



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7135 OF 2024

**M/s Shrinivasa Realcon Private Ltd. Vs. Deputy Commissioner Anti-
Evasion Branch, CGST & Central Excise Nagpur & others**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A.A. Naik, Senior Advocate with Mr. Abhishek Bhoot, Adv. for Petitioner
Mr. K.K. Nalamwar, Advocate for Respondents

**CORAM: AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATED : 8th APRIL, 2025

1. On 11.12.2024, while issuing notice we have recorded the following position.

“1. Heard Mr. A.A. Naik, Senior Advocate advocate for the petitioner.

2. The petition questions the notice dated 24.7.2024 (Page 120), by which the petitioner has been asked to pay the amount of tax as ascertained upon the transaction as contemplated by the agreement of sale dated 7.1.2022 under the terms of which the petitioner has been appointed as a developer by the owner, to develop the land of Plot No.2 admeasuring 8000 sq. ft., Mouza Lendra, into a multi-storied complex for the monetary consideration of Rs.7/- crores and two apartments as

indicated in clause (2) (Page 31). It also

challenges the second show cause notice dated 14.8.2024 (Page 123) by which GST has been claimed upon the aforesaid transaction in terms of clause (5-B) of the Notification dated 28th June, 2017 (Page 131) as it stands amended by the subsequent Notification dated 29th March, 2019 (Page 135).

3. It is contended, that the transaction as is witnessed by the Agreement of Development dated 7.1.2022 does not fall within the scope and ambit of clause (5-B) so as to attract G.S.T. as all that the clause indicates is a service supplied by any person by way of transfer of development rights or FSI for construction of a project by a Promoter. Prima face, on perusal of the agreement dated 7.1.2022 would indicate that it has nothing to do with supply of any TDR, which is defined under Regulation 11.2 of the Unified Development Control and Promotion Regulations for the State. It is material to note that the GST Act does not define what is meant by Transfer of Development Right (TDR).”

2. Mr. Nalamwar, learned counsel for the respondents today seeks to relate, Entry 5B in the Notification dated 29.03.2019 (page 135), to clause 18 of the agreement of development dated 07.4.2022 (page 35), to contend, that it would contemplate transfer and therefore, entry 5B would be attracted, so as to permit the respondents to levy GST upon the said transaction.

3. Entry 5B inserted in the Notification dated 28.6.2017 (page 131), reads as under :

(1)	(2)	(3)	(4)
“5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promotor	Any person	Promoter

4. A perusal of the language of entry 5B, above would indicate, that it relates to services which can be said to be supplied by any person by way of transfer of development rights or Floor Space Index (FSI) [including additional FSI] for construction of a project by a promoter. The expression “transfer of development rights” read in conjunction with ‘FSI’ as indicated in entry 5B, would only relate to a TDR (Transferable Development Rights) as contemplated by clause 11.2.2 under the regulations for grant of TDR in the Unified Development Control and Promotion Regulations for the State of Maharashtra, clause 11.2.1 of which defines transferable development rights, to mean compensation in the form of Floor Space Index (FSI) or development rights, which shall entitle the owner for construction of built up area

subject to the provisions in the said regulations. It therefore, follows, that the TDR / FSI as contemplated by entry 5B, cannot be related, to the rights which a developer derives from the owner under the agreement of development for constructing the building for the owners, in lieu of the owner agreeing to permit the developer to transfer certain built up units for consideration to be appropriated by the developer.

5. In the instant case, the agreement dated 07.4.2022 (page 27) is an agreement of development entered into between the petitioner and the land owner, in terms of which, the petitioner, has been granted right to develop the property in question by utilizing its present FSI or any increases thereof. Mr. Naik, learned Senior Counsel, upon instructions, submits, that in the execution of the agreement dated 07.4.2022 no TDR or FSI has been purchased by the owner or for that matter by the petitioner from any person / entity whomsoever.

6. Clause 18 relied upon by Mr. Nalamwar, learned counsel for the respondents merely indicates, that the owners shall sign and execute a deed of declaration under Section 2 of the Maharashtra Apartment Ownership Act, 1970,

submitting the entire scheme to the provisions of the Maharashtra Apartment Ownership Act and the execution of the apartment deeds in favour of each individual buyers to the nominees of the developers. It is, therefore, apparent, that the transaction as contemplated in terms of the agreement dated 07.4.2022 does not fall within entry 5B of the Notification dated 28.6.2017, as it stand amended by the Notification dated 29.3.2019, in view of which, neither the show cause notice dated 14.08.2023 (page 123) nor the consequent order dated 10.12.2024 (page 137), can be sustained and are hereby quashed and set aside. The petition is accordingly allowed in the above terms. No costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

MP Deshpande