



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

WRIT PETITION NO. 706 OF 2017

Satguru Corporate Services Pvt Ltd ...Petitioner

*Versus*

1. The Mumbai Metropolitan Region Development Authority (MMRDA)
2. Mumbai Suburban Electricity Supply And Transport Undertaking
3. The Collectr (Special Land Acquisition) (Officer No.4), Mumbai Suburban District ...Respondents

WITH

INTERIM APPLICATION NO. 641 OF 2020

Phillips Daniel Baptista & Ors ...Applicant

**In The Matter Between**

Satguru Corporate Services Pvt Ltd ...Petitioner

*Versus*

The Mumbai Metropolitan Region Development Authority & Ors Godfrey Pascol Suttari & Anr ...Respondents

AND

INTERIM APPLICATION NO. 881 OF 2020

IN

WRIT PETITION NO. 706 OF 2017

...Applicant

**In The Matter Between**

Satguru Corporate Services Pvt Ltd ...Petitioner

***Versus***

The Mumbai Metropolitan Region Development Authority & Ors Godfrey Pascol Suttari & Anr

...Respondents

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Mr. Janak Dwarkadas, Senior Advocate, a/w Rohaan Cama, Phiroze Mehta, Jasmine Sheth, Deepu Jojo, Viren Mandhle, i/b Wadia Ghandy & Co., for the Petitioner.

Mr. Sameer Khedekar, for Intervenor in IA/881/2020.

Mr. Makrand M. Kale, i/b Yogesh Sankpal for Intervenor in IA/641/2020.

Smt. Jyoti Chavan, Addl.GP, for State.

Mr. Girish Godbole, Senior Advocate, a/w Rakesh Singh, Heena Shaikh, i/b M.V. Kini & Co., for Respondent No.2/BEST.

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**CORAM : G. S. KULKARNI &  
SOMASEKHAR SUNDARESAN, JJ.**  
**DATE : SEPTEMBER 27, 2024**

**ORAL JUDGMENT : (PER G. S. KULKARNI, J.)**

1. This is a quite peculiar writ petition filed under Article 226 of the Constitution of India, wherein the petitioner's land, subject matter of the petition, reserved under the Development Control Regulations for Greater Bombay, 1991 (for short "**DCR 1991**") for the purpose of a Brihanmumbai Electric Supply and Transportation ("**BEST**") bus depot was acquired by the State Government by following the procedure under the Maharashtra Regional and Town Planning Act, 1966 (for short "**MRTP Act**") read with

relevant provisions of the Land Acquisition Act, 1894 (for short “*the 1894 Act*”). An award dated 17 December, 2015 was published under Section 11 of the 1894 Act awarding compensation to the petitioner. This petition was filed on 24 October, 2016 *inter alia* praying that the petitioner be permitted to develop the acquired land purportedly applying the provisions of Regulation 9 of the DCR, 1991. Thus, the question is that the land which has already stood vested with the State Government and which is to be used for bus depot, can at all be permitted to be developed, more particularly when the development of the land is not the intention of the acquisition, but for its use for the public purpose of bus depot. In such context, the prayers as made by the petitioner are required to be noted which read thus:

a) That this Hon'ble Court be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India directing the Respondents to consider Petitioners application for development of the said Land/Acquisition Land contained in letter dated 19th May. 2016 (Exhibit "GG") under Regulation 9 of DCR by the Petitioners and to issue the necessary approvals for development of the Acquisition Land as per and under Regulation 9(m) of the DCR within a period of 2(two) weeks or such time as the Hon'ble Court deems fit and proper;

(b) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ or direction under Article 226 of the Constitution of India calling for the records and proceedings pertaining to the Impugned Letters (Exhibits "H", "M", "N",

"S", "X", "EE" & "FF") and after examining legality, validity and propriety thereof the same be quashed and set aside.

(c) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ or direction under Article 226 of the Constitution of India calling for the records and proceedings pertaining to the Impugned Award (Exhibit "Y") and the Impugned Notifications (Exhibit "D") and after examining legality, validity and propriety thereof the same be quashed and set aside.

