SUPREME COURT OF INDIA

The Municipal Corporation of Greater Bombay & Anr.

Vs.

Yeshwant Jagannath Vaity & Ors.

2011) 11 SCC 0088

(V.R.Sirpurkar and T.S.Thakur,JJ.,)

17.03.2011

JUDGMENT

V.S.Sirpurkar,J.,

1. Leave granted.

2. Whether the High Court was right in directing the appellant The Municipal Corporation of Greater Bombay (hereinafter called "the MCGB" for short) to grant additional transfer development rights (hereinafter called "TDR" for short) and to issue further development rights certificate (hereinafter called "DRC" for short) equivalent to 2646.14 sq. metres (85 % of the area of a courtyard) developed by the respondents in favour of the appellants is a question that fall for consideration in this appeal.

3. By the impugned judgment, the Bombay High Court under Clause 6 of Appendix VII to the Development Control Regulation for Greater Bombay, 1991 (hereinafter called "the Regulations" for short) has issued such a direction in a writ petition filed by the respondents herein. Factual panorama

4. The respondents herein owned 10,000 sq. yards of land in Mulund village. A development plan was sanctioned for Greater Bombay in the year 1957. Mulund comes within the area of Greater Bombay. The said land was shown as reserved for public purpose of construction of a godown. Ordinarily, such land is acquired under the provisions of Land Acquisition Act, 1894. However, the respondents and the four other co-owners entered into a private agreement to hand over possession of 10,000 sq. yards to the MCGB for the temporary use as a truck terminal. The land was also to be used as a town duty office. The possession was handed over on 18.9.1961. An agreement was entered into between the respondents and the other co-owners with the MCGB wherein it was agreed that the respondents and the other co-owners would receive compensation of Rs.90,000/-. The land, though, was given in possession much earlier and there was an agreement dated 16.12.1967, it was not put to any use much less for the public purpose for which it was intended to be acquired. The land was not put to any other use also right till November, 31998. Hence, the respondents filed a writ

petition No.3437 of 1988 inter alia praying therein for a declaration that the land was not liable to be acquired. The writ petitioners demanded back the possession of 10,000 sq. yards. There was a compromise effected in this writ petition by order dated 10.3.1992 between the parties. Under the same, the MCGB agreed to acquire and retain the area of 3500 sq. metres for the purpose of establishing and constructing an export octroi office. The consent terms provided that appellant Nos.1 and 2, namely, MCGB and its Chief Engineer would hand over the remaining area to the respondents herein and the respondents herein would refund the amount of Rs.90,000/- with interest therein @ 10 % per annum from the date of payment till the date of re-payment to the MCGB. It was further provided in the consent terms that the respondents herein would be entitled to TDR to the extent provided in the Regulations in respect of 3500 sq. metres in lieu of the payment of Rs.90,000/- with interest. It was further provided in the consent terms that the MCGB would grant TDR in lieu of the said land measuring 3500 sq. metres subject to the compliance of various requirements by the petitioners as required under Regulation 34, Appendix VII of the Regulations. It was specifically provided by Clause 9 of the consent terms that if the petitioners constructed and developed export office for the MCGB on the aforementioned area of 3500 sq. metres and handed over the premises to the MCGB free of cost, the respondents would be entitled 4to the benefit of additional transferable development rights as per Regulation 6 of Appendix VII. The precise wordings of Clause 9 to the consent terms are as under: "9. The petitioners shall be entitled to the benefit of Additional Transferable Development Rights (hereinafter referred to as `ATDR'), if the petitioners are asked by the respondent No.1 to construct and develop the Export Office for the Corporation on the land so surrendered at their own costs and as per the plans and designs and specifications of the respondent No.1 and hand over the premises so constructed to the respondent No1 free of costs as per the sub- regulation 6 of Appendix VII of the Development Control Rules for Greater Bombay, 1991."

