RAJHAN NARENDRA ROUT AND OTHERS

v.

THE STATE OF MAHARASHTRA, THROUGH SECRETARY, URBAN DEVELOPMENT DEPARTMENT AND OTHERS

(Civil Appeal No. 4639 of 2012)

AUGUST 25, 2022

[N. V. RAMANA, CJI AND HIMA KOHLI, JJ.]

Maharashtra Regional Town Planning Act, 1966: s.126 – Acquisition of land reserved under the Development Plan for public purposes – Issuance of Transferable Development Rights Certificate against the area of land acquired or surrendered by the land owners – On facts, appellants-land owners agreed to surrender the subject land to the respondent No.3-Corporation and opted for grant of TDR – Said land was reserved for the purpose of a park in the development plan, however appellant's case that the subject land was shown as Hill Top/Hill Slope zone in the development plan – Respondent no. 3 completed the acquisition process and agreed to grant TDR @ 100% Floor Space Index-FSI – Complaints regarding grant of excessive TDR – The then Chief Minister of the State cancelled the grant of TDR @ 100% FSI and reduced it to 4% FSI – Writ petition by the appellant – Dismissed by the High Court – On appeal, held: Gross injustice caused to the appellants who had offered their land to the respondent No.3/Corporation on the basis of a Scheme floated by it proposing to acquire land for public purpose and grant TDR to the land owners in lieu of the land – Having decided to award TDR @ 100% FSI to the appellants, later on the respondents reneged from their decision and slashed the offered TDR to 4% FSI on the premise that the appellants could not compare their land with the adjoining lands for claiming residential use since the said land is also in the nature of 'Hill Top/Hill Slope' – When to the north and the west of the subject land, residential construction was permissible and till date, the lands falling in 'Hill Top/Hill Slope' zone have not been zoned for being put to any use, the appellants cannot be expected to wait – Matter has been lingering in courts for over eighteen years and there have been several rounds of litigation – Land remained in the possession of the respondent

A *No.3/Corporation all along, thereby not only depriving the appellants of its use but also depriving them of the compensation to which they were entitled as long back as in the year 2004 – In ordinary course, this court would have been inclined to restore the TDR granted to the appellants – However, keeping in mind that extensive construction has mushroomed in Pune over the past two decades and additional construction of over seven lakhs sq. feet, if permitted, would cause a severe strain on the civic amenities available in the city – Respondent Nos.3 and 4/Corporation directed to return the land to the appellants and compensate them @ Rs.1 crore per year for the loss caused by surrendering per 66,000 sq. mts. of land way back in the year 2004 – Development Control Regulations – Regn N-2.4.5.*

Friends Colony Development Committee v. State of Orissa and Others **(2004) 8 SCC 733 : [2004] 5 Suppl. SCR 818 – referred to.**

D

Case Law Reference

[2004] 5 Suppl. SCR 818 referred to Para 19

E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4639 of 2012.

From the Judgment and Order dated 13/14.03.2012 of the High Court of Judicature at Bombay in Writ Petition No.1790 of 2008.

F Neeraj Kishan Kaul, Sr. Adv., Ms. Shyel Trehan, Hitesh Jain, Pranaya Goyal, Dharav Shah, Rohan Poddar, Ms. Namisha Chadha, Dhawal Desai, Ms. Pritha Suri, Vikas Mehta, Advs. for the Appellants.

Ms. Madhavi Divan, ASG, Shyam Divan, Sr. Adv., Sachin Patil, Rahul Chitnis, Shreeyash Lalit, Aaditya A. Pande, Geo Joseph, G Ms. Shwetal Shepal, Makarand D. Adkar, Vijay Kumar, Shantanu M. Adkar, Ms. Bharti Tyagi, Venkita Subramoniam T. R., Rahat Bansal, Likhi Chand Bonsle, Advs. for the Respondents.

H

The Judgment of the Court was delivered by

HIMA KOHLI, J.

1. The appellants are aggrieved by the judgment dated 13/14th March, 2012 passed by the High Court of Bombay, dismissing the challenge laid by them to the order dated 27th December, 2007 passed by the then Chief Minister of the State of Maharashtra, cancelling the Transferable Development Rights[1] Certificate earlier granted in favour of the appellants @ 100% Floor Space Index[2] and upholding the decision to reduce the TDR granted to the appellants from 100% FSI to 4% FSI.

