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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.2576 OF 2019****1. Bholenath Developers Ltd.**

A Company registered under the provisions of Companies Act, 1956 having its registered office at Plot No.10, Shiv Ashish Building, 19th Road, Village Chembur, Taluka Kurla, Mumbai – 400071.

2. Mr. Anil Sajanani,

Director of Petitioner No.1, having his address at Plot No.10, Shiv Ashish Building, 19th Road, Village Chembur, Taluka Kurla, Mumbai – 400071.

...Petitioners**~ versus ~****1. The State of Maharashtra,**

through Urban Development Department, having its address at Mantralaya, Mumbai. through the Office of the Government Pleader, Original Side, Bombay High Court.

2. The Principal Secretary,

Urban Development Department, having its address at Mantralaya, Mumbai.

- 3. Municipal Corporation Greater Mumbai,**
a statutory corporation
established under Mumbai
Municipal Corporation Act, 1888
having its office at Mahapalika
Bhavan, Mahapalika Marg,
Mumbai – 400 001.
- 4. The Municipal Commissioner,**
Municipal Corporation Greater
Mumbai, having its office at
Mahapalika Bhavan, Mahapalika
Marg, Mumbai – 400 001.
- 5. The Chief Engineer
(Development Plan)**
Municipal Corporation Greater
Mumbai, having his office at
Municipal Head Office, 5th Floor,
Annex Building, Mahapalika
Bhavan, Mahapalika Marg,
Mumbai – 400 001.
- 6. The Executive Engineer
(Development Plan)**
Municipal Corporation Greater
Mumbai, having his office at
Municipal Head Officer, 5th Floor,
Annex Building, Mahapalika
Bhavan, Mahapalika Marg,
Mumbai – 400 001.
- 7. Assistant Engineer (Survey)**
Office of Dy. Chief Engineer
(Building Proposal) Near Raj
Legacy Building, Paper Mill
Compound, LBS Marg, Vikhroli
(W), Mumbai 400 083.

8. City Survey Officer, Chembur
Topiwala College Building, Sarojini
Naidu Road, Mulund (West),
Mumbai – 400080.

...Respondents

APPEARANCES

for the Petitioners

Mr. Saket Mone a/w Subit
Chakrabarti, Khushnumah
Banerjee i/by Vidhii Partners,
for the Petitioners.

For the Respondents

Mr. Bhavik Manek a/w R. M.
Hajare i/by Meena Dhuri i/by
Sunil Sonawane, for the
Respondents- BMC.

Mr. Abhay L. Patki, AGP, for
the Respondent-State.

**Smt. Snehal Patange, SE
(DP),** BMC is present.

**CORAM : M. S. Sonak &
Arif S. Doctor, JJ.**

RESERVED ON : 6th August 2024

PRONOUNCED ON : 16th August 2024

JUDGMENT (Per Arif S. Doctor J): -

1. Respondent No. 1 (State) vide a Notification dated 16th November 2016 issued under the provisions of Section 37 of the Maharashtra Regional and Town

Planning Act, 1966 ('MRTP Act') sanctioned a modification to Regulation 34 of the Development Control Regulations 1991 *inter alia* by which grant of Transferable Development Rights (TDR) was regulated.

2. The Petitioners' claim to be the owner of a plot of land bearing S. No.91, Hissa No.7/1/1 (part) and 7/1/2 (part), CTS No.612-B, Village Borla, Taluka Kurla, Mumbai Suburban District, admeasuring around 1777 Sq. Meters ('the said plot'). The said plot was affected by a reservation for the purpose of a playground in the sanctioned Development Plan dated 25th March 1991 (DCR, 1991).

3. The Petitioners, on 24th January 2017, made an application ('Petitioners' Application') for issuance of a Development Right Certificate ('DRC') by offering to hand over the said plot in terms of the said Notification. Respondent No. 3 (MCGM), however, failed to grant the Petitioners the benefit of incentive TDR under the said

Notification, and it is thus that the present Writ Petition has been filed.