5. A letter was addressed by the Constituted Attorney of the respondents dated 18.4.1992 calling for a joint survey and demarcation and the engineer of the MCGB was requested to inform the details and specifications of the work which the present respondents would have to carry on to claim the TDR as per paragraph 4 of the consent terms and the additional TDR as per paragraph 9 of the consent order quoted above. The respondents were informed on 25.4.1992 that they would have to carry out the work of leveling the plots, construction of compound wall on three sides with gates, development of yard with asphalting and the construction of an export office building as per the specifications submitted by the Deputy C.E.(P & D)/ Municipal Architect by his communication dated 20.9.1991. The Constituted Attorney was directed to approach the concerned authority. On 25.5.1992, the Architect of the respondents made an application to the MCGB for grant of TDR in respect of 3500 sq. metres of area already surrendered by the respondents to appellant No.1. The petitioners also paid the sum of Rs.3 lakh 15 thousand (principal amount of Rs.90,000/- and the interest @ 10 % per annum) from the date of payment till the date of re-payment as agreed to in the consent terms. On 22.01.1993, the respondents addressed a letter to the Assessor and Collector asking for further details relating to the work to be carried out on the said 3500 sq. metres of land. On 5.3.1993 the Assessor and Collector of the appellant No. 1 herein addressed a letter to the respondents herein enclosing a sketch plan of for the proposed export office together with development of yard. It was informed in the said letter that as per

the directions of the Municipal Commissioner, additional TDR in lieu of the development of export yard and construction of office would be granted to the respondents. The respondents were also requested to expedite the work of construction of export office. On 7.6.1993, a letter was addressed by Municipal Architect to the respondents herein enclosing specifications for asphalting. It was 6mentioned that this work to be carried out under the supervision of Municipal engineer. By a further letter dated 23.6.1993, the Chief Engineer informed the petitioners that the development right certificate would be issued after compliance with certain additional requirements contained in the said letter. On 13.9.1993, the respondents herein wrote a letter to the Assistant Engineer informing about the various compliances and requesting for issue of development right certificate in respect of 3500 sq. metres. On 9.2.1994, it was informed by a letter that the respondents' right to grant development certificate would be considered after they commence the work of construction of the export office. Further on 22.2.1995, the Chief Engineer addressed a consent letter to the respondents certifying his no objection for constructing the export office building subject to the terms and conditions mentioned in the said letter. Condition Nos. 1 and 4 in the said letter are relevant for the issued involved. They are as under:-

> "1. That you will construct the Export Office building as per the plans & specifications of the Municipal Corporation enclosed herewith and the Municipal Corporation will grant the Transferable Development Rights equivalent to the builtup area of the Export Office. 4. That you will concrete/ asphalt the portion of the Export Office Yard around the Export Office building as per the specifications of MCGB and as given by the Chief Engineer (Roads & SWD) of 7 the MCGB. The work will be carried out under the Municipal supervision and certified by the Competent Authority. The Municipal Corporation will grant the benefit of Transferable Development Right in respect of the concrete/asphalted surface area around the Export Office building as and when the quantum of such TDR is decided by the Municipal Commissioner."

(emphasis supplied)

6. The petitioners constructed the export office and also developed the surrounding area. The possession of the export office and the courtyard was handed over to the the MCGB for which a possession receipt was also issued. Possession receipt mentioned the details of the constructed amenity as under:- "CTS No.137A Export Office Gr.FI.293.13 sq. Electric of village & chowky for m. 1st FI.170.15 fittings Mulund (East) octroi Deptt. sq.m. Exit. Fixtures as office 27.88 sq. advised by E.E.(Mech) & Water cooler- Total 491.16.sq.m. CTS No.137A Court yard of Area as shown by Electric of village Export office A B C D E F G H poles and Mulund (East) office I JK on the plan carriage duly certified by entrance to Roads Deptt. under plot & front No.DYCHE/1486/compound/ Rds.dt.23.2.96 wall."

7. An application was made by the respondents' Architect for DRC. On 19.1.1999, DRC for TDR in respect of export office being 491.16 sq. metres equivalent of the 100 per cent of the built up area of the export office was granted. However, insofar as the additional transferable rights in lieu of the development of the export courtyard surrounding the export 8office was concerned, the same was restricted to 466.96 sq. metres being 15 per cent of the built up area

of the courtyard. This was the first flash point. On 7.3.2000, the petitioners by their letter claimed that they were entitled to the additional transferable rights to the extent of 3113 sq. metres as against the development of the courtyard of export office on which they had done the asphalting work. On 27.6.2000, the Chief Engineer refused to grant further additional TDR contending therein that the TDR issued was in accordance with the BMC policy. Once again, a demand was made by communication dated 6.7.2000 for the balance area and also requested the MCGB for the particulars of the alleged policy. It was informed herein that there was a circular dated 9.12.1996 which formulated the policy. The respondents were invited for discussion. A contempt application was also filed by the respondents being Contempt Petition No.116 of 2000, contending therein that the consent order dated 10.3.1992 was violated. The said contempt petition was dismissed holding that there was no willful disobedience. On 23.12.2003, the respondents again addressed a letter to the MCGB calling them upon to grant further DRC for the remaining 85 per cent of the area of the courtyard and since the demand was not met, the writ petition came to be filed.

