII was later renumbered as Appendix-VII-A vide order dated 15.10.1997. It was observed that clauses (5), (6) and (7) of the Regulation 34 was the substratum of the controversy before the High Court.

14.4 Going through the entire gamut of correspondence involved in the said case, it was held that all the activities undertaken by appellant No.1 therein through the Architects till handing over of the possession of the land were not towards the development of amenity and the grant of additional TDR. All these works were undertaken as part of the effort to make the Municipal Corporation accept the surrender of land and to grant TDR. On the facts of the said case, it was held that no amenity was developed as required by law by appellants Nos.1 and 2 therein to be entitled to additional TDR. Therefore, on facts, it was held that appellant was not entitled for additional TDR. Accordingly, the view of the High Court was confirmed and the appeal was dismissed.

Yeshwant Jagannath Vaity:

15. In Yeshwant Jagannath Vaity, the facts were that the respondents therein owned 10,000 sq. yards of land in Mulund village, which came within the area of Greater Bombay. A development plan was sanctioned for Greater Bombay in the year 1957. The said land was shown as reserved for public purpose of construction of a godown. However, the respondents and four other co-owners entered into a private agreement to handover possession of 10,000 sq. yards to the Municipal Corporation of Greater Bombay (MCGB) for temporary use as a truck terminal. The land was also to be used as a town duty office. The possession was handed over on 18.09.1961. The land was not put to any other use till November 1998. Therefore, Writ Petition No.3437 of 1988 was filed seeking a declaration that the land was not liable to be acquired which resulted into a compromise between the parties in which MCGB agreed to acquire and retain the area of 3500 sq. metres for the purpose of establishing and constructing an export octroi office. The respondents therein constructed the

export office and also developed the surrounding area. The possession of the export office and the courtyard was handed over to the MCGB for which a possession receipt was also issued. An application was made by the respondents for TDR in respect of the export office being 3500 sq. metres equivalent of the 100 per cent of the built-up area of the export office. However, insofar as the additional transferable rights in lieu of the development of the export courtyard surrounding the export office was concerned, the same was restricted to 466.96 sq. metres being 15 per cent of the built-up area of the courtyard.

15.1 The respondents not having received a favourable response to their request filed a writ petition which was allowed by the High Court. The High Court while granting the relief relied upon the judgment of this Court in *Godrej & Boyce I*. In the appeal filed by the MCGB, several contentions were raised including the contention regarding the Circular dated 09.04.1996 having no bearing on *Godrej & Boyce I*, since it was issued after the landowners had surrendered their plot of land after construction of the roads as required by the Municipal Council while in the said case the said Circular was issued prior to the respondents No.1 and 3 therein completing the construction of an export office and asphaltting of the courtyard and handing over the possession. Several arguments were advanced to distinguish the judgment of this Court in *Godrej & Boyce I*. This Court observed that the works done by the respondent therein was an amenity and the Circular dated 09.04.1996 did not have any bearing on the case as it was issued after the compromise in the Writ Petition on 10.03.1992 and the issuance of the letter of intent dated 22.02.1995. Accordingly, the appeal filed by the respondent MCGB was dismissed.

15.2 The reasoning of this Court in the said judgment is squarely applicable to these cases. This Court held that the High Court was right in allowing the writ petition filed by the respondent therein and granting 100% TDR as against the development of the courtyard by asphaltting the same. Delay and Laches:

16. However, most of the writ petitions which were filed by the appellants herein were dismissed on the ground of delay and laches by the Bombay High Court. We have already adverted to the judgment of this Court in *Godrej & Boyce II* on the aspect of abandonment of the claim. The contentions of learned senior counsel and learned counsel for the appellants would not call for a reiteration.

17. At this stage, we shall consider some of the judgments relied upon by the learned senior counsel for the respective parties.

On the question of discretion of courts in considering the issue of delay and laches, this Court in *Vidya Devi vs. State of Himachal Pradesh*, (2020) 2 SCC 569 (“*Vidya Devi*”) noted as under, “12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case.

It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.” (emphasis supplied) 17.1 On the question of the principles the Court should rely upon when exercising the discretion to condone delay and laches, the following judgments are instructive.

