PUNE MUNICIPAL CORPORATION & ANR. A

v.

KAUSARBAG COOP. HOUSING SOCIETY. LTD. & ANR.

(Civil Appeal Nos. 3008-3009 of 2010 ETC.)

OCTOBER 09, 2014 B

[RANJAN GOGOI AND M.Y.EQBAL, JJ.]

Maharashtra Regional and Town Planning Act, 1966:

Transferable Development Rights (TDR) under Development Control Regulations (DCR) N-24 – Land shown by Housing Society as 'reserved for garden' in lay out plan submitted by it – Land acquired under Land Acquisition Act – Municipal Corporation resisting the claim stating that the land was not reserved for public purpose – Grant of TDR cannot be confined only to lands which have been reserved in the development plan and not to lands acquired under Land Acquisition Act which land eventually becomes a part of the finally approved and sanctioned development plan – Rejection of the claim of respondent Society to TDR under MRTP Act read with DCR N-2.4.17 is seriously flawed – The same is, therefore, set aside – Land Acquisition Act, 1894: C D E

Administrative Law:

Subordinate Legislation – Development Control Regulations or amendment thereof are legislative functions – G.O. dated 3.2.2007 issued u/s 154 is contrary to clear intent behind DCR N-2.4.17 and, as such, cannot override DCR N-2.4.17 — Maharashtra Regional and Town Planning Act, 1966 – s.154. F G

The instant appeals arose out of the judgment and order of the High Court allowing the claim of the respondent writ-petitioner Society to Transferable

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A Development Rights (TDR) under Development Control Regulations, i.e. DCRN-24 in respect of the subject land.

Dismissing the appeals, the Court

HELD: 1.1. The concept of TDR involves the B surrender of land reserved for various public purposes in the development plan free of cost and in exchange thereof grant of TDR entitling the holder thereof to construct a built up area equivalent to the permissible FSI of the land handed over by him on one or more plots in C the zone specified. [para 11] [859-B-C]

1.2. DCR N-2.4.1(A) gives effect to the provisions of s.126(1)(a) and (b) brought in by the amendment to the MRTP Act in 1993. It entitles the owner or a lessee of a plot of land, which is reserved for a public purpose in the D development plan, to the award of TDR in lieu of compensation upon surrender of the land free of cost. DCR N-2.4.17 contemplates two other situations for grant of TDR. Under DCR N-2.4.17(ii) in situations where possession of land had been delivered without receipt of E part or full compensation payable under the MRTP Act, Bombay Provincial Municipal Corporation Act, private negotiations or under any Act and such event had occurred within 12 years prior to 30.9.1993 (date of publication of the draft DCR containing the TDR concept) F claims for grant of TDR are required to be entertained. DCR N-2.4.17 extends the frontiers outlined u/s 126(1)(a) and (c) and makes the grant of TDR applicable to an extended class of cases wherein acquisition of land is made not only under the MRTP Act but also under other G enactments including the L.A. Act. Such an extension appears to be in consonance with the object behind the introduction of the concept of TDR by the amendment of the MRTP Act of 1993. [para 13] [860-C-G]

H 1.3. Having regard to the clear language contained

in DCR N-2.4.17(ii) and the object sought to be achieved by the introduction of TDR, grant of TDR cannot be confined only to cases of lands which have been reserved in the development plan and not to lands acquired under the Land Acquisition Act which land eventually becomes a part of the finally approved and sanctioned development plan. The above would also lead to the conclusion that DCR N-2.4.17 is capable of operating independently and is not contingent on the existence of the conditions mentioned in DRC N-2.4.1(A). [para 13] [860-G, H]

1.4. If under DCR N-2.4.17, TDR can be granted in cases of acquisition under the MRTP Act obviously acquisition under the LA Act upon invocation of s.126(1)(c) would be included. In such a situation, reference to any other Act in DCR N-2.4.17 would include the L.A. Act so as to bring land covered by the normal process of acquisitions under the L.A. Act within the fold of DCR N-2.4.17. The acquisition of the land belonging to the respondent society would, therefore, be clearly covered by the provisions of DCR N-2.4.17. [para 14] [861-C-E]

