2026 INSC 517

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2026

(Arising out of SLP (C) No. 11541 of 2024)

BRIHANMUMBAI MUNICIPAL CORPORATION AND ORS. ...APPELLANT(S)

VERSUS

VIJAY NAGAR APARTMENTS AND ORS. ...RESPONDENT(S)

J U D G M E N T

J.K. MAHESHWARI, J.

1. Leave granted.

2. The instant civil appeal arises out of the judgment dated 03.04.2024 passed by the High Court of Judicature at Bombay (hereinafter referred to as '**High Court**') in Writ Petition No. 3283 of 2019 whereby the writ petition filed by the Respondent Nos. 1 and 2 herein was allowed. The reliefs sought by the Respondent Nos. 1 & 2 were twofold: (a) challenging the communication / letter dated 05.11.2019 by the Appellants; and (b) directing the Appellants to grant additional amenity Transferrable Development

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Date: 2026.02.04 17:41:34 IST
Reason:

Rights (hereinafter referred to as '**TDR**') in respect of land as specified. Both the reliefs prayed have been granted *vide* the Impugned Order.

3. In the interest of easy comprehension and readability, the Appellant shall be referred to as the 'Corporation' and the Respondent No. 1 and 2 (the Partnership firm and one of its partners) shall be referred to collectively as the 'Landowner'.

FACTS

4. The facts, shorn of unnecessary details are that the Urban Development Department of the Government of Maharashtra reserved a property, i.e. lands bearing CTS Nos. 1A/4, 1A/10, 1A/14 (pt.), 1A/15 admeasuring 98,369.1 sq. mts. in village Anik, Bhakti Park, Chembur, (hereinafter referred to as '**subject land**') which was then owned by the Landowner and in the Development Plan issued *vide* its Notification No. TPB. 4393/2036/UD-11 (RDP) dated 04.03.1994 under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as '**MRTP Act**') it was reserved for the purpose of 'garden'. There was a stipulation in the said order that the respective landowners shall develop the garden

on the subject land and then handover the same to the Corporation.

5. Under the MRTP Act, acquisition of land for public purposes and the compensation in lieu thereof is governed by Section 126 of the MRTP Act. The said section prior to the amendment of the MRTP Act in 2015, is relevant and is therefore quoted herein for reference:

> "***126. Acquisition of land required for public purposes specified in plans –***
>
> *(1) Where after 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 purpose specified in any 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 113A acquire the land,-*
>
> *(a) by agreement by paying an amount agreed to, or*
>
> *(b)* ***in lieu of any such amount, by granting the land-owner or the lessee****, subject, however to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the 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 principles laid down in the Land Acquisition Act, 1894,* ***Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances and also further Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his 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,

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 Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(3) On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be, -

(i) where the land is to be acquired for the purpose of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing

on the date of publication of the notification of the area as undeveloped area; and

(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date or publication of the draft Town Planning Scheme:

Provided that nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973):

Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973), shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration, is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993), the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh."

(Emphasis supplied)

6. Pursuant to an application dated 06.07.2001 by the Landowner to the Corporation under Section 126(1)(b) of the MRTP Act, the Corporation issued a Letter of Intent dated 13.12.2001

(hereinafter referred to as '**LOI**') whereby the Corporation conveyed to the Landowner that it shall grant Development Rights Certificate (hereinafter referred to as '**DRC**') in lieu of transfer of the subject land in favour of the Corporation. DRC is said to be the physical manifestation of the TDR which is granted in lieu of the land which is to be acquired. In the said LOI, there was a specific stipulation that the Landowner shall develop the garden as per the specifications of the Corporation and maintain it for a period of 20 years, in lieu whereof, the Landowner shall not claim any 'Amenity TDR' towards the development of the garden. Relevant paragraphs of the LOI have been quoted herein for reference:

> "…
>
> *3. That you will develop the said Garden plots as per the Municipal Specifications & you will submit registered undertaking that you will develop the said Garden as per the Specifications laid down by the Corporation and maintain it for a further period of next 20 years, at your cost and will not claim any amenity TDR towards Development of Garden.*
>
> …
>
> *7. That board showing that the land owned by the Municipal Corporation of Greater Mumbai shall be provided on site.*
>
> …
>
> *12. That necessary legal documents for transferring the land in favour of the MCGM shall be executed at your own cost.*
>
> …"

7. In the meanwhile, the subject land was developed as a garden by the Landowner as per the specifications of the Corporation, and no objection for issuance of completion certificate was granted by the Superintendent of Gardens and Tree Officer of the Corporation *vide* his letter dated 21.12.2001.

8. On 10.01.2002, the Constituted Attorney of the Landowner signed an Undertaking, agreeing that the garden shall be maintained by it for a period of 20 years at its own cost and it shall not claim any amenity TDR towards the development of the garden. Relevant portion of the undertaking dated 10.01.2002 is quoted herein for reference:

> "...
>
> *That I will develop the said Garden as per the specification laid down by the Corporation and maintain it for a further period of next 20 years from the date of handing over the land to MCOM at my cost and I will not claim any amenity TDR towards Development of Garden.*
>
> *This Undertaking is binding upon me, my heirs, executors and administrators, assigns.*
>
> ..."

9. The actual physical possession of the subject land was handed over to the Corporation between January 2002 to October 2002. In exchange for the same, TDR as compensation to the extent of the land itself was released to then Landowner between

February 2002 to February 2003. There is no dispute between the parties regarding the release of TDR in respect of the land itself.

10. On 27.11.2002, a Maintenance Agreement was entered into between the Corporation and the Landowner, which provided *inter alia* that the Landowner shall develop the garden on an 'adoption basis' for a period of 20 years from 2002 to 2022 and in exchange, the Landowner shall not claim any Amenity TDR / Floor Space Index (hereinafter referred to as '**FSI**') or any other compensation towards development and maintenance of the garden. Relevant portion of the Maintenance Agreement is quoted herein for reference:

> "*1. The Municipal Corporation of Greater Mumbai shall allow the Organization to maintain the Garden on adoption basis (yearly renewal basis) for the period not exceeding twenty years from 2002 to 2022 subject to condition that the said plot shall be properly maintained as per the Municipal specification at their own cost without claiming any amenity TDR/FSI or any compensation towards the development and maintenance of the said Garden to the satisfaction of the Corporation and as per the detailed layout plan annexed herewith.*"

11. Pursuant to the Maintenance Agreement, although title of the subject land had been transferred in favour of the Corporation, possession was retained by the Landowner, which continued to manage and maintain the garden on 'adoption basis',

uninterrupted till the year 2016. In 2016, *vide* its letter dated 14.03.2016, pursuant to separate proceedings before the Learned Lokayukta, the Corporation demanded actual possession of the garden from the Landowner.

12. We must pause here and briefly narrate the proceedings before the Learned Lokayukta, although they are not under challenge in this appeal, since they find mention in the writ petition of the Landowner and the orders passed in the said proceedings have a material bearing on this case. The Learned Lokayukta vide order dated 17.11.2015 took up *suo moto*, on the basis of a news report, the issue of the garden on the subject land not being accessible to the general public. In the said proceedings, the Learned Lokayukta took a view in the order dated 15.01.2016 that the Maintenance Agreement was being misused by the Landowner to advertise their property / project as a prime project and directed the Corporation to take possession of the subject land. In the subsequent order dated 18.01.2016 in the said proceedings, the Learned Lokayukta recorded that the subject land was not a garden, but rather was being used as a playground for playing cricket by the elite class and common man was not being given access to the subject land. It was said that the power of

attorney holder of the Landowner, Shri Atul Ajmera through Ajmera Builders was exploiting the land. It is pursuant to these proceedings that the order dated 14.03.2016 was passed by the Corporation demanding possession of the garden.

13. The Landowner handed over possession of the subject land to the Corporation on 02.06.2016 without any demur or claim for additional amenity TDR at this stage. In the meanwhile, on 03.05.2018, the Development Control Regulations, 1991 (hereinafter referred to as '**DCR, 1991**') under which the subject land was reserved and developed as a garden, was superseded by the Development Control and Promotion Regulations, 2034 (hereinafter referred to as '**DCPR, 2034**')

14. It was only on 04.04.2019 that the Landowner made a claim for grant of additional amenity TDR against the development of the amenity of garden on the subject land. It was this request for grant of additional amenity TDR which was denied by the Corporation *vide* its Letter No. ChE/DP/18527/TDR dated 05.11.2019 (hereinafter referred to as '**Rejection Order**') which was impugned by the Landowner before the High Court in the writ petition. The grounds for rejection, in brief, as specified in the Rejection Order are as follows:

14.1. There was a delay of 17 years in making the claim for additional amenity TDR against the development of the garden on the subject land.

14.2. There is no provision for grant of additional TDR against development of amenity in the DCPR, 2034 and the DCR, 1991 is no longer in force.

14.3. Such a claim for additional amenity TDR is contrary to the terms and conditions of the LOI, Undertaking and Maintenance Agreement between the Landowner and the Corporation.

