



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

VASANT
ANANDRAO
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WRIT PETITION (LODGING) NO.16563 OF 2023

| | | |
|----|------------------------|------------------|
| 1. | Ravindra D. Waikar, | |
| 2. | Mr.Asoo K. Nihalani, | |
| 3. | Amardeep Singh Bindra, | |
| 4. | Mr.Raj K. Lalchandani, | |
| 5. | Manisha Waikar, |Petitioners |

| | ...Versus... | |
|----|--|----------------|
| 1. | Brihan Mumbai Municipal Corporation, Through Municipal Commissioner, Head Office at Mahapalika Bhavan, Mahapalika Marg, Mumbai – 400 001. | |
| 2. | The Chief Engineer, Brihan Mumbai Municipal Corporation, Office at Mahapalika Bhavan, Mahapalika Marg, Mumbai – 400 001. | |
| 3. | The Executive Engineer, Building Proposal, K/East Ward, Having Office at the office of the Deputy Chief Engineer (Building Proposal), Hindu Hrudhayasamrat Shri. Bala Saheb Thackarey Market, New Majas Market, Link Road, Jogeshwari (East), Mumbai – 400 093. | |
| 4. | The Director (E.S. & P.), Brihan Mumbai Municipal Corporation, Office at Mahapalika Bhavan, Mahapalika Marg, Mumbai – 400 001. Respondent Nos.1 to 4 served through The Law Officer, Legal Department, 3 rd Floor, Mahapalika Bhavan, Mahapalika Marg, Mumbai – 400 001. | ...Respondents |

Mr.Aspi Chinoy, Senior Advocate with Mr.A.Y. Sakhare, Senior Advocate i/b Mr.Joel Carlos for the Petitioners.

Dr.Milind Sathe, Senior Advocate with Mr.Kunal Waghmare i/b Mr.Sunil Sonawane the Respondent No.1 – Corporation.

**CORAM : SUNIL B. SHUKRE &
RAJESH .S. PATIL, JJ.**
RESERVED ON : 7 AUGUST, 2023
PRONOUNCED ON : 8 SEPTEMBER, 2023

P.C. :

1. This Writ Petition is filed under Article 226 of the Constitution of India by the Petitioners seeking therein to quash and set aside the impugned order dated 15 June 2023 passed by the Executive Engineer of Building Proposal (K-East Ward) of the Mumbai Municipal Corporation of Greater Mumbai (for short “Corporation”).

FACTUAL BACKGROUND:

2. The Petitioners claimed to be occupiers of a plot of land, bearing CTS No. 1 (pt) new CTS No. 1B and 1C of village Vyaravaly at Jogeshwari Vikroli Link Road, Jogeshwari (E) Mumbai, admeasuring about 8000 sq. mtrs. which was then owned by Mahal Pictures Limited (for short “*the subject plot of land*”). The subject plot of land was reserved in the Development Plan of 1991 (for short “DP 1991”) for the public purpose of “Recreation Ground”.

3. In the year 2002, the Mahal Pictures Pvt. Ltd. (Owners) and the Petitioners (Occupiers) of the subject plot of land had desired to develop the same under Regulation 9 Table 4 (4)(k) of the Development Control Regulations 1991 (for short “DCR 1991”) i.e. by using 0.15% FSI of the plot, on 33% of the total plot area for ancillary purposes, and agreeing to keep the balance area of 67% available for use by the Public as a Recreation Ground.

4. The Corporation accepted this proposal under File No CHE/3341/DPWS/H&K dated 11 March 2002. Accordingly an Agreement dated 9 February 2004 was entered into between the Corporation, Mahal Pictures Pvt. Ltd. as the Owners and the Petitioners as the Occupiers of the said land, whereunder the Corporation agreed to permit the occupiers to construct a sports facility on 33% of the plot area and the occupiers agreed to keep 67% of the Plot area open and available as a Garden for the unrestricted use of the General public.

5. On 18 June 2005, the Petitioners purchased the subject plot of land from the erstwhile owners by a Conveyance dated 18 June 2005, on the terms and conditions more specifically stated therein.