(d) Without prejudice and in the alternative, that this Hon'ble Court be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India directing the Respondents to issue development rights certificate in regard to TDR instead of in lieu of compensation payable under the Impugned Award for acquisition of the said Land to the Petitioner within a period of 2(two) weeks or such time as the Hon'ble Court deems fit and proper;

(e) Without prejudice and in the alternative, that this Hon'ble Court be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India directing Respondent No. 2 and 3 to re-compute the compensation payable under the Impugned Award for acquisition of the said Land to the Petitioner as per the value of the said Land in 2010 and as per the said Act of 2013, within a period of 2(two) weeks or such time as the Hon'ble Court deems fit and proper;

(f) Pending the hearing and final disposal of this Petition, this Hon'ble Court direct the Respondents to consider afresh the application of the Petitioner for development of the Acquisition Land under Regulation 9 of the DCR, within a period of 2 weeks or such time as the Hon'ble Court deems fit and proper;

(g) Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to stay the operation, effect and implementation of the Impugned Award, the Impugned Notification and The Impugned Letters;

(h) Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to restrain the Respondents and its servants, officers, agents and any person claiming through, by and under them by an order of from interfering, disturbing or obstructing the possession of the Petitioner to the said Land;

(i) Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to restrain the Respondents and its servants, officers, agents and any person claiming through, by and under them from developing the said Land in any manner whatsoever;

(j) for interim and ad interim reliefs in the terms of prayers (a) to (i) above;

(k) for costs; and

(l) for such other and further reliefs as this Hon'ble Court may deem fit in the nature and circumstances of the present case.

2. We have heard Mr. Dwarkadas, learned senior counsel for the Petitioner, Mr. Godbole, learned senior Counsel for Respondent No.2-BEST and Ms. Jyoti Chavan, Addl.GP for Respondent No.3.

3. On behalf of the petitioner the principal contention as urged by Mr. Dwarkadas is that the petitioner as a matter of legal right is entitled to the reliefs as prayed for, considering the provisions of Regulation 9(IV)(c) as also Regulation 9(V)(5)(m) as contained under Table 4 of the DCR, 1991.

4. At the outset, we may note that the case of the petitioner is premised on the said DCR. We may also observe that Regulation 9 of the DCR 1991

falls under Part II which pertains to “*General planning requirements and land uses of manner of development*”. It provides for the uses of all lands situated within the municipal limits of Greater Bombay, which have been allocated, designated or reserved for certain purposes in the development / re-development, in regard to which Table 4 providing for Land-uses and the Manner of Development has been set out in the said Regulation providing for “guidelines” for development under the regulations more specifically as contained in paragraph 2 of the said regulations. We note that the regulations and the sub-regulation(s) as relied on behalf of the petitioner are hereunder:

**“PART II**  
**General planning requirements**  
*Land uses and manner of development*

**9. Land uses and the manner of development**

The uses of all lands situated within the municipal limits of Greater Bombay, which have been allocated, designated or reserved for certain purposes in the development plan, shall be regulated in regard to type and manner of development/re-development, according to Table 4 hereunder-

The guidelines, for development of said reservations (i.e. Housing the Dishoused, Municipal Staff Quarter/Municipal Housing, Retail Market, Shopping Centre, Dispensary, Health Welfare Centre, Maternity Home, Municipal Chowky, Library) to be developed through suitable agency shall be required to be approved from the Government.

**Table 4**

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***Land-uses and the Manner of Development***