IMPUGNED ORDER

15. The High Court *vide* the Impugned Order has allowed the claim of the Landowner for additional amenity TDR against the development of the garden on the subject land. The High Court has placed reliance on the judgment of this Court in ***Sukh Dutt Ratra & Anr. v. State of Himachal Pradesh and Ors.***[1], to hold that no argument of delay and laches can be sustained where there is a continuing cause of action. The Court observed that it is unclear whether the argument of the Corporation is one of waiver, acquiescence or estoppel, since estoppel has not been pleaded by

[1] (2022) 7 SCC 508.

the Corporation. The Court has found that the maintenance agreement whereby the Landowner was permitted to maintain the garden on the subject land has to be read along with the condition that the Landowner shall not claim additional amenity TDR. The entitlement to maintain the garden was the benefit attached in lieu of the condition that the Landowner shall not claim additional amenity TDR and once the said entitlement had been withdrawn by the Corporation, the condition itself could not survive on its own. In the said context, the Court relied upon paragraphs 51 and 52 of the judgment of this Court in ***Godrej & Boyce Manufacturing Co. Ltd. v. State of Maharashtra & Ors.***,[2] (hereinafter referred to as '**Godrej & Boyce I**') that the TDR against the land and the additional amenity TDR is to be provided 'against' the surrender of land and 'against' the development construction under Section 126 of the MRTP Act. As such, the condition for non-claim of additional amenity TDR was only suspended or deferred until the Landowner was being permitted to maintain the garden on the subject land. On the point of non-applicability of DCR, 1991, the Court found that the development, the LOI, the undertaking and the concept of TDR was predicated on the DCR,

[2] (2009) 5 SCC 24.

1991 and so therefore the DCPR, 2034 cannot be applied to the subject land.

ARGUMENTS ADVANCED

16. Mr. Dhruv Mehta, learned senior counsel appearing for the Corporation has argued with much vehemence that the impugned judgment passed by the High Court deserves to be set aside, broadly on the following grounds:

16.1. The High Court has engaged in 'rewriting' the commercial contract between the parties.

16.2. The finding of the High Court that the disclaimer of additional Amenity TDR by the Landowner was tied to the 'benefit' of maintenance of the garden was completely erroneous and could not be borne out from the LOI, the Maintenance Agreement or the Undertaking by the Landowner. In this context, he has relied upon the judgment of this Court in ***Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.***,[3] to submit that the terms of

[3] (2013) 5 SCC 470.

the contract have to be read without any external aid and such terms must be construed strictly.

16.3. Further, the subject land / garden is not an amenity within the meaning of the MRTP Act since it was being used for personal benefit and commercial exploitation and not for the BMC.

16.4. He submits that the DCPR, 2034 had come into force on 13.11.2018 and the application seeking additional amenity TDR was made on 04.04.2019 and therefore, no such claim could be made under the DCR, 1991 which had by then been superseded. Reliance is placed on the judgment of this Court in ***T. Vijayalakshmi v. Town Planning Member***,[4] to submit that the development regulations applicable on the date when the application is made have to be applied.

16.5. Since the Landowner claimed its right to additional amenity TDR in 2019, though crystallized it in 2002, after an unexplained and un-condonable delay of about 17 years. In support of such contention reliance was placed on the judgment of this Court in Shri ***Vallabh Glass***

[4] (2006) 8 SCC 502.

Works Ltd. v. Union of India,[5] as well as ***Municipal Corpn., Greater Mumbai v. Century Textiles & Industries Ltd.***,[6]. He has submitted that no plea has been taken by the Landowner in its writ petition that there is a continuing cause of action, therefore the High Court has erred in relying upon the judgment in ***Sukh Dutt Ratra*** (supra).

16.6. Last, but certainly not the least, on the question of waiver of rights by the Landowner, learned senior counsel appearing for the Corporation has submitted that a mandatory provision of law made for the protection or benefit of a private individual can be waived by that person as long as there is no public interest involved. In support, reliance has been placed on the judgments of this Court in ***Lachoo Mal v. Radhey Shyam***,[7] ***Sita Ram Gupta v. Punjab National Bank***,[8] ***Bank of India v. O.P. Swarnakar***[9]. He submits that the finding of the High Court that waiver or estoppel has not been pleaded by the Corporation is erroneous and stares at the face of the

[5] (1984) 3 SCC 362.
[6] (2025) 3 SCC 183.
[7] (1971) 1 SCC 619.
[8] (2008) 5 SCC 711.
[9] (2003) 2 SCC 721.

record, inasmuch as the same is pleaded in the Corporation's counter affidavit filed before the High Court, particularly in paragraph 5 and 10 thereof.

17. Mr. Mukul Rohatgi and Mr. Pravin Samdani, learned senior counsel has appeared on behalf of the Landowner and defended the impugned judgment with equal vehemence. They have made the following broad submissions:

17.1. Under the scheme of Section 126(1)(b) of the MRTP Act, the compensation against surrendered land is in two parts: firstly, as FSI/TDR equal to the land surrendered and transferred and secondly, FSI/TDR equal to the area of amenity developed / constructed. The Landowner had been granted the first part of the compensation but denied the second part of the compensation by the Corporation. He has submitted that the payment of compensation in such form is a requirement under the statute and denial thereof is contrary to the MRPT Act, read with the DCR, 1991 as well as Article 300A of the Constitution of India.

17.2. They have assiduously urged that there can be no case of contracting out of the statute and any contractual clauses contrary to the statutory scheme cannot be sustained.

17.3. Further, no estoppel can act against the Landowner since there cannot be any estoppel against the statute.

17.4. Any acquisition of land has to be made subject to Article 300A of the Constitution of India which requires acquisition in accordance with law. As such, no person can be deprived of his property without strict compliance of the requirements under the MRTP Act and no extraneous condition can be imposed by means of a subsequent agreement.

17.5. They further submit that the right to receive rightful compensation against acquisition of land is a continuing cause of action, therefore, it cannot be said that there is a delay of 17 years in claiming the second part of the compensation, i.e. claim for additional Amenity TDR under the MRTP Act. Reliance has been placed on the judgment of this Court in ***Kukreja Construction Company and Ors. v. State of Maharashtra and Ors.***[10]

17.6. Regarding the application of DCPR, 2034, they have argued that right to receive additional amenity TDR under Section 126 of the MRTP Act accrued in favour of the

[10] (2024) 14 SCC 594.

Landowner way back in 2002 when the DCR, 1991 was applicable and as such, it cannot be said that coming into force of the DCPR, 2034 had any effect on the rights of the Landowner which had already crystallized. Reliance is again placed on the judgment in ***Kukreja Construction*** (supra).

QUESTIONS

18. We have heard the learned senior counsel for the parties extensively and have perused the exhaustive record at our disposal. Upon perusal thereof, the following questions fall for our consideration:

18.1. *Whether the claim for additional amenity TDR in the instant case is barred by delay and laches?*

18.2. *Whether the Landowner had waived its right to claim additional amenity TDR under Section 126 of the MRTP Act, particularly in view of the LOI, Undertaking and Maintenance Agreement signed by it?*

ANALYSIS OF ISSUES

19. Since the issues framed are inextricably linked, they are being analysed by us conjointly. The present case relates to grant

of fair compensation in exchange for land which has been acquired by the State. The scheme for acquisition under the MRTP Act has been provided for in Section 125 of the MRTP Act (prior to its amendment in 2015). The said provision is relevant and is therefore quoted hereunder:

> "***125. Compulsory acquisition of land needed for purposes of Regional plan, Development plan or town planning schemes etc.*** –
>
> *Any land required, reserved or designated in a Regional plan, Development plan or town planning scheme for a public purpose or purposes including plans for any public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894).*"

20. Further, it is Section 126(1) of the MRTP Act which determines how compensation in exchange for acquisition of land under the said Act is to be determined; it provides three different methods for acquisition of such land. *First*, under Section 126(1)(a), the appropriate authority may acquire land reserved for public purpose from the landowner or lessee by paying an amount agreed to between them. *Second*, under Section 126(1)(b), instead of paying an agreed amount, the appropriate authority may grant to the landowner or the lessee (*subject to the lessee paying the lessor or depositing with the appropriate authorities an amount equivalent to the value of the lessor's interest to be determined by*

the said authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894), FSI or TDR against the area of land surrendered free of cost and free from all encumbrances, and also further additional FSI or TDR against the development or construction of the amenity on the surrendered land at his cost as the Final Development Control Regulations prepared in that regard provide. *Third*, by acquisition of the land under the Land Acquisition Act, 1984 (prior to amendment of the MRTP Act) and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (after amendment of the MRTP Act).

21. The word 'amenity' itself has been defined in Section 2(2) of the MRTP Act, which reads as follows:

> "*2.(2) 'Amenity' means roads, streets, open spaces, parks, recreational grounds, playgrounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lightning, sewerage, drainage, public works and includes other utilities, service and conveniences.*"

22. 'Amenity' has also been defined in Regulation 2(7) of the DCR 1991 as follows:

> "'*Amenity' means roads, streets, open spaces, parks, recreational grounds, play grounds, gardens, water supply,*

electricity supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences."

23. In the present case, we are concerned with development of a garden on the subject land, and from the aforementioned definitions, we find that 'garden' falls within the definition of amenity under the DCR, 1991 as well as the MRTP Act.

24. We are concerned with the second method of acquisition in the present case under Section 126(1)(b) of the MRTP Act which was inserted into the Act by an amendment with effect from 25.03.1991. It provides that land demarcated for a public purpose may be acquired by the relevant authorities of the State, without any encumbrances, practically without granting any monetary compensation, by instead granting to the owner FSI or TDR against the area of the land surrendered as well as 'in addition' additional FSI or TDR against the development or construction of amenities on the land by the owner at his own cost. There is no dispute between the parties in respect of the FSI or TDR against the land surrendered, but the controversy between the parties in the case at hand relates to the additional FSI or TDR which is to be granted against the development or construction of an amenity on the said land.

