

3. The Applicant further submits that in this Rejoinder, he shall traverse through the core points which are pertinent to the issues at stake. Accordingly, whatever has not been denied specifically, not be construed as being any admission which shall be adverse to the underlying cause of this Original Application.

4. The core point, which emerges from this Affidavit-in-Reply, is that the Municipal Commissioner grants relaxations under the provisions of Regulation 6 (b) of the Development Control and Promotion Regulations for Greater Mumbai, 2034. Such a position is untenable in a country governed by the "Rule of Law". The reasons why such a position is untenable are given hereunder:

5. REASONS:

5.1 REASON NO. 1:

Commissioner has got no powers to relax a provision if it affects health of the people – Lack of Open Spaces adversely affects the health of the people:

The Applicant submits that the core of the reasoning of this Respondent, which justifies his action of reducing open spaces, like reducing the mandated open spaces from 20 metres to mere 1.5 metre, is that Regulation 6 (b) of the Development Control and Promotion Regulations for Greater Mumbai, 2034 permits the same to be done.

In particular, this Respondent has stated as under:

“c. Further, as per regulation 6(b) as mentioned above, Municipal Commissioner may for reasons to be recorded in writing, by special permission permit any of the dimensions prescribed by these Regulations to be modified, except those

relating to floor space indices unless otherwise permitted under these Regulations. Accordingly, report was submitted to Chief Eng.(D.P.)/Municipal Commissioner for approval of various concessions and same is approved by the Municipal Commissioner vide online note sheet dated 25.04.2023.

d. Considering facts mentioned above, the approval granted by Municipal Corporation is as per DCPR 2034 and policies in force prevailing as on the date of CRZ Notification 2019. Also, MCZMA has granted the NOC for the proposed redevelopment. Hence, there is not violation with respect to CRZ Norms.”

In this reference, the Applicant states that the reasoning given by this Respondent as above is legally untenable. This is because the *Municipal Commissioner has got no powers to grant any relaxation in open spaces, if it were to adversely affect the health of the people.* This exclusion of the powers of the Municipal Commissioner is apparent from a plain reading of the said Regulation 6 (b) which is quoted hereunder:

“6. Discretionary powers

(a) In conformity with the intent and spirit of these Regulations, the Municipal Commissioner may: -

... ..

(b) In specific cases where a clearly demonstrable hardship is caused, the Commissioner may for reasons to be recorded in writing, by special permission permit any of the dimensions prescribed by these Regulations to be modified, except those relating to floor space indices unless otherwise permitted under these Regulations, **provided that the relaxation will not affect the health**, safety, fire safety,

structural safety and public safety of the inhabitants of the building and the neighborhood.” (Emphasis supplied).

The Applicant submits that from the above-mentioned legal provision it is clear and apparent that the powers of relaxation can be invoked only if the said relaxation **“will not affect the health of the inhabitants of the building and the neighborhood.”**

However, it is a well-accepted fact that lesser than prescribed open spaces or deficient open spaces shall be detrimental to health. These open spaces are required for the following reasons:

- Dispersal of pollutants.
- Tree plantation.
- Fire-safety.
- Providing holding area of water during heavy rains.
- Permeation of ground water to recharge the aquifers.
- Reduction of urban heat island effect.
- Reduction of the effect of wind-tunnels.
- To provide sunlight, which is a very important source of Vitamin-'D', which is critical for the health of bones and also for the prevention of diabetes. An article of American Diabetes Association, based on several studies titled – “Low Vitamin D May Contribute to Insulin Resistance” is hereto annexed and marked as **ANNEXURE-‘A-1’**.
- To provide for adequate spaces during construction phase for the construction machinery to be accommodated inside the compound, otherwise these machinery occupy spaces on public road abutting the site and thereby creating traffic jams

and pollution lasting 3 to 5 years, which is generally the time taken to complete the construction of a skyscraper.

In view of the above, it is apparent that open spaces are required for the health of the people, both for those who live in the buildings as also those who are in the neighbourhood. For this reason, the Municipal Commissioner has got no powers to relax a stipulation related to open spaces.

5.2 REASON NO. 2:

That open spaces have a bearing on health has been mandated by the Hon'ble Supreme Court in Civil Appeal No. 5041 of 2021 [Arising out of SLP (C) No. 11959 of 2014) Supertech Limited v. Emerald Court Owner Resident Welfare Association & Ors.]:

The Applicant submits that as stated in the previous paragraph, the Municipal Commissioner can relax an open space stipulation only if it does not affect the health of the people. In this reference, in addition to the reasons given in the previous paragraph, the Applicant would seek to quote from the ruling of the Hon'ble Supreme Court in *Civil Appeal No. 5041 of 2021 (Arising out of SLP (C) No. 11959 of 2014) Supertech Limited v. Emerald Court Owner Resident Welfare Association & Ors.* At paragraph 67 of this ruling the Hon'ble Supreme Court has held as under:

“As a matter of first principle, we are not inclined to adopt the construction proposed by the appellant. It will deprive the residents of urban areas of the amenities of light, air and

ventilation which are essential to maintaining a basic quality of life.”

