(ARRAYED AS PARTY RESPONDENT AS
PER THE ORDER OF HON'BLE COURT DATED 17.01.2022)
... RESPONDENTS

(BY SRI. S N PRASHANTH CHANDRA, ADVOCATE FOR R1 TO R3;
SRI. G LAKSHMEESH RAO, ADVOCATE FOR R2;
SMT. PRATHIMA HONNAPURA, AGA FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE DIRECTION TO THE RESPONDENTS TO ISSUE DRC TO THE PETITIONER TO AN EXTENT OF 8794.31 x 1.5 EQUAL TO 13191.46 SQ MTS (141991.70 SQ FT) WITHIN A TIME TO BE FIXED BY THIS HONBEL COURT AND ETC.,

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY THROUGH PHYSICAL HEARING, THE COURT MADE THE FOLLOWING:-

ORDER

All these petitions broadly involving common grievances of the land losers are presented to the Writ Court essentially seeking a direction to the respondent BBMP for issuance of *'Transferable Development Rights'* (hereafter TDR) or *'Developmental Rights Certificates'* in respect of lands in question which they have relinquished in favour of BBMP years ago for the formation or widening of roads.

2. After service of notice, the respondent-State & its officials have entered appearance through the learned AGA; the respondent-BBMP & its officials are represented by their Senior Panel Counsel; similarly, the respondent-BDA & its officials are represented by their Senior Panel Advocate. The respondent-BBMP has filed a Statement of Objections in W.P.No.1440/2021 resisting the claim of petitioners. The said objections are adopted for the rest of petitions too. Learned Addl. Govt. Advocate and the Panel Advocates make submission seeking dismissal of the writ petitions principally contending that the lands are no longer required and that the same will be returned to the land owners.

3. **FACTS IN BRIEF:**

All the petitioners happen to be the erstwhile owners of the lands comprised in the subject Relinquishment Deeds. These lands along with other do figure in the Revised Master Plan, as being presumptively required for the public purposes mentioned therein i.e., road widening. The Relinquishment was

done more than five years ago and it was at the instance of BBMP which in turn was permitted to take these lands as per the Government Notification of 2005. This being, the TDR certificates have not been given to the petitioners despite representations. The BBMP now contends that these lands are no longer required and therefore, would be returned to the relinquishers. Even otherwise, the subject lands being situate outside its territorial jurisdictional limits, they cannot be made use of and therefore, TDR Certificates cannot be granted. With this principal stand dismissal of Writ Petitions is sought for.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

(a) Right to property although is no longer a Fundamental Right after 42nd Amendment to the Constitution, it is constitutionally secured. The Apex Court in *BAJRANGA vs. STATE OF MADHYA PRADESH*, (2021) SCC OnLine SC 27

reiterated: *"Right to property is still a constitutional right under Article 300A of the Constitution of India though not a fundamental right. The deprivation of the right can only be in accordance with the procedure established by law."* Ordinarily, the State takes the property of private persons either by consensual purchase or by compulsory acquisition, as provided under the law concerned. The latter is *inter alia* subject to payment of adequate compensation. The claim of petitioners has to be adjudged keeping this in mind.

(b) For conceptual clarity, it would be profitable to refer to '*Transferable Developmental Rights, Guidelines For Implementing of TDR Tools for Achieving Urban Infrastructure Transition in India'* (2020) published by the NITI AYOG:

> *"TDR means an award specifying the Built-Up Area (BUA) an owner of a site or plot can either sell or utilize – in-situ/ elsewhere, in lieu of the land foregone on account of surrendering / gifting land free of cost to the ULB's (Municipal Body, Urban Improvement Trust, Urban Development Authority), required to be set apart for public purpose as per the Master Plan or for road widening, recreational use zone, etc. The award is*

> *in the form of a TDR Certificate issued by the Competent Authority. The TDR Certificate inter-alia should mention the area surrendered and the cost of that area as per the circle rate. These certificates are regulated under the building Bye-Laws or in conjunction with TDR guidelines framed by State Governments from time-to-time…"*

