



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

**WRIT PETITION NO.3087 OF 2023**

Smt. Saranga Anil Kumar Aggarwal	]	
carrying on business in the Name	]	
and style of M/s Skyline Construction	]	
Company as the proprietor thereof at	]	
RNA Corporate Park, Next to Collector	]	
Office, MSD, Kalanagar, Bandra (East),	]	
Mumbai 4000 511, through her constituted	]	
attorney Mr. Anubhav Aggarwal vide	]	
Power of Attorney dated 29/11/2014.	]	... Petitioner.

**V/s.**

- |   |   |                 |
|---|---|-----------------|
| 1. State of Maharashtra                 | ] |                 |
| Through its Principal Secretary         | ] |                 |
| Urban Development Department-I,         | ] |                 |
| Mantralaya, Mumbai 01.                  | ] |                 |
| 2. Mumbai Metropolitan Region           | ] |                 |
| Development Authority having its        | ] |                 |
| office at MMRDA Building,               | ] |                 |
| Bandra-Kurla Complex, Bandra (East),    | ] |                 |
| Mumbai 400 051.                         | ] |                 |
| 3. The Metropolitan Commissioner, MMRDA | ] |                 |
| having his office at MMRDA Building,    | ] |                 |
| Bandra-Kurla Complex, Bandra (East),    | ] |                 |
| Mumbai – 400 051.                       | ] | ... Respondents |

**WITH  
INTERIM APPLICATION (L) NO.28840 OF 2024  
WITH  
CONTEMPT PETITION (L) NO.11933 OF 2024  
WITH  
INTERIM APPLICATION (L) NO.31426 OF 2023**

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Mr. Nitin Thakkar, Senior Advocate, a/w Mr. Cherag Balsara, Mr. Yogesh Patil, Mr. Aniruth Purushothaman and Mr. Joshua Borges, i/by Mr. Parth Shah for the Petitioner.

Mr. Milind More, Addl. GP for Respondent-State.

Dr. Birendra Saraf, Advocate General, a/w Mr. Akshay Shinde and Mr. Vaibhav Charalwar for Respondent Nos.2 and 3.

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**CORAM : A. S. GADKARI AND  
KAMAL KHATA, JJ.**

**RESERVED ON : 11<sup>th</sup> December 2024.**

**PRONOUNCED ON : 2<sup>nd</sup> January 2025.**

**Judgment (Per : Kamal Khata, J) :-**

1) By this Writ Petition, filed under Article 226 of the Constitution of India, the Petitioner seeks the following reliefs:

“a) that this Hon’ble Court be pleased to issue a Writ of Mandamus, or a Writ in the nature of Mandamus, or any other appropriate writ, order or direction, under Article 226 of the Constitution to declare that the Petitioner is entitled to land Transferable Development Rights (TDR) in the form of Development Rights Certificates (DRC) under all three Tripartite Agreements in respect of land surrendered under the Scheme in accordance with DCPR 2034 i.e. at twice the land area (as per Sub-Clause 4.1.1 of Regulation 32 in Table 12-A.

b) that this Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution, directing the Respondents to issue a recommendation letter to MCGM for release and issuance of

DRCs for Land TDR to the Petitioner for the entire land area at the rate specified in DCPR 2034 i.e. the DRCs for the balance land TDR of 19,436.24 sq. meters and also to direct the Respondents to permit the Petitioner the DRC so issued to be utilized as per DCR 1991 as the said Scheme is permitted to be completed in accordance with DRC, 1991 as per sub-clause 11.2 (1) of Regulation 33 (10) of DCPR 2034.

c) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, order or direction, under Article 226 of the Constitution, directing the Respondents to issue a DRCs for Land TDR to the Petitioner as set out in prayer clause (a), (b) and (c) above.