6. In the year 2018, the Development Plan 2034 (for short “DP 2034”) and Development Control and Promotion Regulation 2034 (for short “DCPR 2034”) for the City of Mumbai were sanctioned. The Petitioner's entire plot of land continued to be reserved for the purpose of garden.

7. In the month of October 2020, the Petitioners through their Architects made an online application that they be permitted under DCPR 2034, Regulation No.17(1) to surrender/transfer 70% of the subject plot of land to the Corporation and further after demolition of the existing building, construct/develop on the balance 30% area a building utilising the FSI of the entire plot of land.

8. On 20 January 2021, the Corporation issued Development Permission to the Petitioner and the Corporation also issued an IOD on 22 January 2021 for construction of a Commercial hotel building on the balance 30% of the subject plot.

9. Shortly thereafter on 26 February 2021, the Corporation issued a Commencement Certificate for construction

upto plinth level / zero FSI.

10. On 5 September 2022, by a letter Mr. Kirit Somaiya (former M.P.) lodged a complaint to the Corporation alleging that the permission to the Petitioners for development of the subject plot under DC Regulation 17(1) had been wrongly given, as under the Agreement dated 9 February 2004 between Mahal pictures, the Petitioners and the Corporation, it had been provided that: (i) 67% of the plot would be available for use of the general public as a garden and (ii) there was a condition that in future no person could claim compensation for allowing 67% of the plot to be used as a RG.

11. By letter dated 17 October 2022 addressed by the Executive Engineer to Mr. Kirit Somaiya with reference to his complaint letter dated 5 September 2022 informed that the permissions had been granted in accordance with DCPR 2034 17(1) as the Corporation was to receive 70% of the plot area without paying any compensation and that there has been no violation of DCPR 2034.

12. Further by its letter dated 8 February 2023 the

Corporation's Executive Engineer referred to a Complaint that had been received by Corporation which stated that Clause 8 of the Agreement of the year 2004, whereunder the owners / occupiers had agreed *"that they would not claim compensation/ TDR at any time for the entire area of the plot under reservation in the DP including 67% area which is to be kept open for the unrestricted use of the public"* and sought the Petitioners Architect's explanation / clarification on the issue raised in the complaint within 7 days from the receipt of the letter so as to enable this office to process the matter further on its merits. The Petitioners replied to the said notice, and gave their detailed explanation.

13. On 15 June 2023, the Corporation passed the impugned order thereby the development permission issued on 20 January 2021 and the CC issued to Petitioner which was already lapsed, cancelled the permission granted by Corporation for the subject work as per the direction of Municipal Commissioner dated 14 June 2023.

SUBMISSIONS OF PARTIES

14. Mr.Aspi Chinoy, learned Senior Advocate made his submissions on behalf of the Petitioners :

14.1. Mr.Chinoy, submitted that without giving any hearing to the Petitioners, the impugned order has been passed. He further submitted that total area of the subject land is 8000 sq. mtrs. and the Petitioners are the owners of the subject plot. The subject plot was reserved under the category of garden, under DCR 1991.

14.2. He submitted that 70% of the land has been taken over by the Corporation on 20 January, 2021 and immediately thereafter an IOD for balance 30% of the land for construction was granted. Further the commencement certificate dated 26 February, 2021 was granted. He further submitted that a copy of the Conveyance was also submitted to the Corporation by the Architect of the Petitioners while applying for building construction permission and it is expected that the Corporation must have scrutinized each and every document and only thereafter the permission to construct has been granted.

14.3. Mr.Chinoy contended that one Mr. Kirit Somaiya had filed alleged complaint with the Corporation and the Corporation after going through the issues raised in the complaint on 17 October, 2022 rejected the complaint of Mr.Somaiya. He further submitted that however, surprisingly after three months again the Corporation looked into the alleged complaint made by Mr.Somaiya and issued a purported notice to the Petitioners.

14.4. Mr.Chinoy, further submitted that in two more such cases viz., Indian Hotels and Mars Hotel, an identical issue as that raised in the present proceedings has arose however, the Corporation decided not to take any action in those two matters.