4. Before adverting to the rival contentions, it is useful to set out the following facts, which lie within a fairly narrow compass and are as follows, viz.

i. Since Respondent No. 3 (MCGM) had not taken a decision on the Petitioners' Application, the Petitioners had initially approached this Court by filing Writ Petition (L) No. 2427 of 2017 ('first Writ Petition') in which the Petitioners had *inter alia* sought a direction that Respondent No.3 (MCGM) shall decide the Petitioners' Application in accordance with the law. The first Writ Petition was disposed of vide an order dated 31st October 2017 by which the Respondents were directed to decide the Petitioners' Application within three months of the said order, in accordance with law.

ii. Thereafter on 20th January 2018, Respondent No.3 (MCGM) issued a Letter of Intent ('LoI') to the

Petitioners by which the Petitioners' compliance on various points enumerated therein was sought for. It is the Petitioners' case that vide a letter dated 3rd May 2018 addressed by the Petitioners' architect to Respondent No. 3 (MCGM), the Petitioners had complied with requisitions contained in LoI.

iii. On 8th May 2018, the Development Control Regulations 2034 (DCPR 2034) were notified by Respondent No.1 (State of Maharashtra) under Section 37 of the MRTP Act.

iv. Since the Petitioners' Application for DRC had yet not been granted, the Petitioners were constrained to file another Writ Petition being Writ Petition No.3346 of 2018 ('second Writ Petition'). The second Writ Petition was disposed of by an order dated 11th March 2019, by which this Court *inter alia* directed Respondent No. 3 (MCGM) to issue the DRC to the Petitioners within a period of two weeks from the date of the said order.

v. On 22nd April 2019, Respondent No.3 (MCGM) issued to the Petitioners a DRC for an area of 3554 square meters of FSI of built-up area. However, no incentive TDR was granted to the Petitioners as per the said notification. The Petitioners thereafter made representations/requests to Respondent No.3 (MCGM) to grant the Petitioners an additional 20% incentive TDR equivalent to 355.4 square meters in accordance with Clause 4 of the said Notification since the Petitioners had applied for a grant of the DCR on 24th January 2017, which was within one year from 16th January 2016.

vi. Since the Petitioners' representations/requests were not accepted/responded to by Respondent No .3 (MCGM), the present Petition came to be filed on 31st August 2019, in which the Petitioners had sought the following relief, viz.

"(a) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing

Respondent Nos.3 to 7 to issue Development Rights Certificate to the Petitioners in terms of the Application dated 24th January 2017 (at Exhibit I) and grant benefit of 20% additional/incentive TDR as per law, including the benefits under the second proviso to Clause 4.1.1 of the Schedule accompanying the Notification dated 16th November 2016 (as Exhibit A);”

Submissions of Mr. Mone, on behalf of the Petitioners

5. Mr. Mone, Learned Counsel appearing on behalf of the Petitioners, submitted that there could be no dispute that the Petitioners would be entitled to the benefit of the said Notification since the same had admittedly been filed within a period of one year from the date of the said Notification. He then pointed out that once the LoI was issued by Respondent No. 3 (MCGM) to the Petitioners on 20th January 2018, a concluded contract between the parties came into force.

6. Mr. Mone then placed reliance upon a Full Bench judgement of this Court in the case of ***Shree Vinayak Builders And Developers, Nagpur vs. State***

of Maharashtra & Ors.¹ to submit that the scheme under Section 126 of the MRTP Act was to acquire land by way of an agreement and hence, acquisition of land by compelling the land owner to accept TDR/FSI as unilaterally decided by the acquiring authority without giving land owner an opportunity to bargain/negotiate would be unfair and unjust. He submitted that once the landowner surrendered the property in question, such landowner was statutorily entitled to grant of TDR/FSI and that Respondent No.3 (MCGM) had denied the Petitioners 20% incentive TDR. He thus submitted that Respondent No. 3 (MCGM), in denying the Petitioners the benefit of the additional TDR, was breaching the agreement between the parties.

7. Mr. Mone then submitted that the DCPR 2034 was notified only on 8th May 2018, whereas the Petitioners' Architects had informed Respondent No.3 (MCGM) of the Petitioners' compliance with the conditions of the LoI on 3rd May 2018, i.e., before the date of

¹ 2022 (4) Mh.L.J.739

notification of the DCPR 2034. Thus, he submitted that the Petitioners would be governed by the provisions of the DCR 1991 and not the DCPR 2034. He thus submitted that Respondent No.3 (MCGM) erred in not granting incentive TDR to the Petitioners in terms of the said Notification.