d) that pending the hearing and disposal of the Petition the Respondents be directed by an interim order to issue or arrange for the MCGM to issue DRCs for Land TDR to the Petitioner for the entire land area at the rate specified in DCPR 2034 ie the DRCs for the balance land TDR of 19,436.24 sq. meters as set out in prayer clause (a) and (b) above within a period of no more than four weeks from the date of such order passed by this Hon'ble Court;

e) for costs

f) for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

#### BRIEF FACTS:

2) Petitioner is a developer and Constituted Attorney of the original landowner, a textile processing corporation, which offered 37,935 square meters of land at village Goregaon, Oshiwara District Centre, for a

Slum Rehabilitation Scheme specifically for construction of tenements for 'Project Affected Persons' (PAPs) in accordance with clause 3.11 of Appendix IV of Development Control Regulations (DCR)1991, Regulation 33 (10).

2.1) The said land, forms part of the notified Oshiwara District Centre area, for which the Petitioner's Slum Rehabilitation Scheme (SR Scheme) was approved by the MMRDA, designated as a Special Planning Authority under Section 40 of the MRTP Act, 1966.

2.2) The Petitioner executed a Tripartite Agreement dated 5th August 2003 for development of the SR scheme under which the Petitioner agreed to construct and provide tenements to PAPs identified by the Respondent No.2 for rehabilitation of slum dwellers from the area required to be cleared for the Mumbai Urban Infrastructure Project ("MUIP"). As consideration, the Respondent No.3 agreed to grant DRCs as per DCR 33 (10) read with clauses 3.11, 3.5 and 3.19 (II) of Appendix IV of DCR 1991.

2.3) During the project's implementation, the Petitioner acquired development rights of the adjoining lands admeasuring 11,165.1 sq. mts and submitted a revised proposal to the MMRDA for including it in the earlier sanctioned scheme making it to a total of 49,100.4 sq.mts of land. The MMRDA accorded its sanction to the revised scheme and issued a revised Letter of Intent (LOI) on 20th June 2005. Pursuant to the issuance of the revised LOIs', two further Tripartite Agreements, dated 12th August

2005 and 17th August 2005 were executed between the Petitioner and Respondents Nos.1 and 2 for construction of tenements for PAPs on the additional land on the same terms and conditions.

2.4) In the meantime, the State Government vide Notification dated 8 May 2018, notified the Development Control and Promotion Regulations, 2034 ("DCPR 2034") for Mumbai under which the Petitioner would be entitled to 76,986.24 sq. mts computed at 2 times of 38,493.12 square meters.

2.5) The Petition asserts that, under the express/ specific terms of the Tripartite Agreement, since DCPR 2034 is applicable, the Petitioner is entitled to an additional land TDR at the rate of 0.5 times of 38,493.12 sq. mts i.e. 19,436.24 square meters.

2.6) Under the Scheme the Petitioner surrendered the lease/transferred the land admeasuring 49,100.40 sq. mts., has availed of land TDR of 7981.61 sq. mts., towards reservation of road, and 2625.67 sq. mts for Rehab tenements, leaving a balance of 38,493.12 sq. mts. Under DCR 1991, the Petitioner was entitled to Land TDR of 57,739.68 sq. mts computed at 1.5 times of 38,493.12 sq.mts. The Petitioner completed 15 rehab buildings out of the total 16 rehab buildings and have also received occupation certificates for the same. The Petitioner is in the process of constructing the 16<sup>th</sup> Rehab building in the project.

2.7) Petitioner's made representation dated 23<sup>rd</sup> July, 2020 to

Respondents Nos. 2 and 3 followed by several letters and representations in this regard has not yet been considered. The Respondents have neither disputed nor objected to the Petitioner's claim. Consequently, the Petitioners contend that they are illegally and arbitrarily deprived of their express entitlements under the Tripartite Agreements. Left with no other remedy, the Petitioner filed this Petition.

3) In the first round, the Petition was allowed by an Order dated 11<sup>th</sup> October 2023 thereby granting additional TDR to the Petitioners in terms of the Tripartite Agreement and in accordance with the Table 12A of Regulation 32 of DCPR 2034.