14.5. Mr.Chinoy, learned Senior Advocate contended that this is only out of vengeance that the alleged complaint made by Ex-Member of Parliament Mr. Kirit Somaiya, the Corporation is acting. He therefore submitted that the Writ Petition should be allowed and the impugned Order dated 15 June 2023, be quashed and set aside.

15. On the other hand, Dr.Milind Sathe on behalf of the

Corporation made his submissions :

15.1. Dr. Sathe submitted that the Writ Petition was not maintainable and should be dismissed, as the Petition is filed without disclosing true and correct facts.

15.2. He submitted that the Petitioners obtained permission dated 26 February 2021, by suppressing the fact that the reservation on the subject plot as placed in DP 1991 had already been implemented as per the then policy. The DP 2034 only showed the existing possession and it would not be open to claim the development reservation, as if it was done for the first time.

15.3. Dr.Sathe further submitted that the conveyance dated 18 June 2005 showed consideration of Rs.3,00,000/- for the subject plot admeasuring 8,000 sq,mtrs. The conveyance records that the right is transferred with “restricted development rights in favour of the purchaser”. This fact was suppressed by the Petitioners while applying for development permission in the year 2020.

15.4. He further submitted that DP 1991, the subject property was reserved for recreation ground- This reservation was subject to compulsory acquisition under the provisions of Section 126 of MRTP Act and if the subject land was acquired, the owner would have been paid compensation in terms of the provisions of Section 126 of MRTP Act and then the Corporation would have developed recreation ground for the public. The then owners approached the Corporation and requested the Corporation that they be allowed to develop the subject plot in accordance with DCR 1991, Regulation 9, Table No.IV (4) (k). The Corporation agreed to allow the owners and the occupiers to develop the subject plot as per their request and in terms of release letter dated 11 March 2002. In terms of this permission, the owners retained 33% of the land and relinquished 67% of the land.

15.5. Dr.Sathe submitted that a tripartite agreement was executed on 9 February 2004 between the Corporation, Mahal Pictures and the Petitioners herein, for development of the subject land. The agreement clearly recorded that 67% of the

subject plot would be for unrestricted general public use and balance 33% of the subject plot would be for the use of the owners / occupiers, as per the terms of the then DC Regulations. Clause 8 of the said agreement records that the occupiers were not supposed to claim any compensation / TDR at any time for the entire area of the subject plot. Accordingly the development permission was issued on 11 March 2002 with conditions.

15.6. The Development Plan was then approved on 10 October 2004, for Club House and other sports activity on the subject plot. Accordingly, constructions were carried on 33% of the subject land and balance 67% of the subject land was put to unrestricted use of general public as recreation ground. Accordingly, the reservation stood implemented as per DCR 1991.

15.7. In 2018, new Development Plan for the city of Greater Mumbai i.e. Development Plan 2034 and Development Control and Regulations 2034, were sanctioned. The subject plot under the said development plan is shown as reservation of ROS1.5 (garden / park).

15.8. Dr.Sathe further contended that the Petitioners thereafter submitted a proposal for development of the subject plot as per DP 2034, by suppressing the fact that the reservation had already been implemented and that there is tripartite agreement to that effect between the owners, occupiers and Corporation executed way back in the year 2004 and the same has not been set aside or cancelled. He further submitted that the Petitioners had submitted a proposal in online format therefore as per procedure the Petitioners' proposal was processed. The proposal was submitted in terms of Regulation 17(1) of DCPR 2034 for the subject plot. In view of the provisions, on receipt of approval of Municipal Commissioner dated 5 December 2022 for the various concessions involved in the proposal, the development permission dated 20 January 2021 was granted with condition that the owners shall hand over 70% of land to the Corporation free of costs and balance 30% was allowed for development as per Regulation 17(1), Table No.V, Serial No.16 of DCPR 2034. As per the procedure thereafter Zero FSI, IOD and commencement certificate was issued on 22 January 2021

and 26 February 2021 respectively, thereby allowing the construction of basement and plinth only, which does not involve any FSI consumption.