With regard to TDR, before TDR was conceptualized, the like concepts of taxing and zoning in exercise of State interest were treated by the U.S. Supreme Court nearly a century ago in *VILLAGE OF EUCLID vs. AMBLER REALTY CO.* 272 U.S. 365 (1926). Long thereafter, the case of *PENN CENTRAL TRANSPORT COMPANY vs. NEW YORK CITY* 438 U.S. 104 (1978) addressed TDR as a flexible alternative to the payment of compensation to the persons who give up their properties and thereby get Enhanced Developmental Rights in some other property belonging to them. This idea was evolved on the premise of balancing landowners' interest with public interest. What Justice Antonio Scalia observed in *SUITUM vs. TAHOE REGIONAL PLANNING AGENCY* 529 U.S. 725 (1997) is profitably reproduced below:

> *"TDR, of course, have nothing to do with the use or development of the land to which they are (by regulatory decree) attached. The right to use and develop one's own land is quite distinct from the right to confer upon someone else an increased power to use and develop his land. The latter is valuable, to be sure, but it is a new right conferred upon the landowner in exchange for the taking, rather than a reduction of the taking… so also the marketable TDR, a peculiar type of chit which enables a third party not to get cash from the government but to use his land in ways the government would otherwise not permit, relates not to taking but to compensation.."*

(c) Our Apex Court deliberating on the nature of *TDR* in *JANHIT MANCH vs. STATE OF MAHARASHTRA* (2019) 2 SCC 505 at paragraphs 2, 3 & 4 has instructionaly observed:

> *"2…transferable development right (TDR) is* ***voluntary, incentive based program allowing landowners to sell developmental rights from their land to a developer or to other interested parties****, who can use these rights to increase the density of development at another designated location…3.In order to understand this concept, we would like to further elucidate that the object is to give compensation in a different way, to private landowners who have transferred a portion of their land to the Government as and when the Government has required such private land to build or expand public utilities like grounds, gardens, bus stands, roads, etc.* ***The alternate***

> ***mode of compensation, instead of payment of money is TDR, which is nothing but a development potential, in terms of increased floor space index (hereinafter referred to as "FSI") awarded in lieu of the area of land given, conferred in the form of a Development Rights Certificate (hereinafter referred to as "DRC"), by the Government.*** *Such TDR or DRC is negotiable and can be transferred for consideration, leaving it open for the owner of the acquired land to either use the TDR for himself or to sell it in the open market…4.The other concept which would have to be dealt with in the context of the present dispute is that of floor area ratio (hereinafter referred to as "FAR"), which is the ratio of a building's total floor area (gross floor area) to the total area of the plot. The concept of FAR can be utilised in the zoning process, to limit urban density.* ***It may be noted that often FAR and FSI are used as interchangeable terminologies*** *and what is taken into account is the carrying capacity/infrastructure and amenities of an area, which would, in turn, have a direct impact on public health, safety and the right to life of the occupants of the area."*

The Govt. of Karnataka vide Notification dated 18.1.2005 has promulgated certain terms & conditions for the grant of Transferable Development Rights by the Municipal Corporations. The same are justiciable since they have

statutory force by virtue of section 14B of the Karnataka Town and Country Planning Act, 1961, which the Notification itself in so many words mentions. The Apex Court while treating more or less a similar circumstance observed in *GODREJ & BOYCE MFG. CO. LTD. vs. STATE OF MAHARASHTRA* (2009) 5 SCC 24 observed as under:

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

(d) The Statement of Objection filed by Respondent – BBMP on 10.12.2021, refers to the Government Letter dated 12.12.2011 at Annexure – R1 thereto, which grants approval for having the lands for the purpose of widening of roads mentioned in Revised Master Plan 2015, even when these lands are situate outside the BBMP jurisdictional limits. The

BBMP at paragraph 2 of Statement of Objections specifically admits:

> *"Accordingly, BBMP identified certain lands including the land of petitioner which were falling within the BBMP limits for the purpose of road widening…the land of the petitioner is one such area earmarked for such purpose of development activities…"*

The BBMP also admits that it has secured the subject lands by way of registered Relinquishment Deeds. Thus, they lost the ownership of the lands and the BBMP gained the same in accordance with the statutory scheme. But for the assurance of TDR, the petitioners would not have surrendered their valuable lands, which admittedly are comprised in the Revised Master Plan. It is not that the BBMP or the Government has paid any compensation. The BBMP has not utilised the said lands is a poor justification for denying TDR. After the relinquishment, petitioners have no say over what the BBMP would do with these lands. The handing of TDR certificates is not dependent upon the proof of utilization of lands by the BBMP for the avowed purpose. If contention of BBMP is

accepted, petitioners who have lost their lands would not get either the compensation or the TDR and thus the action of the BBMP would amount to forfeiting private property without authorization of law and therefore, is violative of constitutional mandate enacted in Article 300A.