3.1) Aggrieved by this Order the 2<sup>nd</sup> Respondent filed SLP (L) No.27047 of 2023. The Hon'ble Supreme Court was pleased to set aside the Order dated 11<sup>th</sup> October 2023 and the matter was remanded by for reconsideration on merits in accordance with law after hearing both sides.

3.2) Therefore, in furtherance of Supreme Court Order dated 3<sup>rd</sup> September 2024 in SLP (L) No.27047 of 2023 this Petition was taken up, out of turn for hearing and was finally heard on 11<sup>th</sup> December 2024.

4) Mr. Nitin Thakkar learned Senior Counsel for the Petitioner highlighted clauses 4, 9 and 10 of the Tripartite Agreement on which the Petitioner's claim is founded. The relevant clauses are reproduced herein below for ready reference:

“4. The Deemed S.R.A. hereby confirms that the proposed Project of construction of Rehabilitation Component by the Developer in pursuance of this Agreement on the said property is as per Clause 3.11 r/w 3.5 & 3.19(ii) of Appendix IV of DCR 33(10) (Notification dated 15<sup>th</sup> October, 1997), and Authority proposes to rehabilitate slum dwellers which are to be cleared for public purpose of MUIP and the Developer is entitled to get the benefit of the F.S.I. of the entire land under this scheme in the form of land T.D.R.. It is agreed that the land T.D.R. for the F.S.I. In respect of the land component for the said property excluding the encroachment will be given or cause to be given, as per the ratio of F.S.I. prevalent at the time of signing of this Agreement, by the Deemed SRA, to the Developer as herein mentioned. The Developer will get the Land TDR for the area under encroachments only when the developer rehabilitates the said encroachers in the proposed free sale residential building. **It is clarified that any higher FSI ratio in respect of the land component, if available, hereafter due to any change in the Development Control Regulations upto the time of issue of last D.R.C. in respect of the last building under the Rehabilitation Component as per prevailing Government of Maharashtra guidelines/policy for R&R or issue of last DRC in respect of the land component whichever is later will be given by the Deemed SRA at the time of such change for the entire land component irrespective of the fact that part TDR/D.R.C. was issued earlier for the said land component as per this Agreement.**

9. The “Deemed SRA” and the “Authority” do hereby agree and confirm that the “Developer” shall be entitled to the following: -

- i. T.D.R.in the form of D.R.C. on the basis of clause 3.11 read with 3.5 and 3.19(ii) read with 3.5

in respect of the said area comprised in the said Rehabilitation Component (D.R.C. for Rehab Component).

ii. T.D.R. in respect of the land Component which is declared to be part of approved Slum Rehabilitation Project in this Agreement.

iii. To use the TDR as per Clause (i) of this agreement.

iv. It is clarified that any higher FSI ratio, if available, on account of modified development control regulations and as admissible under SRA Policy of the Government of Maharashtra **before Occupation Certificate in respect of the last of the building of the said rehab component is received and before the last D.R.C. is received by the Developer** then the Developer will be entitled for such additional benefits, if any, as admissible under the modified SRA policy/guidelines.

10. The Authority doth hereby confirm that any change or modification in the Guidelines/Policy of Slum Rehabilitation from the date hereof, but before the grant of Occupation certificate to the last Rehabilitation building and before the last D.R.C. is issued which results into any benefit to Developer by way of any reduction in levy charges per tenement or per sq. meter or any higher TDRA or any other benefit, **then the Developer shall automatically become entitled to the benefit of all such changes or additions and the same will apply to this Agreement Mutandis-Mutandis as Applicable to other or other such schemes for Rehabilitation of Slum Dwellers, otherwise the terms of this Agreement shall prevail. The Developer has entered into this Agreement on the specific assurance and**



**covenant as recorded herein by the Deemed SRA and the Authority in favour of the Developer.”**

**(Emphasis supplied)**

4.1) Referring to the above, he argued that these clauses clearly establish the Petitioner’s entitlement to an enhancement of the DRC for the the land component, in accordance with the regulations prevailing either at the time of completion of the last building or at the issuance of the final DRC, which in this case is governed by DCPR 2034. He further contended that the Tripartite Agreement does not require the Petitioner to undertake either the entire construction or the balance construction in accordance with the subsequent regulations as a condition for receiving the enhanced DRC under the subsequent resolutions.