1.5. Making of DCR or amendments thereof are legislative functions. The Government Order dated 3.2.2007, seeks to prohibit the grant of DCR under DCR N-2.4.17 so far as lands in respect of which Award under the Land Acquisition Act had been passed or possession of which has been taken over. This is contrary to the clear intent behind DCR N-2.4.17. The Government Order in question, having been issued u/s 154 of the MRTP Act, therefore, cannot override the DCR N-2.4.17 as the directions u/s 154 of the MRTP Act would be in the nature of administrative instructions. [para 15] [861-E-F; 862-A-B]

Pune Municipal Corporation and Anr. Vs. Promoters and Builders Association and Anr. 2004 (2) Suppl. SCR 207 =

A **(2004) 10 SCC 796;** *Laxminarayan R. Bhattad and Others* vs. *State of Maharashtra and Another* **2003 (3) SCR 409 = (2003) 5 SCC 413 – relied on**

1.6. It is for the State to effect necessary corrections as deemed proper and not search for an escape valve through a judicial verdict. Such a course of action is jurisprudentially impermissible. [para 16] [862-F]

R.D. Shetty Vs. International Airport Authority **1979 (3) SCR 1014 = (1979) 3 SCC 489 – relied on.**

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Viteralli Vs. Seaton **3.L Ed.2d. 1012 – relied on.**

1.7. The rejection of the claim of the respondent Society to TDR under the MRTP Act read with DCR N-2.4.17 is seriously flawed. The same is, therefore, set aside. The order dated 15.9.2009 of the Bombay High Court in the writ petition filed by the respondent Society is affirmed. [para 17] [860-C-D]

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Case Law Reference:

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2004 (2) Suppl. SCR 207	**relied on**	**para 15**
2003 (3) SCR 409	**relied on**	**para 15**
1979 (3) SCR 1014	**relied on**	**para 16**
3. L Ed.2d. 1012	**relied on**	**para 16**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3008-3009 of 2010.

From the Judgment & Order dated 15.09.2009 of the High Court of Judicature at Bombay in Writ Petition No. 7006 of 2006 and Judgment and final order dated 18.12.2009 in Review Petition No. 137 of 2009 in Writ Petition No. 7006 of 2006.

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WITH

C.A. No. 4580 of 2010.

V.A. Mohta, Vinod Bobde, Shekhar Naphade, Makarand D. Adkar, Braj K. Mishra, Vijay Kumar, Nelakanta Nayak, Devansh Mohta, Vishwajit Singh, Aniruddha P. Mayee, Charudatta Mahindrakar, Nitin Lonkar, Sonia S. Chillarge, Asha Gopalan Nair, Rohaan Cama, Subhash Jadhav, Kamna Sagar, Venkita Subramoniam T.R., Vikas Mehta for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. The controversy in the present appeals arises out of the claim of the respondent-writ petitioner, a housing society, to Transferrable Development Rights (TDR) under the relevant Development Control Regulations (DCR) i.e. N-2.4 framed under the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). The said claim has been resisted and rejected by the Pune Municipal Corporation and the State of Maharashtra, the two appellants in the appeals under consideration, on the ground that the land in question was not reserved for a public purpose in the development plan prepared under the MRTP Act and being shown as an existing garden therein, the claim to TDR has no legal basis. There are additional grounds for the rejection, details whereof will be, noticed in the course of the narration to be made hereinafter. The land in question measured about 3.5 acres and was covered by Survey No.12 (Part) located at Kohdhava Khurd, Pune. The view of the High Court being in favour of the respondent (writ petitioner) society, the Pune Municipal Corporation and the State of Maharashtra have filed the two appeals in question.

2. The core fact that emerges from the multitude of collaterals and the exhaustive pleadings of the parties is that the land in question was shown by the respondent Society itself

A in the lay out plan submitted by it to the Pune Municipal Corporation, as reserved for garden. Acquisition of the said land was initiated in the year 1982 (28.01.1982) under the provisions of the Land Acquisition Act, 1894 and the same was completed in the year 1987 whereafter possession of the land B was taken over on 19.02.1987. In the draft development plan dated 15.09.1982 that was prepared and published under the provisions of the MRTP Act, which was subsequently approved and sanctioned on 05.01.1987, the land was shown as an existing garden. The close proximity of time between the two C parallel process is too significant to be overlooked. While according to the respondent-writ petitioner the stage and the manner of the inclusion of the land in the development plan is of no consequence to the issue arising i.e. entitlement to TDR, the State contends that the land was acquired under a non-D development plan proposal which would not attract the provisions of the MRTP Act.