8. The writ petitioners-respondents mainly relied on the consent terms dated 10.3.1992 and, more particularly, on Clause 9 and contended that 9they were entitled to the benefit of additional TDRs as they had developed not only the export office of the MCGB but also done the asphalting work of the surrounding area, more particularly, in accordance with the Regulations. Appendix VII, Sub-Clause 6 of Regulation 34 of the Regulations were also reiterated in the letter issued by the Chief Engineer dated 22.12.1992. Further condition No. 4 provided that the MCGB will grant benefit of transferable development rights in respect of the agreed asphalted surface area, the export office building as and when the quantum of such TDR is decided by the Municipal Commissioner was also relied upon. They pointed out that the Municipal Commissioner could not have relied on a subsequent circular dated 9.12.1996 and had to go strictly by the language of Clause 6 of Appendix VII of Regulation 34 of the Regulations under which they were entitled for an area equivalent 100 per cent of the area of the courtyard which they had developed. In short, they pointed out that limiting that area only to 15 per cent and granting DCR only in respect of that much of area was wholly illegal.

9. On the other hand, it was contended on behalf of the appellants herein that Regulations 33 and 34 of the Regulations were only enabling provisions and did not create any legal right to get additional TDR. The appellant also relied on the circular dated 9.12.1996 and it was contended that as per this circular various amenities were described where 100 per 1cent FSI was admissible in respect of some amenities and in respect of others only 15 per cent of additional development rights could be admissible. It was mainly contended that the courtyard and the development therein did not amount to an amenity within the meaning of Section 2 (7) of the Regulations. The High Court allowed the writ petition. It was held that the Regulations had statutory force and Clause 6 of Appendix VII of Regulation 34 of the Regulations provided for benefit to be enjoyed by a person who constructed the amenity. Relying on the plain language of Clause 6, it was held that the respondents herein were entitled to 100 per cent DCR rights. The High Court also held that the aforementioned circular dated 9.4.1996 was of no consequence vis-`-vis the specific language of Clause 6 of Appendix VII Regulation 34 of the Regulations. The High Court also relied on the judgment

of this Court reported as Godrej & Boyce Manufacturing Co. Ltd. v. State of Maharashtra & Ors. [2009 (5) SCC 24]. The High Court came to the conclusion that the above mentioned decision of this Court applied on all fours to the present matter.

10. Shri Uday Lalit, learned senior counsel appearing on behalf of the appellants herein firstly contended that the above mentioned decision was distinguishable. According to him, in that decision the Court was considering whether a road constructed by the owner would entitle the 1owner to additional TDR. He further argued that the road was undoubtedly an amenity under Maharashtra Regional and Town Planning Act (hereinafter called "the Act" for short) as also under the Regulations. Learned counsel further argued that in the present case the additional TDR was being claimed on the basis of the work of asphalting of the courtyard and, therefore, it could not be held to be an amenity entitling the owner to the additional TDR.

11. It was further submitted that the circular dated 9.4.1996 had no bearing in Godrej & Boyce's case (cited supra) since it was issued after the land owners had surrendered their plot of land after construction of the roads as required by the Municipal Council while in the present case the said circular was issued prior to the respondent Nos.1 and 3 completing the construction of an export office and asphalting of the courtyard and handing over the possession. The counsel further urged that the question arising in the present case was different in the sense that in the present case, the question was whether under sub-regulation 6 of Appendix VII of Regulation 34, it was mandatory for the Commissioner or the appropriate authority to grant 100 % TDR equivalent to the entire area of the courtyard. Lastly, it was contended that in Godrej & Boyce's case, the difference between Regulations 5 and 6 of Appendix VII was not noticed.