4.2) Referring to MMRDA’s reply to the Petition, which asserts that under clause 11 of the Regulation 33(10) of DCPR 2034 and Regulation 9 (6), the developer has the option to convert the entire scheme or the balance development of the scheme under DCPR 2034 in order to be entitled to the additional benefits, Mr Thakkar respectfully disagrees, asserting that this interpretation is unfounded.\_

4.3) Mr. Thakkar argued that, the Petitioner has unequivocally acted in accordance with the terms and conditions of the Tripartite Agreement. Consequently, the Respondents are estopped from making any claims or assertions that contradict the provisions of the agreement. He further

contended that, as per clauses 4, 9 (iii), and 10 of the Tripartite Agreement, the Petitioner is entitled to the benefits as outlined in table 12A of the DCPR 2034.

4.4) Moreover, Mr Thakkar disagreed with the Respondent's assertion that the terms and conditions of DCPR 2034 should prevail over the Tripartite Agreement, arguing that such an interpretation is misconceived. He emphasized that Clause 32 of the Agreement explicitly addresses potential conflicts between the Tripartite Agreement and prevailing laws. Additionally, he pointed out that the Letter of Intent (LOI) was issued prior to the implementation of DCPR 2034, rendering reliance on clause 11 of DCPR 2034 misplaced.

4.5) Referring to the judgment of the Supreme Court in the case of *Jamshed Hormusji Wadia V/s. Board of Trustees, Port of Mumbai and Another reported in (2004) 3 SCC 214*, particularly paragraphs 16, 18 and 19, Mr. Thakkar submitted that, the State and its Authorities including the instrumentalities of the State have to be just, fair and reasonable in all their activities including those in the field of contracts. He submitted that, while the State is permitted to augment their resources, it cannot dilute or eliminate its object to serve the public cause and to do public good by resorting to fair and reasonable methods.

4.6) Contemplating an argument on maintainability of the Writ Petition, Mr. Thakkar referred to the Supreme Court judgment in the case of

*Gas Authority of India Limited V/s. Indian Petrochemicals Corporation Limited and Others reported in (2023) 3 SCC 629* to submit that, the Writ jurisdiction can be invoked when the State fails to act with fairness or engages in discriminatory practices against a party. He contended that, in the present case, the Respondents had failed to uphold the required standard of fairness, thereby making the Writ Petition maintainable.

4.7) In conclusion, Mr Thakkar asserted that the Petitioner is entitled to the additional benefit of an extra 0.5 TDR without need to fulfill any further obligations.

5) *Per Contra* Dr. Saraf learned Advocate General appearing for Respondent Nos 2 & 3, asserted that the Petition is not maintainable. He referred to the prayer in the Petition, which sought a declaration of Petitioner's entitlement.

5.1) Dr Saraf cited the Supreme Court judgment in the case of *Rajasthan State Industrial Development and Investment Corporation and Another V/s. Diamond and Gem Development Corporation Limited and Another reported in (2013) 5 SCC 470*, particularly emphasizing on paragraphs 19 to 22. He submitted that the judgement clarified that a Writ cannot be issued to create or establish a legal right but only to enforce an already established one. He argued that the Petitioner's right or entitlement under the Tripartite agreement had not been admittedly crystallized and therefore the writ was not maintainable.

5.2) Dr. Saraf further referred to the judgement in *Shabbi Construction Company V/s. City and Industrial Development Corporation and Another reported in (1995) 4 SCC 301*, which dealt with similar arguments. In this case, the Supreme Court rejected the Petitioners arguments, holding that the doctrine of promissory estoppel cannot compel the public bodies or government to carry out representations or promises that are contrary to law or outside their authority.