15.9. Thereafter there were certain complaints received by the Corporation as regards the subject plot. The Corporation thereafter found out that the reservation of DP 1991 was already implemented on the subject plot as per the then policy, hence no new proposal could have been sought for under the new DP 2034. Hence a show cause notice was issued on 8 February 2023. The Petitioners had submitted a detailed reply through their Architect on the show cause notice. Reply disclosed that the erstwhile owners obtained the permission to develop the subject land earlier as per DP 1991. Reply further stated that the owners are authorized to make an application for development as per DCPR 2034. Reply further submitted that the conditions imposed in February 2004 are only for the occupiers and not for the owners.

15.10. Dr.Sathe, further submitted that since the assertion were made by Petitioners patiently false and contrary

to the tripartite agreement, the order dated 15 June 2023 was passed, thereby cancelling the permission dated 20 January 2021. He further added that the principles of natural justice was complied with, as the show cause notice was issued and explanation of the Petitioners was sought for. The reply filed by the Petitioners was considered and only thereafter the order dated 15 June 2023 was passed.

15.11. Dr.Sathe submitted that the Petitioners are in an indirect manner trying to get rid off the binding tripartite agreement, which the Petitioners cannot do. Dr.Sathe submitted that there is no merits in the Petition and the development permission is rightly cancelled by the order dated 15 June 2023, hence the Petition should be dismissed with costs.

ANALYSIS AND CONCLUSION:

16. We have carefully gone through the submissions made by both the learned Senior Advocates for the parties and also gone through the documents.

17. The Municipal Corporation of Greater Mumbai is the

Planning Authority for jurisdiction of Greater Mumbai as per the provisions of the Maharashtra Regional and Town Planning Act, 1966.

18. The first Development Plan prepared by the Corporation, was sanctioned in the year 1964-1967. Thereafter, the Corporation revised the first D.P. as per provisions of the MRTP act, and the revised D.P. was sanctioned by State Government of Maharashtra in the year 1991 (for short DP 1991).

19. It is for the Town Planning Authority under the MRTP Act, 1966, to finalize, revise and amend the Plans, inter-alia more particularly empowered therein. Under Section 38 of the MRTP Act, the Town Planning Authority, is required to atleast revise once in 20 years from the date on which a DP has come into operation.

20. Urban Development Department (for short UDD) by its notification dated 20 February 1991, in exercise of powers conferred by sub section (1) of section 31 of MRTP act sanctioned the Development Control Regulations for Greater

Bombay 1991. The DCR 1991 came into force on 25 March 1991 and the 20 years period expired in the year 2010. Therefore, as per the provisions of Section 38 of new D.P. was to be sanctioned.

21. The erstwhile owners Mahal Pictures Pvt. Ltd. and the Petitioners (Occupiers) of the subject plot of land in the year 2002, desired to develop the subject plot under Reg. 9, Table IV (4) (k) as per then prevailing DCR 1991. **Reg.9 Table IV (4) (k), reads as under:-**

**Table 4
Land-uses and the Manner of Development.**

| Serial No. | Use(Allocation, designation or reservation) | Person/Authority who may develop | Condition subject to which development is permissible |
|------------|---|----------------------------------|---|
| (1) | (2) | (3) | (4) |
| (4) | <u>Assembly and Recreation-</u> (k) Recreation Ground (RG) | Corporation or Owner | The Commissioner may entrust the development and maintenance of the facility to a suitable agency on terms to be decided by him. |

22. The Corporation accepted the proposal of the Petitioners on 11 March 2002. Pursuant thereto an tripartite agreement dated 9 February 2004 was entered into between the Corporation, then Owners of subject plot of land (Mahal Pictures

Pvt. Ltd.) and the Petitioners (Occupiers), wherein the Corporation agreed and permitted the Occupiers/Petitioner to utilize 0.15% of the total plot FSI on, 33% of the plot area for constructing a sports facility in the form of Club and the remaining 67% of the plot area to be kept open for general public to use as garden. The said agreement also stipulated in clause 6 and 8 that Occupiers/Petitioners would not claim any compensation/TDR for the subject plot under reservation in the DP.