12. The learned senior counsel also urged that Clause 6 applied only to the developed or constructed amenity and asphalting the courtyard could not be covered under the same. Our attention was drawn to the definition of `amenity' and it was contended that the courtyard could not be covered under the same. The learned senior counsel further urged that the High Court had not properly interpreted the consent terms as also Clause 4 of the letter dated 22.2.1995. It was urged that that unlike sub-regulation 5, the wording in sub-regulation 6 confers a discretion on the authority. Our attention was drawn to the difference in language by contending that while in clause 5 the wording used is "shall be equal to" and in clause 6, the same was "may be granted". Our attention was also drawn to the phraseology used in the two clauses. While in clause 5, the wording used was "equal", in clause 6 it was "equivalent". It was also urged that by circular dated 9.4.1996, arbitrary exercise of discretion by the Commissioner was avoided and that was the main purpose of bringing in the circular. The same provided definite guidance in respect of the extent of TDR that was to be granted by the Commissioner /competent authority. Lastly, it was urged that asphalting of the courtyard was a separate activity. It had got nothing to do with the consent terms. As regards the letter dated 22.2.1995, and more particularly, clause 4 therein, it was urged that under the same the respondents had specifically agreed that the quantum of the TDR to be granted was to be decided by the Municipal 1Commissioner and, therefore, the respondents could not turn back and urge that they would be entitled to the 100% TDR.

13. As against this, Shri Ashok H. Desai, learned senior counsel appearing on behalf of the respondents pointed out that the matter was fully covered by the decision in the aforementioned case of Godrej & Boyce (cited supra). The learned senior counsel pointed out that it was a misnomer to say that asphalting was not an amenity. He pointed out that unless the asphalting was done, the basic purpose of constructing the octroi duty office would have been frustrated as there would be no place for the large number of vehicles to be parked. The learned counsel also pointed out, relying on the provisions of DCR, that the courtyard, though was separately mentioned and explained in the Rules, the asphalting therein would certainly be an amenity. The counsel urged about the letter dated 22.2.1995, that even if it was the discretion to decide about the quantum of grantable TDR, the said discretion could not have been used in contravention of the Regulations. He pointed out that on that date, the circular was nowhere which came much later and as such it could not have been made applicable with retrospective effect. The learned senior counsel also urged that the interpretation put forward by the appellants of Clauses 5 and 6 was incorrect and in fact there was very little or no difference. The learned senior counsel stressed the implication of Clause 16 and pointed out that there was no scope for the interpretation tried to be put forward by the appellant MCGB. Learned senior counsel wholly supported the High Court judgment.

14. It will be our task to examine as to whether the aforementioned ruling in Godrej & Boyce's case (cited supra) clinches the issue. The factual scenario in both the matters is almost identical. The only difference is that in that case, the land owners had developed the roads while in the present case, the land owners have developed the courtyard by asphalting the same. In Godrej & Boyce's case (cited supra), the reliance was only on the same circular dated 9.4.1996 issued by the Municipal Commissioner of the MCGB. That was by far the only defence. In that case, the State had argued that the law provides for the grant of additional FSI or TDR commensurate to the value of the amenity constructed by the landowner and the meaning of Para 6 of Appendix VII to the Regulations would be clear by reading it alongwith other provisions of the Regulations and the parent Act. The State had argued that the said circular dated 9.4.1996 was clarificatory and fully applied to the claims of the appellants in that case which were even prior to the said circular being born. After taking the full resume of the provisions of the Act as also the Regulations, the Court went on to hold firstly that as per Regulation 2(2) of the Regulations, any terms and expressions not defined in the Regulations 1shall have the same meaning as in Bombay Municipal Corporations Act, 1888 and the Rules and Bye-laws framed thereunder, as the case may be, unless the context otherwise required. The Court then went on to hold that the term "amenity" which was defined under Regulation 3 Clause (7) was much restricted than the one given under the Act, inasmuch as the sport complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals were not included in the definition of "amenity". The Court, however, found that the road was common to definitions, both, under the Act and the Regulations and it was defined in the widest possible terms in Clause (76) of Regulation

