IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.23230 of 2026

1. EARTH GRAPHICS
A partnership firm registered under the provisions of the Indian Partnership Act, 1932 and having its registered address at 101, Akruti Aditya, 36, Noshir Bharucha Marg, Grant Road (West), Mumbai 400 007.

2. BHUPESH JAIN
of Mumbai, an adult Indian Inhabitant, the Partner of Petitioner No.1 and having his address at 101, Akruti Aditya, 36, Noshir Bharucha Marg, Grant Road (West), Mumbai 400 007.

...Petitioners

Versus

1. THE STATE OF MAHARASHTRA
Through its Urban Development Department, 4th Floor, Mantralaya, Madam Cama Road, Mumbai-400 032.

2. THE MUNICIPAL CORPORATION OF GREATER MUMBAI
A body constituted under the provisions of the Mumbai Municipal Corporation Act 1888, having its head office at Mahapalika Bhavan, Mahapalika Marg, Opp. CSMT, Mumbai 400 001

3. MUNICIPAL COMMISSIONER
Municipal Corporation of Greater Mumbai, Annex Building, Mahapalika Marg, Fort, Mumbai - 400 001

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

4. **EXECUTIVE ENGINEER**
Municipal Corporation of Greater Mumbai, Municipal Building, Walmiki Chowk, Vidyalankar Marg, Wadala (East), Mumbai 400 037.

5. **THE DY. CE (BUILDING)PROPOSAL CITY-III**
City New Municipal Building, Bhagwan Walmiki Chowk, Vidyalankar Marg, Opp. Hanuman Mandir, Antop Hill, Wadala (East), Mumbai -400 037.

6. **MUMBAI BUILDING REPAIRS AND RECONSTRUCTION BOARD**
A board constituted under the provisions of the Maharashtra Housing and Area Development) Act 1976 having address at Grihanirman Bhavan, Kala Nagar, Bandra East, Mumbai 400 051.

7. **EXECUTIVE ENGINEER**
"D-1" Division, A regional unit of MHADA, 89-95, Rajanai Mahal, Tardeo Road, Mumbai- 400 034.

]...Respondents

Mr. Aspi Chinoy, Senior Counsel with Mr. Ashish Kamat, Senior Counsel, Mr. Chirag Sarawagi, Ms. Tanya Sheth i/b Mr. Tushar Goradia, for the Petitioners.

Dr. Milind Sathe, Advocate General with Ms. Jyoti Chavan, Addl. G.P., Ms. Anupama Pawar, AGP, for Respondent No.1-State.

Mr. Arvind T. Rathod i/b Ms. Komal Punjabi, for Respondent Nos. 2 to 4 -MCGM.

Mr. P.G. Lad, for Respondent Nos. 6 and 7 – MHADA.

CORAM : SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.

Reserved on : 2nd NOVEMBER, 2026
Pronounced on : 5th NOVEMBER, 2026

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

JUDGMENT: (Per Gautam A. Ankhad, J.)

1. Rule. Rule is made returnable forthwith and the matter is heard finally with the consent of the parties.

2. This Petition raises a narrow question on the interpretation of clause (19) of Regulation 33(7) of the Development Control and Promotion Regulations for Greater Mumbai, 2034 ("**DCPR 2034**"), i.e, where a plot being redeveloped under Regulation 33(7) has both cessed and non-cessed structures that existed before 30th September 1969, and the land under the non-cessed structures is less than 45% of the total plot area, would the developer be entitled to incentive FSI on the area required to rehabilitate the occupants of the non-cessed structures?

3. The basic facts are not in dispute. Petitioner No. 1 owns the land admeasuring 2882.32 sq. m. bearing C.S. Nos. 683, 684 and 685, Girgaon Division, at R.K. Wadi, V.P. Road, Mumbai – 400 004 (**"the property"**). C.S. Nos. 684 and 685 contain only cessed structures. C.S. No. 683 has mixed structures i.e. cessed and non-cessed structures. The land component under the non-cessed structures is 15.91% of the plot area. The three plots now form a

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

single property, which is being redeveloped under Regulation 33(7).

4. All the structures were constructed before 1940. There are 115 residential and 46 commercial tenants/occupants on the property. The Petitioners began development and proposed to construct additional floors using the incentive FSI under Regulation 33(7)(19) and applied to the Respondent Nos. 2 and 3 for sanction of plans. On 13th October 2021, the Respondent No.6-Mumbai Building Repairs and Reconstruction Board by its letter dated 13th October 2021, had confirmed to the Respondent No.4 that since the land component under the non-cessed structures was within 45% of the plot area, it was eligible for incentive FSI under Regulation 33(7)(19). However, despite the same no permission was granted by the Respondent No.2. As such, in between 2022-2025 several letters have been addressed by the Petitioners to various authorities but to no avail.