3. The High Court took the view that it cannot be understood as to how there can be a difference between land E "which was part of a development plan reserved by the Government or a part of the development plan submitted by the petitioner in which the land in question was shown as a garden". Laying emphasis on the relevant DCR i.e. N-2.4.17(ii), the High Court took the view that no such distinction is disclosed therein F and going by the language of the DCR the respondent Society was entitled to TDR as compensation for the land was not received by it. The High Court also noticed the various communications brought on record by the respondent-writ petitioner to show that, at different stages, the authorities of the G Municipal Corporation as well as those of the State of Maharashtra had unequivocally indicated the entitlement of the respondent-writ petitioner to Transferable Development Rights. The High Court also held that the directions contained in Government Order dated 03.02.2007 to be contrary to DCR N-.2.4.17 which is an instance of exercise of statutory powers H

under the MRTP Act. The said G.O. dated 03.02.2007 had excluded the entitlement to Transferable Development Rights once an award had been made and possession of the land had been delivered as in the present case.

4. We have heard Shri V.A. Mohta, learned senior counsel and Shri Aniruddha P. Mayee, learned counsel appearing for the appellants and Shri Vinod Bobde and Shri Shekhar Naphade, learned senior counsels appearing on behalf of the respondents.

5. Assailing the order of the High Court, it is contended on behalf of the appellants that under Section 126 of the MRTP Act grant of TDR against land acquired under the Land Acquisition Act is not contemplated and grant of TDR is permissible only when the land is acquired by agreement and it is further agreed that in lieu of compensation, TDR will be granted and accepted. It is argued that grant of TDR is a matter of agreement between the acquiring authority and the land owner and the authority cannot be directed to grant TDR if it is not so willing asmuch as a land owner cannot be compelled to accept TDR in the event he opts to accept compensation for the land acquired. The concept of TDR was brought in by an amendment to the MRTP Act in the year 1993 whereas the award for acquisition of the land of the respondent society was passed in the year 1987 and possession thereof was taken over on 21.2.1987. It is contended that the respondent society whose land was acquired under the Land Acquisition Act is entitled to compensation calculated on the market value of the land as on the date of the Notification under Section 4 of the Land Acquisition Act which was published in the year 1982. The value of the benefit, if TDR is to be granted at the present stage, would be grossly disproportionate. Pointing out the provisions of the Development Control Regulations governing grant of TDR, it is contended that DCR N-.2.4.1(A) and 2.4.17 are required to be read harmoniously and not in isolation as has been done by the High Court. Before DCR N-.2.4.17 can be

A made applicable, the conditions spelt out under DCR N-. 2.4.1(A) has to be satisfied, namely, that the land should have been shown as reserved for a public purpose in the development plan. It is pointed out that in the present case it was not so done and the land was, in fact, shown as an existing B garden. Therefore, DCR N-.2.4.1(A) is not applicable thereby ruling out the application of DCR No.2.4.17. It is also pointed out that the land was acquired under the provisions of the Land Acquisition Act under a non-development plan proposal to which acquisition the provisions of Section 126 of the MRTP C Act will have no application. In so far as the G.O. dated 03.02.2007 under Section 154 of the MRTP Act is concerned, the appellants contend that the said G.O. dated 03.02.2007 is no way amends DCR No.2.4.17 as held by the High Court; rather the said directions are merely clarificatory and were D issued due to large scale deviations that have taken place in the matter of grant of TDR.