(a) In *Dehri Rohtas Light Rly. Co. Ltd. vs. District Board, Bhojpur*, (1992) 2 SCC 598, this Court noted that:

“13... The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches.” (emphasis supplied)

(b) In *Tukaram Kana Joshi vs. Maharashtra Industrial Development Corporation*, (2013) 1 SCC 353, this Court held, albeit in the context of the State taking over possession of land without any sanction of law, to the following effect:

“12... Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved.” (emphasis supplied)

(c) In *Kazi Moinuddin Kazi Bashiroddin vs. Maharashtra Tourism Development Corporation*, 2022 SCC OnLine SC 1325, at para 26, this Court noted that, in matters relating to payment of amount of compensation to land losers, if at all two views are possible, the view that advances the cause of justice is always to be preferred rather than the other view, which may draw its strength only from technicalities.

17.2 On the question of abandonment or waiver of rights, this Court in *G.T. Lad vs. Chemical and Fibres of India Ltd.*, (1979) 1 SCC 590 noted, albeit in the context of workmen abandoning service, that “to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same”. It further noted that such abandonment is always a question of intention. 17.3 Further, in *State of Punjab vs. Davinder Pal Singh Bhullar*, (2011) 14 SCC 770, this Court dealt with the doctrine of waiver. It held that, to constitute waiver, the person who is

said to have waived, must have intentionally abandoned his rights with full knowledge after being fully informed of his rights.

18. In the following Writ Petitions by the impugned order dated 18.12.2018 the Bombay High Court observed as follows and dismissed the Writ Petitions on the ground of delay and laches.

“ (i) WP No.1898 of 2009 – Kukreja Construction and Others vs. The State of Maharashtra and Others.

35. In Writ Petition No.1898/2009, the petitioners' land was reserved for 18.3 meters wide DP Road. The petitioners surrendered the reserved land and were granted TDR in lieu of the reserved land. Thereafter, the petitioners constructed DP Road as claimed in the petition and a completion certificate was issued on 19th August 1994. According to the case of the petitioners, they carried out work of storm water drain for which completion certificate was issued 17th March 2003. According to their case, the TDR in respect of the land was issued on 16th March 1994 and 5th April 2003. On 21st July 2003, the petitioners through their Architect applied for grant of additional TDR under clause (6) of Appendix-VII. But the application made by the petitioner (Exhibit-I) shows that on 21st July 2003, only 25% additional TDR was claimed in respect of amenity of DP Road. It is not the case of the petitioners that thereafter they followed the said application by issuing reminders. For six years or more, no claim was made for 100% TDR on account of construction of the amenity. However, on 28th August 2009, through their Architect, the petitioners applied for grant of additional TDR for the amenity equivalent to 100% of the area. The said application was made only after the decision of the Apex Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra) and the present petition was lodged on 15th September 2009. Therefore, in facts of the case, no relief can be granted as for a period of more than six years after surrender, no claim was made for 100% TDR.

(ii) WP No.1823 of 2009 –
Jitendra Amritlal Sheth vs. State of
Maharashtra and Others.

37. Now, we come to Writ Petition

No.1823/2012. In this case, the possession of DP Road after its construction was handed over by the petitioners to the Municipal Corporation on 5th March 2005. On 24th February 2009, the petitioners' Architect for the first time applied for 100% FSI in lieu of the constructed amenity. There was inaction for more than 3 years and 11 months and claim for 100% additional TDR was not made. The averments made in the petition show that on 18th November 2009, a reminder was issued. By communication dated 7th December 2009, the proposal of the Architect was specifically rejected. The petition was affirmed on 30th July 2012 i.e. two years after the prayer for grant of 100% TDR was turned down. The explanation for delay given by way of amendment to the petition is that on 7th March 2010, a file containing correspondence and judgments of the Supreme Court was handed over to the attorneys. It is stated that amendment of 17th June 2010 to the DCR was made available to the petitioners in July 2010. On 8th January 2011, the Legal Consultant of the fourth petitioner by writing an email enquired with the Solicitors whether draft was ready. On 25th