2. The subject matter of the dispute in the present appeal is in respect of a parcel of land, situated in plot No.517 (part) and plot No.523 (part) at Parvati, Pune, measuring 66372.82 sq. mts. In the Development Plan of Pune City, 1987[3], the said land was reserved for the purpose of a park. The stand of the appellants is that the subject land was shown in the 'Hill Top/Hill Slope' zone in the Development Plan under the Maharashtra Regional Town Planning Act, 1996[4]. Respondent No.3/ Pune Municipal Corporation[5] invoked Section 126 of the Town Planning Act that permits acquisition of land which is reserved under the Development Plan, for public purposes and contemplates issuance of TDR against the area of land acquired or surrendered by the land owners free of cost. In terms of the aforesaid provision, the appellants agreed to surrender the subject land to the respondent No.3/Corporation and opted for grant of TDR. The respondent No.3/Corporation completed the acquisition process in respect of the said land and agreed to grant TDR to the appellants in terms of the Development Control Regulations[6] framed under the Town Planning Act, in particular Regulation N -2.4.5.

3. Respondent No.4/Commissioner of the Corporation addressed a letter dated 22nd February, 2001 to the respondent No.2/Secretary, Urban Development Department[7] of the respondent No.1/State of Maharashtra seeking a clarification as to the rate at which TDR was to be granted in respect of the subject land.

---

[1] for short 'TDR'
[2] for short 'FSI'
[3] for short 'Development Plan'
[4] for short 'Town Planning Act'
[5] for short 'Corporation'
[6] for short 'DC Regulations'
[7] for short 'UD Department'

A 4. The Principal Secretary, UD Department wrote to the Advocate General of the State on 3rd September, 2003 for obtaining legal advice on the above aspect. The said letter highlighted *inter-alia* the fact that the parcel of land in question had not been zoned for 'Hill Top/Hill Slope' and for purposes of deciding the value of TDR for a reserved site which does not bear any zoning, zoning of the adjoining land is taken into consideration by the respondent No.3/ Corporation. The Advocate General forwarded his opinion on 22nd September, 2003, stating that if the plots adjacent to the acquired/surrendered land were in a residential zone, then TDR for the said land was to be awarded at the rate of FSI available to the residential plots. On the basis of the said legal opinion, vide letter dated 9th October, 2003, the Under Secretary, UD Department informed the respondent No.4/Commissioner of the Corporation that since the zoning line was not shown in the Development Plan, the applicable TDR for the subject plot shall be @ 100% FSI, as that was the rate appliable to the surrounding land.

D 5. On 20th October, 2003, Director, Town Planning, Pune requested the State Government to reconsider its decision of awarding TDR @ 100% FSI to the appellants and to pass a revised order awarding TDR @ 4% FSI. Respondent No.2/State responded vide letter dated 12th March, 2004, stating that unlike the Development Plan of Mumbai, the Development Plan of Pune does not contain zones and/or zoning lines and as per the Town Planning Scheme of Pune, the subject land was to be kept open. The letter further clarified that while granting TDR for any land under reservation, TDR is granted as per the permissible FSI, irrespective of non-buildable nature of land due to shape and accessibility. Reliance was placed on the remarks made by the Advocate General in the opinion given on 22nd September, 2003 and a copy thereof was enclosed with the reply.

6. The chronology of events reveals further that on 26th May, 2004, the appellants deposited a sum of ₹ 50,12,516/- (Rupees fifty lakhs, twelve thousand, five hundred and sixteen) with the respondent No.3/ Corporation towards the expenses to be incurred for construction of a compound wall to protect the subject land. On 28th May, 2004, respondent No.3/Corporation issued Development Right Certificates[8] in favour of the appellants in lieu whereof, the appellants handed over possession of the subject land to the respondent No.3/Corporation.

H [8] for short 'DRC'

7. In the meantime, on receiving some complaints regarding grant of excessive TDR to the appellants, the then Chief Minister of the respondent No.1/State of Maharashtra issued an order dated 19th April, 2004, staying the operation of the letter dated 9th October, 2003. Aggrieved by the same, the appellants submitted a representation to the Chief Minister on 24th October, 2005, requesting that the stay order be vacated, which was rejected on 22nd November, 2005. The aforesaid rejection order was challenged by the appellants before the Bombay High Court by filing a writ petition registered as WP No.5989/2006. The said petition was disposed of vide order dated 15th January, 2007 with a direction to the appellants to submit a representation before the respondent No.2/Secretary, UD Department, to enable him to pass appropriate orders in a time bound manner.