Clause 6 and 8 of the said agreement reads as under:

*“6. The ~~Owner~~/Occupiers shall use the said 33% area of Recreation Ground for **Recreational/ Sports activities only** and the Owners/Occupiers hereby **undertake that they shall not be used for any other purpose.**”*

*8. It is hereby agreed by the Owners/Occupiers that they **shall not claim any compensation/TDR at any time for the entire area of the plot under reservation** in the Development Plan including the 67% area which is to be kept open for the unrestricted use of the general public.”*

[Emphasis supplied]

23. The Petitioner accordingly constructed a Club House/ Sports Activity on the 33% of the subject plot by using 0.15% FSI of entire plot and the balance area of 67% was kept open for general public were as garden.

24. Subsequently, on 18 June 2005, the Petitioners purchased the subject plot of land from the erstwhile owners by Conveyance Deed Dt. 18 June 2005. The Consideration as mentioned in the Conveyance was Rs. 3,00,000/- (Rupees Three Lakhs Only) for the subject plot admeasuring 8,000 Sq.Mtrs. Therefore, in the year 2005, the Petitioners had purchased the subject plot at the rate of Rs. 37.50 per Sq. Mtr. for land situated in Mumbai Suburban city at Jogeshwari. The Conveyance records that the rights are transferred with restricted development rights in favour of the purchaser. The relevant clause of the conveyance reads as under:

“Whereas Vendors herein are lawfully seized, possessed and absolute owners in respect of plot of land bearing CTS No. 1, Vyarvali Village, which is open (R.G.) Reservation under R.G. Plot adm. About 8000 sq. mtrs. at Jogeshwari Vikhroli Link Road, Next to Matoshri Sports Complex, bearing S.No. 093, Mumbai – 400 093, with restriction to develop only 33% of Recreation Ground adm. About 2640.73 sq. mtrs. and balance 67% area adm. about 5361.51 sq.mtrs. to be made available to general public as per Agreement with Director (E.S. & P) Municipal Corporation of Gr. Mumbai Dt. 9.2.04 with a condition not to claim any compensation TDR at any time for entire area of plot under reservation in the Development Plan to be kept for unrestricted use of General Public AND as per the approved plan with BMC bearing No. CE/7523/WS/AK of 10.2.04 hereinafter called and referred to as “said plot” for sake of brevity, more particularly mentioned in the Scheduled hereunder written.”

[Emphasis supplied]

25. A bare reading of the clause of conveyance and taking into account the consideration amount, the only reason one can derive is that, due to the restriction of development rights on the subject land, it was sold at a much cheaper rate.

26. In affidavit in Rejoinder the petitioner has mentioned that even in new DCPR 2034 the subject plot of land is reserved as Garden. The paragraph no.2(iv) of Affidavit in Rejoinder reads as under:

“In DCR 2034 the Development Plan had continued to show the Petitioner's entire plot of land as being reserved for a RG”.

27. The Petitioners have thereafter in the year 2020 pursuant to new DCPR 2034 sought permission to demolish the existing Club House and built a new building for the purpose of 14 Storey Star Hotel.

28. The proposal was sent to the Corporation in online format. On receipt of approval of Municipal Commissioner dated 05 December 2020 for the various concessions involved in the proposal, the development permission was granted on 20 January 2021, with the condition that the owner shall hand over

70% of land i.e. adm. 5530.00 sq. mtr. to Corporation free of cost and balance 30% area adm. 2370.00 sq. mtr, was allowed for development as per Reg. 17(1) Table No. 5 Sr. No. 16 of DCPR 2034. At the time of granting the development permission, advance possession receipt of land adm. 5530.00 sq.mtrs. i.e. 70% of land was taken by Corporation on 20 January 2021. Thereafter, Zero FSI IOD and Commencement Certificate was issued on 22 January 2021 and 26 February 2021, respectively, allowing construction of basement and plinth, which does not involve any FSI consumption.