January 2011, it is claimed that the draft was forwarded. Thereafter, on 18th July 2011, a meeting was held between the petitioners, their Legal Consultant and Architect. It is claimed that the documents were furnished by the Architect to their advocate on 15th June 2012 and, ultimately, on 30th July 2012, the petition was filed. This is hardly an explanation for delay of 2½ years, especially when in the facts, of the case after construction of DP Road, the possession of the same was handed over on 5th March 2005. There is no explanation for not claiming 100% TDR within three years from that date. Even after entrusting the case to the Advocate, there is a long delay. Hence, considering the gross delay and laches which is not at all explained, this is a case where a Writ Court should not allow the party to invoke its extra ordinary jurisdiction under Article 226 of the Constitution of India.

(iii) WP No.839 of 2015 – Geeta alias Chandani Umesh Gandhi vs. The State of Maharashtra and others.

38. In Writ Petition No.839/2015, the possession of DP Road was handed over to the Municipal Corporation on 20th May 2005. On 31st December 2006, 25% FSI/TDR in respect of the constructed road was granted. On 1st December 2009, the petitioner through her Architect requested to release balance 75% TDR towards the amenity developed. The perusal of the averments made in the petition shows that after lapse of 4½ years thereafter, by a letter dated 20th June 2014, the petitioner requested the Municipal Corporation to issue balance 75% TDR. Thereafter, there was a legal notice sent on 1st December 2014. The petition was filed one year thereafter in January 2015. There is absolutely no explanation as to why there is a complete inaction on the part of the petitioner from 1st December 2009 when the petitioner's Architect applied for grant of remaining 75% additional TDR till 20th June 2014 when similar request was made by the petitioner. As there is no explanation for this inaction for a period of more 4½ years and the delay involved thereafter, this is not a fit case wherein a Writ Court should exercise jurisdiction under Article 226 of the Constitution of India.

(iv) WP No.2871 of 2015 – Jameel A. Hussain and Others vs. State of Maharashtra and Others.

39. In Writ Petition No.2871/2015, the reservation of the land claimed by the petitioners was for DP Road. The possession of the developed portion of the reserved land was taken over by the said Corporation on 29th July 2004. The completion certificate was issued on 23rd August 2014. It is claimed in the petition that FSI in respect of surrender of land was granted but FSI in respect of amenity constructed thereon was never granted. Going by the averments made in the petition, though the petitioners claim to have surrendered the reserved land with amenity on 29th July 2004, the petitioners never applied for grant of 100% TDR in respect of the amenity. Even after the decision of the Apex Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra) which is of 6th February 2009, the petitioners did not apply for grant of additional FSI/ TDR in respect of amenity surrendered in the year 2004 and for the first time by a letter dated 17th February 2012, the petitioners applied for grant of additional TDR. The proposal for grant of additional TDR was rejected on 30th January 2015. Thereafter the petition was filed. Thus, after surrendering the reserved land on 29th July 2004, the petitioners never claimed TDR in respect of the amenity developed by them till 17th February 2012. The application was made three years after the decision

of the Apex Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra). Considering this conduct of the petitioners which virtually amounts to abandonment of their right, no relief can be granted to the petitioners in this petition.

(v) WP No.2107 of 2016 – M/s Byramjee Jeejeebhoy Pvt. Ltd. and Another vs. The Municipal Corporation of Greater Mumbai and Others.–

40. In Writ Petition No.2107/2016, according to the case of the petitioners, they constructed DP Road. They surrendered the reserved land on 5th June 2007. Their Architects/ Licensed Surveyors made an application on 4th September 2009 for grant of 100% additional TDR in the light of the decision of the Apex Court. A legal notice was issued by their advocate on 7th December 2009. Thereafter, the petitioners took no steps and after a gap of 6½ years on 21st July 2016, the petitioners called upon the said Corporation to grant additional FSI/TDR. The correspondence made by the petitioners in the year 2009 was based on the decision of the Apex Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra). The petitioners sought to rely upon the subsequent decision of the Apex Court dated 5th May 2016 in the case of Municipal Corporation of Greater Mumbai v. Natvar Parikh & Co. Pvt. Ltd. (Civil Appeal No.1479/2015) which followed the decision of the Apex Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra). There is no explanation offered in the petition as to why there was complete inaction on the part of the petitioners from 2009 to 2016. Therefore, considering this conduct of the petitioners, they are dis-entitled to any relief.

