

Prasad Pandurang Tapkir and Anr. Vs. The Assistant Director of Town Planning, Pune District, Pune and Ors.

Civil Appeal No. _____ of 2026 @ SLP (Civil) No. 9666 of 2023 · Supreme Court of India · 2026-07-13 · Sanjay Kumar · K. Vinod Chandran · F2J-C-1100

Full judgment text

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Sanjay Kumar, J

1. Leave granted.
2. Denial of a refund to the appellants, Prasad Pandurang Tapkir and Shakuntala Pandurang Tapkir, is in issue.
3. By judgment dated 17.11.2022, a Division Bench of the Bombay High Court dismissed their writ petition on the ground that there was no provision for such refund in the statutory scheme. Hence, this appeal.
4. The appellants owned an extent of agricultural land in Survey No. 103/2/2 of Alandi Taluka in Pune District. They wanted to develop this land under the scheme for homogenous development in areas adjoining municipal corporation limits, formulated by the Government of Maharashtra, which enabled modification of the regional plan. On 25.05.2012, they sought conversion of the use of their land so as to undertake group housing construction thereon. In terms of the regulations framed, premium was payable for construction over and above what was permissible under the Floor Space Index (FSI) Regulations. On 18.06.2012, premium rates were notified by the District Collector, Pune District. On 30.08.2012, upon the appellants' request for extra FSI, the premium payable was determined and the appellants paid ₹30,46,290/- to the authorities. On 08.10.2012, the Sub-Divisional Officer, Khed, Pune, granted permission for such conversion and construction. However, the appellants abandoned their group housing construction plan and wanted to make plots instead. Their application dated 16.12.2013 in this regard was accepted and permission was granted to take up the plotting, vide order dated 19.04.2014, making it clear that the terms and conditions of the order dated 08.10.2012 would remain in force.
5. On 13.08.2015, the appellants applied for refund of the premium of ₹30,46,290/- paid by them, as they had not utilized the extra FSI. Their plea in this regard ultimately came to be rejected by the Assistant Director, Town Planning, Pune Branch, Pune, vide order dated 15.02.2020, on the ground that there was no provision in the Development Control Regulations permitting such refund. This order was challenged by the appellants before the High Court, by way of Writ Petition No. 9040 of 2021. The writ petition came to be dismissed by way of the impugned order. Therein, the Division Bench observed that wherever refund was permissible, the same was expressly provided for in the regulations and the appellants could not seek return of the premium paid by them, as refund thereof was not contemplated.
- The Bench noted that the State was not to blame for the failure of their project and it was the appellants themselves who had abandoned it. Pointing out that the regulation of FSI is in public interest but a privilege had been granted to the appellants upon payment of premium, the Bench held that it was for them to use the same as the process ended upon payment of such premium. The Bench opined that the decision not to utilize the privilege was entirely that of the appellants and, having relinquished the privilege granted, it was not open to them to seek refund of the premium from the public exchequer. The writ petition was accordingly dismissed.
6. At this stage, we may note that the High Court also held against the appellants on the ground of delay, as they had filed their first writ petition only in the year 2018. However, we find that the

appellants sought refund of the premium paid by them on 13.08.2015 itself. This claim on their part was within three years of making the payment on 30.08.2012 and the inaction of the authorities upon their request cannot be attributed to them as delay on their part.

In this regard, we may note that the Sub-Divisional Officer, Khed, Pune, addressed letter dated 19.11.2015 to the Assistant Director, Town Planning, Pune District, recommending the case of the appellants. Therein, he stated that as the appellants had not undertaken construction as proposed by them, it would be appropriate to refund the amount paid by them. Despite such recommendation, no action was taken by the authorities, constraining the appellants to approach the High Court by way of Writ Petition No. 8586 of 2018. The said writ petition was disposed of on 15.01.2020, directing the authorities to take a decision on the appellants' request for refund of the premium paid by them.