8. Mr. Mone then relied on this Court's judgement in the case of ***Apurva Natvar Parikh & Co. Private Limited vs. The State of Maharashtra & Ors.***² to submit that the said Notification did not state that if a proposal which though made within time remained pending beyond the tenure of the Notification, the said proposal would lapse. He submitted that the Petitioners proposal was kept pending for no fault of the Petitioners and thus not granting incentive TDR to the Petitioners would therefore amount to giving retrospective effect to the DCPR 2034 which he submitted was impermissible in law.

² 2018 SCC OnLine Bom 6436

9. Mr. Mone then submitted that the Petitioners, having submitted the said Application within the time prescribed under the said Notification, had a vested right to claim the benefit thereof. He submitted that the failure of Respondent No.3 (MCGM) to take any decision on the Petitioners' Application could not, therefore, prejudice the Petitioners and/or take away the Petitioners' vested right. He submitted that the Petitioners were constrained to approach this Court by filing the first Writ Petition only because Respondent No.3 (MCGM) had failed to decide the Petitioners' application. He pointed out that on 31st October 2017, i.e., the date on which this Court had directed Respondent No.3 (MCGM) to decide the Petitioners' application, the DCPR 2034 had not yet come into force and thus it was incumbent upon Respondent No.3 (MCGM) to have decided the Petitioners' application in accordance with the provisions of the said Notification.

10. Mr. Mone placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***J. S. Yadav***

vs. State of Uttar Pradesh & Another³ and the judgement of the Full Bench of this Court in the case of ***Vishwas Bajirao Patil vs. State of Maharashtra & Others***⁴ to submit that a vested right cannot be taken away by a subsequent enactment unless the same made retrospective in its application.

11. Basis the above, Mr. Mone submitted that the Petitioners were therefore entitled to incentive TDR of 20% as provided in the said Notification and would not be governed by the provisions of the DCPR 2034.

Submissions of Mr. Bhavik Manek, on behalf of Respondent Nos.3 to 7 (MCGM)

12. *Per contra*, Mr. Manek, Learned Counsel, appearing on behalf of Respondent Nos. 3 to 7 (MCGM) submitted that the Petitioners' contention of being entitled to 20% incentive TDR as in terms of the said Notification was entirely misconceived. He submitted that the Petitioners had plainly misconstrued the said

³(2011) 6 SCC 570

⁴2019 SCC OnLine Bom 1770

Notification. He further submitted that the mere fact that the Petitioners had filed the said Application within the prescribed time, the said Notification would not *ipso facto* become applicable to the Petitioners.

13. Mr. Manek then invited our attention to Clause 4.1.2⁵ and Clause 7.1⁶ of the Notification, from which he pointed out that the same clearly provided that the entitlement to additional TDR was only after the surrender of the land and that it was incumbent upon Respondent No.3 (MCGM) to verify and satisfy qua the ownership and title of said plot. Mr. Manek submitted that Clause 4.1.2, read with Clause 7 of the said Notification, made it clear that a claim for TDR could be considered when the subject property was surrendered to

5 4.1.2 *DRC shall be issued only after the land is surrendered to the Municipal Corporation; free of cost and free from encumbrances and after levelling the land to the surrounding ground level and after constructing/erecting a 1.5 m. high compound wall/fencing i.e. brick/stone wall up to 0.60 mt above ground level and fencing above that up to remaining height with a gate, at the cost of the owner and to the satisfaction of the Municipal Commissioner. Provided that, if on certain lands such construction/erection of compound wall/fencing is prohibited or restricted by any regulation, then quantum of Transferable Development Rights (TDR) shall be reduced as prescribed in proviso to Clause 4.1.1.*

Provided further that such construction/erection of compound wall/fencing shall not be necessary for area under Development Plan roads. In such cases TDR equivalent to entitlement as mentioned in regulation no.4.1.1 shall be granted without any reduction.

6 7.0 VESTING OF LAND

7.1 The Commissioner, before issuing DRC, shall verify and satisfy himself that the ownership and title of the land proposed for surrender is with the applicant, and get the Record of Right to be corrected in the name of Planning Authority.