Regulation 17(1) Table No.5, Sr.No.16 of DCPR 2034, reads as under :-

Table No.5
Reservations to be developed for the intended purposes
or as per Accommodation Reservation

| <i>Sr. No.</i> | <i>Reservation main Category</i> | <i>Reservation Sub-Category</i> | | <i>Uses Permitted</i> | | <i>Applicable conditions for development</i> |
|----------------|----------------------------------|---------------------------------|---------------------|--|--|--|
| | | <i>Code</i> | <i>Name</i> | <i>Permissible uses</i> | <i>Ancillary Activities</i> | |
| 16 | Public Open Spaces | ROS 1.5 | Garden /Park | Garden, Parks, Botanical Garden, Children Park with Walking Track, Wooded Areas Water Body | Art and Culture related uses, Vipassana/yoga meditation, Watchman cabin, Gardener chowky, toilet block. | 1 or 3 In case of 3, Y=70 and minimum area of reserved plot shall be 1000 sq. m. |

The Development Permission dated 20 January 2022 was granted to the Petitioner on the basis of documents submitted by them at the time of submission of proposal.

29. Pursuant to Petitioner's application zero percent FSI was sanctioned and an IOD was granted to the Petitioners. So also commencement certificate was granted to the Petitioners.

30. While granting the development permission dated 20 January 2021 certain conditions were imposed on the Petitioner, out of these conditions four conditions, namely condition Nos. 5, 6, 7 & 23 which read as follows:

5) That the development permission is issued based on the documents submitted by the Owner/Architect. If any of the documents is found to be fake/false/ fraudulent, this permission shall stand revoked without any further intimation,

6) That the development permission is granted based on documents submitted by the Architect/Owner and if at any time are found fake/fraudulent then the permission issued shall stand revoked/cancelled.

7) That Indemnity bond indemnifying MCGM and its officers against any litigation, costs, damages, etc. arising out of documents submitted, earlier approvals if any and

23) That the registered declaration cum undertaking shall be submitted to this office stating that no benefits either by way of acquisition/Purchase Notice/ TDR/ FSI /Award/Compensation whatsoever has been received in the past nor any proposal is in process claiming benefits"

[Emphasis supplied]

31. The Petitioners also submitted registered undertaking (RUT) cum indemnity bond agreeing to these conditions.

32. IOD dated 22 January 2021 was issued. On the subject plot of land the said IOD, conditions specifically state that in case the Corporation realizes that any kind of fraud or suppression is made by the Applicants/Petitioners, then the permission granted would be rejected. The Commencement Certificate was issued on 26 February 2021, which was valid for one year. Condition No.6 (c) reads as under:-

6. This Certificate is liable to be revoked by the Municipal Commissioner of Greater Mumbai if :-

a.

b.

c. **The Municipal Commissioner of Greater Mumbai is satisfied that the same is *obtained by the applicant through fraud or misrepresentation* and the applicant and every person deriving title through or under him in such an event shall be *deemed to have carried out the development work in contravention of section 43 or 45 of the Maharashtra Regional and Town Planning Act, 1966.***

[Emphasis supplied]

This CC is valid upto 25/2/2022

Issue On: 26 Feb 2021

Valid Upto: 25 Feb 2022

Application Number:

P-4350/2019/(1)/K/E

Ward/VYARAVALI/CC/1/New

Remark:

C.C. upto plinth level/Zero FSI i.e.0.15 mt. AGL as per zero FSI IOD plan dated 21.01.2021. Subject to submission of excavation permission from the office of collector M.S.D. along with the work start notice.

[Emphasis supplied]

Therefore it was clear that in case any fraud or misrepresentation is committed by the Petitioners the Permission was liable to be revoked.

33. A complaint was received by Corporation on 26 August 2022 and on 05 September 2022 regarding various issues related to the said plot. As the Development Permission was issued by Corporation, the Complainant had objected to the Grant of Permission. In light of that the issue was referred by Corporation to the UDD of State of Maharashtra under Regulation 4 of DCPR 2034.