7. Pursuant thereto, the Assistant Director, Town Planning, Pune Branch, passed the order dated 15.02.2020. Therein, he referred to the letter dated 13.02.2020 of the Director, Urban/Town Planning, Maharashtra State, Pune, stating that GR No.TPS-1815/2647/CR-13/ 15/UD-13 dated 14.03.2016 permitted refund of premium paid for additional FSI for educational, medical institutions and star hotels but, as the present case involved premium for residential construction, those directions were not applicable. Reiterating this view, the Assistant Director rejected the appellants' plea for return of the premium, stating that there was no provision in the Development Control Regulations for such refund.

8. In this context, we may note that the Government of Maharashtra issued directives under Section 154 of the Maharashtra Regional and Town Planning Act, 1966, vide GR No. TPS-1815/2647/CR-13/UD-13 dated 14.03.2016, regarding levy and sharing of the premium between the Government and local authorities for granting additional FSI to educational, medical institutions, institutional buildings and star category hotels. The directives were applicable to the Pune Metropolitan Regional Development Authority also. Notably, reference was made therein to the earlier directives issued on 14.12.1998 and 26.06.2006, but the same have not been placed on record.

Thereafter, in exercise of power under Section 37 of the MRTP Act, the Government modified the Development Control Regulations of Greater Mumbai, 1991, vide Notice dated 08.08.2019. It was stated therein that provision was there for refund of the premium for additional FSI that was not utilized within four years for construction of educational, medical institutions, institutional buildings and star category hotels, by deducting 10% administration charges, but due to oversight the same was not incorporated in the regulations. Accordingly, exercising power under Section 37(1AA) of the MRTP Act, the Government proposed modification of the regulations, which was to come into effect forthwith, to enable refund of such premium.

9. Strangely, the Assistant Director of Town Planning, Pune District, Pune, filed a counter affidavit before us taking a stand contrary to what was stated in the rejection order dated 15.02.2020. He claimed that the premium paid for exemption of certain components from FSI computation was different from the premium paid to purchase additional FSI. According to him, the former is a charge while the latter is amenable to refund, if not utilized.

He asserted that the appellants' reliance upon the GRs dated 14.03.2016 and 08.08.2019 was misconceived, as those GRs pertained to the Municipal Corporation of Greater Mumbai area and had no application to Pune District. He further stated that the premium paid by the appellants was credited to the consolidated fund of the State and, in the absence of a regulation permitting refund thereof, return of the premium could not be claimed by the appellants, even if the privilege granted to them in relation thereto was not utilized.

10. As matters stand, the admitted position is that the appellants never undertook construction on their land as proposed by them. Further, the payment of ₹30,46,290/- made by them was for additional FSI for the group housing construction that they proposed to take up on their land. The verbal jugglery in the counter affidavit, so as to make out a difference between additional FSI and 'exemption of certain components from FSI computation' is ludicrous, as the effect of both is one and the same, i.e., extra FSI. In any event, the construction plan was given up and the appellants proposed to plot their land, which was permitted by the authorities on 19.04.2014.

Surprisingly, the terms and conditions of the earlier order dated 08.10.2012 were stated to be binding upon the appellants in relation to the proposed plotting. However, we find that there was no mention in the order dated 08.10.2012 about the premium paid by the appellants for additional FSI. The

appellants sought refund of the said premium on 13.08.2015. The first writ petition filed by them, viz., WP No. 8586 of 2018 was within three years therefrom and, consequent upon the order dated 15.01.2020 passed therein, the rejection order dated 15.02.2020 came to be passed, which was challenged by way of the subject writ petition filed in the year 2021. There was, thus, no delay on their part, so to speak of.

11. When it is not in dispute that the appellants did not utilize the additional FSI granted to them upon payment of premium of ₹30,46,290/- it was not just and fair on the part of the authorities to retain the premium paid by them, while permitting the change from construction to plotting, when no tangible benefit accrued to them therefrom. The ostensible justification offered by the State for doing so is that no specific provision is available in the statutory scheme for refund of such premium.

On one hand, the order dated 15.02.2020 stated that the refund could not be considered as the premium paid by the appellants was for additional FSI for residential construction whereas the regulations permit such refund for unutilized FSI relatable to educational and medical institutions, institutional buildings and star category hotels. On the other hand, the stand taken in the counter affidavit filed before us is that the regulations that permit such refund are applicable only to the Municipal Corporation of Greater Mumbai area and have no application in Pune District.