25. Regulation 34 of the DCR, 1991 which references Appendix VII (subsequently renumbered as Appendix VII-A) governs the grant of TDR in the form of DRC. The said regulation and relevant portion of the referenced appendix is relevant and is quoted for reference:

> "***34.*** *Transfer of Development Rights*
>
> *In certain circumstances the development potential of a plot of land may be separate from the land itself and may be made available to the owner of the land in the form of Transferable Development Rights (TDR). These rights may be available and be subject to the Regulations in Appendix VII hereto."*
>
> ***...***
>
> ***Appendix VII-A (Regulation 34)***
>
> *1. The owner (or lessee of a plot of land which is reserved for a public purpose 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 any required compulsory or recreational open space, shall be eligible for the award of Transferable Development Rights (TDRs) in the form of Floor Space Index (FSI) to the extent and on the conditions set out below. Such award will entitle the owner of the land to FSI in the form of Development Rights Certificate (DRC) which he may use himself or transfer to any other person.*
>
> *2. Subject to Regulation 1 above, where a plot of land is reserved for any purpose specified in Section 22 of the Maharashtra Regional and Town Planning Act, 1966, the owner will be eligible for development rights (DRs) to the extent stipulated in Regulations 5 and 6 in this appendix had the land been not so reserved, after the said land is surrendered free of cost as stipulated in Regulations 5 in this appendix, and after completion of the development or construction as in Regulation in this appendix if he undertakes the same.*

3. Development rights (DRs) will be granted to an owner or a lessee only for reserved lands which are retainable/non-retainable under the Urban Land (Ceiling and Regulation) Act, 1976, and in respect of all other reserved lands to which the provisions of the aforesaid Act do not apply, and on production of a certificate to this effect from the competent authority under that Act before a development right is granted. In the case of non-retainable lands, the grant of development rights shall be to such extent and subject to such conditions as the Government may specify. Development rights (DRs) are available only in cases where the development of a reservation has not been implemented i.e. TDRs will be available only for prospective development of reservations.

4. Development Rights Certificates (DRCs) will be issued by the Commissioner himself. They will state, in figures and in words, the FSI credit in square metres of the built-up area to which the owner or lessee of the said reserved plot is entitled, the place and user zone in which the DRs are earned and the areas in which such credit may be utilized.

5. The build-up area for the purpose of FSI credit in the form of a DRC shall be equal to the gross area of the reserved plot to be surrendered and will proportionately increase or decrease according to the permissible FSI of the zone wherefrom the TDR has originated.

6. When an owner or lessee also develops or constructs the amenity on the surrendered plot at his cost subject to such stipulations as may be prescribed by the Commissioner or the appropriate authority, as the case may be and to their satisfaction and hands over the said developed / constructed amenity to the Commissioner / appropriate authority, free of cost, he may be granted by the Commissioner a further DR in the form of FSI equivalent to the area of the construction / development done by him utilization of which, etc. will be subject to Regulations contained in this appendix.

7. A DRC will be issued only on the satisfactory compliance with the conditions prescribed in this appendix."

(Emphasis supplied)

26. The grant of TDR in the form of FSI is a mechanism which unlinks the development rights over a land from the land itself. The physical / documentary manifestation of such TDR is in the form of a DRC which often has high monetary value and may be traded in the market or transferred from one person to another. The value of such DRC is like a traded commodity and it depends on market demand and supply. This TDR obtained against an immovable property can be used to develop structures on a different property. As such, under Section 126(1)(b) of the MRTP Act, a unique form of compensation against the land and against the development / construction of an amenity by the landowner on the surrendered land, in form of an asset that is DRC, has been envisaged by the legislature, which is quite distinct from the usual monetary compensation by means of an agreement (which would fall within Section 126(1)(a) of the MRTP Act) or by means of acquisition proceedings under the relevant laws (which would fall within Section 126(1)(c) of the MRTP Act).

Judgments of this Court

27. The question of grant of additional TDR against development / construction of an amenity on a land acquired under Section 126(1)(b) of the MRTP Act has been the subject matter of previous

litigation before this Court. Before embarking upon a discussion about the applicability of the judgments therein to the facts of the instant case, it would be apposite to discuss the said cases.

28. In ***Godrej & Boyce I*** (supra), which has been relied upon by the High Court in the impugned order, the plots owned by the appellants therein were reserved for roads under the DCR 1991. The appellants constructed the said roads at their own cost and they were compensated in the form of TDR against the land surrendered by them. Upon making a claim for additional TDR against the amenity constructed / developed by them to the extent of the surface area of the road so developed, their claim was denied by the Corporation relying upon its Circular dated 09.04.1996 which permitted additional TDR in the form of FSI equal to built-up area of the amenities such as hospitals, municipalities, primary schools, etc. but limited the grant of additional TDR against the construction of amenity of development plan roads to 15% of the surface of the road. The said circular was put to challenge by way of a writ petition filed by the appellant therein before the High Court, which dismissed the same, accepting the contention of the Corporation that the differentiation between different kinds of amenities in grant of additional amenity TDR is valid since it

ensures that no discrimination may be caused between different forms of amenities, quantifying the exchange value of different commodities based on their construction cost. The High Court observed that the use of the word 'equivalent' in Paragraph 6 of Appendix VII of DCR, 1991 required grant of development rights equivalent to the 'value' of the amenity concerned.

29. This Court, however, set aside the judgment of the High Court, finding that grant of additional FSI or TDR against the development of an amenity by the landowner at their own cost would be equivalent to the 'area' of the construction or development made on the land as opposed to its 'value'. This Court stressed on the use of the word 'against' in Section 126(1)(b) of the MRTP Act and found that it was a compensation to the landowner proportionate to the area of the development / construction of amenity on the land surrendered by the landowner. It was also specifically observed by this Court that the Circular issued by the Corporation cannot override the provisions of the MRTP Act. Relevant paragraphs of the said judgement are quoted herein for reference:

> "***50.*** *We are unable to agree with the view taken by the Bombay High Court and to accept the submissions of Mr*

Naphade because it seems to us to do violence to the plain language of the statute.

51. *Section 126(1)(b) of the Act uses the word "against": it speaks of granting FSI or TDR "against the area of land surrendered" and further additional FSI or TDR "against the development or construction of amenities on the surrendered land". Now, one of the meanings of the word "against" is given as "in return of something" e.g. the exchange rate against Franc" (Chambers 21st Century Dictionary, 1st published in India 1997, reprinted 1999). Webster's Third New International Dictionary gives the meaning of the word "against" as "in exchange for: in return for". Concise Oxford English Dictionary gives one of the meanings of the word as "in exchange for, in return for; as an equivalent or set-off for; in lieu of, instead of".*

52. *Thus, on the basis of the language used in Section 126(1)(b) it could be legitimately argued that what is contemplated is to recompense the landowner proportionate to the value of the development or construction of the amenity on the surrendered land. But the matter does not stop there. As seen above in Appendix VII to the Regulations Para 5 uses the words "equal to the gross area of reserved plot". Therefore, insofar as the bare land is concerned there is no difficulty. Para 6 of the appendix, however, uses the words "equivalent to the area of the construction/development" and much argument is made on the meaning of the word equivalent.*

...

57. *The last of the above makes the meaning of the word "equivalent" very clear by explaining it in contradistinction to the word "equal". It says equivalent is equal in such properties as affect the use which we make of things. Seen thus any of the relevant properties e.g. value, area, volume, quantity, quality, etc. may form the basis for determining equivalence. Now, if the words in Para 6 of the Schedule were to be "equivalent to the construction/development" then the submission of Mr Naphade would have been fully acceptable as in that case it would be open to determine equivalence on the basis of value of the construction and not on any other basis. But the regulation fixes the measure of equivalence by using the*

words "equivalent to the area of construction/development done on the surrendered land". "Area" of construction/development having being fixed as the measure of equivalence it is no longer open to contend that any other basis such as value may be used for determining equivalence.