Respondent No.3 (MCGM) without any encumbrances. He submitted that in the present case, the land was admittedly surrendered to Respondent No.3 (MCGM) by the Petitioners only on 22nd March 2019, which was (i) well beyond one year from the date of the said Notification and (ii) was also after the DCPR 2034 had come into force. He submitted that, therefore, clearly, the provisions of the said Notification would not apply to the Petitioners.

14. Mr Manek then invited our attention to the Petitioners' application dated 24th January 2017 and submitted that the same was absent of any clarity on the area of the said plot and the necessary details regarding access to the said plot. He pointed out that all of these were vital to determine whether the Petitioners would, in fact, be eligible for the grant of incentive TDR under the said Notification. He then submitted that the Petitioners' application dated 24th January 2017 being inchoate and incomplete would not, therefore, make the Petitioner

eligible for the grant of incentive TDR under the said Notification.

15. Mr. Manek pointed out that the Petitioners' reliance upon its architect's letter dated 3rd May 2018 was also entirely misplaced. He pointed out that Respondent No.3 (MCGM) had vide its letter dated 20th July 2018, in response to the Petitioners' architect's letter, had pointed out that the said plot was not *inter alia* accessible from the Municipal Road and there was also an ambiguity in the area of the said plot. He pointed out that by the said letter, it was brought to the Petitioners' notice that once all these lacunae in the Petitioners' application were filled in, the application would be processed on merit. Mr. Manek submitted that the Petitioners had deliberately not mentioned this letter in the body of the Petition or dealt with the same.

16. Mr. Manek then submitted that since the new Regulation had come into force on 1st September 2018 and the said plot had neither been surrendered to nor

vested in Respondent No.3 (MCGM) before 1st September 2018, no incentive TDR could be issued to the Petitioners in terms of the said Notification. He pointed out that possession of the said plot was admittedly handed over to Respondent No.3 (MCGM) only on 22nd March 2019. He also pointed out that the Petitioners had executed the relevant indemnity bond and agreement of permanent right of way on 23rd March 2019 and 11th April 2019 respectively, which was much after DCPR 2034 had come into force. Thus, he submitted that it was the provisions of DCPR 2034 that would apply and not the notification. He submitted that the Petitioners' contention that Respondent No. 3 was retrospectively applying DCPR 2034 was therefore entirely misconceived and untenable. He submitted that the Petitioners' reliance upon the judgements in the case of **J. S. Yadav** (supra) and **Vishwas Bajirao Patil** (supra) was also, therefore, wholly inapplicable and would be of no assistance to the Petitioners.

17. Mr. Manek then equally submitted that the Petitioners' reliance upon the judgement of this Court in the case of **Apurva Natvar Parikh & Co. Private Limited** (supra) was also of no assistance to the Petitioners. He pointed out that, in fact, the judgement amplified the Respondents' case since the same expressly held as follows, viz.

"54. *The contention of the learned Advocate General based on the decision of the Apex Court in the case of Howrah Municipal Corporation v. Ganges Rope Co. Ltd. (supra) was that where applications are pending for grant of benefit in terms of clause (6) of Appendix-VII on 16th November 2016, they will be governed by the impugned notification. In the said decision in the case of Howrah Municipal Corporation v. Ganges Rope Co. Ltd. (supra), it was held that when application for grant of building permission is made, the same has to be decided in accordance with the rules prevailing on the date the application is considered and not the date on which it is made. With greatest respect, the application for grant of additional TDR made under clauses (5) and (6) of Appendix-VII in respect of a land surrendered by the owner or lessee on which he has constructed the amenity at his own cost cannot be equated with an application made for grant of building permission. In case of application invoking clause (6) of Appendix-VII, the condition precedent for grant of additional FSI is*

already complied with by spending considerable amount for developing amenity. The acquisition under clause (b) of sub-section (1) of section 126 of the MRTTP Act can be made only by mutual agreement and, therefore, it is open to the Municipal Corporation not to accept surrender of the land and in such a case, recourse can be taken to clause (a) or (c). In cases where such surrender has been accepted by the Municipal Corporation, a right accrues to the owner or lessee to get compensation in terms of clause (b) of subsection (1) of section 126 of the MRTTP Act as per DCRs prevailing on the date of surrender as the surrender takes place by a mutual agreement. In fact, on surrender, the vesting in the said Corporation is complete. After having accepted the surrender, if the Municipal Corporation refuses to give TDR as per the prevailing DCR on the date of surrender or on the date of completion of construction of amenity, it will amount to violation of the right under Article 300A of the Constitution. Hence, the argument of retrospective operation cannot be accepted.