Further, it is stated that the Government Notification dated 28.08.2009, under which the appellants paid the premium for exclusion of specific areas from FSI calculation had no provision for refund. In the documents placed before us, we find reference to the Development Control Regulations for peripheral areas falling within 10 Kms. range from the boundaries of Pune and Pimpri Chinchwad Municipal Corporation, approved by the Government of Maharashtra, vide Letter No. TPS-1809/650/Pra.No.-1654/09/NaVi-13 dated 28.08.2009, but the same have not been produced. The claim in the counter affidavit, therefore, cannot even be put to test.

12. In any event, when the Government made provision for refund of the premium paid for unutilized additional FSI in relation to educational and medical institutions, institutional buildings and star category hotels in Mumbai, the same logic should apply to premium paid for unutilized FSI for residential constructions, be it in Mumbai or elsewhere in the State of Maharashtra. The effect of both is one and the same and by mere wordplay, the authorities cannot seek to distinguish between the two.

Further, the distinction sought to be drawn between areas coming under the jurisdiction of the Municipal Corporation of Greater Mumbai and other areas in the State of Maharashtra, including Pune District, is at variance with the policy underlying the directives issued by the Government of Maharashtra under GR dated 14.03.2016 with regard to levy and sharing of premium collected for additional FSI, not only in Mumbai, but in other parts of Maharashtra, including Pune District.

As noted earlier, the Development Control Regulations dated 28.08.2009, which are stated to have application in Pune District, have not been placed on record and, similarly, the earlier directives issued on 14.12.1998 and 26.06.2006, which find mention in the GR dated 14.03.2016, have also not been produced. Those directives were also issued in the context of the levy and sharing of premium collected for additional FSI. When such premium was being collected across the State and was being shared by the Government with the local authorities in different parts of the State, it is patently arbitrary and discriminatory on the part of the authorities to seek to distinguish between Mumbai and the rest of the State, when it comes to refund of premium for unutilized additional FSI.

13. The further distinction that has been drawn between additional FSI for educational and medical institutions, institutional buildings and star category hotels as opposed to additional FSI for any other constructions, including residential, equally defies logic. The authorities' decision in this regard does not manifest any reason as to why such benefit should be limited only to those identified buildings and to no other. Their action, therefore, suffers from sheer arbitrariness. That apart, discrimination is writ large on the face of it. Further, the refusal by the authorities to refund the premium paid by the appellants is also contrary to the principle of fairness, a facet of non-arbitrariness, intrinsic to and inherent in Article 14 of the Constitution.

14. In this regard, useful reference may be made to *E.P. Royappa vs. State of Tamil Nadu* and another², wherein a Constitution Bench held to the effect that equality is antithetical to arbitrariness as equality and arbitrariness are sworn enemies; one belonging to the rule of law in a republic, while the other, to the whims and caprice of an absolute monarch. The Bench observed that, where an act is

arbitrary, it is implicit in it that it is unequal, according to political logic as well as constitutional law, and would, therefore, be violative of Article 14.

It was held that Articles 14 and 16 strike at arbitrariness in State action, so as to ensure fairness and equality of treatment by requiring that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. Though, the above observations were made in the context of public employment, they would be equally applicable to any arbitrary action on the part of the State.

15. Again, in *Kumari Shrilekha Vidyarthi and others vs. State of U.P. and others*³, this Court observed that the philosophy of the Constitution does not contemplate exclusion of Article 14 - non-arbitrariness which is basic to rule of law - from State actions in the contractual field also, as all actions of the State are meant for public good and are expected to be fair and just. It was further observed that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity, contrary to the professed ideals in the Preamble.

It was held that the requirement of Article 14, being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. It was pointed out that there is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest.