34. Based on UDD reply, the Corporation sought reasons by issuing a Show Cause Notice dated 8 February 2023 from the Petitioners as to why the earlier agreement of 2004 was suppressed, while applying for new permission. The Petitioners tendered their detailed reply to the Show Cause Notice.

35. Upon consideration of the Remarks of UDD and Architect's non disclosure of agreement and clauses therein in Form 3 (List of Indicative concessions), the development

permission dated 20 January 2021 granted by Corporation was revoked due to following reasons:

- a) That the Project Proponent/Architect failed to submit/disclose earlier development permissions under DCR 1991 and agreement dated 09.02.2004 while obtaining development permission dated 20.01.2021 under DCPR-2034.
- b) That the Development Permission dated 20.01.2021 is lapsed.

36. We find that the Architect of the Petitioner had not disclosed of the existence of condition No.8 in agreement dated 9 February 2004. Hence, while preparing the reports, the said fact was not known to the concerned officer of the Corporation about the earlier development Agreement dated 9 February 2004. According to our view, the Petitioners had suppressed the material clauses from the earlier Development Agreement while submitting the proposal under DCPR 2034. The Petitioner had also given an undertaking to the Corporation that no purchase notice/ TDR /FSI /award/compensation whatsoever has been

received in the past nor any proposal with regard to claiming any benefits there under. Therefore on the face of it false Undertaking was given by Petitioners.

37. In this back drop we are of the view that the Petitioners submitted a proposal for development of the reservation in the 2034 plan by suppressing the fact that the reservation has already been implemented and that there is a Tripartite Agreement to that effect between the owners, occupiers and Corporation executed way back in 2004 and the same has not been set aside or cancelled or rescinded.

38. We are also of the view that once the Petitioners had received the benefit under DC Regulations 1991 and had constructed the club house, therefore effectively the whole scheme was implemented and, therefore having received compensation in the form of FSI for a land which is reserved for garden purpose, the Petitioners now cannot, in view of DCPR 2034, again apply for compensation when the reservation on the subject land has not changed.

39. We conclude that the principles of natural justice are duly followed by the Corporation while cancelling the Development Permission dated 20 January 2021. The Show

Cause Notice dated 08 February 2023 was served upon the Petitioner calling for clarifications regarding non-disclosure of earlier Development Permission. An opportunity was given to the Petitioners for giving the explanation regarding non-disclosure of the material documents at the time of submitting proposal. Petitioners had given their reply to the Show Cause Notice. In view of the same we conclude that the Petitioners are not entitled for the benefit which they are claiming. As the Development Permission was granted by Corporation on 20 January 2021, the Validity of the Development permission lapsed after 2 years i.e. on 19 January 2023. Architect of Petitioners has not revalidated the Development Permission dated 20 January 2021. As the Development permission was cancelled by Corporation the Commencement Certificate issued to Petitioners is also lapsed.

40. We find that there are no malafides or any lapses on the part of Corporation in taking the decision impugned in the present Petition.

41. The Conveyance expressly recorded in the first Recital that the owners had a "restriction to develop only 33% of recreation ground admeasuring 2640.73 sq mtrs and balance 67% area admeasuring about 5361.51 sq mtrs is to be made available to the general public as per Agreement with Director (E.S.& P) of Municipal Corporation dated 9 February 2004 with a condition not to claim any compensation / TDR at any time for entire plot under reservation in the DP to be kept for unrestricted use of General Public."

42. As far as the Indian Hotels and Mars Hotel are concerned, the Petitioners are not able to show any document about similarity of them with the Petitioner's project. As it can be seen in both of the projects there was a Notification for Development of 50% land for the purpose of Hotel. Petitioners were not able to show any such Notification in their project. The Agreement dated 9 February 2004 and Conveyance dated 18 June 2005, had specific restrictions on development in present proceedings.

43. In view of the same, there is no merit in the present Writ Petition and the same is dismissed. There shall be no order as to costs.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)

44. At the request of learned counsel for the Petitioners, the interim relief granted by this Court on 21st June, 2023 is extended for a further period of four weeks from today to enable the Petitioners to challenge the order before the Supreme Court.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)