8. In compliance of the aforesaid order, a representation was submitted by the appellants to the respondents No.1 and 2/State. After hearing the parties, an order was passed by the then Chief Minister on 27th December, 2007, cancelling the TDR granted @ 100% FSI for the subject land and directing that new TDR @ 4% FSI shall be granted.

9. Passing of the aforesaid order led to a second round of litigation between the parties. The appellants filed WP No.1790/2008 before the High Court of Bombay praying *inter-alia* for quashing and setting aside the order dated 27th December, 2007. Vide order dated 11th December, 2008, the said writ petition was dismissed by the High Court by observing that the subject land surrendered by the appellants was classified as 'Hill Top/Hill Slope' and there was no reason to interfere with the order dated 27th December, 2007, granting TDR @ 4% FSI to the appellant instead of 100%.

10. Aggrieved by the order dated 11th December, 2008, the appellants filed a Special Leave Petition before this Court registered as SLP(C) No.6476/2009. Vide order dated 15th September, 2010, the aforesaid order passed by the Bombay High Court was set aside and the matter was remanded back for fresh consideration with liberty granted to the parties to file fresh affidavits and additional documents. Till then, the interim order passed by the Bombay High Court was extended.

11. It is a matter of record that the appellants did file an additional affidavit along with additional documents before the Bombay High Court in opposition whereto, counter affidavits were filed by the respondents.

A After hearing the parties, vide judgment dated 13/14 March, 2012, the High Court once again dismissed the writ petition. It is this order that has brought the appellants back before this Court.

12. Appearing for the appellants, Mr. Neeraj Kishan Kaul, learned Senior Advocate has contended that the respondents have committed a B gross illegality by arbitrarily cancelling the TDR originally granted @ 100% FSI, thereby making the appellants run from pillar to post for relief. The entire litigation has spread over eighteen years during which period, the appellants have not only been deprived of the use of the land, but also from receiving any compensation in lieu of surrendering the C land to the respondent No.3/Corporation. Referring to the correspondence exchanged between the UD Department of the respondent No.1/State and the learned Advocate General of the State as also between the respondent No.1/State and the Director, Town Planning, Pune, it has been argued that the appellants are legally entitled to receive TDR @100% FSI more so when as per the respondents, D TDR is granted as per the permissible FSI, irrespective of the non-buildable nature of the land due to the shape and accessibility. Stating that the subject land was not demarcated in the Development Plan as falling in the 'Hill Top/Hill Slope' zone but was reserved as a park, it has been asserted that the appellants are entitled to grant of TDR @100% FSI.

E

13. Laying emphasis on the fact that since there is no zoning of the subject property, it has been canvassed that the appellants are entitled to grant of TDR as would be allottable to the adjacent residential land i.e. @100% FSI. Invoking the doctrine of promissory estoppel and legitimate expectation, it was asserted that the respondents are estopped F from cancelling the TDR granted to the appellants more so when they have already acted on the representation of the respondents and have surrendered the subject land to the respondent No.3/Corporation as long back as in the year 2004, on an assurance that TDR @ 100% FSI would be allotted to them.

G 14. As for the observations made in the impugned judgment to the effect that the appellants had themselves admitted that the subject land is situated in a 'Hill Top/Hill Slope' zone and therefore, maximum FSI of 4% would be permissible in terms of Rule M-8 of the Development Control Rules for the Pune Municipal Corporation, Pune, 1982[9], it was

H [9] for short 'DC Rules'

argued on behalf of the appellants that an isolated averment made in the writ petition cannot be read out of context and the High Court was required to take a holistic view of the averments made in the writ petition coupled with those made in the additional affidavit and the additional documents filed subsequently by the appellants after the matter was remanded back by the Supreme Court for reconsideration. Had that been done, the High Court would not have arrived at an erroneous conclusion that the appellants have conceded that the subject property is situated in 'Hill Top/Hill Slope' zone for which TDR of only 4% FSI would be permissible.