58. *We may here make it clear that we fully appreciate the rationale behind trying to make value of the development/construction rather than its area as the basis to recompense the landowner and for granting the additional FSI or TDR. The submissions of Mr Naphade in that regard are not without substance but that is not the law as it stands and the value of the development/construction can only be made the basis for granting additional FSI or TDR by making suitable amendments in the law and not by an executive circular."*

30. Further, in the said case, a specific plea was taken by the Corporation that the landowners having agreed to surrender their land in exchange for 100% TDR in lieu of the land, could not make further claim for additional TDR against the amenity constructed on the land. The Corporation claimed that the acquisition under Section 126(1)(b) of the MRTP Act was based on conditions which were imposed upon the landowners who surrendered their land which had been negotiated, and such conditions were binding, in effect the landowners had waived their rights. It was even contended by the Corporation that the grant of 15% and later 25% TDR against the construction of the road on the said land was indulgence shown by the Corporation. All of these contentions were specifically recorded and rejected by this Court, observing

inter alia that the compensation is ordained under the statute and the statutory rights of the landowner cannot be derogated from by means of negotiation. The relevant portion of the said judgment in ***Godrej & Boyce I*** is quoted herein for reference:

> *"**60.** Apart from the contention raised by Mr Naphade, Mr Shishodia, Senior Advocate appearing for the Municipal Corporation, Greater Mumbai resisted the claims of the appellants and the writ petitioners on certain other grounds. Mr Shishodia submitted that for acquisition of the designated plot of land recourse to clause (b) of sub-section (1) of Section 126 of the Act could only be taken by mutual agreement of the parties concerned. It was equally open to the municipal authorities not to accept the surrender of the land under clause (b) as it was open to the landowner to make the offer.* ***Therefore, it followed according to him, that the municipal authorities could accept acquisition of the land in terms of clause (b) on certain conditions to which the landowner might or might not agree. In case the landowner did not agree to the condition(s) put by the municipal authority he would not surrender the land and then the acquisition of the land could take place either in terms of clause (a) or clause (c) of Section 126(1)****.*
>
> ***61. Mr Shishodia submitted that the appellants in all the cases had agreed to construct the road as part of the condition to surrender the land and getting 100% TDR in lieu of the land. According to him, since the construction of the road was a condition for grant of 100% TDR for the bare land the appellants and the petitioners were not entitled to claim any further TDR at all for construction of the roads by them.***
>
> ***62.*** *Mr Shishodia further submitted that it was only indulgence shown to the appellants and the petitioners that the municipal authorities agreed to give them additional TDR to the extent of 15% of the road area after the issuance of Circular dated 9-4-1996 and 25% of the road area after the issuance of the Circular dated 5-4-2003.*

63. The submission of Mr Shishodia is completely unacceptable. The conditions, that is to say, the mutual rights and obligations subject to which the landowner may offer to surrender the designated plot of land to municipal authority and the latter may accept the offer are enumerated in detail in the statutory provisions. Beyond those conditions there can be no negotiations for surrender of the land, particularly in derogation to the landowner's statutory rights*.*

64. *Having regard to the nature of the law the submission advanced on behalf of the municipal authority would lead to palpably unjust and inequitable results.* ***The landowner whose land is designated in the development plan as reserved for any of the purposes enumerated in Section 22 of the Act or for any of the amenities as defined under Section 2(2) of the Act or Regulation 2(7) [sic Regulation 3(7)] of the Regulations is not left with many options and he does not have the same bargaining position as the municipal authority. Therefore, surrender of the land in terms of clause (b) of Section 126(1) of the Act cannot be subjected to any further conditions than those already provided for in the statutory provisions. It is of course open to the legislature to add to the conditions provided for in the statute (or for that matter to do away with certain conditions that might be in existence). But it certainly cannot be left in the hands of the executive to impose conditions in addition to those in the statutes for accepting the offer to surrender the designated land.***

65. *Mr Shishodia next submitted that the measure of 15% (later raised to 25%) of the area of the road constructed for grant of TDR by the impugned Circulars of 9-4-1996, 5-4-2003 and 5-5-2004 was decided in meetings in which Mr Nayan M. Shah, constituted attorney of the appellants, was also present as the representative of the industry. Hence, it was no longer open to the appellants and the petitioners to question those circulars.* ***We are once again unable to accept the submission, Mr Shah might have been present in the meeting and he might or might not have voted for the graded scheme for grant of additional TDR but that would not authorise the municipal***

authorities to override or supersede the statutory provisions by issuing circulars in the nature of executive instructions."

(Emphasis supplied)

31. In ***Municipal Corpn., Greater Bombay v. Yeshwant Jagannath Vaity***,[11] this Court examined the applicability of the judgment in ***Godrej & Boyce I*** (supra) in the facts of that case where the landowner therein had laid down asphalt on a courtyard. This Court found that the matter was covered by the judgment in ***Godrej & Boyce I*** (supra) and that similar arguments made by the Corporation which were already rejected by this Court in the said judgment could not be re-agitated. Relevant paragraphs of the said judgment are quoted herein for reference:

"***31.*** *In view of this unequivocal declaration of law by this Court in the aforementioned case of Godrej & Boyce [(2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] , in fact, law seems to be fully settled against the appellants. It is, however, argued that asphalting of the courtyard could not be said to be an "amenity". The argument must fail as the very stance on the part of MCGB to provide 15% of additional TDR for asphalting the courtyard would contain an admission that asphalting of the courtyard would amount to an amenity. Had it not been so, MCGB could have conveniently said that it would not provide even 1% of additional TDR to the respondents herein. Further, considering the definition of "amenity" under Regulation 3(7) of the Regulations, which includes open spaces, parks, recreational grounds, playgrounds, etc. we have no difficulty in holding that asphalting the courtyard would certainly amount to an amenity. The building offered to be constructed by the*

[11] (2011) 11 SCC 88.

respondents herein was an export office. Considering the overall situation prevailing in Mumbai, the asphalting of the whole courtyard and thus providing parking lot would certainly amount to an amenity. After all, the office, by its very nature, would attract trucks and other vehicles. In the absence of an asphalted large area, the office could possibly not be a feasible idea. On this count, the argument of the appellants must fail.

32. Shri U.U. Lalit, learned Senior Counsel appearing on behalf of the appellants ***then urged that the respondents herein had specifically agreed in the letter dated 22-2-1995 and more particularly in terms of Condition 4 thereof that the Municipal Corporation will grant the benefit of TDR in respect of the concrete/asphalted surface area around the export office building as and when the quantum of such TDR is decided by the Municipal Commissioner.*** *It was very earnestly argued by the learned Senior Counsel that thereby the respondents had compromised their rights and had left it to the discretion of the Municipal Commissioner and, therefore, they could not turn around and say that it was not for the Municipal Commissioner then to decide the quantum as per his own discretion.* ***The argument is clearly incorrect for the simple reason that on the day when this letter was signed, the aforementioned Circular dated 9-4-1996 was nowhere in existence. The respondents, therefore, had no reason to believe that the Municipal Commissioner would decide to scale down the entitlement which they legitimately expected because of Paras 5 and 6 in Appendix VII. The aforementioned letter merely provided that the quantum could be decided in terms of the area of courtyard to be developed and the grant of TDR would depend upon as to whether that much area was fully developed as per the satisfaction of the Municipal Commissioner. The scope of Condition 4 could not be taken beyond this.***

33. *Shri Lalit, learned Senior Counsel, relying on Para 15, also argued that the landowner was to get TDR only on the land being levelled to the surrendering ground level and a 1.5 m high compound wall was constructed with a gate, at the cost of the owner. That may be so; however, in our view,*

the agreement on the part of respondents to construct such a compound wall and gate and to do the levelling of the land before handing over the land admeasuring 3500 sq m, would be of no consequence insofar as the present controversy is concerned. The further argument of the learned Senior Counsel about the difference in the phraseology in Paras 5 and 6 i.e. the word "equal" having been used in Para 5 and the word "equivalent" having been used in Para 6 would also be of no consequence as, in our opinion, the same has been concluded by the aforementioned ruling of this Court in Godrej & Boyce case [(2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] against the appellants, and, therefore, the argument that it gives a discretion ***to the Municipal authorities to scale down the grantable TDR, does not impress us. That apart, in the aforementioned ruling in Godrej & Boyce case [(2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] , the Court has clearly held that in a circular, the Corporation could not have created divisions in the total amenities in the sense that it could not have chosen to grant 100% of additional TDR in favour of some amenities and 15% in case of some others.***

...

36. *Lastly, Shri Lalit, learned Senior Counsel urged that the ruling in Godrej & Boyce case [(2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] was distinguishable inasmuch as under the said ruling what was considered was the construction of a road which was not equivalent to asphalting of a courtyard. We have already pointed out that the question was not of the construction of a road or asphalting of a courtyard; the question was whether it was an amenity. Once it is held as an amenity, there will be no question of refusing the right of equivalent TDR therefor. It was then urged that the Circular dated 9-4-1996 in Godrej & Boyce case [(2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] was issued after the landowners had surrendered their plot of land and completed the construction of roads as required by the Municipal Corporation, whereas in the present matter, the circular was issued "prior to" completion of the construction of the export office by Respondents 1 to 3 and asphalting of the courtyard and handing over of the possession by them. In our opinion, this cannot be the distinguishable feature, as under any*

circumstance, the Circular dated 9-4-1996 was issued much after the compromise in the writ petition and the issuance of letter of intent dated 22-2-1995. No other point was urged before us."

(Emphasis supplied)

32. On a perusal of paragraph 32 of the judgment of this Court in ***Yeshwant Jagannath Vaity*** (supra), an argument was again raised by the Corporation that the landowners in that case had given up their rights in respect of additional TDR against the construction or development of amenity on the land surrendered since they had admitted in a letter that the Corporation shall decide the quantum of additional TDR. The said contention was rejected by this Court, which observed that on the date when the letter was signed, the Circular dated 09.04.1996 did not exist and there was no reason for the landowner to believe that their right to receive additional TDR against the area of the amenity constructed or developed over the land surrendered shall be curtailed or scaled down in any sense.

33. The High Court in ***Apurva Natvar Parikh & Co. Pvt. Ltd. v. State of Maharashtra and Ors.***,[12] observed that the right to receive additional TDR against the construction or development of amenity on land surrendered by the landowner under Section

[12] 2018 SCC OnLine Bom 6436.

126(1)(b) of the MRTP Act accrues on the date of surrender of the land.

