

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

WRIT PETITION NO.2409 OF 2011

Vasantkumar Jivanlal Mehta & Anr.	...	Petitioners
V/s.		
The Municipal Corporation of Greater Mumbai & Ors.	...	Respondents

ALONG WITH
WRIT PETITION NO.2452 OF 2011

Hasmukh Maganlal Mehta	...	Petitioner
V/s.		
The Municipal Corporation of Greater Mumbai & Ors.	...	Respondents

Mr. D.H. Mehta a/w. Mr. Kalpesh Mehta, i/b. M/s. P. Mehta & Mithi & Co., for the Petitioners in WP/2409/2011.

Mr. Aspi Chinoy, Sr. Advocate, a/w. Mr. S.P. Pawar, i/b. M/s. S.K. Legal Associates, for the Petitioner in WP/2452/2011.

Mr. E.P. Bharucha, Sr. Advocate, a/w. Mr. A.Y. Sakhare, Sr. Advocate, and Ms. T.H. Puranik for the Respondent-Municipal Corporation.

CORAM : S.A. BOBDE &
R.G. KETKAR, JJ.

DATE : 28TH SEPTEMBER, 2012.

P.C. :

1. Rule. Rule is made returnable forthwith. Heard finally, by consent of the parties.

2. The only prayer made in both these Petitions is for quashing and setting aside the impugned orders by which the Respondent-Municipal Corporation has refused to permit the Petitioners to use T.D.R. on their plots. The reason given by the Respondent-Municipal Corporation, as apparent from the letter dated 28th June, 2010 in Writ Petition No.2452 of 2011, seems to be that the Petitioners are being denied permission to use T.D.R. apparently since the Petitioners' plots are situated in J.V.P.D. Scheme, which are consuming FSI more than one i.e. more than the normal permissible F.S.I. The letter further expresses the apprehension that if permission granted to load T.D.R., it would consider themselves eligible for serving of Purchase Notice as interested persons and at the same time reap the benefits of enhanced 2.5 F.S.I..

3. Having heard the matter, we are of the view that the reasons are entirely misconceived since at no point of time the Petitioners claimed right to use more than F.S.I.-1, which is normally permitted when T.D.R. is permitted to be loaded. It is common ground that the Petitioners are not developing amenity plots.

4. Mr. Bharucha, the learned Counsel for the Respondent-Municipal Corporation, submitted that the Respondent-Municipal Corporation has made a

representation to the Government for clarifying the position for utilization of T.D.Rs. in regard to amenity plots and, that, that is another reason why the Respondent-Municipal Corporation has put the Petitioners' request on hold. Having regard to the admitted fact that there is no amenity plot involved in these matters, we are of the view that the Petitioners should be considered entitled to use T.D.R. to the extent of F.S.I.-1 with reference to their plots.

5. Rule is made absolute in terms of prayer clauses (a), (b) and (c).

6. The impugned communication are quashed and the Respondents are directed to permit the Petitioners to use T.D.R. in accordance with law.

[R.G. KETKAR, J.]

[S.A. BOBDE, J.]