6. Opposing the aforesaid contentions advanced on behalf of the appellants, Shri Vinod Bobde and Shri Shekhar E Naphade, learned senior counsels appearing on behalf of the respondent - cooperative housing society in the two separate appeals have submitted that the object of the amendment made in the year 1993 (14.10.1993) introducing the concept of TDR was to lessen the financial burden of the State facing F the prospect of making payment of huge compensation money for acquisition of land in connection with the Development Plan. Learned counsels have pointed out that in the present case the land was eventually included in the development plan prepared and approved under the MRTP Act. The manner of inclusion in G the development plan i.e. as an existing garden or as reserved for a garden would not make any difference to the claim of TDR. It is argued that, though offered, the respondent had not accepted any compensation and, in fact, had agitated for higher compensation under Section 18 of the Land Acquisition Act. While the matter was so pending the concept of TDR came to H

be introduced in the Act and in the year 1997 (05.06.1997) the modified DCR N-2.4 was introduced. The respondent society abandoned the reference made by it for higher compensation and initiated proceedings challenging the acquisition. After the said challenge was negatived, the respondent society, in the year 2003, lodged a claim for grant of TDR under DCR N-2.4.17 (ii) which though initially was responded favourably was eventually rejected by placing reliance on the Government Order dated 03.02.2007. It is further contended that DCR N-.2.4.17 is a stand alone provision and under clause (ii) of the said DCR the respondent society is entitled to its claim of TDR under the MRTP Act though the land had been acquired under Land Acquisition Act. In this regard, it has been specifically pointed out that possession of the land was taken from the society in the year 1987 which is within 12 years prior to 30th September, 1993 as contemplated in DCR N-2.4.17 (ii). Admittedly, no compensation has been received. It is further submitted that the Government Order dated 03.02.2007 purports to amend the DCR which cannot be so done without following the procedure prescribed under Section 37 of the MRTP Act. The fact that in similar circumstances TDR had been granted to other land owners has also been pointed out by the learned counsels appearing on behalf of the respondent housing society.

7. In so far as the provisions of Section 126(1) (a) (b) and (c) of the MRTP Act is concerned, Shri Vinod Bobde, learned counsel appearing for the respondent society in C.A. No.3008-3009 of 2010 has submitted that the availability of TDR to cases of land acquired under the Land Acquisition Act after invoking the provisions of Section 126(1) (c) of the MRTP Act will not be open to be raised either by the State or the Municipal Corporation once the DCR, particularly DCR N-2.4.17 (ii), had been enacted and brought into force to confer Transferrable Development Rights for land acquired under the provisions of the aforesaid Section 126(1) (c) of the Act by following the

process laid down in the Land Acquisition Act. Shri Bobde has pointed out that once Regulations have been framed contemplating grant of TDR to such land subjected to acquisition under Section 126 (1)(c), the Government cannot turn around and refuse to be bound by its own norms much less challenge the same. It is further pointed out by Shri Bobde that any such plea on the part of the State is not competent in law and the State cannot seek a decision on the validity of its self professed norms of governance. So long as the DCR remains its full legal effect must be given effect to.

8. As the issues raised before us will have to be answered on the basis of the true and correct purport and effect of the relevant provisions of the MRTP Act; those of the Development Control Regulation i.e. DCR N-2.4.1(A) and 2.4.17; and the Government Order dated 03.02.2007, the same may be extracted at the first instance.

Relevant provisions of the MRTP Act

"22. Contents of Development Plan -

A Development plan shall generally indicate the manner in which the use of land in the area of the Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,-

(a).....

(b).....

(c).....

(d) .....

(e).....

(f)..... A

(g).....

(h).....

(i)..... B

(j).....

(k).....

(l)..... C

(m) - provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of fees, charges and premium, D at such rate as may be fixed by the State Government or the Planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant E Development Control Regulations, and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population F allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking G space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act." H

A "**Section 126. Acquisition of land required for public purposes specified in plans** (1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any
B 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 –

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

(b) in lieu of any such amount, by granting the land-owner or the leasee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the
D 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
E 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
F surrendered land at this 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 Land Acquisition Act, 1894.

G 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 or Transferable Development Rights under this Section or under the Land Acquisition Act, 1894, as the case may be,

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shall vest in the Planning Authority, Development Authority, or as the case may be, any Appellate Authority." A

Government Order dated 03.02.2007

"Maharashtra Regional & Town Planning Act, 1966 B
Directive under Section 154 About TDR.