15. After considering the concepts like "floor spare index (FSI)", "Additional FSI" and "TDRs", the Court considered Appendix VII referred to in Regulation 34 of the Regulations, the Court then took the stock of the argument that the envisaged grant of FSI or TDR was under two separate heads, one, for the land and the other for the construction of the amenity for which the land was designated in the development plan, at the cost of the owner. The Court referred to Section 2(9-A), as also to Section 126(1)(b). Taking note of Para 6 of Appendix VII of the Regulations, the Court noted that the additional DR for construction of the amenity for which the surrendered plot was designated in the development plan at the 1owner's cost provided for a further DR in the form of FSI "equivalent to the area of the construction/development". The Court also noted the argument that this grant of additional DR could not be on a sliding scale for construction/development of different kinds of amenities on the surrendered land and thus, it could not be reduced or curtailed. After taking into consideration the circular dated 9.4.1996 and noting, particularly, para 3 thereof, the Court also noted that in that case, the earlier granted TDR @ 15% was increased to 25%. The Court also noted the further argument that the Regulations framed under the Act had statutory force as held in *Pune Municipal Corporation Vs. Promoters and Builders Assn*[1].
As against this, the circulars issued by the Municipal Commissioner were simply executive instructions and thus could not override or supersede the provisions of the Regulations. The Court also noted the argument that since the Municipal authorities were fully aware and conscious of this legal position, they had requested to the State Government to suitably modify Para 6 of Appendix VII of the Regulations. The non-retrospectivity of the circular dated 9.4.1996 was also noted.

16. All these arguments were tried to be countered in that case, basically on the ground that the grant of additional TDR for construction of all different kinds of amenities equal to the area of the construction was 1illogical, unreasonable and discriminatory. It was also urged that the law contemplated grant of further additional TDR commensurate to the value of the land constructed/developed on the surrendered land. This argument was specifically refuted. In the present case, Shri U.U. Lalit also tried to argue the same aspect that as against the value or the expenditure spent for asphalting, the claim for TDR over the area would be an excessive claim if the values are to be compared. In short, the argument was that the value of asphalting would be nothing in comparison to the claim of 100% TDR for the whole courtyard. The Court did not accept this proposition which was accepted by the Bombay High Court in that case. Relying on the language of Section 126(1)(b) and the use of the word "against" therein in respect of the area of the land surrendered and the further use of the word "against" in respect of the development or construction of amenities of the surrendered land, the Court held that what was contemplated by law was to recompense the landowner. However, Para 5 of the Appendix VII to the Regulations used the words "equal to the gross area of reserved plot", and, therefore, there was no difficulty insofar as the bare land was concerned The Court then went on to consider the effect of the words "equivalent to the area of the construction/development" in Para 6 of the Appendix and noted in paragraph 58 of the judgment to the effect that the argument on behalf of the Government, though not without substance, had to be rejected as it was not in keeping with the law as it stood and, 1therefore, the value of the development/construction could only be made the basis for granting additional FSI or TDR by making suitable amendments in the law and not by an executive

circular. In short, the Court came to the conclusion that (1) construction of the road was undoubtedly an "amenity", (2) under the express language of Section 126(1)(b) read with Para 6 of the Appendix VII, the use of the word "equivalent" would entitle the owner of the building to 100% for the construction of an amenity at owner's cost, and (3) a subsequent circular would be of no consequence and would not have the effect of overriding the provisions of the Regulations as envisaged in Appendix VII and clauses 5 and 6.

17. In view of this unequivocal declaration of law by this Court in the aforementioned case of Godrej & Boyce (cited supra), in fact, law seems to be fully settled against the appellants. It is, however, argued that asphalting of the courtyard could not be said to be an "amenity". The argument must fail as the very stance on the part of the MCGB to provide 15% of additional TDR for asphalting the courtyard would contain an admission that asphalting of the courtyard would amount to an amenity. Had it not been so, the MCGB could have conveniently said that it would not provide even 1% of additional TDR to the respondents herein. Further, considering the definition of "amenity" under Regulation 3(7) of the 1Regulations, which includes open spaces, parks, recreational grounds, play grounds etc., we have no difficulty in holding that asphalting the courtyard would certainly amount to an amenity. The building offered to be constructed by the respondents herein was an export office. Considering the overall situation prevailing in Mumbai, the asphalting of the whole courtyard and thus providing parking lot would certainly amount to an amenity. After all, the office, by its very nature, would attract trucks and other vehicles. In the absence of an asphalted large area, the office could possibly not be a feasible idea. On this count, the argument of the appellants must fail.