15. Concluding his arguments, Mr. Kaul, learned Senior Advocate submitted that even under the Town Planning Act, Section 50(3) and Section 127 state that for determination of the purpose for which a parcel of land can be used when it is de-reserved or when the acquisition has lapsed is the purpose, for which the adjacent land can be used and in the instant case, the subject land is bounded on two sides by residential areas and therefore, if the respondent No.3/Corporation is not inclined to retain the land, then it ought to be returned to the appellants for being put to use at par with the adjacent land, along with compensation for having deprived the appellants of the land and its benefits for the past over eighteen years.

16. The aforesaid arguments have been vehemently contested by Mr. Shyam Divan, learned Senior Advocate appearing with Mr. Sachin Patil, Advocate-on-Record for the respondent No.1/State of Maharashtra, Ms. Madhavi Divan, learned Additional Solicitor General appearing with Ms. Bharti Tyagi, Advocate-on-Record for the respondent No.2/ Secretary, UD Department of the Government of Maharashtra and Mr. Venkita Subramoniam T.R., Advocate-on-Record, appearing for the respondent No.3/Corporation and respondent No.4/Commissioner for the Corporation. The stand of all the respondents is common. They have sought to repel the arguments advanced on behalf of the appellants that the respondents cannot be permitted to retract from their earlier decision, holding that the appellants are legally entitled to receive TDR @ 100% FSI particularly, when the said decision was based on an opinion given by the learned Advocate General of the State of Maharashtra, by contending that the appellants cannot be permitted to take undue advantage of factual errors made by the then Secretary, State of Maharashtra in the letter dated 3rd September, 2003 that forms the basis

A of the opinion given by the learned Advocate General on 22nd September, 2003. It was urged that the Secretary, UD Department, Government of Maharashtra committed an error in noting the boundary zones of the subject land and observing that it is 'Hill Top/Hill Slope' zone towards three sides and a residential zone on the fourth side, whereas the residential zone is situated at a far distance from the subject land and is
B neither adjacent nor contiguous thereto.

17. For making the aforesaid submission, learned counsel for the respondents alluded to the Development Plan of Pune that defines 'Hill Top/Hill Slope' zones, Rule N-2.4.5 of the DC Rules that provides that an owner would be entitled to FSI credit in the form of DRC as per
C permissible FSI of the zone from where the TDI has originated and Rule 14.2 that provides for zonal FSI as per Appendix-M. Arguing that Rule M-8 of the DC Rules specifically deals with 'Hill Top/Hill Slope' zone and provides for a maximum FSI of 4% for such a zone, it was submitted that there was no logic in granting FSI of the adjacent land to the
D appellants, when there is a specific provision in the DC Rules and the Development Plan relating to 'Hill Top/Hill Slope' zones. It was thus stated that a factual inaccuracy in the letter soliciting an opinion from the learned Advocate General resulted in a legally incorrect opinion and this fact was highlighted by the Director, Town Planning in his letter dated 20th October, 2003, which ultimately led to cancellation of the
E TDR granted @ 100% to the appellants in respect of the subject land and reducing it to the 4% FSI.

18. The respondents have also sought to repel the submissions made on behalf of the appellants that though the State of Maharashtra has implemented the Unified Development Control and Promotion
F Regulations from 2nd December, 2020, it has deliberately not incorporated the concept of 'Hill Top/Hill Slope' zone, which has been kept in abeyance. It was submitted that the issue of 'Hill Top/Hill Slope' zone has been kept in abeyance in the new Regulations only to enable the State to examine the said issue at greater length.

G 19. On his part, learned counsel for the respondents No.3/ Corporation and 4/Commissioner to the Corporation added that if the subject land is granted TDR @100% FSI, it would translate into construction of 7,14,422 sq. feet area and in that event, the Corporation will have to grant 100% TDR for all the proposed acquisitions, which
H would result in construction of over two crores sq. feet area. He sought

to explain that in such an event, the respondent No.3/Corporation will not be in a position to provide civic amenities like water, sewage etc. when the city is already facing acute problems regarding availability of such facilities. In support of his submission that Development Plan of city is extremely important and ought to be regulated in line with Town Planning principles, reliance has been placed on ***Friends Colony Development Committee v. State of Orissa and Others***[10].

20. We have carefully considered the arguments advanced by learned counsel for the parties, perused the impugned judgment and the documents placed on record. The facts of the case are not in dispute. The core issue that requires to be answered in the instant case is whether the subject land surrendered by the appellants to the respondent No.3/ Corporation would entitle them to grant of TDR @ 100% FSI or @ 4% FSI.