5.3) He also relied on the judgment in *Shree Sidhbali Steels Limited And Others V/s. State of Uttar Pradesh And Others reported in (2011) 3 SCC 193 : 2011 SCC OnLine SC 213*, particularly paragraphs 32 and 33. He contended that, the Supreme Court has held that for the doctrine of promissory estoppel to apply, the promisee must establish that he suffered a detriment or altered his position relying on the promise. It further held that if it could be shown by the government that, having regard to the facts as they have subsequently transpired, it would be inequitable to hold the government with a promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the government. It further held that where public interest warrants, the principles of promissory estoppel cannot be invoked. He submitted that the judgment also observed that the authority cannot be compelled to do something which is not allowed by the law or prohibited by the law. Consequently, the doctrine of promissory estoppel cannot be invoked for the enforcement of a

promise made contrary to the law because none can be compelled to act against a Statute.

5.4) Dr. Saraf then submitted that, in the present case, the Petitioner had not suffered any detriment or altered his position as such. He contended that the Petitioner simply sought the benefits of the new regulations without fulfilling the conditions under the new regulations. He submitted that this would be not only contrary to the law but also to the public interest.

5.5) Referring to clause 9(iv) of the Tripartite Agreement, Dr. Saraf pointed out that, the words ‘if available’ and ‘as admissible’ (underlined hereinabove) were crucial to the context and had been overlooked by the Petitioners. He argued that, these words would clearly indicate that the Petitioner could claim benefits only if they were in consonance with the DCPR 2034. Furthermore, he submitted that the Petitioners had not applied for the conversion of the scheme from the ‘old one’ to the ‘new one’ as contemplated under DCPR 2034. He clarified that, had the Petitioner applied for such a conversion, the Respondents would have readily offered extended the benefits under the new Regulations. Relying on Clause 11 of the DCPR 2034, he contended that the Petitioner could only claim DRC benefits under the DCPR 2034, if they undertook construction under the new regulations or completed the balance construction as per DCPR 2034.

5.6) In conclusion, Dr Saraf argued that the Petitioner could not

claim an entitlement that was neither crystallized nor in accordance with the law. Therefore, he submitted that the Petition should be dismissed.

**Reasons and conclusions**

6) We are unable to agree with Mr. Thakkar's contentions on both counts - namely, the maintainability of the Petition and on entitlement of benefit under the DCPR of 2034.

7) This Petition essentially seeks a declaration that a developer under the Slum Rehabilitation Scheme (SR Scheme), who commenced development and will complete it as per the provisions of the old DCR 1991, is entitled to the benefits provided under the new DCPR 2034 based on the said Tripartite Agreements. This contention must be rejected, as it would undermine the very objective of the beneficial provisions introduced under DCPR 2034.

8) Consequently, the Petitioner's contention that they propose to utilize the Development Right Certificates (DRCs) as outlined in 10 (a) or (b) of the old DCR 1991, rather than the broader provisions of the new DCPR 2034, which allows for their use "anywhere in Mumbai City area (Island city) and Mumbai Suburban/Extended Suburban area," as governed by the formula in new DCPR 2034 must be rejected.

9) In our view, Clause 32 of the Tripartite Agreement is explicit in its terms is reproduced hereunder for ready reference:

“32. The terms & conditions of Letter of Intent, Layout Approval, Intimation of Approval, Commencement Certificate, Occupation Certificate etc. all approvals issued and/or to be issued by the Deemed Slum Rehabilitation Authority shall be treated as part and parcel of this Agreement.