34. In ***Municipal Corpn., Greater Mumbai v. Natvar Parikh & Co. (P) Ltd.***,[13], the parties before this Court did not dispute about the applicability of the judgment in ***Godrej & Boyce I*** (supra) but a plea was taken by the Corporation that the said judgment should apply prospectively and not retrospectively. In such circumstances, this Court held that that matter should have been agitated when ***Godrej & Boyce I*** (supra) was being heard and the entire issue could not be re-agitated. However, the appropriate Court shall take a decision in the matter when a plea is taken seeking to take benefit of the judgment in ***Godrej & Boyce I*** (supra).

35. This Court in ***Godrej & Boyce Mfg. Co. Ltd. v. Municipal Corpn., Greater Mumbai***,[14] (hereinafter referred to as '**Godrej & Boyce II**') dealt with grant of additional TDR against the amenity of recreation ground which was constructed by the appellant therein on the land surrendered by it to the Corporation under Section 126(1)(b) of the MRTP Act. This Court was faced with the

[13] (2024) 14 SCC 644.
[14] (2023) 15 SCC 110.

question as to whether there was abandonment of the claim for additional TDR against construction / development of amenity by the landowner and whether delay and laches could defeat its claims. The claim of the landowner therein for additional TDR against amenity was rejected considering 'prevailing policy'. This Court found that the rights of the landowners to additional TDR against the amenities had been curtailed by the Corporation to different extents for different amenities under its circular dated 09.04.1996 (the prevailing policy) which had formed the subject matter of the judgment of this Court in ***Godrej & Boyce I*** (supra) which was delivered in 2009. From 1996 to 2009, the right to claim additional TDR was in suspended animation and once the cloud over the landowners' rights was cleared, the claim was duly made and there was no abandonment of rights. However, on facts, the Court found that the landowner therein had not developed any amenity as required under the law and was therefore not entitled to additional amenity TDR. With the said finding, this Court dismissed the appeal filed by the landowner in the said case. Relevant paragraphs of the judgment in ***Godrej & Boyce II*** (supra) are quoted herein for reference:

> *"**35.** In fact, the above Circular dated 9-4-1996, gave rise to a dispute between Appellant 1 herein and a few others on*

the one hand and the Corporation on the other hand. That dispute which related to some other property, ultimately landed up before this Court in the form of a couple of civil appeals and a writ petition. The dispute got resolved through the decision of this Court in Godrej & Boyce Mfg. Co. Ltd. [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] The said decision was rendered on 6-2-2009 [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] .

36. *Therefore, taking advantage of the said decision, Appellant 2 applied once again for the grant of additional TDR, on 3-11-2009. The same was rejected once again by a communication dated 17-8-2010. This rejection triggered the present proceedings in the year 2010. It is in the light of this chain of events that we have to see whether there was any delay on the part of the appellants and whether such delay could lead to an inference of abandonment of claim.*

37.*The law of abandonment is based upon the maxim invito beneficium non datur. It means that the law confers upon a man no rights or benefits which he does not desire. In P. Dasa Muni Reddy v. P. Appa Rao [P. Dasa Muni Reddy v. P. Appa Rao, (1974) 2 SCC 725] , this Court held that "[a]bandonment of right is much more than mere waiver, acquiescence or laches.... Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege ...". In para 13 of the said decision [P. Dasa Muni Reddy v. P. Appa Rao, (1974) 2 SCC 725] , this Court put the law pithily in the following words : (SCC p. 729)*

> *"13. ... There can be no waiver of a non-existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver."*

...

39. *To put it differently, what was cited by the Municipal Corporation in their order of rejection dated 27-11-1998 as an impediment for the grant of additional TDR was the subject-matter of challenge in the first round. It was made by the very Appellant 1 herein, though in respect of another property. If the said decision in the first round had gone against Appellant 1 herein, the rejection of the claim of the*

appellants for additional TDR on the basis of "prevailing policy" would have become final and unquestionable.

38. *Irrespective of whether the respondents concede or not, the Circular dated 9-4-1996 curtailed the rights of the owners to have additional TDR in certain circumstances. The Circular came under challenge before this Court and the decision of this Court in Godrej & Boyce Mfg. Co. Ltd. [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] was delivered on 6-2-2009. As we have stated earlier, the decision in Godrej & Boyce Mfg. Co. Ltd. [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] was in the case of the very Appellant 1 herein though in respect of some other property.*

40. *In other words, during the period from 1996 to 2009, the right to claim additional TDR was in suspended animation. Therefore, the appellants had to necessarily wait till the cloud over their right got cleared. To say that the wait of the appellants during the period of this cloudy weather, tantamounts to abandonment, is clearly unjustified and unacceptable. Therefore, the finding recorded by the High Court on Question 1 is not in tune with the law or the facts of the present case and hence Question 1 has to be answered in favour of the appellants herein."*

36. In ***Godrej & Boyce II*** (supra), this Court further held that when parties were *ad idem* that the consideration for acquisition of reserved land is not to be paid in the form of cash, but in the form of kind, i.e., by grant of FSI or TDR for the area of land surrendered and additional FSI and TDR against the development or construction of amenity on the surrendered land, the Court must find out (i) whether the parties had agreed to give / take FSI or TDR in lieu of compensation, in terms of Section 126(1)(b); and

(ii) whether there was a valid claim for grant of additional FSI or TDR towards the development or construction of the amenity on the land so surrendered by the landowner at his own cost.

37. Most recently, the claim for additional TDR against construction of amenity on land surrendered by the landowner under Section 126(1)(b) of the MRTP Act was the subject matter of dispute before this Court in ***Kukreja Construction*** (supra). This round of litigation was initiated after the judgment of this Court in ***Godrej and Boyce I*** (supra). Several writ petitions were filed before the High Court by landowners, claiming grant of 100% additional TDR in respect of the amenity developed on the land surrendered by them under Section 126(1)(b) of the MRTP Act. Most of the writ petitions were dismissed on the ground of delay and laches, while in some cases the High Court allowed the claim. All those judgments of the High Court were challenged, either by the Corporation or by the respective landowners in a batch of special leave petitions which were disposed of by this Court in a common judgment. By this time, the DCR, 1991, specifically Regulation 34 thereof, was amended by the State, issuing a notification dated 16.11.2016, which amended the mechanism for grant of additional TDR against construction or development of amenity. The

Corporation endeavoured to prove that the said amendment could be made operable retrospectively and sought to apply it to the case of the landowners in that case, it was also contended that the judgment in ***Godrej & Boyce I*** (supra) was in fact *per incuriam*, since it did not notice Regulations 33 of the DCR, 1991. Ultimately, this Court analysed various judgments and held that delay and laches could never be the ground to defeat the claim for additional TDR against construction of an amenity by the landowner on the land surrendered. The Corporation was directed to consider the case of the landowners in light of the judgment of this Court in ***Godrej & Boyce I*** (supra) and that it shall release the balance of FSI / TDR within a period of three months from the date of the judgment. Relevant portion of the said judgment is quoted herein for reference:

> "***69.*** *In all these cases, we find that the writ petitioners/appellants herein had surrendered the reserved land and had also been granted 25% TDR and a representation for additional TDR was made after the judgment of this Court in Godrej & Boyce (1) [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] and in some cases, the representation was made early but in other cases, the representations were made after some time. It is also noted in Civil Appeal No. 1748 of 2015, in Natvar Parikh [Municipal Corpn. of Greater Mumbai v. Natvar Parikh & Co. (P) Ltd., (2024) 14 SCC 644] , this Court had stated that the decision in Godrej & Boyce (1) [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC*

24 : (2009) 2 SCC (Civ) 368] could not be revisited inasmuch as the Mumbai Municipal Corporation could not seek to reargue the matter. Also, the facts in each case on the questions of delay was to be considered as observed by this Court. The issue of abandonment of claim has also been considered and negatived in the judgment of this Court in Godrej & Boyce (2) [Godrej & Boyce Mfg. Co. Ltd. v. Municipal Corpn. of Greater Mumbai, (2023) 15 SCC 110].

70. *We have referred to the decisions of this Court where the question of delay and laches would not arise in matters such as the present cases.* ***When relief in the nature of compensation is sought, as in the instant case, once the compensation is determined in the form of FSI/TDR, the same is payable even in the absence of there being any representation or request being made. In fact, a duty is cast on the State to pay compensation to the land losers as otherwise there would be a breach of Article 300-A of the Constitution.*** *As rightly contended by the learned Senior Counsel for the writ petitioners/appellants herein,* ***the respondent Mumbai Municipal Corporation has not established that owing to a short delay even if it has occurred in any of these cases owing to uncertainty in law, the Corporation has been prejudiced by the same or that the third-party rights had been created which could not be disturbed owing to delay or laches.*** *The calculation of period of delay in the table submitted by the learned Senior Counsel for the Mumbai Municipal Corporation is not acceptable in view of our discussion above.* ***The decisions referred to by us above would clearly indicate that neither the doctrine of delay and laches nor the principle of abandonment of claim or waiver would apply in these cases. Rather the delay has occurred on the part of the Mumbai Municipal Corporation in complying with the Regulations insofar as these appellants are concerned.***

71. *In view of the aforesaid discussion, we hold that the Bombay High Court was not right in dismissing [Apurva Natvar Parikh & Co. (P) Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 6436], [Starwing Developers (P) Ltd. v. State of Maharashtra, 2019 SCC OnLine Bom*

13411], [Arvind Kashinath Dadarkar v. Municipal Corpn., Greater Mumbai, 2022 SCC OnLine Bom 11962] the writ petitions on the ground of delay and laches. Hence, those portions of the impugned order of the High Court are set aside.