21. It is not in dispute that under the Scheme floated by the respondent No.3/Corporation, wherever land was to be acquired for development schemes in Pune, land owners could opt for the Scheme and in lieu of the surrendered land, they would be entitled to grant of TDR as compensation. Admittedly, the appellants had surrendered the subject land to the respondent No.3/Corporation in expectation of grant of TDR. Since there was some confusion within the department with regard to the rate at which the TDR was to be granted in respect of the subject land, a clarification was sought by the respondent No.4/ Commissioner of the Corporation from the Principal Secretary, Town Planning Department, Government of Maharashtra. The letter dated 14th May, 2003 addressed by the respondent No.4 refers to boundation of the subject land and their zoning as below :

> "But, according to Pune Municipal Corporation sanctioned Development plan in the year I957 the Final Plot No. 523 (Part) and 517 (Part) was bounded and their zone was as follows :
>
> | | | |
> |---|---|---|
> | On or Towards North | : | By Survey No, 121,1,22 (Canal' and PMC waterworks, PSP and residential Zone) |
> | On or Towards | : | By Survey No, 103, 104 (Hilltop |

[10] (2004) 8 SCC 733

	South		Hill Slope and PSP Zone and residential Zone at certain distance.)
	On or Towards East	:	By Survey No, 96, 97 (Hill top Hill slope and PSP Zone)
	On or Towards West	:	By Survey No. 106 (Hill top Hill slope Zone)

Therefore in the proposal under subject with how much FSI Index TDR shall be paid, in respect suspicion has been raised. Hence it is requested to issue order of Government in this respect."

22. For issuing necessary clarification, the UD Department of the respondent No.1/State wrote a letter to the Advocate General of the State seeking an opinion as to the value of the TDR to be granted to the appellants in lieu of their land. In the said letter, it was clarified that Rule N-2.4.5 of the DC Rules prescribes that the built-up area for the purpose of FSI credit in the form of TDR shall be equal to the gross area of the reserved plot that is surrendered to the Corporation and that it will be proportionately increased or decreased, according to the permissible FSI of the zone wherefrom the TDR has originated. The letter further clarified that the expression *"according to the permissible FSI of the zone"* appearing in Regulation N-2.4.5 of the DC Regulations, is significant and that the said Rule has been lifted from the Development Control Regulations for Greater Mumbai, 1991. But unlike Mumbai, where each and every parcel of land has sites reserved for public purpose, that is not the case in respect of the city of Pune, where the sites reserved for public purpose are not included in any planning zone and it is in this background that the issue of awarding FSI credit requires to be decided. The relevant para of the letter dated 03.09.2003 issued by the Principal Secretary, UD Department is extracted as under :-

> "03. ……In such a situation, in the absence of any zoning being assigned to reserved sites, the meaning of expression permissible FSI of the zone where the TDR has originated "cannot be precisely applied in case of Pune Development Plan, unlike in the cases from Development Plan of Mumbai.
>
> 04. While deciding the value of TDR for reserved sites (which do not bear any zoning), the Pune Municipal Corporation takes into

consideration the zoning of the adjoining land in the vicinity of reserved sites and accordingly the Corporation awards TDR. Thus, for a site reserved for "Park" and surrounded by Residential/ Commercial Zone, Pune Municipal Corporation grants TDR to the FSI value admissible for Residential/Commercial zone. However, in the instant case, the land under reference is surrounded by following planning zones:

To North	-	Residential Zone
		Public-Semi Public Zone. (In which buildings can be constructed with FSI that is available in Residential Zone)
To South	-	Municipal Corporation limit beyond which is Pachgaon Kurar Park
To East	-	P.S.P. Zone & Hill Top Hill Slope Zone.
To West	-	Hill Top Hill Slope Zone. (HT /HS)
		Canal and further to which Residential/Public utility development (FSI 1.00)"

23. We may next extract below the opinion given by the learned Advocate General of the respondent No.1/State of Maharashtra :

"This refers to your letter dated 3rd September, 2003 on the above subject. Interestingly, the expression "zone" is not used in Section 14 which deals with the contents of a Regional Plan, or in Section 22 which deals with the contents of a Development Plan. It however finds inclusion in Section 22 (A) which was brought in by the Maharashtra Act, 39 of 1994. The expression "zone" apparently came to be used for the first time in the Development Control Regulations from Mumbai in 1991.