- 59.** *An additional FSI or TDR in term of clause (6) of Appendix-VII as well as in terms of clause (1) of Regulation 33 becomes available on surrender of the land reserved with or without amenity as the case may be. After 17th June 2010, if there is a surrender of land reserved for road or road widening on which road is constructed by the owner or lessee, the FSI or TDR will be available in respect of amenity of road as per Regulation 33(1) as amended. Therefore, the right to get FSI/TDR accrues at the time of surrender. But on the*

ground of delay and laches, a Writ Court can refuse to enforce the right. We have already held that the decision of the Apex Court in the case of Howrah Municipal Corporation v. Ganges Rope Co. Ltd. (supra) will have no application to the case of grant of TDR. The reason being is that the provision in DCR for grant of TDR against surrender of reserved land or surrender of reserved land after developing the amenity thereon will have a direct nexus with clause (b) of sub-section (1) of section 126 of the MRTP Act. In a sense, the additional FSI or TDR is payable by way of compensation under clause (b) of sub-section (1) of section 126. Therefore, the argument that the notification dated 16th November 2016 will have retroactive operation in the sense that it will apply to all pending applications for grant of TDR cannot be accepted as the right accrues on the surrender of the land. Therefore, now we turn to the facts of individual cases.”

(emphasis supplied)

Basis the above, he submitted that there was no manner of doubt that the date which is to be considered for giving incentive TDR would be the date of surrender of the property in question and not the date on which such proposal was made.

18. Mr. Manek submitted that the Petitioners had failed to demonstrate as to how, in these circumstances,

there was a concluded contract between Respondent No.3 (MCGM) and thus reliance by the Petitioners upon the judgement of this Court in the case of ***Shree Vinayak Builders And Developers, Nagpur*** (supra) would be of no assistance to the Petitioners since the judgement in the said case made it clear that as per section 126(1)(b) of MRTP Act, a the right in favour of the Petitioner would only accrue on surrender of land or communication of acceptance of the condition to surrender the land, after approval of proposal for grant of TDR. Basis this, he submitted that in the facts of the present case, the land was neither surrendered before DCPR 2034 was notified nor had Respondent No.3 (MCGM) approved the proposal for the grant of TDR before DCPR 2034 had come into force.

19. Mr. Manek then invited our attention to Regulation 32 of the DCPR 2034 which he submitted replaced Regulation 34 of the DCR 1991. From Regulation 32 of the DCPR 2034, he pointed out that the same specifically provided grant of "*additional/incentive*

Transferable Development Rights (TDR) to the extent of 10% and 5% of surrendered land area shall also be allowed to the land owners who submit the proposal for grant of Transferable Development Rights (TDR) and if land is surrendered to MCGM within 24 months and 36 months respectively from the date of coming into force of these regulations". He thus submitted that Regulation 32 of the DCPR 2034 now made explicit what was previously implicit in Regulation 34 of DCR, 1991, i.e., there has to be surrender of the subject property to avail of the benefit of TDR.

20. Mr. Manek then submitted that since the Petitioners had surrendered the said plot to Respondent No.3 (MCGM) on 22nd March 2019, which was within 24 months from 2018, the Petitioners were entitled to only 10% of TDR and not 20% as claimed by the Petitioner. It was thus he submitted that because the Petitioners had failed to show (a) a concluded contract; (b) that Respondent No.3 (MCGM) had retrospectively applied the

new Regulation and (c) any vested right, this Petition deserves to be dismissed.

21. We have heard Learned Counsel for the Parties considered the rival contentions, the case law cited, as also the relevant provisions of the said Notification and the MRTP Act and have no hesitation in holding that the Writ Petition is entirely misconceived for the following reasons, viz.