72. *We also do not find any merit in the three appeals filed by the Mumbai Municipal Corporation. Having regard to the earlier judgments of this Court, we find that the reasoning of the High Court on merits in the three impugned decisions [Apurva Natvar Parikh & Co. (P) Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 6436], [Starwing Developers (P) Ltd. v. State of Maharashtra, 2019 SCC OnLine Bom 13411], [Arvind Kashinath Dadarkar v. Municipal Corpn., Greater Mumbai, 2022 SCC OnLine Bom 11962] discussed above is just and proper which would not call for any interference by this Court.*

73. *Consequently, the civil appeals filed by the writ petitioners/appellants herein are allowed as under:*

73.1. *Those portions of the impugned order dated 18-12-2018 [Apurva Natvar Parikh & Co. (P) Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 6436] by which the writ petitions were dismissed on the ground of delay and laches are set aside and the respondent Mumbai Municipal Corporation is directed to consider the case of those writ petitioners/appellants herein in light of the judgments of this Court in Godrej & Boyce (1) [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] and release the balance FSI/TDR to the appellants.*

73.2. *However, in the case of the appellant Kukreja Construction Company and others, the Mumbai Municipal Corporation is directed to consider the nature of the amenities constructed and thereafter to consider their case for additional FSI/TDR.*

73.3. *The said exercise shall be carried out as expeditiously as possible and within a period of three months from today.*

74. *The civil appeals filed by the Mumbai Municipal Corporation are dismissed and the cases of the respondents in those civil appeals shall be considered in terms of the*

judgments of this Court in Godrej & Boyce (1) [Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2009) 5 SCC 24 : (2009) 2 SCC (Civ) 368] and the balance FSI/ TDR shall be released to the respondents therein within a period of three months from today."

(Emphasis supplied)

Application to the facts of the instant appeal

38. From a reading of the previous section of this judgment, it is quite apparent that the Corporation has raised and re-raised similar contentions before this Court which have been negatived by this Court more than once. Goes without saying that any such contention raised in the instant appeal must also meet the same fate. However, the facts of this case require examination in isolation to test their applicability.

Waiver of rights

39. There is no dispute between the parties about the fact that the subject land was surrendered to the Corporation by the Landowner way back in 2002, after which the name of the Corporation reflects in the revenue records as owner. In lieu of such surrender of land, there is no dispute that the compensation of TDR against the area of land surrendered has already been credited to the Landowner in the form of DRCs. Further, the Superintendent of Gardens of the Corporation has granted a

completion certificate to the Landowner for the development of a garden as per approved plans. The dispute, therefore, is on a narrow canvas, it pertains to the compensation in the form of additional TDR against the construction or development of the amenity of 'garden'.

40. The sum and substance of the argument sought to be advanced by the Corporation in the instant appeal is that the Landowner having agreed, by means of the LOI, the Undertaking as well as the Maintenance Agreement way back in 2002, cannot now turn around after a significant delay of more than 17 years from the date of handover of the garden to the Corporation, to stake their claim for additional amenity TDR.

41. In this context, it is pertinent to mention that this is a case relating to acquisition of land since the FSI or TDR against the area of land surrendered as well as additional FSI or TDR against the development or construction of amenity on the surrendered land by the landowner at his own cost, is stated to be in lieu of other means of compensation as described in Section 126(1) of the MRTP Act. The right under Article 300A of the Constitution of India, therefore, squarely attract, which albeit is no longer a fundamental right; it is a sacrosanct Constitutional right. Article 300A in plain

terms provides that '*No person shall be deprived of his property save by authority of law*'. This Court has observed that the said right is not only a legal right under the Constitution of India, but it is also a human right and therefore, statutes which are expropriatory must be strictly constructed.[15] It goes without saying that while the State is vested with the sovereign power of 'eminent domain', it must be juxtaposed against the public interest sought to be achieved and it should not place an unfair burden on the private rights which are sought to be curtailed.

42. Furthermore, this Court in ***Kolkata Municipal Corpn. v. Bimal Kumar Shah***,[16] has laid down seven sub-rights which are encapsulated within Article 300A of the Constitution of India, which also includes the right to fair compensation, in the following manner:

> "***29.*** *The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the "power of eminent domain". Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated [State of Bihar v. Kameshwar Singh, (1952) 1 SCC 528] . Although not explicitly contained in Article 300-A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to*

[15] See: ***Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.***, (2007) 8 SCC 705.
[16] (2024) 10 SCC 533.

the individuals who are being divested of property [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627; K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414] . A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

30. *What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub-rights can be identified, albeit non-exhaustive. These are:*

(i) The duty of the State to inform the person that it intends to acquire his property — the right to notice,

(ii) The duty of the State to hear objections to the acquisition — the right to be heard,

(iii) The duty of the State to inform the person of its decision to acquire — the right to a reasoned decision,

(vi) The duty of the State to demonstrate that the acquisition is for public purpose — the duty to acquire only for public purpose,

(v) The duty of the State to restitute and rehabilitate — the right of restitution or fair compensation,

(vi) The duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings — the right to an efficient and expeditious process, and

(vii) The final conclusion of the proceedings leading to vesting — the right of conclusion."

43. The plea that the Landowner had surrendered its right to claim additional amenity TDR under Section 126(1)(b) of the MRTP Act against the construction or development of amenity cannot be countenanced or sustained. The said provision of statute is a manifestation of Article 300A of the Constitution of India and once fair compensation as against surrender of land is prescribed under statute, in terms of Section 126(1)(b) of the MRTP Act when read with the relevant regulations, no deprivation of land without strict compliance thereof can be permissible. In the facts of ***Godrej and Boyce I*** (supra), this Court had specifically found in paragraph 63 of that judgment that once the compensation against acquisition of land under Section 126(1)(b) of the MRTP Act had been laid down, no further negotiations, especially in order to derogate from the landowner's rights can be permissible and no further conditions may have been imposed by the Corporation which derogate from the provisions of the statute. The plea that the landowners had specifically accepted not to claim additional amenity TDR against the construction or development of amenity was recorded and rejected by this Court giving specific reasons. We see no reason to take a different view in this matter when the same contention was rejected by this Court in ***Godrej & Boyce I***.

44. In the facts of ***Godrej & Boyce I*** (supra), this Court was dealing with the question as to whether a circular which at best could be considered as executive instructions, may override the statutory right of compensation flowing from Section 126(1)(b) of the MRTP Act. The facts of this case are worse placed, in that the Corporation contends that an agreement between the authority / executive and the landowner may override the statutory provisions which contemplate the grant of compensation in a certain manner. We fail to understand how the Corporation can get out of the crutches of the findings of this Court in the said judgment or the judgment in ***Kukreja Construction*** (supra) where this Court, in paragraph 70 has negatived the argument of waiver and abandonment of claim raised by the Corporation therein. Similar is the view taken by this Court in ***Yeshwant Jagannath Vaity*** (supra) which also stares at the face of the argument of the Corporation in respect of waiver and abandonment of claims.

45. On perusal of record, it does appear that the question of waiver, estoppel and acquiescence was raised by the Corporation in its counter affidavit, so therefore the finding of the High Court to the contrary is incorrect. In any case, the learned senior counsel appearing for the Corporation has placed reliance on the

judgments of ***Lachoo Mal*** (supra), ***Sita Ram Gupta*** (supra) and ***O.P. Swarnakar*** (supra) to buttress his argument in respect of waiver. He submits that a mandatory provision made for the protection or benefit of a private individual can be waived by the person as long as there is no public interest involved. Even though the argument regarding waiver has been specifically rejected by this Court in ***Godrej & Boyce I*** (supra), ***Godrej & Boyce II*** (supra) as well as ***Yeshwant Jagannath Vaity*** (supra) there are some additional reasons why we do not believe that there is any waiver of rights in the facts and circumstances of the present case.

46. This Court in ***State of Punjab v. Davinder Pal Singh Bhullar***,[17] relied upon various judgments of this Court and explained the principle of waiver in the following terms:

> "***41.*** *Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (Vide Dawsons Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha [(1934-35) 62 IA 100 : AIR 1935 PC 79] , Basheshar Nath v. CIT [AIR 1959 SC 149] , Mademsetty Satyanarayana v. G. Yelloji Rao [AIR 1965 SC 1405] , Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh [AIR 1968 SC 933] , Jaswantsingh Mathurasingh v. Ahmedabad Municipal*

[17] (2011) 14 SCC 770.

Corpn. [1992 Supp (1) SCC 5] , Sikkim Subba Associates v. State of Sikkim [(2001) 5 SCC 629 : AIR 2001 SC 2062] and Krishna Bahadur v. Purna Theatre [(2004) 8 SCC 229 : 2004 SCC (L&S) 1086 : AIR 2004 SC 4282] .)"