Thus, if the Hon'ble Supreme Court has mandated that open spaces are necessary for **“light, air and ventilation which are essential to maintaining a basic quality of life”**, in that case the decision of the Commissioner to reduce the prescribed open spaces from 20 metres to mere 3 metre or 1.5 metres or even less than 1 m, would completely upset the inference of the Hon'ble Supreme Court as quoted above.

5.3 REASON NO. 3:

Reduction in open spaces would create inequality before law – violation of Article 21 of the Constitution of India:

The Applicant submits that the very reason to have a law is that it ought to be complied with in letter and spirit. If any relaxation is done to the law, in that case it would create a discriminatory situation, where laws would be applied unequally on a case-to-case basis.

In the cases referred to in the Original Application, there is a system where across the board relaxations are given in a dramatic manner on a routine basis. Once influence is imposed on the Municipal Commissioner, maybe through the advice of a Liaison Centre, the Commissioner then reduces the open spaces from 20 metres to 3 m or 1.5 m or even less than 1 metre, for a 40-Floor building.

In fact, in this segment of implementation of the law the "Rule of Law" has collapsed, a situation which cannot be permitted to exist in view of the provisions of Article 14 of the Constitution of India.

5.4 REASON NO. 4:

Being a rule emanating from an environmental Legislation, the Coastal Regulation Zone Notification, 2019, has to be strictly construed:

The Applicant submits that in the Original Application he has traversed through in detail as to how the Coastal Regulation Zone Notification, 2019, classifies Mumbai to be environmentally vulnerable and requires a special consideration.

From the Affidavit-in-Reply of this Respondent it is apparent that the Municipal Commissioner in his orders have not applied his mind over this aspect which is specific to the Coastal Regulation Zone Notification, 2019.

It is also pertinent to note that in such a case, where the Coastal Regulation Zone Notification, 2019, apprehends environmental vulnerability, the 'Precautionary Principle' ought to be strictly construed and thereupon the Notification has to be strictly applied.

Unfortunately, when the Municipal Commissioner passed orders to reduce open space from say 20 metres upto less than 1 metre, he did not bear in his mind the considerations of the 'Precautionary Principle' and the stipulation placed in the Coastal Regulation Zone Notification, 2019, that Mumbai requires a special consideration due to its vulnerability.

5.5 REASON NO. 5:

The Hon'ble Supreme Court in the case of *K. Ramadas Shenoy* has ruled that a building plan approval cannot be in violation of the Regulations:

The Applicant submits that in the case of *K. Ramadas Shenoy v. Chief Officer, Town Municipal Council, Udipi* 1974 AIR 2177, the Hon'ble Supreme Court ruled as under:

“The Municipality acts for the public benefit in enforcing the Scheme. Where the Municipality acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. **If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the Courts. If sanction is given to build by contravening a bye-law the jurisdiction of the Courts will be invoked** on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative [See *Yabbicom V. King* [1899] 1 Q. B. 444].” (Emphasis supplied).

The Applicant submits that the act of the Municipal Commissioner falls squarely within the ruling of the Hon'ble Supreme Court quoted above. Therefore, the Municipal Commissioner has got

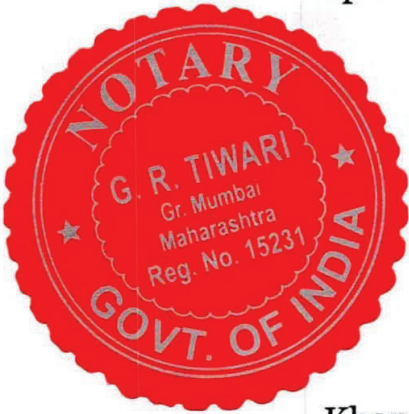
no powers to relax the Regulations related to open spaces, which dramatically reduces open spaces from substantial to negligible levels.

In other words, the Municipal Commissioner cannot arrogate to himself the powers to reduce substantial open spaces to negligible open spaces, as that would affect the "Right to Life" of the general public.

6. Considering what has been stated above, the contentions placed by this Respondent in his Affidavit-in-Reply be rejected and commensurately, the prayers made in the Original Application be upheld and thereby made absolute.

Yogesh Pratap Singh

APPLICANT



VERIFICATION

I, Yogesh Pratap Singh, resident of 1501, Harisiddhi Heights, Khan Abdul Gaffar Khan Road, Mumbai – 400030, do hereby verify that the contents of aforesaid paras are true to my personal knowledge and the rest of the paragraphs are believed to be true on legal advice and that I have not suppressed any material fact.