However the spirit of the Act is very clear. For instance, in Section 50 which deals with deletion of reservation of designated land, sub-Section 3 provides that such designated land when released from such designation or reservation shall become available to the owner for the purposes of development as is otherwise permissible in the case of adjacent land in the relevant plan. Obviously, Rule N-.2.45 has to be read on a similar basis. The idea of giving TDR or a Development Rights certificate, is to

A compensate the owner for the deprivation of his property by giving him development rights in respect of the plot which can be used elsewhere. It would have to be on the basis that the plot would otherwise have been developable having regard to the user of the adjacent plots. The adjacent plots are in the residential zone and therefore the approach in paragraph 5 of your letter is correct and normal FSI available for the residential zone could be made available."

B

24. What has been sought to be urged by learned counsel for the respondents is that the aforesaid opinion is premised on wrong information furnished by the Department. Admittedly, on discovering the purported factual error, the Department did not go back to seek a fresh opinion of the learned Advocate General. Instead, the aforesaid opinion was duly accepted and acted upon by the respondents and based thereon, vide letter dated 28th May, 2004, respondents No.3 and 4/Corporation issued TDR in favour of the appellants, permitting FSI @ 100% in lieu of the parcel of land surrendered by them. Contemporaneously, physical possession of the land was also taken over from the appellants who paid over ₹ 50,00,000/- (Rupees fifty lakhs) to the respondents No.3 and 4/ Corporation towards construction of the compound wall and for levelling of the land.

C

D

25. So far so good. Trouble started after lapse of one year when the respondents decided to cancel the TDR granted to the appellants and proceeded to reduce it from 100% FSI to 4% FSI by observing that there was no residential development in the land adjoining the subject land and that there was an adjoining canal and 'Hill Top/Hill slope' zone. Therefore, though residential use is permissible adjoining the subject land, even then, the site would remain as 'Hill Top/Hill Slope' zone in nature, making it permissible to award TDR only @ 4% FSI, for such a zone.

E

F

26. In the order impugned before the High Court, no effort was made to explain as to why the opinion taken by the respondent No.1/ State had to be brushed aside. No explanation has been offered that justified disagreement with the said opinion; no effort was made by the State to approach the learned Advocate General for obtaining a fresh opinion on the plea that the letter seeking the earlier opinion, had furnished erroneous facts. In all this back and forth between respondent Nos.1 and 2/State and the respondent Nos.3 and 4/Corporation, it is the appellants who have been left high and dry. They had surrendered the subject land

G

H

to the authorities as far back as in the year 2004 on the expectation of being granted TDR, which has still not materialized. In these eighteen years, the respondents have continued to retain the possession of the subject land. In the course of arguments advanced before this Court, it was specifically enquired from learned counsel for the respondents that the land having been surrendered for a public purpose, whether the same has been put to any such use, the Court was first informed that a reservoir has been built on the land; later, it was stated that the status of the land has remained the same as it was when it was surrendered.

27. In view of the above, we are of the opinion that gross injustice has been caused to the appellants who had offered their land to the respondent No.3/Corporation on the basis of a Scheme floated by it proposing to acquire land for public purpose and grant TDR to the land owners in lieu of the land. Having decided to award TDR @ 100% FSI to the appellants, later on the respondents reneged from their decision and slashed the offered TDR to 4% FSI on the premise that the appellants could not compare their land with the adjoining lands for claiming residential use since the said land is also in the nature of 'Hill Top/Hill Slope'. We may note that the boundation of the land as was mentioned by the Principal Secretary, UD Department to the learned Advocate General in the communication dated 3rd September, 2003, has been specifically stated to be residential zone towards the North where buildings could be constructed with FSI that is available in the residential zone. Yet again, towards the west of the subject plot, is the 'Hill Top/Hill Slope' zone and a canal further to which residential/public utility development with FSI of 1.00 was available. When to the north and the west of the subject land, residential construction was permissible and till date, the lands falling in 'Hill Top/Hill Slope' zone have not been zoned for being put to any use, the appellants cannot be expected to wait till eternity for the respondents to take a decision in this regard.