(vi) WP No.2170 of 2016 – Girdharlal D. Rughani Alia Thakkar H.U.F. and Another vs. The State of Maharashtra and Others.–

41. In Writ Petition No.2170/2016, the case of the petitioners is that on 20th October 1995 they handed over the possession of their land reserved for DP Road to the said Corporation. They claimed that after completing the construction of DP Road on 20th October 1994, a completion certificate was granted by the Municipal Corporation. It is not the case of the petitioners that thereafter they applied for grant of additional 100% TDR in respect of the amenity developed. Only on 5th August 2014 (i.e. ten years after developing the amenity) that the petitioners applied for grant of additional TDR through their Architect. For a period of 10 years, the petitioners never claimed 100% additional TDR in respect of the amenity. Even thereafter, no action is taken and the present petition is filed in July 2016. Considering the conduct of the petitioners, they are not entitled to any relief.

(vii) WP No.384 of 2017 – Oberoi Realty Limited and Another vs. Municipal Corporation of Greater Mumbai and Others.–

42. In Writ Petition No.384/2017, the case of the petitioners is that between 2004 and 2008, they developed seven DP Roads and handed over the possession thereof to the said Corporation. However, they made representation for the first time on 10th June 2016 claiming additional TDR in respect of amenity developed. The representation was rejected on 30th November 2016 by the said Corporation. Thus, even after the decision in the case of Godrej & Boyce Manufacturing Co. Ltd.

(supra), the petitioners did not apply for grant of additional TDR. The petitioners sought additional TDR after lapse of eight years and more. Therefore, for a period of eight years or more, the petitioners never claimed additional TDR. Hence, considering the delay and laches on the part of the petitioners, no relief can be granted.

(viii) WP No.541 of 2017 -

Nanabhoy Jeejeebhoy Pvt. Ltd. and Another vs. The State of Maharashtra and Others. –

43. In Writ Petition No.541/2017, the case of the petitioners is that there were eleven reservations on their property for DP Roads. The petitioners have referred to the said reservations as DP Road-I to DP Road-XI. According to the case of the petitioners, after developing the amenities, the possession of DP Roads was handed over to the said Corporation on 13th April 2004, 20th March 2001, 27th March 2002, 6th September 2001, 13th February 2006, 27th October 1997, 27th October 1997, 29th October 1997, 21st December 2002, 22nd May 2002 and 14th August 2002 respectively. For the first time additional TDR was claimed by the petitioners by making application on 11th July 2014. Thus, in all cases except one, the possession was handed over after the development of DP Roads before the year 2003. In some cases, the possession of DP Road was handed over in the year 1997. In one case, the possession was handed over in the year 2006. Thus, after lapse of several years after handing over possession of DP Roads i.e. in 2014, belatedly a request was made for grant of additional TDR. The request was made after a gap of about 8 to 13 years for which there is no explanation. Thus, the petitioners by their conduct have virtually abandoned their claim for additional FSI/TDR in respect of amenity.” 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 I* 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 the case of *Natwar Parikh*, this Court had stated that the decision in *Godrej & Boyce I* 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 II*.

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 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. 18.1 In view of the aforesaid discussion, we hold that the Bombay High Court was not right in dismissing the writ petitions on the ground of delay and laches. Hence, those portions of the impugned order of the High Court are set aside.

19. 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 discussed above is just and proper which would not call for any interference by this Court.

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

(i) Those portions of the impugned order dated 18.12.2018 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 I and release the balance FSI/TDR to the appellants.

(ii) However, in the case of 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.

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

20.1 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 I and the balance FSI/TDR shall be released to the respondents therein within a period of three months from today.

Parties to bear their respective costs.

.....J. (B.V. Nagarathna)J.
(Nongmeikapam Kotiswar Singh) New Delhi;

September 13, 2024.