Serial No.	Use (Allocation designation or reservation)	Person/ Authority who <u>may</u> develop	Condition subject to which development is permissible
(1)	(2)	(3)	(4)
IV	<p>Transportation-</p> <p>(a) Proposed road/street</p> <p>(b) Proposed widening of existing road/ street envisaged either in the development plan or by prescription of regular line of street under the Bombay Municipal Corporation Act, 1888.</p> <p>(c) BEST Bus Depot (BBD) and Housing (BBDH)</p>	<p>Corporation</p> <p>Corporation</p> <p>BEST undertaking or Owner</p>	<p>(A) For lands not owned by appropriate authority.</p> <p>(i) The owner <u>shall</u> construct designated amenity on 40 per cent of land under reservations with 0.40 of permissible FSI of area under reservations according to norms prescribed by the said concerned Department (inclusive of provision for required parking spaces) for being used for the designated amenity.</p> <p>(ii) Building thus constructed <u>shall</u> be handed over along with 40 per cent land to the concerned department, free of cost.</p> <p>Thereafter, the owner shall be allowed to develop the remaining 60 per cent site to</p>

			<p>the full permissible FSI of the plot without taking into account the FSI utilised for this construction of amenity building.</p> <p>(B) For lands owned by appropriate authority.-</p> <p>Development of reserved plot <u>shall</u> be subject to such conditions as may be prescribed by the Government.</p>
	(d) BEST Bus Station (BBS) and Housing (BBS and H)	BEST Under taking	
(5)	<p>Public Utilities-</p> <p>(a) Fire Brigade Station (FB)</p> <p>(k) Telephone Exchange (TE)</p> <p>(l) Police Station</p> <p>(m) (a) BEST Receiving Station (BRS)</p> <p>(b) BEST Bus Depot (BBD)</p> <p>(c) BEST Bus Station</p> <p>(d) BEST Terminal</p>	<p>Corporation or Owner</p> <p>Government Department concerned or owner. Or basic Telephone Operating Company.</p> <p>Government Department concerned or Owner</p> <p><u>BEST undertaking or Owner</u></p>	<p>(A) For lands not owned by appropriate authority.-</p> <p>(i) The owner <u>shall</u> construct designated amenity on 40 per cent of land under reservations with 0.40 of permissible FSI of area under reservations according to norms prescribed by the said concerned Department (inclusive of provision for required parking spaces) for being used for the designated amenity.</p> <p>(ii) Building thus constructed <u>shall</u> be handed over alongwith 40 per cent land to the concerned department, free of cost.</p> <p>Thereafter, the owner shall be allowed to develop the remaining 60 per cent site to the full permissible FSI of the plot without taking into account the FSI utilised for this construction of amenity building.</p> <p>(B) For lands owned by appropriate authority.-</p>

			Development of reserved plot <u>shall</u> be subject to such conditions as may be prescribed by the Government.
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Explanation :-

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(v) Sites reserved for BEST Undertaking such as BEST Bus Depot, BEST Bus Station, BEST Terminus, BEST Bus Station and Staff Quarters, BEST Bus Depot and Transport Carriage, may be developed by the BEST Undertaking for the specified purpose coupled with commercial user subject to the following conditions :-

(a) The built-up area of such commercial user shall not exceed 30% of the total permissible floor area.

(b) Out of such permissible commercial user 50% built-up area not exceeding of the total permissible commercial user may be permitting on the ground floor. While remaining floor area for commercial user may be permitted on the upper floor.

(c) Extent of built-up area proposed to be used for commercial purpose shall be such that it does not adversely affect the principal user.

(d) The proposal for such composite user shall be cleared by Additional Commissioner of Police (Transport), Mumbai.

(e) Considering the strategic location of reserved sites with reference to the volume and nature of the traffic in the vicinity of the reserved site, Municipal Commissioner shall have right to prescribe additional condition as deemed fit and also restrict the commercial area to the justifiable extent.

(f) Provision for separate parking shall have to be provided as per prevailing norms in such a way that it does not affect movement of BEST buses as well as the traffic of road.

(g) The above commercial user shall be permitted on Plot having area of 2000 sq. mt. and above.

(h) If there is any storage of diesel/petrol or any explosive material on the plot, then the above commercial user is permissible by

maintaining segregating distance between them as decided by the Chief Fire Officer.

Explanations.-

(i) Even where an owner, in terms of column (3) in Table 4 above, is permitted to develop certain categories of reservations, allocations or designations, the Corporation or concerned authority may at any time acquire land thereunder.