18. Shri U.U. Lalit, learned senior counsel appearing on behalf of the appellants then urged that the respondents herein had specifically agreed in the letter dated 22.2.1995 and more particularly in terms of para 4 thereof that the Municipal Corporation will grant the benefit of TDR in respect of the concrete/asphalted surface area around the Export Office building as and when the quantum of such TDR is decided by the Municipal Commissioner. It was very earnestly argued by the learned senior counsel that thereby the respondents had compromised their rights and had left it to the discretion of the Municipal Commissioner and, therefore, they could not turn around and say that it was not for the Municipal Commissioner then to decide the quantum as per his own 2discretion. The argument is clearly incorrect for the simple reason that on the day when this letter was signed, the aforementioned circular dated 9.4.1996 was nowhere in existence. The respondents, therefore, had no reason to believe that the Municipal Commissioner would decide to scale down the entitlement which they legitimately expected because of clauses 5 and 6 in Appendix VII. The aforementioned letter merely provided that the quantum could be decided in terms of the area of courtyard to be developed and the grant of TDR would depend upon as to whether that much area was fully developed as per the satisfaction of the Municipal Commissioner. The scope of Para 4 could not be taken beyond this.

19. Shri Lalit, learned senior counsel, relying on clause 15, also argued that the land owner was to get the TDR only on the land being levelled to the surrendering ground level and a 1.5 metres high compound wall was constructed with a gate, at the cost of the owner. That may

be so; however, in our view, the agreement on the part of respondents to construct such a compound wall and gate and to do the levelling of the land before handing over the land admeasuring 3500 sq. metres, would be of no consequence insofar as the present controversy is concerned. The further argument of the learned senior counsel about the difference in the phraseology in clauses 5 and 6 i.e. the word "equal" having been used in clause 5 and the word "equivalent" having been used in clause 6 would 2also be of no consequence as, in our opinion, the same has been concluded by the aforementioned ruling of this Court in Godrej & Boyce's case (cited supra) against the appellants, and, therefore, the argument that it gives a discretion to the Municipal authorities to scale down the grantable TDR, does not impress us.

20. That apart, in the aforementioned ruling in Godrej & Boyce's case (cited supra), the Court has clearly held that in a circular, the Corporation could not have created divisions in the total amenities in the sense that it could not have chosen to grant 100% of additional TDR in favour of some amenities and 15% in case of some others.

21. Shri Lalit, learned senior counsel has also reiterated the argument regarding the value of construction vis-`-vis the grant of TDR, which question, in our opinion, is not open in view of the unequivocal finding given on that question in the aforementioned ruling in Godrej & Boyce's case (cited supra). It was tried to be suggested that in asphalting of the courtyard there was no element of development as, according to the learned senior counsel, the term "development" meant building, engineering, mining or other operations in, or over, or under land or the making of any material change in any building or land. The argument is wholly incorrect, as had 2this not been development, the MCGB would not have agreed to provide even 15% of the TDR therefor.

22. Lastly, Shri Lalit, learned senior counsel urged that the ruling in Godrej & Boyce's case (cited supra) was distinguishable inasmuch as under the said ruling what was considered was the construction of road which was not equivalent to asphalting of a courtyard. We have already pointed out that the question was not of the construction of a road or asphalting of a courtyard; the question was whether it was an amenity. Once it is held as an amenity, there will be no question of refusing the right of equivalent TDR there for. It was then urged that the circular dated 9.4.1996 in Godrej & Boyce's case (cited supra) was issued after the land owners had surrendered their plot of land and completed the construction of roads as required by the Municipal Corporation, whereas in the present matter, the circular was issued "prior to" completion of the construction of the export office by respondents 1 to 3 and asphalting of the courtyard and handing over of the possession by them. In our opinion, this cannot be the distinguishable feature, as under any circumstance, the circular dated 9.4.1996 was issued much after the compromise in the writ petition and the issuance of letter of intent dated 22.2.1995.

23. No other point was urged before us.

24. We are, therefore, of the clear opinion that the High Court was right in allowing the writ petition and granting 100% TDR as against the development of courtyard by asphalting the same. We find no merits in the appeal. The appeal is, therefore, dismissed. No costs.

Judgment Referred.

[1] *(2004) 10 SCC 0796*