(e) The contention of respondent BBMP that it has not taken the possession of surrendered lands in question, is bit difficult to countenance for more than one reason: firstly, the Relinquishment Deeds that are placed on record are registered instruments to which BBMP is a party signatory and they specifically mention about delivery of possession. Secondly, it is the specific case of petitioners that all they have given up the possession of subject lands simultaneously with the execution and registration of Relinquishment Deeds. In fact, some of the petitioners have dismantled their structures that existed in few of these lands and thereafter handed the same to BBMP. Thirdly, petitioners specifically state that they are not in the possession of these lands. It is not the case of BBMP

that the petitioners obstructed or otherwise interfered with the BBMP utilizing these lands for any purpose. Even now, petitioners in all fairness state that the BBMP is free to do whatever it wants in the subject lands and that they shall be miles away from all that. If any of the petitioners or any one claiming under them takes up a plea/contention in any proceeding before any Court/authority inconsistent with what is stated herein above they can not only be prosecuted for trespass but tried for the offence of perjury and contempt.

(f) Petitioners acting on the statutory policy of the State and believing the words of Government and BBMP have surrendered valuable lands and thereby altered their position to their disadvantage and to the great benefit of BBMP. Thus, there is a fool-proof case for the invocation of doctrine of *estoppel* as enacted in Section 115 of the Indian Evidence Act, 1872. There is a State policy namely, the Government Notification dated 18.01.2005 promulgated under Section 14B of 1961 Act. Added, the government vide letter dated

12.12.2011 specifically assured about the TDR facility on the land being surrendered. It is pursuant to this the BBMP got these lands from the petitioner without paying any compensation or consideration. Years have lapsed since these lands have been surrendered. Thus a classic case is made out by the petitioners for invoking *promissory estoppel* as well. There is a choate cause of action for the grant of relief. The Apex Court in *MOTILAL PADAMPAT SAGAR MILLS vs. UTTAR PRADESH, AIR 1979 SC 621* expounding on the doctrine of promissory estoppel observed:

> *"The doctrine called 'promissory estoppel', 'equitable estoppel', 'quasi estoppel', and 'new estoppel' is a principle evolved by equity to avoid injustice where a promise is made by a person knowing that it would be acted on and it is person to whom it is made and in fact it is so acted on and it is inequitable to allow the party making the promise to go back upon it. … The basis of the doctrine is the inter position of equity, which has always true to its form stepped into mitigate the rigours of strict law…"*

(g) In relation to Bhopal Gas Tragedy, there was a case in a District Court in New York i.e., Un *IN RE: UNION CARBIDE CORPORATION GAS LEAK DISATER AT BHOPAL, INDIA IN DECEMBER 1984.* The MNC was seeking adjudication of the claims only in American Court alleging that Indian legal system is inadequate. A great jurist of yester decades Mr. N.A. Palkhivala in his personal Affidavit dated 18.12.1985 filed in the said court extolled the efficacy & greatness of Indian Judiciary, *inter alia* by referring to MOTILAL PADAMPAT *supra*. A part of what he said is worth reproducing:

> *"In Motilal Padampat Sagar Mills v. Uttar Pradesh (AIR 1979 SC 621) the Supreme Court took the doctrine of Promissory estoppel (which estops the government from pleading executive necessity and going back on its earlier promise) an important step further, and held that it was not merely available as a defence but could supply a cause of action for institution of legal proceedings."*
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> *"I have seen the Memoranda and Affidavits filed in opposition to Union Carbide's Motion regarding Forum Non Conveniens. In those papers its has been stated that the Indian legal system is "deficient: and "inadequate". I am constrained to*

say that it is gratuitous denigration to call the Indian system deficient or inadequate."

"The Indian judiciary is wholly competent to deal with any dispute in any field of law, in the 35 years of the history of our Republic, ably deait with far more complex issues than those arising from the gas plant disaster at Bhopal."