(ii) An owner, who, in terms of column (3) of Table 4 also, is permitted to develop certain categories of allocations, designations or reservations, shall provide the required parking spaces for the same, in addition to those required for the developments he is permitted to undertake.

(iii) In areas where the Bombay Metropolitan Region Development Authority or any other authority is appointed as Special Planning Authority under Section 40 of the Maharashtra Regional and Town Planning Act, 1966, all development permissions shall need the clearance of the said Authority.

***[Emphasis Supplied]***

5. It is not in dispute that the land belonging to the Petitioner was subject matter of acquisition, upon it being reserved for the purpose of a bus depot of the “*Brihanmumbai Electric Supply and Transportation* (“**BEST**”) under the provisions of the MRTP Act. Accordingly, on 6 March, 2000 a proposal was made by the BEST to the Special Land Acquisition Officer (“**SLAO**”)/Respondent No.3 for acquisition of the petitioner’s land in question for such public purpose. On 6 April, 2000 Additional Collector forwarded the said proposal to the SLAO, according

his approval for acquisition of the petitioner's land.

6. On 12 April, 2007 and 25 April, 2007, a final notification under Section 126(4) of the MRTP Act read with Section 6 of the 1894 Act was published. A revised measurement of the land in question was carried out by City Survey Office, Goregaon. On 15 April, 2010, a corrigendum notification under Section 126(4) of the MRTP Act was issued.

7. In February 2011, the Petitioner was served with a notice under Section 9 of the 1894 Act. On 1 March, 2011, the Petitioner addressed a letter to the SLAO informing him of its ownership of the land, and requesting for grant of TDR in view of the land owned by the Petitioner. The BEST addressed a letter dated 24 June, 2011, to the Collector *inter alia* stating that the BEST being an acquiring body had deposited the amount of the land at Rs.6,66,98,137/- with the SLAO, hence possession of the land be handed over to the BEST.

8. From the correspondence between the parties, it is seen that the Petitioner by its letters dated 13 January, 2013 and 19 June, 2013 made proposals to the BEST for development of the land in question under the accommodation reservation policy, which according to the Petitioner, was

an entitlement of the Petitioner under Regulations 9(IV)(c) and 9(V)(5)(m) of the DCR, 1991. These regulations are noted by us hereinabove.

9. The petitioner's proposal was rejected by Respondent Nos.2 and 3 vide letter dated 30 January, 2013 and 19 June, 2013. Such rejection was not challenged by the Petitioner. On 15 October, 2013, by a further application, the Petitioner once again indicated its willingness to develop the land under Regulation 9(V)(5)(m) of the DCR, 1991. Again such proposal was rejected by Respondent No.2 vide its letter dated 28 November, 2013. On 11 December, 2013, Respondent No.1 informed Respondent No.3 of the rejection *inter alia* on the ground that since the entire land under acquisition was not owned by the Petitioner, the proposal of the Petitioner to develop the land under DCR, 1991 cannot be considered.

10. There are other documents placed on record which are not relevant for the issue in hand, suffice it to observe that on 17 December, 2015, Respondent No.3 passed an award for acquisition of the land in question for a total compensation of Rs.32,74,58,150/- (Rs.32.74 Crs) out of which Rs.13,06,29,683/-(13.06 Crs) was to be paid to the Petitioner. It is against

such backdrop the Petitioner's proposal for development of the part land subject matter of acquisition was rejected by Respondent No.1 *vide* letter dated 25 May, 2016, which is being challenged by the petitioner seeking the reliefs noted hereinabove.

11. Mr. Dwarkadas has argued at length, contending that the land acquisition would be required to be held to be illegal inasmuch as the Petitioner has not been granted an opportunity to develop the land in terms of the alleged entitlement of the provisions of Regulation 9(IV)(c) and Regulation 9(V)(5)(m) of the DCR 1991. His contention is that the provisions of the DCR, 1991 necessarily were applicable insofar as the development of the land acquired was concerned. The submission is that DCR Regulation 9(IV)(c) and Regulation 9(V)(5)(m) confers a peremptory right on the Petitioner to develop the land, which is required to be recognized, hence the acquisition in question necessarily would be subject to the applicability of the said DCR, 1991. In support of this submission, Mr. Dwarkadas has placed reliance on the decision of a Division Bench of this Court in Indian Cork Mills Private Limited vs. State of Maharashtra<sup>1</sup> to contend that the analogy insofar as the landowner's

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<sup>1</sup> 2018 SCC OnLine Bom. 1214

right to develop the slum land proposed to be acquired and developed under the Slums Act, is applicable even for the development of lands acquired under the MRTP Act.