GOVERNMENT OF MAHARASHTGRA
URBAN DEVELOPMENT DEPARTMENT
MANTRALAYA, MUMBAI – 400 032. C

DATED 3rd FEBRUARY, 2007.

ORDER

No. TPS/Sankirna-06/CR-527/06/UD-13:- Whereas the provision of Transferable Development Rights (hereinafter referred to as "the said TDR") has been incorporated in the sanctioned Development Control Regulations (hereinafter referred to as "the said DCR") with a view to reduce the financial burden of acquisition of lands reserved for public purposes in the Development Plan and for early possession of these lands: D E

And whereas, sanctioned Development Control Regulations of some Municipal Corporations contain the provision of rules regarding the said TDR; F

And whereas, sanctioned the said DCR of some Municipal Corporations also have provision to grant the said TDR for the lands acquired either under Maharashtra Regional& Town Planning Act, 1966 (hereinafter referred to as "the said Act"), Bombay Provincial Municipal Corporation Act, Private Negotiation or any other Act and possession of which has already been delivered to the Municipal Corporation; G

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A And whereas, it has come to the notice of Government that the rule regarding the grant of TDR such acquired lands have been misinterpreted and misused;

And whereas, once the possession is delivered after
B acquisition the rights of the owner are transferred to the Planning Authority and the application by the land owner demanding TDR thereafter can be said to be made without having any rights in the land;

After considering the facts and circumstances
C referred to above, in exercise of the powers conferred under Section 154 of the said Act, Government is pleased to issue directives to all the Municipal Corporations as follows:

D DIRECTIONS

All the Municipal Corporations which have the provisions regarding grant of Transferable Development Rights (TDR) for the lands which are acquired under either
E the MRTP Act, BPMC Act, Private Negotiation or any other Act shall initiate modification proposal after following procedure laid down under Section 37 of the said Act so as to replace the provisions of this regard by new rules as follows:

F NEW RULES:

(1) Transferable Development Rights (TDR) shall not be permissible once an award has been declared under the acquisition process and or the possession has already
G been delivered to the Municipal Corporation under any Act.

(2) Municipal Corporation shall punish a notice inviting suggestions and or objections regarding the modification within sixty days from the date of issue of this order.

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(3) After completing the procedure laid down under Section 37(1) of the said Act Municipal Corporation shall submit the said modification proposal to the Government for final sanction.

(4) Pending the approval to the aforesaid modification the new rule mentioned hereinabove shall come into force with effect from the date of issue of this notification.

By order and in the name of
Governor of Maharashtra.
Sd/-
(Nandkishor Patil)
Under Secretary to Government"

Development Control Regulation

"**N.2.4.1 (A).** The owner (or lessee) of a plot of land which is reserved for a public purpose, or road construction or road widening in the development plan and for additional amenities deemed to be reservations provided in accordance with these Regulations, excepting in the case of an existing or retention user or to any required compulsory or recreational open space, shall be eligible for the word of transferable Development Rights (TDRs) in the form of Floor Space Index (FSI) to the extent and on the condition set out below. Such award will entitle the owner of the land, to FSI in the form of a Development Right Certificate (DRC) which be (sic. he) may use for himself or transfer to any other person.

N-2.4.17. Grant of TDR in cases where lands are under acquisition:

(i) Where Land Acquisition has been declared but request was made for TDR to the Special Land Acquisition Officer after 30th September 1993 i.e. the date of publication of these draft Development Control Regulation containing TDR concept.

A (ii) Possession of the land has been delivered without having received part or full compensation under either the Maharashtra and Town Planning Act, Bombay Provincial Municipal Corporation Act, private negotiation or under any Act for the time being in force within 12 years prior to 30th B September 1993."