5. On 8th July 2025, the Respondent Nos.2 and 3 by the letter to the Respondent No. 1 sought concurrence of the State Government on whether the Petitioners were entitled to incentive FSI in respect of the non-cessed structures. As no decision was forthcoming, the Petitioners filed Writ Petition No. 1079 of 2026 before this Court. By an order dated 16th February 2026, this Court had directed the

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

Respondent No.3-Commissioner to decide the Petitioners' representation within 30 days in the light of Regulation 33(7)(19). Instead, on 22nd April 2026, the Respondent No.3 sought a clarification from the Respondent No. 1.

6. The Petitioners then filed the present Petition in July 2026. On 4th August 2026, this Court had again directed the Respondent No.3 to take a decision. On 24th August 2026, the Respondent No. 1 issued a clarification that incentive FSI is not permissible on the area of non-cessed structures in a redevelopment proposal comprising both cessed and non-cessed structures. Relying on this clarification, the Respondent No. 2, by its letter dated 31st August 2026, rejected the Petitioners' request on the ground that incentive FSI for mixed structures is not permissible on the area of non-cessed structures under Regulation 33(7)(19). By way of subsequent amendment, the aforesaid letters dated 24th August 2026 and 31st August 2026 have also been impugned in the present petition.

Submissions

7. Mr. Chinoy, learned Senior Counsel for the Petitioners, submits that the impugned clarification issued by the Respondent No.1 proceeds on an erroneous interpretation of Regulation 33(7)(19).

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

The said provision specifically contemplates a composite property comprising of cessed and non-cessed structures and extends the benefit of Regulation 33(7) to non-cessed structures as well, subject to the land component of non-cessed structures being below the prescribed 45% threshold limit. Mr. Chinoy submits that clause 19 of Regulation 33(7) cannot be read in isolation from other clauses of the said Regulation or in a manner that renders the extension of benefits granted to non-cessed structures as meaningless. Further the clarification dated 24th August 2026 merely records a conclusion without any reasons and that the Respondent No. 2 has mechanically rejected the Petitioners' proposal on the basis of such erroneous clarification. The impugned decisions, according to Mr. Chinoy, are contrary to the express language and object of Regulation 33(7)(19) and ought to be set aside.

8. Opposing the petition, Dr. Sathe, learned Advocate General for the Respondent No. 1, submits that incentive FSI under Regulation 33(7) is meant only for the cessed structures. Cess was levied by the State authorities to maintain buildings that were existed before 1969. As the funds were inadequate to maintain such buildings, the State took a policy decision to grant incentive FSI for the redevelopment of

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

cessed buildings under Regulation 33(7). Clause (5) of Regulation 33(7) permits incentive FSI only in the case of cessed buildings. Dr. Sathe submits that non-cessed structures are governed by the ordinary development regulations, including Regulation 30 of DCPR 2034 and the Petitioner cannot claim the special incentive available under Regulation 33(7). The mere fact that non-cessed structures are situated on the same property along with the cessed structures would not entitle their occupants or the developer to claim incentive FSI in respect of such non-cessed structures. Therefore, according to Dr. Sathe, the impugned clarification correctly interprets Regulation 33(7)(19) and the Petition deserves to be dismissed.

Reasons and conclusion

9. For appreciating the legal controversy, it would be necessary to examine the relevant provisions of Regulation 33(7), particularly clauses (1), (2), (5) and (19).

10. Regulation 33(7) deals with reconstruction or redevelopment of cessed buildings in the Island City. Clause (1), *inter alia*, provides that where development is undertaken by societies or landlords or occupants of cessed building, existing prior to 30th September 1969, it shall be entitled to FSI of 3.00 on the gross plot area or the FSI

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

required for rehabilitation of existing tenants plus incentive FSI, as specified in clause (5)(a), whichever is more, subject to the conditions stipulated therein. Clause (2) provides for the rehabilitation entitlements of existing occupants, including the carpet area to be provided to residential and non-residential occupants. Clause (5)(a) then provides for the computation of such incentive FSI, which is determined on the basis of the ratio between the Land Rate (LR) and the Rate of Construction (RC), as applicable under the Annual Statement of Rates, and is calculated as a percentage of the admissible rehabilitation area in accordance with the prescribed table. It is in this statutory framework that clause (19) of Regulation 33(7) has to be considered.

11. In our view, a plain reading of clause (19) of Regulation 33(7) makes it clear that the said provision expressly extends the benefit of the redevelopment framework under Regulation 33(7) to non-cessed structures, which but for clause (19), would not have qualified under the incetive scheme applicable to cessed buildings. The heading of Regulation 33(7)(19) clearly states "*Non-Deduction of non-cessed Structure area*". This indicates that the area of the non-cessed structures is not to be deducted and the FSI is to be considered on the

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

total plot area. Further clause (19) expressly states that "*Provision of clause no 2 above shall be made applicable to non-cessed occupier*", thereby confirming that the occupier of a non-cessed structure is entitled to the same rehabilitation benefits as an occupier of a cessed structure. The express extension of clause (2) to non-cessed occupants demonstrates that the State had intended to bring such occupants within the rehabilitation framework of Regulation 33(7), notwithstanding the fact that their structures are non-cessed structures. Lastly, the proviso to clause (19) declares that the non-cessed land component within the 45% limit *"will be eligible for FSI as per Regulation 33(7) only*". As such, all non-cessed structures within the 45% limit will be treated like the cessed component for all purposes of FSI under Regulation 33(7) and the FSI shall be considered on the total plot area.