28. It is noteworthy that the appeal was taken up for hearing on seven occasions, between February, 2022 to May, 2022 and on each date, the respondents were directed to resolve the matter amicably with the appellants instead of bringing it to a head. This Court had clearly observed on 4th May, 2022 that it was not persuaded by the arguments advanced by learned counsel for the respondent Nos.3 and 4/Corporation. As for the respondent Nos.1 and 2/State of Maharashtra, learned counsel have stated on instructions that it will take time for the State Government

to take a definite decision in the matter. In the said circumstances, we had proposed the following two solutions to the respondents for settling the matter once and for all :

(a) to grant Transferable Development Right Certificate (TDRC) to the petitioner as was given to the petitioner on 28-5-2004; or

(b) to acquire the land and pay compensation to the petitioner in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2003.

29. On the next date of hearing, i.e., 10th May, 2022, after taking note of the order passed on the earlier date, the following proceedings were recorded :

"3. Learned Senior counsel appearing on behalf of the appellants submits that vide Notification dated 05.01.1987, the Development Plan of Pune City, 1987 was sanctioned and under the said Plan, the land in dispute was shown as reserved for park. An amendment was made to the Maharashtra Regional Town Planning Act, 1966 and the Development Control Rules. Section 126 of the amended Act permitted acquisition of lands which were reserved under the Development Plan for public purpose and further, provided for issuance of Transferable Development Rights (TDR) in lieu of compensation against the area of land acquired or surrendered free of cost. Learned Senior counsel further submits that the Chief Minister vide order dated 27.12.2007 had directed that the TDR's already granted to the appellants at the rate of 100% be cancelled and had further directed that new TDRs be issued to the appellants at the rate of 4% instead of 100%.

4. Learned counsel appearing on behalf of respondent No.3 – Municipal Corporation of Pune submits that the order impugned has been passed by the State Government and for any modification or implementation of the said order, permission has to be given by the State Government but the State Government is un-willing to agree to either of the two proposals which had emanated during the course of hearing.

5. On the other hand, learned counsel appearing on behalf of the respondent – State submits that it has already been suggested to

the Municipal Corporation of Pune to either auction the land in question under the new Act or return the said land to the appellants.

6. In view of the ongoing tussle between the Municipal Corporation of Pune and the State Government, we are of the view that some responsible officer of the State Government should be called upon to appear before this Court personally and explain the stand taken by the State Government.

7. We, accordingly, deem it appropriate to direct the Chief Secretary, State of Maharashtra to personally appear before this Court and apprise us about the stand taken by the State Government in compliance with the order passed by this Court on 04.05.2022.

8. At this juncture, learned counsel appearing on behalf of the State of Maharashtra submits that it is the Principal Secretary, Urban Development Department who is competent to take a final decision in this regard and not the Chief Secretary.

9. In view of the above, we direct the Principal Secretary (Urban Development Department), Government of Maharashtra to personally appear before this Court on 19.05.2022 and explain the steps taken by the State Government in compliance with the order passed by this Court on 04.05.2022."

30. The Principal Secretary, UD Department, Government of Maharashtra did appear before this Court on the next date but no practical solution was offered. Instead, the matter was sought to be argued to the hilt yet again and the respondent No.2/State and the respondent Nos.3 and 4/Corporation kept on passing on the buck to each other for the impasse.

31. Having considered the factual matrix of the present appeal where the matter has been lingering in courts for over eighteen years and there have been several rounds of litigation, three before the High Court and two before this Court in respect of the subject land, which has all along remained in the possession of the respondent No.3/Corporation, thereby not only depriving the appellants of its use but also depriving them of the compensation to which they were entitled as long back as in the year 2004, we are unable to concur with the impugned judgment. In ordinary course, we would have been inclined to restore the TDR granted to the appellants by the respondent No.3/Corporation on 28th May, 2004.

A However, keeping in mind the submission made by learned counsel for the respondent Nos.3 and 4/Corporation that extensive construction has mushroomed in Pune over the past two decades and additional construction of over seven lakhs sq. feet, if permitted, will cause a severe strain on the civic amenities available in the city, it is deemed appropriate to direct the respondent Nos.3 and 4/Corporation to return the land B acquired by it to the appellants within four weeks. Once the possession is restored, the appellants shall be permitted to use it for residential purposes. Further, the respondents are directed to compensate the appellants @ Rs.1 crore per year for the loss caused to them on surrendering per 66,000 sq. mts. of land way back in the year 2004. The C entire exercise shall be completed within a period of three months from the date of this order.

32. The impugned judgment is, accordingly, quashed and set aside and the present appeal is allowed on the above terms.

Nidhi Jain Appeal allowed.
(Assisted by : Shashwat Jain, LCRA)