9. Though there is some controversy on the basic facts, there is also unanimity to show that the acquisition of the land belonging to the respondent society was initiated by notification C dated 28.01.1982 issued under Section 4 of the Land Acquisition Act, 1894. It is also clear that on completion of enquiry under Section 5-A of the Land Acquisition Act, declaration under Section 6 was published on 2.1.1985. Some further facts on which there is no dispute and therefore would D require to be taken note of, are that the draft revised development plan which was published on 18.9.1982 showed the land as an existing garden and in the final development plan which was sanctioned on 5.1.1987, the land was again shown as "existing garden as per approved layout". The respondent-E writ petitioner, however, contends that the description of the land as an existing garden is wrong and what should have been mentioned in the development plan is that the land was proposed for a garden as possession of the same was still with the respondent-society on the date of publication of the final F development plan i.e. 5.1.1987. Possession of the land, as noticed, was taken over on 18.2.1987 whereas the award under the Land Acquisition Act was made on 22.01.1987.

10. Having considered the matter we are of the view that it will not be necessary for us to consider the aforesaid G perspective highlighted by the respondent society as the controversy over the entitlement to TDR under the relevant DCR is capable of being resolved on a wholly different basis to which aspect of the matter we may now turn.

H 11. The concept of TDR was introduced for the first time

in the MRTP Act in the year 1993 by an amendment of Section 126(1)(a), (b) and (c) of the MRTP Act. The modalities for grant of TDR were brought into force by the amended Development Control Regulation (for short 'DCR') N-2.4 with effect from 5.6.1997. In its simplest form, the concept of TDR involves the surrender of land reserved for various public purposes in the development plan free of cost and in exchange thereof grant of TDR entitling the holder thereof to construct a built up area equivalent to the permissible FSI of the land handed over by him on one or more plots in the zone specified. Such rights are transferable. The object behind introduction of TDR, as admitted by the Pune Municipal Corporation in its various publications, was to meet the situation faced by the Corporation on being called upon to make payment of over Rs.1500 crores to take over different sites measuring about 600 hectares which had been reserved for different public purposes in the development plan.

12. Strictly construed it is the provisions of the Section 126 (1)(a) read with (b) of the MRTP Act, extracted earlier, which contemplate grant of TDR and that too only against land acquired by agreement as distinguished from land which is acquired under the Land Acquisition Act in exercise of powers under Section 126(1)(c). The latter kind of acquisition i.e. under the Land Acquisition Act by invoking Section 126(1)(c) of the MRTP Act however stands on a footing that is different and distinguishable from the normal process of acquisition under the same Act i.e. the Land Acquisition Act. This is because in an acquisition under the Land Acquisition Act made in exercise of power under section 126(1)(c) of the MRTP Act, the provisions of Section 4 and Section 5A of the L.A. Act are dispensed with and straightway a notification under Section 6 is to be issued. The market value of the land, though sought to be acquired under the Land Acquisition Act, is pegged to the date of publication of the interim or draft development plan, as may be, and not to the date of publication of the notification

A under Section 4 of the Land Acquisition Act. The above is a subtle but vital difference between the ordinary and 'normal' process of acquisition under the Land Acquisition Act and the process of acquisition under the same Act but in exercise of powers under Section 126(1)(c) of the MRTP Act that needs
B to be kept in mind.

13. DCR N-2.4.1(A) gives effect to the provisions of Section 126(1)(a) and (b) brought in by the amendment to the MRTP Act in 1993. It entitles the owner or a lessee of a plot of
C land, which is reserved for a public purpose in the development plan, to the award of TDR in lieu of compensation upon surrender of the land free of cost. If, DCR No.N-2.4 had not contemplated any further situations for grant of TDR the argument advanced on behalf of the appellants would have
D merited serious consideration. However, DCR N-2.4.17, extracted above, contemplates two other situations for grant of TDR. Under DCR N-2.4.17(ii) in situations where possession of land had been delivered without receipt of part or full compensation payable under the MRTP Act, Bombay
E Provincial Municipal Corporation Act, private negotiations or under any Act and such event had occurred within 12 years prior to 30.9.1993 (date of publication of the draft DCR containing the TDR concept) claims for grant of TDR are required to be entertained. DCR N-2.4.17 extends the frontiers outlined under
F Section 126(1)(a) and (c) and makes the grant of TDR applicable to an extended class of cases wherein acquisition of land is made not only under the MRTP Act but also under other enactments including the L.A. Act. Such an extension appears to be in consonance with the object behind the introduction of the concept of TDR by the amendment of the
G MRTP Act of 1993. Having regard to the clear language contained in DCR N-2.4.17(ii) and the object sought to be achieved by the introduction of TDR, we do not see as to how grant of TDR can be confined only to cases of lands which have been reserved in the development plan and not to lands
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acquired under the Land Acquisition Act which land eventually becomes a part of the finally approved and sanctioned development plan. The above would also lead to the conclusion that DCR N-2.4.17 is capable of operating independently and is not contingent on the existence of the conditions mentioned in DRC N-2.4.1(A). A B