16. Earlier, in *Ajay Hasia and others vs. Khalid Mujib Sehravardi and others*⁴, another Constitution Bench observed that, wherever there is arbitrariness in State action, whether it be of the legislature or of the executive or of an 'authority' under Article 12, Article 14 immediately springs into action and strikes down such State action. It was further observed that the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

Affirming this principle in *Dwarkadas Marfatia and Sons vs. Board of Trustees of the Port of Bombay*⁵, a 3-Judge Bench of this Court held that, where there is arbitrariness in State action, Article 14 springs in and judicial review strikes down such an action, as every action of the executive authority must be subject to the rule of law and must be informed by reason. It was concluded that whatever be the activity of a public authority, it should meet the test of Article 14. More recently, in *Securities and Exchange Board of India vs. Sunil Krishna Khaitan and others*⁶, this Court observed that the mandate of Article 14 of the Constitution requires fairness in every action by the State and non-arbitrariness in essence and substance.

17. Viewed in the backdrop of the above principles, the distinction sought to be drawn by the authorities between a case of unutilized additional FSI for educational institutions, medical institutions, institutional buildings and star category hotels as opposed to unutilized additional FSI for residential/group housing projects is bereft of rationale. There is no reason as to why unutilized additional FSI in the former case should be placed on a higher pedestal when compared to unutilized additional FSI in the latter one, in the context of refund of the premium paid for such unutilized additional FSI.

In fact, logic and fairness demand that premium paid for unutilized additional FSI for a residential/group housing project, which would eventually impact either an individual homebuyer or a developer, who would invariably pass it on to his homebuyer, should stand on a higher footing when compared to premium paid for unutilized additional FSI for commercial/semi-commercial buildings, wherein educational or medical institutions or any other institution or a star category hotel will be operated.

18. The policy of the authorities in permitting refund of the premium paid for unutilized additional FSI in the case of the aforesaid identified constructions while denying such relief to the appellants on the ground that they proposed to put up a group housing project on their land, therefore, defies comprehension and is, thus, clearly whimsical. The distinction drawn in that regard smacks of arbitrariness on the part of the authorities. The appellants would, therefore, be entitled to refund of the premium paid by them for the unutilized additional FSI, subject to deduction of 10% thereof towards administration charges, as was made applicable to the identified buildings under the extant policy.

19. The next issue is whether the appellants would be entitled to interest on the amount withheld from them for all these years. In that regard, we may refer to Chapter VI-A of the MRTP Act, which deals with development charges. Section 124H therein deals with the procedure for filing an appeal under Section 124G in relation to assessment and recovery of development charges under Section 124E. Section 124H(b) provides that an appellant who seeks to assail a notice of assessment, by way of an appeal under Section 124G, has to deposit the amount claimed in the notice of assessment together with the amount of interest, if any due thereon, for entertainment of such appeal.

Section 124I is titled 'Interest on amount of enhanced assessment or of refund' and states that, on the amount of difference payable on enhancement of assessment, pursuant to an order passed in an appeal under Section 124G, or any amount from out of the amount paid under Section 124H(b) that is required to be refunded to an appellant, as a result of the order passed in an appeal under Section 124G, interest @ 18% per annum shall be payable. Therefore, refund of the amount paid in the context of an appeal carries interest. However, as the issue presently hinges on a different foundation altogether, adopting the same rate of interest may not be justified.

20. On the above analysis, the appeal is allowed and the impugned judgment dated 17.11.2022 passed by the Bombay High Court as well as the rejection order dated 15.02.2020 passed by the Assistant Director, Town Planning, Pune Branch, Pune, are set aside. The appellants are held entitled to refund of the premium paid by them towards additional FSI, which was never utilized by them.

However, in terms of the norms applicable to other similar refunds, 10% out of the sum of ₹30,46,290/-, i.e., ₹3,04,629/-, shall be deductible towards administration charges. Interest shall also be payable to the appellants upon the amount that is refundable to them, which was retained by the authorities for more than a decade and a half.

The sum of ₹27,41,661/- shall, accordingly, be refunded to the appellants with simple interest thereon @ 7% per annum, from the date of deposit till the date of actual payment, within two months from today.

Pending application(s), if any, shall stand disposed of.

Parties shall bear their own costs.

.....J. [Sanjay Kumar]

.....J. [K. Vinod Chandran]

New Delhi;

July 13, 2026.

1 For short, 'the MRTP Act'

2 (1974) 4 SCC 3

3 (1991) 1 SCC 212

4 (1981) 1 SCC 722

5 (1989) 3 SCC 293

6 (2023) 2 SCC 643

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

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