12. Mr. Godbole on behalf of the BEST, has opposed the contentions as urged on behalf of the petitioner. His submission is that none of the contentions as urged by Mr. Dwarkadas are tenable. It is submitted that there cannot be any analogy and / or a comparison between the acquisition and redevelopment under the Slums Act and the acquisition of land reserved under the MRTP Act. It is submitted that in the instant case, the reservation is for a BEST bus depot and, that too it is admittedly as a town planning/MRTP reservation. It is next submitted that it is ill-conceivable that the provisions of Regulation 9(IV)(c) and Regulation 9(V)(5)(m) in any manner would become applicable qua the acquisition in question as there is no scope for any development for any purpose under the said regulations this apart from non-applicability of the said regulations. He accordingly submits that the petition needs to be summarily dismissed.

13. Ms. Jyoti Chavan, Addl.GP has also submitted that a lawful procedure in regard to the acquisition was followed by Respondents under

which there is a declaration of the award as also the possession of the petitioner's land has been taken over. It is her submission that the prayers as made by the Petitioner are thus wholly untenable. She also prays for dismissal of the petition.

14. Having heard learned counsel for the parties and having perused the record, we are of the opinion that the contentions as urged by Mr. Dwarkadas are wholly untenable and cannot be accepted looked from any angle, for several reasons which we discuss hereafter.

15. Admittedly, the land in question belonging to the Petitioner along with other lands, was subject matter of a town planning reservation under the provisions of the MRTP Act for the public purpose of a "BEST Bus Depot". For such public purpose, the land could be acquired by resorting to the provisions of Section 126 of the MRTP Act which takes within its ambit the applicability of the provisions of the 1894 Act. On this there is no dispute. There is also no dispute that the well defined procedure under the 1894 Act read with the provisions of Section 126 of the MRTP Act was resorted by the respondents and the land acquisition was completed by an award being published on 17 December, 2015. The compensation

amount as payable to the Petitioner and declared under the award was deposited with the SLAO by the BEST. It is also not in dispute that the possession of the land was also taken over and the same was handed over to the BEST. It is at such stage the present proceedings were filed on 24 October 2016. A co-ordinate bench of this Court on 20 June, 2017 passed an ad-interim order to the following effect which has continued to operate:-

- “ Heard Mr. Tulzapurkar, learned senior counsel for the petitioner.
2. Finally, two weeks’ time is granted to the respondents to file reply-affidavit with advance copy thereof to the petitioner, who shall file rejoinder, if any, within one week thereafter.
3. The reason to challenge the acquisition was no reaction from the respondents when several letters were written by the petitioner opting to develop the property for the benefit of respondent No.2- BEST Undertaking, which is a statutory right of the petitioner.
4. In the above circumstances, we direct the parties to maintain status-quo so far as development of the property till next date of hearing.
- List this petition after three weeks.”

16. In the aforesaid circumstances, the only question which is required to be decided is as to whether the Petitioner can claim any legal right or any entitlement to develop the land, subject matter of acquisition, on the basis of the Petitioner’s reading of Regulation 9(IV)(c) and Regulation

9(V)(5)(m) of the DCR, 1991.

17. Having considered the regulations which we have extracted hereinabove, at the outset we may observe that, under the scheme of acquisition of the land as applicable in the present case, the said regulations falling under DCR 1991 are wholly inapplicable. In our opinion the ingenuity of the petitioner in attempting to make out such case infact crosses all legitimate boundaries, which if accepted, in our opinion would result in re-writing the statutory scheme of land acquisition as provided under the provisions of the MRTP Act read with the 1894 Act.

