



rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.97 OF 2019

Kalpataru Ltd. .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

Mr.Saket Mone a/w Mr.Makrand Savant, Mr.Suneet Tyagi and
Mr.Raghav Taneja i/b Vidhii Partners for the Petitioner.

Mr.Milind More, Addl. GP for the State.

Mr.Prakash Chavan a/w Shruti Keer for the MCGM.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 8th JUNE 2026

JUDGMENT (PER BHARATI DANGRE, J) :

1 Rule. Rule is made returnable forthwith.
Heard by consent.

2 The Petitioner No.1, a Company incorporated under the Companies Act, 2013, alongwith its authorized signatory has approached this Court as regards the matter of levy of premium for staircase being contrary to the provisions of DC Regulations 1991, and also making a grievance about the quantum thereof.

The Petitioner is aggrieved by the rejection of the representation preferred by the it, at the hands of the Corporation and by the levy demand and recovery of the staircase premium in the sum of Rs.3,48,67,540/-.



3 Heard the learned counsel for the Petitioner and the learned counsel representing the Corporation.

By consent of Parties we issue 'Rule', which is made returnable forthwith.

4 The learned counsel Mr.Mone has placed reliance upon the order passed by the Division Bench of this Court in Writ Petition No.187/2016 (Wadhwa Estate & Developers (I) Pvt. Limited vs. The Municipal Corporation of Greater Mumbai & Ors.) decided on 14/11/2017. He would submit that the issue which is raised in the said Petition was the subject matter of consideration in the pending Writ Petition, where the Petitioner/Developer sought a declaration that the Corporation and its Authorities, do not have the power to charge premium at the rate of 100% for development under Regulation 33(5) of the DCR of Greater Mumbai, 1991 for the open space deficiency.

In turn, a challenge was raised to the demand notice for which they were called upon to pay 100 % premium for the open space deficiency.

5 Inviting our attention to the contest raised and the findings of the Division Bench, Mr.Mone would submit that based on the aforesaid decision a representation was preferred by the Petitioner, but it received a rejection on 17/02/2018 on the ground that that MCGM has filed SLP in the Supreme Court against the order of the High Court and further that the order relied upon was in regard to charging of premium for open space deficiency created due to loading of fungible FSI.



Mr.Mone has placed before us the order passed by the Apex Court dated 10/08/2023 when the Civil Appeal No(s).11967/2018 filed by the MCGM against the order of the Division Bench dated 14/11/2017 is dismissed.

6 We have perused the order passed by the Division Bench on 14/11/2017 and we have noted that the Petitioner raised an identical challenge, calling in question the authority of the Corporation to charge 100% premium for open space deficiency and we have also taken note of the findings rendered, where it is categorically held that the circular issued by the Corporation, to charge 100% premium is totally unsustainable, in view of clear and unambiguous provision of Regulation 33.

It is also specifically observed that by Regulation 33 of the Regulations, the Authority has decided to grant certain relaxations to slum development scheme and the schemes of MHADA that were meant for EWS/LIG and MIG tenements at concessional premium and the very object of the Regulation 33(5) and 33(10) would stand frustrated by the issuance of circular dated 26/12/2013.

Based upon the aforesaid, a declaration is issued by the Division Bench that the Respondents would not be entitled to charge 100% premium for relaxation, pertaining to open space deficiency under the sub clause of clause 6 in Annexure A of Appendix IV of Regulation 33(10) of the Regulations, and, therefore, the impugned notice demanding 100% premium is bad in law.



As a consequence of the said declaration, a direction is also issued that the Respondents shall compute the amount payable by the Petitioner towards 10% of the premium for availing the relaxation pertaining to open space deficiency and after retaining the said amount, refund be made of the remaining/ balance amount to the Petitioner within 8 weeks.

7 The said order being subjected to challenge before the Hon'ble Apex Court, by order dated 10/08/2023 , finding no merit in the Appeal warranting any interference in the impugned Judgment, the Appeal was dismissed.

What is relevant to note is the direction contained in Para 3 of the order of the Apex Court when it is directed that the amount of premium at the rate of 100% having already deposited by the Respondent under protest, after deducting the admissible premium at the rate of 10% was directed to be refunded alongwith interest accrued thereon within a period of 6 weeks.

We do not find ground available to the Municipal corporation now to contest or deny the relief as claimed by the Petitioner, as the Division Bench Judgment has been upheld by the Apex Court and the Appeal has been dismissed.

It is further directed that since the amount of premium was already deposited at the rate of 100% by deducting the permissible premium at the rate of 10%, the balance amount which has been deposited was directed to be returned alongwith interest that has been accrued.

8 We must also follow the same pursuit and while allowing the



Writ Petition being covered by the decision of Division Bench of this Court in WP No. 187/2016, declaring that the Corporation has no authority to levy the premium at the rate of 100% even in respect of the Scheme of the Petitioner being covered under Regulation 33(5), are entitled to be extended with similar benefit.

We deem it appropriate to make the writ petition absolute in terms of prayer clause (a) and (b) which reads to the following effect:-

“a. 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 direction under Article 226 of the Constitution of India, thereby calling for the records and proceedings pertaining to the issuance of the impugned Demand Notices dated 20/06/2014, 07/07/2015 and 17/05/2017 (being Exhibit N hereto), after going through the legality and validity thereof the same be quashed and/or set aside;

b. 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 of India, directing the Respondent No 2 to recalculate the staircase premium at 10% of the normal premium as consistent with the prevailing practices and refund the excess payment made by the Petitioner as per particulars given in Exhibit N-1 hereto.”

Since the Petition contain a statement that the Petitioners have paid an aggregate amount of Rs.3,48,67,540/- towards the premium for staircase, and as we permit the Corporation to recover 10% premium towards the staircase, we direct the Corporation to remit the balance amount alongwith interest accrued thereon at the rate of 6% from the date of its deposit till the date of its refund.

The Corporation is also at liberty to adjust the said amount towards any other amount which is due and payable to the Corporation, at the instance of the Petitioners.



In case the amount is to be refunded, that should be done within a period of 10 weeks alongwith interest as directed above.

Petition is made absolute in above-said terms.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]