47. The element of intent is quite implicit in the principle of waiver and the same must be deciphered from the facts and circumstances of each case. In the present case, the subject land was reserved as a garden by the unilateral act of the State way back in 1994 under the DCR, 1991. As discussed above, the reservation itself had a stipulation that the garden on the said land was to be developed by the Landowner. In such a situation, the Landowner was left with limited options under the scope of Section 126(1) of the MRTP Act. It could pursue an agreement with the Corporation for payment of compensation in cash (under Section 126(1)(a)), or it could await land acquisition proceedings under the relevant law (under Section 126(1)(c)). The Landowner, however, made its application for grant of TDR under Section 126(1)(b), read with Regulation 34 & Appendix VII of DCR, 1991 on 06.07.2001. On a perusal of the said application, we find that at paragraph 17 of the same lies the question and answer submitted thereto by the Landowner.

"*(17) Whether the reservation is proposed to be built upon as per the plans approved by the concerned Authority as*

per sub regulation No. 6 of Appendix VII, if so, details thereof:

Answer: No."

48. In reply thereof, the Corporation sent its letter dated 06.07.2001, the LOI, wherein conditions were laid down for grant of DRC in lieu of the land in the following manner:

"*This has reference to the application made by you along with various documents. By direction, I have to inform you that* ***your request*** *to grant you 'Development Right Certificate' in lieu of the aforesaid land,* ***will be considered after complying the following requirements****:*

...

3. That you will develop the said Garden plots as per Municipal specifications & ***you will submit a registered undertaking*** *that you will develop the said Garden as per the specification laid down by the Corporation and maintain it for a further period of next 20 years, at your cost,* ***and will not claim any amenity TDR towards development of garden.***"

(Emphasis supplied)

49. From a perusal of the LOI it appears that the Corporation portrayed to the Landowner that an undertaking for the development of the garden, its maintenance for 20 years and most importantly, the condition for not claiming additional TDR against development of the garden is a pre-condition or 'requirement' for the grant of DRC / TDR in respect of the land surrendered. Certainly, pursuant to the LOI, there is an undertaking which was submitted by the Landowner in the same terms and a Maintenance

Agreement which also provides the condition of not claiming additional amenity TDR, but this does not appear to be a case of waiver. The statutory right of the Landowner under Section 126(1)(b) being two-fold as discussed above, the Corporation could not have conjured a pre-condition for the Landowner to abjure part of the compensation in order to receive the other part. It is trite law that what cannot be done directly, also cannot be done indirectly.[18] The proposition of law espoused in the judgments relied upon by the learned senior counsel for the Corporation, certainly cannot be called into question, but the facts and circumstances of this case do not indicate voluntary and intentional waiver of rights by the Landowner.

50. This Court in ***Kukreja Construction*** (supra) has placed reliance on its earlier judgment in ***Kazi Moinuddin Kazi Bashiroddin v. Maharashtra Tourism Development Corporation***,[19] where this Court held that in matters relating to payment of amount of compensation to land losers, if at all two views are possible, the view that advances the cause of justice is

[18] ***Nazir Ahmad v. King-Emperor***, 1936 SCC OnLine PC 41.
[19] (2024) 19 SCC 490.

always to be preferred rather than the other view, which may draw its strength only from technicalities.

51. The LOI, Undertaking as well as the Maintenance Agreement cannot be divorced from the context in which they were entered into. There is invariably an inequal bargaining power between the authority, i.e. the Corporation on one hand and the landowner on the other. We are aware that the Landowner in the instant case is a corporation, a developer, but that would make no difference. Once the land has been demarcated for a public purpose under the MRTP Act, there is inherent imbalance of bargaining power between the authority carrying out the acquisition and the landowner and Courts must be wary of any possible economic duress which might affect parties' decision-making. In such circumstances, the agreement between the Landowner and the Corporation where the Landowner has purportedly 'given up' statutory rights which accrue in its favour, pales into insignificance, especially when giving up of such rights has been projected as a pre-condition at the very first step, as discussed above. Once the statute read with the regulations framed thereunder provides for compensation to be granted in a certain manner, there was no occasion for the officials of the Corporation

to enter into further negotiations with the Landowner to come up with a new mechanism for payment of compensation in derogation of the same. There was no occasion for the authorities to contract out of the statutory conditions for payment of compensation. Such an act cannot be countenanced and sustained in law, and it therefore deserves interference by this Court. For the aforestated reasons, the contention of the Corporation that the Landowner cannot claim anything beyond the scope of contract between the parties and the reliance placed on ***Rajasthan State Industrial Development & Investment Corpn.*** (supra) is not acceptable.

52. The learned senior counsel appearing for the Corporation would contend that the Landowner had enjoyed the benefit of maintenance of the garden on the subject land from 2002 to 2016 in lieu of grant of additional TDR against the construction of amenity on the surrendered land as per the LOI, the Undertaking and the Maintenance Agreement. Somewhat along the same lines, the High Court in the impugned order has found that the Landowner had agreed to not claim additional amenity TDR since they were permitted to maintain the garden in question and during such period, their claim for additional amenity TDR remained suspended or deferred. As such, the High Court reasoned that

upon withdrawal of the 'privilege' of maintenance of the garden, which is the benefit, the condition of disclaimer of additional amenity TDR could not survive.

53. The gist of what is being claimed by the learned senior counsel appearing for the Corporation (which has also found favour with the High Court) is that the Landowner had, by agreement, substituted its right to receiving additional amenity TDR with the right to maintain the garden for a period of twenty years.

54. This contention may not detain us for too long and it must be rejected at the threshold. In ***Pt. Chet Ram Vashist v. Municipal Corpn. of Delhi***,[20] this Court observed as thus:

> *"**6.** Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general.* ***The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should***

[20] (1995) 1 SCC 47.

> ***be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law.*** *The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.*"
>
> ***(Emphasis supplied)***

55. It is to observe in this regard that it was not the Corporation's case before the High Court that the maintenance of the garden was inextricably linked with the grant of additional TDR against the construction of amenity on the land surrendered by the Landowner. In fact, the Corporation in its counter affidavit to the writ petition filed before the High Court, had pleaded as follows:

> "***4. I say that the entitlement of TDR and giving the garden on adoption basis are two separate issues forming parts of two different transactions one having nothing to do with others. I say that at the request of the Petitioner the garden was given on adoption basis after erstwhile owner of properties / garden handed over possession of the same to Corporation and transferred title of the property reserved for garden in favour of the Respondent by transferring the property cards etc. in the name of the Corporation.***
>
> *5. I say that the Agreement for adoption of garden with the Petitioner was terminated by MCGM on 14.03.2016. The termination is accepted by the Petitioner without demurrer*

and therefore they immediately handed over the possession of the garden to the Respondent. Thus, the Petitioner cannot go back and seek the benefits in respect of garden. The Petition is maintainable on the grounds of principle of waiver and doctrine of estoppel."

(Emphasis supplied)

56. In this context, we are of the opinion that the High Court has erred in observing that the maintenance agreement was in lieu of the statutory right of the Landowner to additional amenity TDR against development of amenity on the land surrendered. The maintenance of a garden on adoption basis has nothing to do with the statutory rights of the Landowner for compensation accruing under Section 126(1)(b) of the MRTP Act. Having specifically admitted so in the counter affidavit before the High Court, it does not lie in the mouth of the Corporation to claim the opposite before this Court. The issue of grant of maintenance rights on adoption basis to the Landowner and its subsequent withdrawal cannot be made the subject matter of the instant dispute since the agreement for maintenance can be said to be an alternative manner of compensation which has been conjured by the Corporation in complete and abject ignorance of the statutory provisions.

57. It is for the above-mentioned reasons, placing reliance on the judgments as cited above, we reject the contention of the

Corporation regarding waiver of rights by the Landowner as well as the argument about substitution of the right to receive fair compensation under Section 126(1)(b) with the right to maintenance of the garden on an adoption basis.

Non-applicability of DCR, 1991 and delay and laches

58. It is further contended by Mr. Mehta appearing for the Corporation that the DCPR 2034 had come into force by the time the Appellant had sought benefit of additional amenity TDR for the construction of amenity on the surrendered land, i.e., on 04.04.2019. He has placed reliance on ***T. Vijayalakshmi*** (supra) in this regard. In this regard, it will suffice to observe that the said judgment has no applicability in the facts and circumstances of the instant case. The right to fair compensation against acquisition of land crystalized on the day when the land was surrendered by the Landowner as observed by the High Court in its judgment in ***Apurva Natvar Parikh*** (supra) which we believe is the right view in the matter.

59. Now, therefore, the next contention of the Corporation is that in case the said right accrued to the Landowner upon surrender of land in 2002, it has continued to maintain the garden in terms of the Maintenance Agreement without any claim or demur, and has

made a claim for additional amenity TDR after a massive delay of 17 years which cannot be condoned. It is further claimed that the Maintenance Agreement itself was terminated in June, 2016, even thereafter a period of 3 years elapsed prior to the Landowner filing its writ petition in 2019.

60. In this regard, this Court in ***Godrej & Boyce II*** (supra) has considered the question of delay and laches and abandonment of claim and has reached the conclusion that during 1996 to 2009, the law in respect of grant of additional amenity TDR against construction or development of amenity was unclear, until the judgment in ***Godrej & Boyce I*** (supra) was pronounced by this Court. Although the reason for denial of additional amenity TDR to the Landowner in the instant appeal does not relate to the Circular which was under challenge in ***Godrej & Boyce I*** (supra), the uncertainty in law was clarified by this Court in the said judgment, that the landowners are entitled to 100% of the area of the construction or development of amenity on the land surrendered. Noticing the said judgment in ***Godrej & Boyce II*** (supra), this Court in ***Kukreja Construction*** (supra) has rejected the contention of the Corporation that claim for additional amenity TDR against construction or development of amenity on the land

surrendered by the owner can be hit by delay and laches. The Court found that when relief in the nature of compensation is sought, and it is determined in the nature of FSI / TDR under the statute, it is payable even without a representation being made. It was observed therein that the Corporation has not been able to show that any third-party rights had been created which would be disturbed by delay and laches.