18. There is fundamental fallacy in the contentions as urged by Mr. Dwarkadas, namely, that the provisions of the DCR, 1991 ought to be read into the provisions of Section 126 of the MRTP Act, and that too in respect of a concluded acquisition. From a reading of Section 126, we find that the legislature itself has not made such allowance so as to include the applicability of the provisions of the DCR, 1991 into the provisions of Section 126. Section 126 is a code by itself in so far as acquisition of the land is concerned and for the purposes for which the lands are reserved under the MRTP Act, making applicable the provisions of the 1894 Act (as applicable for the acquisition in question). From the reading of the

provision of Section 126, it is clearly seen that there is no scope to assume that Section 126 is subject to the provisions of the DCR, 1991. Thus, on first principles unless the statute (MRTP Act) specifically and mandatorily provides, that qua any acquisition under Section 126 of the MRTP Act, the provisions of the DCR 1991 much less the DCR Regulation 9(IV)(c) and Regulation 9(V)(5)(m) becomes applicable, the petitioner's imagination on such applicability cannot become a reality much less a legal right. We also fail to understand as to how the land which stands completely acquired and having vested with the State Government and when the corporeal rights of the petitioner on such land stand divested, the petitioner can claim any right to retain and exploit any benefit from such land taking recourse to the said DCR's. The only right of the petitioner is to receive compensation as the law mandates. Thus as observed by us the case as urged on behalf of the Petitioner, if accepted would amount to doing violence to the provisions of Section 126, as also reading into the provisions of the 1894 Act, something which the legislature itself has not provided for.

19. Even assuming that the said DCR's are applicable, the petitioner's contention need rejection. In such context, we note that Mr. Dwarkadas

intends to read the word “shall” as used in Column 4 of Table 4 of the said DCR (supra), to assert that the land owner has a statutory entitlement to develop the land acquired. It is noteworthy that the very title of Column 3 of Table 4 uses the word “may” (it is titled “*persons/authority who may develop*”) in relation to who may develop the land, and underlines that the development could be by the BEST or by the land owner. Thus, there is nothing absolute or mandatory, that the landowners whose lands are already acquired, have any right to develop the land in terms of what is outlined in Column 4.

20. Even otherwise a plain reading of the provisions of the said DCR (supra) would show that it would certainly not create any absolute right in favour of the land owner to contend that it is mandatory that the owner has an option to develop the land. Hence, with certitude, we observe that neither Regulation 9(IV)(c) and Regulation 9(V)(5)(m), confers any statutory right in favour of the landowner to develop the land acquired. We find no such statutory right has at all been created. We are thus unable to understand as to how the provisions of the said DCR confer any entitlement, by reason of the contents of Column 4, when admittedly Column 3 itself indicates that there is an option for either the authority of

the landowner to develop. Besides, clause (i) of the Explanation under Table 4 of Regulation 9 makes it clear that even where an owner, in terms of Column 3 in Table 4, is permitted to develop certain categories of reservations, allocations or designations the BEST or concerned authority may at any time acquire land thereunder. Thus, looked from any angle, the case of the Petitioner needs to fail.

21. In the light of the above discussion no interference is called for. The writ petition accordingly stands dismissed. Interim orders, if any, stand vacated forthwith. The BEST is free to use the land as it already stood vested in the State Government.

22. Needless to observe that we have been informed that at the behest of some parties, other than the Petitioner, a reference under Section 30 of the 1894 Act was filed and the same now stands transferred to the Competent Authority. We expressly keep open all contentions of the parties in the pending reference.

23. Although this is a fit case for dismissal of the petition with costs. We refrain from doing so.

24. At this stage, Mr. Cama would request that the ad-interim orders passed by this Court be extended for a period of four weeks. However,

considering the fact that the land has already stood vested with the State Government and that the larger interest of public has been undermined in an unsustainable manner, we reject Mr. Cama's prayer.

25. Interim applications would not survive and would stand disposed of.

[ SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]