A. A plain reading of clauses 4.1.2 and 7 of the said Notification read with Section 126 (1)(b) of the MRTP Act makes clear that the entitlement to the incentive TDR would only be upon *surrender* of the land in question and not merely on the filing of an Application within one year from the date of the said Notification. In our view, this was put beyond the realm of any doubt by the Division Bench of this Court in the case of ***Apurva Natvar Parikh & Co. Private Limited*** (supra), in which this Court specifically held "*the right to get FSI/TDR accrues at*

the time of surrender". Hence, the Petitioners' contention that a vested right had accrued in favour of the Petitioners on the filing of the said Application is also without any substance since, in fact, there was no surrender of the land at any time prior to the DCPR 2034 coming into force. The vested right, if any, might only have accrued in favour of the Petitioners had the Petitioners (i) surrendered the land or (ii) entered into an Agreement with Respondent No. 3 before the coming into force of the 2034 DCPR. Hence, the judgements in the case of **Apurva Natvar Parikh & Co. Private Limited** (supra) and **Shree Vinayak Builders And Developers, Nagpur** (supra) upon which the Petitioner placed reliance would thus have absolutely no application to the Petitioners' case. In fact, the observations in **Apurva Natvar Parikh & Co. Private Limited** (supra) support the Respondent's case.

B. The Petitioners' contention that a concluded contract had come into existence between the parties is also devoid of any merit. The LOI upon which the Petitioners have placed reliance explicitly records "... request to grant *"Development Right Certificates"* in lieu of the aforesaid land will be further considered after complying with following requirements". Thus, *ex facie*, the issuance of this LOI could never be construed to mean that a concluded contract between the Parties had come into force as suggested by the Petitioners. Also, it is crucial to note that though the Petitioner has relied on the letter dated 3rd May 2018 to submit that the Petitioners had complied with the conditions of the LOI, the Petition suppresses and makes no mention of the letter dated 20th July 2018 issued by Respondent No. 3 whereby Respondent No. 3 *inter alia* pointed out that LOI was not fully complied with. Thus, clearly, the letter dated 3rd May 2018 could never be construed to mean that the

Petitioners had complied with the LOI or had, by virtue thereof, surrendered the land in question.

C. Equally untenable is the Petitioners' contention that if the Petitioners were not granted the benefit of the incentive TDR under the said Notification, it would, in effect, amount to Respondent No. 3 retrospectively applying the provisions of the DCPR 2034. As we have already noted above, for any such vested right to have accrued in favour of the Petitioners, what was paramount was for the Petitioners to have, in fact, surrendered the said land. This surrender happened only on 22nd March 2019, after the DCPR 2034 had come into force. Hence, clearly, the said Notification would not apply to the Petitioners' Application. Given that we have held that there was, in fact, no retrospective application of DCPR 2034, the judgement in the case of **J S Yadav** (supra) and **Vishwas Bajirao Patil** (supra) upon which the Petitioners placed reliance would be of no application.

22. As referred to above, Clause 4.1.2 and Clause 7.1 of the Notification provide that the entitlement to additional TDR was only after the surrender of the land and that it was incumbent upon Respondent No.3 (MCGM) to verify and satisfy qua the ownership and title of said plot. Clause 4.1.2, read with Clause 7 of the said Notification, makes it clear that a claim for TDR could be considered when the subject property was surrendered to Respondent No.3 (MCGM) without any encumbrances. In the present case, the land was admittedly surrendered to Respondent No.3 (MCGM) by the Petitioners only on 22nd March 2019, which was (i) well beyond one year from the date of the said Notification and (ii) was also after the DCPR 2034 had come into force. Given such undisputed facts, the contentions about retrospectivity or entitlement cannot be accepted.

23. The Petitioners' reliance upon its architect's letter dated 3rd May 2018 was also entirely misplaced. Respondent No.3 (MCGM) had vide its letter dated 20th July 2018, in response to the Petitioners' architect's letter,

pointed out that the said plot was not *inter alia* accessible from the Municipal Road and there was also an ambiguity in the area of the said plot. It was brought to the Petitioners' notice that once all these lacunae in the Petitioners' application were filled in, the application *will be further considered after complying with following requirements*. The requirements or requisitions were never complied with before the notification, allowing additional TDR/FSI entered force. The compliances, if at all, were on or about 22nd March 2019, when the Petitioners actually surrendered the land in question. In such facts, none of Mr. Mone's contentions, including the contention based on the concluded contract theory, could be accepted.

24. Hence, for the aforesaid reasons, the Petition is dismissed. There shall be no order for costs.

(Arif S. Doctor, J)

(M. S. Sonak, J)