61. The judgment in ***Kukreja Construction*** (supra) has been followed by this Court in the judgment of ***Ultra-Tech Cement Ltd. v. Mast Ram***,[21] to hold that compensation against acquisition of land is due and payable by the State upon acquisition being made and it should not delay such payment. Relevant portion of the said judgment is quoted herein for reference:

> "***50.*** *That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in Kukreja Construction Co. v. State of Maharashtra [Kukreja Construction Co. v. State of Maharashtra, (2024) 14 SCC 594 : 2024 SCC OnLine SC 2547] wherein it has been held that once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and a duty is cast on the State to pay such compensation to the land losers, otherwise there would be a breach of Article 300-A of the Constitution.*
>
> ***51.*** *In the present case, the Government of Himachal Pradesh as a welfare State ought to have proactively*

[21] (2025) 1 SCC 798; Also see: Paragraph 69 of ***Urban Improvement Trust v. Vidhya Devi***, 2024 SCC OnLine SC 3725.

intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. The State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings under the MoU signed between the appellant, JAL and itself. We find that the delay in the payment of compensation to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300-A and the idea of a welfare State.

52. *Acquisition of land for public purpose is undertaken under the power of eminent domain of the Government much against the wishes of the owners of the land which gets acquired. When such a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest."*

62. In matters which relate to payment of fair compensation against acquisition of land, the State is obligated to fairly compensate the owner of the land since it is a curtailment of his legal right to enjoyment of such land. It is an intrinsic aspect of Article 300A. Upon such acquisition, a duty is cast on the State to make good the compensation as determined under the relevant statute, in this case, MRTP Act and the regulations framed thereunder. In such circumstances, we see no reason to differ from the view taken by this Court in ***Kukreja Construction*** (supra) in respect of effect of delay and laches in the claim for conferment of

additional TDR against construction of amenity under Section 126(1)(b) of the MRTP Act.

63. In support of its argument on delay and laches, the Corporation has placed reliance on the judgments of this Court in ***Shri Vallabh Glass Works Ltd.*** (supra) and ***Century Textiles & Industries Ltd.*** (supra). In the former, this Court has observed that denial of relief in terms of delay and laches wholly depends on the facts and circumstances of each case.

64. The reliance on the latter, i.e. ***Century Textiles & Industries Ltd.*** (supra) has been placed by the Corporation to contend that delay and laches are non-condonable especially while filing writ petition under land acquisition matters. Relevant portion of the said judgment is quoted herein for reference:

> "***76.*** *Reference may be made to the following judgments wherein delay and laches being non-condonable while filing petition, especially under land acquisition matters, has been elaborately dealt with and has been the consistent view of this Court that such belated petitions are liable to be dismissed.*
>
> ***78.*** *Similarly, in Hari Singh v. State of U.P. [Hari Singh v. State of U.P., (1984) 2 SCC 624] , it was observed that : (SCC p. 626, para 4)*
>
> > *"4. At the outset we are of the view that the writ petition filed in July 1982 questioning the notification issued in January 1980 after a delay of nearly two-and-a-half years is liable to be dismissed on the ground of laches only. It is no*

doubt true that the appellants have pleaded that they did not know anything about the notifications which had been published in the Gazette till they came to know of the notices issued under Section 9(3) of the Act but they have not pleaded that there was no publication in the locality of the public notice of the substance of the notification as required by Section 4(1) of the Act. It should be presumed that official acts would have been performed duly as required by law. It is significant that a large number of persons who own the remaining plots have not challenged the acquisition proceedings. The only other petition in which these proceedings are challenged is Civil Misc. Writ Petition No. 11476 of 1982 on the file of the High Court filed subsequently by Amar Singh and four others. Moreover in a small place like Kheragarh where these plots are situate, the acquisition of these lands would be the talk of the town in a short while and it is difficult to believe that the appellants who are residents of that place would not have known till July 1982 that the impugned notification had been published in 1980. Any interference in this case filed after two-and-a-half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should, therefore, fail on the ground of delay alone."

82. *Therefore, the writ petition ought to have been dismissed on this ground of delay and laches alone. We find no merit in the conduct of Respondent 1 where it deliberately chose to sit still on its rights for a long period of fifty-one years. Even after such a belated delay and sending a notice to the appellant in 2006, Respondent 1 again failed to exhibit any diligence and chose not to file a suit within the period of limitation under the 1888 Act. Instead, Respondent 1 has shown utmost craftiness and lack of bona fides in preferring the writ petition before the High Court in 2016 as it is clearly a route adopted to subvert the long delay of sixty-one years, which we do not find condonable, given the conduct of Respondent 1 throughout."*

65. The said judgment is entirely distinguishable in the facts and circumstances of the present case. Distinction must be drawn between delay and laches caused in challenging the process of land acquisition itself on one hand and delay and laches caused in seeking fair statutory compensation on the other. In the facts of ***Century Textiles & Industries Ltd.*** (supra), the challenge made by the writ petitioner before the High Court was to the acquisition itself and it claimed ownership over the property acquired. In making such challenge, there was unsurmountable delay of 61 years, which this Court held to be non-condonable. Certainly, no disagreement can be made with the proposition of law laid down therein, but it does not apply to the present facts where fair compensation in respect of land acquisition is sought by the Landowner.

66. In these circumstances, the judgment of ***Kukreja Construction*** (supra) strictly applies and seals the contention of the Corporation in respect of delay and laches. So also, the High Court is absolutely correct in relying upon the judgment of this Court in ***Sukh Dutt Ratra*** (supra) and holding that the plea of delay may not succeed where there is a continuing cause of action especially in the facts of the instant case. It goes without saying

that questions relating to delay in approaching Courts for relief heavily depend on facts and circumstances of each case and in the present set of facts, we are of the opinion that delay and laches cannot defeat that claim of the Landowner to fair compensation under Section 126(1) of the MRTP Act.

Nature of the amenity

67. Another argument raised by the Corporation in the instant appeal is that the garden on the subject land is not an 'amenity' within the meaning as prescribed under Section 2(2) of the MRTP Act and Regulation 2(7) of the DCR, 1991. It is contended that the garden in question was commercially exploited for personal use by the Landowner and it was not used for the benefit of the Corporation, so therefore it cannot be considered an 'amenity'. It is further contended that the garden in question was constructed / developed prior to handing over the subject land to the Corporation and in such circumstances, there can be no claim made for additional TDR in respect of the area of amenity constructed or developed on the land surrendered.

68. This argument of the Corporation also deserves to be rejected for twofold reasons. Firstly, this was never the contention raised by the Corporation and was not the reasoning for rejection

mentioned by the Corporation in the Rejection Order dated 05.11.2019, nor was this stand taken by the Corporation in its counter affidavit filed before the High Court. At the fag end of the litigation, the Corporation is enjoined from raising a claim which it has not raised throughout. Secondly, such a contention is also not borne out from the record. It is the Corporation itself which has certified the development of the garden on the subject land by the Landowner. From the very inception when the subject land was reserved as a garden *vide* the Notification dated 04.03.1994, there is a stipulation that the respective landowners must develop the garden proposed on the sites and then hand over the property to the Corporation. In the LOI dated 13.12.2001, the Corporation has stated that grant of DRC against the land itself can be considered only upon complying requirements which included the development of a garden as per specifications laid down by the Corporation.

69. It is apparent that the development of the amenity by the Landowner was made a pre-requisite by the Corporation itself for grant of TDR against the land and it therefore cannot now claim that the completion of development of garden prior to surrender of the land would take it outside the fold of compensation for

construction / development of amenity on the surrendered land within the meaning of Section 126(1)(b) of the MRTP Act. Further, such an interpretation of Section 126(1)(b) of the MRTP Act would do violence to the statute as well as the DCR, 1991.

70. Before we part, the Corporation has placed heavy reliance on the proceedings before the Lokayukta and the non-maintenance of the garden, its private / commercial use by the Landowner. In this respect, it will suffice to say that recourse and remedy as permissible under the law may be taken in respect of the Maintenance Agreement. As we have found above, and as admitted by the Corporation before the High Court, the maintenance of the garden is completely independent from the acquisition of the subject land after development of the garden. It is difficult to accept the contention of the Corporation that the alleged misuse of the garden would in any manner affect the statutory right of the Landowner to receive fair compensation under Section 126(1)(b) of the MRTP Act.

71. For the aforementioned reasons, we are not inclined to interfere with the judgment of the High Court, although we have provided our separate reasons for reaching the said conclusion. As a result, the instant appeal shall stand dismissed. The Corporation

shall now comply with the directions issued by the High Court within a time period of two months. All interlocutory applications (if any) shall be treated to be disposed of.

.....J.
(J.K. MAHESHWARI)

.....J.
(ATUL S. CHANDURKAR)

NEW DELHI;
MAY 20TH 2026.