12. In light of the specific language of clause (19), we cannot accept the arguments advanced by the learned Advocate General, which proceeds on the premise that since clause (5)(a) refers to redevelopment of cessed buildings, the benefit of incentive FSI must remain confined to the occupants of cessed structures alone. It is undoubtedly true that the historical objective of Regulation 33(7)

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

was primarily to facilitate the redevelopment of cessed buildings. However, the non-cessed structures on a mixed plot that existed before 1969 are equally old. It would defy logic to extend the rehabilitation area benefits under clause (2) to non-cessed occupants, but exclude the corresponding incentive FSI mechanism merely on the ground that their structures are non-cessed. It is a settled principle of interpretation of statute that a statutory provision must be construed in a manner that advances its object and does not render the provision redundant or nugatory. In our view, the general words of clause (5)(a) cannot be read in a manner so as to defeat the specific provision contained in clause (19). Both the clauses i.e. clause 5(a) and (19) of Regulation 33(7) must be read together so as to cull out the object of such provision. In our view, the Respondents cannot seek to introduce a restriction which is not borne out by the language of the Regulation itself.

13. We may note that the authorities concerned had themselves understood clause (19) in the manner projected by this Court. The Respondent No.6, which is the certifying authority under Regulation 33(7)(3), in its communication dated 13th October 2021 issued to the Respondent No.3, had accepted that the land component attributable

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

to the non-cessed structures was within the prescribed limit of 45% of the total plot area and therefore, incentive FSI would be available to the Petitioners' redevelopment. Though the said communication would not, by itself, confer any right upon the Petitioners, yet, it is a relevant circumstance which lends support to the Petitioners' case.

14. We also find that the impugned clarification dated 24th August 2026 does not disclose any reasons or independently provide an interpretation to clause (19) for holding that the non-cessed structures forming part of an otherwise eligible composite redevelopment would be altogether disentitled to incentive FSI. In our view, the impugned clarification dated 24th August 2026 simply records a conclusion without giving any reasons. The consequential rejection dated 31st August 2026 by the Respondent No.2 merely adopts that clarification, without independent consideration, even though this Court had twice directed the Respondent No.3-Commissioner, on 16th February 2026 and 4th August 2026, to decide the Petitioners' request in the light of Regulation 33(7)(19). We find that both the clarification and the rejection are contrary to the plain language of Regulation 33(7)(19). The same are unsustainable and set aside.

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

15. For all the above reasons, we hold that clause (19), when read harmoniously with clauses (2) and (5) of Regulation 33(7), permits the grant of incentive FSI in respect of eligible non-cessed structures forming part of a composite redevelopment, provided the land component attributable to such non-cessed structures is below the prescribed threshold of 45% of the total plot area and the other applicable conditions are fulfilled.

16. Accordingly, the Petition is allowed in terms of prayer clauses (a-1) and (b), which read as under:

> "(a-1) This Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or directions under Article 226 of the Constitution of India, calling for the records, papers and proceedings on the basis of which the Impugned Order/communication dated 31 August 2026 (alongwith the clarification dated 24th August 2026) has been passed/issued by Respondent No.2 (Exhibit "CC" hereto), and after examining the legality and validity thereof, this Hon'ble Court be pleased to quash and set aside the Impugned Order/communication dated 31st August 2026 (alongwith the clarification dated 24th August 2026);
>
> b. This Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or direction directing the Respondents to forthwith process and approve File No.CHE/CTY/0656/D/337 of the Petitioners and grant benefit of FSI/incentive FSI to the Petitioners for the area of the land component under the non-cessed structure of the

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09

property bearing C.S. Nos. 683, 684 and 685 of Girgaon Division, situate at R.K. Wadi, 1st Parsiwada Lane, V.P. Road, Mumbai-400 004 as per the provisions of Regulation 33(7) (19) of DCPR 2034 and as per Government Notification dated 8th July 2021."

17. Rule is made absolute in the above terms. There shall be no order as to costs.

(GAUTAM A. ANKHAD, J.) (SUMAN SHYAM J.)

BHARAT DASHARATH PANDIT

Digitally signed by BHARAT DASHARATH PANDIT
Date: 2026.11.05 18:45:55 +0530

Uploaded on - 05/11/2026 Downloaded on - 09/11/2026 10:58:09