14. The matter needs to be viewed from another perspective. The difference between acquisition under the L.A. Act by resort to the provisions of Section 126(1)(c) of the MRTP Act and acquisition *dehors* the said provision of the MRTP Act has already been noted. If under DCR N-2.4.17, TDR can be granted in cases of acquisition under the MRTP Act obviously acquisition under the LA Act upon invocation of Section 126(1)(c) would be included. In such a situation, reference to any other Act in DCR N-2.4.17 would include the L.A. Act so as to bring land covered by the normal process of acquisitions under the L.A. Act within the fold of DCR N-2.4.17. The acquisition of the land belonging to the respondent society would, therefore, be clearly covered by the provisions of DCR N-2.4.17. C D E

15. "Making of DCR or amendments thereof are legislative functions."[1] The Government Order dated 3.2.2007, though claimed to be clarificatory by the appellants, really, seeks to prohibit the grant of DCR under DCR N-2.4.17 so far as lands in respect of which Award under the Land Acquisition Act had been passed or possession of which has been taken over. This is contrary to the clear intent behind DCR N-2.4.17. The Government Order itself acknowledges the necessity of following the procedure prescribed by Section 37 of the MRTP Act before the aforesaid modification could become effective. Yet, surprisingly the Government Order goes on to state that, "Pending approval of the aforesaid modification the new rule F G

1. Pune Municipal Corporation and Anr. Vs. Promoters and Builders Association and Anr. [(2004) 10 SCC 796]. H

A mentioned hereinabove shall come into force with effect from the date of issue of this notification". The Government Order in question, having been issued under Section 154 of the MRTP Act, therefore, cannot override the DCR N-2.4.17 as the directions under Section 154 of the MRTP Act would be in the B nature of administrative instructions (*Laxminarayan R. Bhattad and Others Vs. State of Maharashtra and Another*[2]). Admittedly, at the relevant point of time, the requisite process under Section 37 of the MRTP Act had not been completed.

C 16. Underlying the arguments advanced on behalf of the appellants is a fundamental issue that would require a brief mention. The present case discloses a somewhat disturbing course of action adopted by the State in seeking to disown and challenge its own professed standards laid down in the form D of a DCR by tangentially contending the same to be incompetent in law. Such a course of action by the State seeking to depart from its self-professed norms is neither permissible nor would the Court require to consider the same. The DCR governing the grant of TDR though may have gone E beyond what is contemplated under the MRTP Act, the State and its authorities cannot be permitted to request the Court to collaterally adjudge the validity of the said norms laid down by the State itself. It is for the State to effect necessary corrections as deemed proper and not search for an escape valve through F a judicial verdict. Such a course of action is jurisprudentially impermissible. So long as the DCR holds the field all executive actions must be within the four corners thereof. We can usefully remind ourselves of the observations of Justice Frankfurter in *Viteralli Vs. Seaton*[3] approved in *R.D. Shetty Vs. International* G *Airport Authority*[4] :

"An executive agency must be rigorously held to the

2. (2003) 5 SCC 413.

3. 3.L Ed.2d. 1012.

H 4. (1979) 3 SCC 489.

standards by which it professes its action to be judged. ..Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind the agency, that procedure must be scrupulously observed...This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

17. For the above-stated reasons, the conclusion is obvious. The rejection of the claim of the respondent Society to TDR under the MRTP Act read with DCR N-2.4.17 is seriously flawed. We, therefore, set aside the same; affirm the order dated 15.9.2009 of the Bombay High Court in the writ petition filed by the respondent Society and consequently dismiss the appeals filed by the Pune Municipal Corporation and the State of Maharashtra.

Rajendra Prasad Appeals dismissed.