(See:'Mass Disasters and Multinational Liability: The Bhopal Case' by Upendra Baxi and Thomas Paul, Indian Law Institute, pages 223-225)

That being the position, petitioners are more than justified in seeking redressal of their grievance in constitutional jurisdiction by placing reliance on this decision.

(h) The contention of BBMP that the lands being no longer required, it would reconvey the same to the owners thereof, is thoroughly unjustified and unconscionable. As already mentioned above, petitioners gave up their lands years ago and free of cost, of course, the TDR being the assured recompense. They did it, not for getting the lands back that too at this length of time. No law nor any ruling is brought to the notice of this court which supports such a

stand of BBMP. It was open to the BBMP to stipulate a condition of reconveyance in the Relinquishment Deed itself, specifying the circumstances on which it could have structured defense of the kind. Such a condition conspicuously being absent in the deeds, this contention has to fail. The action of BBMP falls short of constitutional morality. This statutory authority which answers the definition of State under Article 12 of the Constitution cannot be permitted to resile from the its promise of issuing TDR Certificates more particularly in the teath of amended law. The Karnataka Town and Country Planning (Amendment) Act, 2021 which came into force *pendente lite* (w.e.f. 05.07.2021) also supports the case of petitioners. Sub–section 4A of the Amendment Act introduces a proviso to sub–section 10 of Section 14B of the principal Act, which reads as under:

> *"(4A) after sub-section (10), the following proviso shall be inserted, namely:-*
> *"Provided that, in cases where land has been procured and possession has been taken by the Public Authority five years or more prior to the date of commencement of the Karnataka Town and Country Planning*

(Amendment) Act, 2021 for the purpose specified above but no Development Right Certificate has been issued till the commencement of the said amendment Act, in such procurement process land owners shall be eligible for benefit of Development Rights as per the said amendment Act."

(i) Learned Panel Counsel for the answering Respondent lastly contended that the prayer of petitioners is only for the consideration of their representations at the hands of BBMP and therefore, no direction can be issued for the grant of TDR certificates. This argument is attractive, at the first blush. However, a deeper examination robs off all its attraction. As already mentioned above, the letter of Government granting permission to the BBMP for taking the lands in question was issued in 2011. Acting on assurance, petitioners surrendered their lands years ago. The BBMP has been holding on these properties since then. A specific stand is unjustifiably taken by the BBMP in their pleadings & submissions that no TDR Certificates can be granted. Added the prayer for a direction for the consideration of

representations is made only as an alternative to the principal prayer. Therefore justice will not be meted out by the issuance of only a direction to consider the representations when stand of BBMP is already known. '*Justice should not only be done, but seen to have been done*' said Lord Hewart in *REX vs. SUSSEX JUSTICES*, 1924 1 KB 256. It is pertinent to recall the following wise words of JUSTICE OLIVER WENDELL HOLMES in *DAVIS vs. MILLS*, 194 U.S. 451, 457 (1904):

> *"Constitutions are intended to preserve practical and substantial rights, not to maintain theories".*

In the above circumstances, these petitions succeed with the following order:-

(i) A Writ of Mandamus issues to the respondent-State and the BBMP to grant TDR Certificates to the petitioners within a period of three months. If delay is brooked, the BBMP shall pay cost to the petitioners at the rate of Rs.1,000/- per week per square meter of relinquished lands, in addition to risking in contempt action.

(ii) It is open to the petitioners to seek reconveyance of surrendered lands, if they so desire, and if representations to this effect are made, the respondent BDA shall reconvey the surrendered lands within eight weeks, failing which the same cost as prescribed above shall be paid, till that is done, in addition to risking in contempt action.

Liberty is reserved to the respondent-BBMP to recover the costs if & when paid, personally from the erring officials in accordance with law.

(iii) The above directions shall take effect only if petitioners file with the Registry of this Court and with the BBMP within four weeks an affidavit of Rs.100/- Non-Judicial stamp paper to the effect that the BBMP has been in the exclusive possession of subject lands and that they or anyone claiming under them shall not interfere with the same in any circumstance nor they shall claim any compensation or damages or return of the lands.

This Court places on record its deep appreciation for the assistance rendered by Mr.Faiz Afsar Sait, Law Clerk-cum-Research Assistant.

Now, no costs.

Sd/-
JUDGE

Snb/