**It is declared that the Developer has entered into this Agreement with the Authority, if any terms & conditions of this agreement are/is inconsistent and/or contradictory with the terms & conditions of said Agreement (Contract Agreement and/or Consensual Agreement) and/or Letter of Intent, Layout Approval, Intimation of Approval, Commencement Certificate, Occupation Certificate etc. all approvals issued and/or to be issued by the Deemed Slum Rehabilitation Authority and/or any provisions of Slum Act, 1971, Development Control Regulations, Prevailing Government Guidelines, Policy Decisions and/or Practices followed by SRA in this respect then the terms & conditions of the latter shall prevail over the terms & conditions of this agreement.”**

**(Emphasis supplied)**

10) This Clause unequivocally establishes that, the terms and conditions of DCR, prevailing government guidelines, policy decision and practices followed by the SRA shall prevail over the provisions of the Agreement. Furthermore, it clarifies that the provisions of DCPR 2034 will only apply if the scheme is fully converted or partially converted for the balance development, as per clauses 11 of Regulation 33 (10) and Regulation 9 (6) of the DCPR 2034.

11) The Clauses 11 of Regulation 33 (10) and Regulation 9(6) are reproduced hereinbelow for ready reference.

“11. Conversion of Old Project into New Project.

11.1 Provision of the Regulation 9(6) shall be applicable.

Provided further that Projects, where LOIC has been granted, shall be treated as per the DCR provisions existing on the date of LOI. In case such a project comes up for revised LOI or change of developer or any other change, including recording and resubmission without change in slum boundary, prevailing DCR provisions shall apply.”

11.2 Exceptions

- 1) Schemes approved prior to coming into force of these Regulation:

The slum rehab schemes where LOI has been issued by SRA prior to the date of coming into force of these Regulations and which is valid may continue to be governed by the regulation applicable prior to these Regulations.”

“Reg 9(6) Applicability to partially completed works:

- (a) **for works where IOD/IOA has been issued or for ongoing partially completed works, started with due permission before these Regulations have come into force, the developer/owner may continue to complete the said works in accordance with the conditions under which permission stood granted.** However, the period of the development permission granted shall not exceed that specified in section 48 of the MR&TP Act, 1966 or at the option of owner/developer, the proposal can be converted as per DCPR-2034 in toto.
- (b) In case of such plots or layouts that started with due permission before DCPR 2034 have come into force, and if the



owner/developer, at his option, thereafter seeks further development of plot/layout/buildings as per DCPR 2034, then the provision of DCPR 2034 shall apply to the balance development. The development potential of such entire plot shall be computed as per DCPR 2034 from which the sanctioned FSI of buildings/part of buildings Plaintiff are proposed to be retained as per Plaintiff proved Plaintiff and as per then Regulations, shall be deducted to arrive at the balance development potential of such plot or layout.”

12) In the present case, the Petitioner’s has neither converted the scheme entirely under the new DCPR nor sought to apply its provisions for the balance development. Therefore, merely because the LOI has been granted prior to the regulations coming into force, the Petitioner cannot claim the benefits under the new DCPR 2034, however according to us is entitled under the 1991 DCR only.

13) Accepting Mr. Thakkar’s contention would amount to granting largesse to the developer without he fulfilling any obligations provided under DCPR 2034.

14) In our view, Mr. Thakkar’s interpretation of the contractual terms, is *ex facie* contrary to law and public interest and consequently unenforceable as held by the Supreme Court in *Shree Sidhabali Steels Limited* (Supra). The new DCPR grants additional benefits to the developers only when they either adopt the new scheme in its entirety or

apply it to the remaining portion of an incomplete project.

15) Any interpretation of the law that allows a developer to gain benefits without additional efforts would contradict the legislative intent. The language of the regulations does not support such an outcome.

16) In our view, the Petitioner's entitlement for land TDR in form of DRC has admittedly not been crystallized as the Petition itself seeks a declaration. Therefore, the principle established in the case of a *Rajasthan State Industrial Development and Investment Corporation (supra)* that a Writ cannot be issued to establish or create a legal right but only to enforce an already established one applies here. Consequently, this Writ Petition that seeks a declaration of entitlement is not maintainable.

17) In light of the above reasoning, we dismiss the Petition, with no order as to costs.

18) In view of the dismissal of the Petition, the Contempt Petition and Interim Application do not survive and are accordingly disposed off.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)