Yogesh Pratap Singh
Signature of the Applicant

DATE: December, 2024

PLACE: Mumbai

BEFORE ME

G. R. Tiwari
G. R. TIWARI
M.A.,LL.B.
ADVOCATE & NOTARY GOVT OF INDIA
Mumbai, Maharashtra
Reg. No. 15231



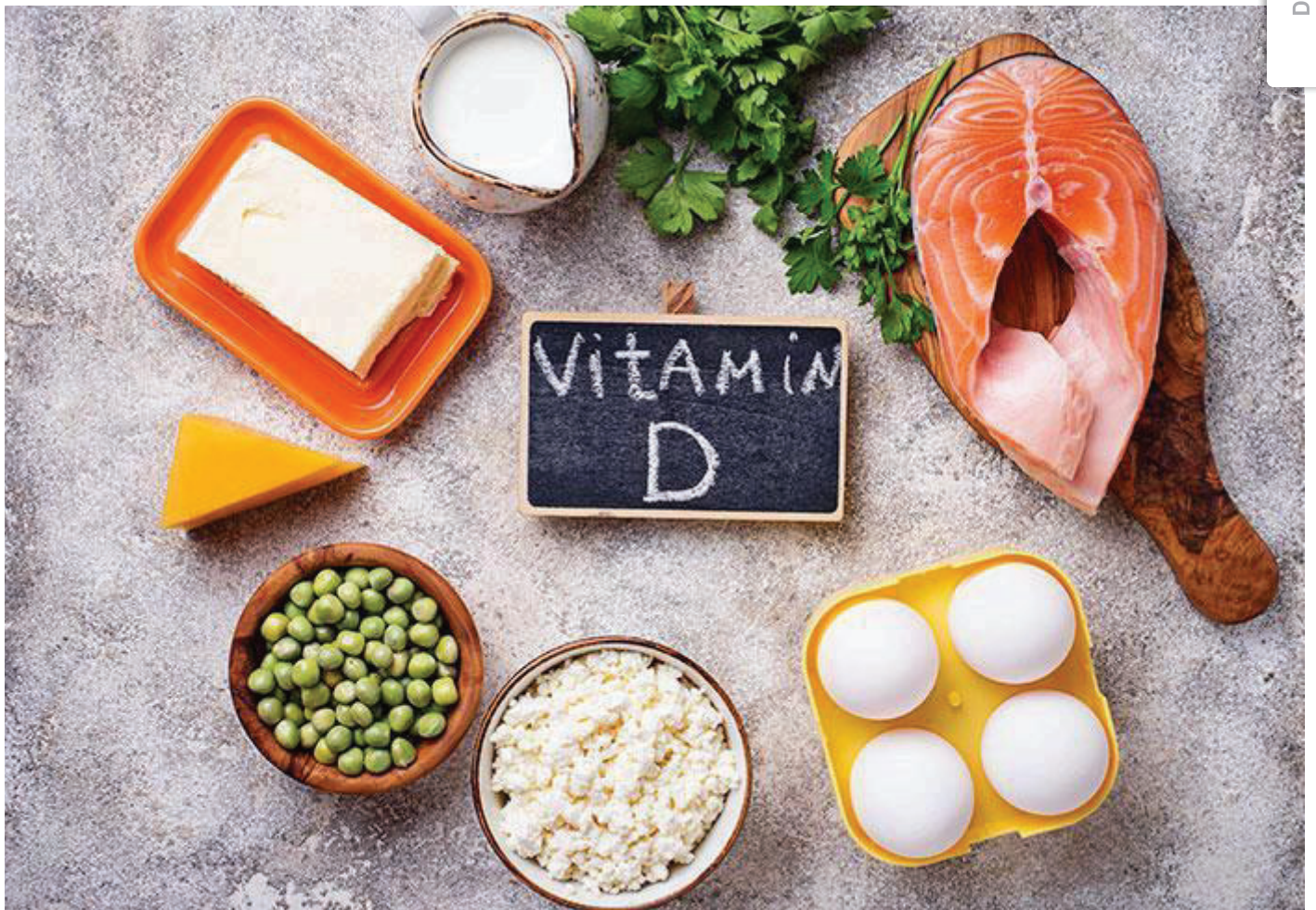
G. R. TIWARI (Notary Govt. of India)
NOTARIAL REGISTER
Sr. No. 1111 3 DEC 2024

FOOD & NUTRITION

Low Vitamin D May Contribute to Insulin Resistance

Many studies have looked at the role of vitamin D in diabetes and have shown an association between low levels of vitamin D and increased risk for type 2 diabetes and its complications. And what's concerning is that low levels of vitamin D—also dubbed the “sunshine” vitamin—are all too common, especially among older adults and people of certain ethnic/racial groups.

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How Vitamin D Helps Foot Ulcers

One recent study linked low vitamin D levels to a higher likelihood of foot ulcers in older people with diabetes. The study was the first to assess vitamin D levels among people who were in the hospital with a diabetic foot ulcer. Vitamin D levels were found to be steadily lower as the severity of the ulcer worsened. In fact, people with the most favorable foot ulcer (least severe based on the grading scale), had vitamin D levels that were more than twice that seen in people with the worst stage or grade of ulcer.

The study included 339 people aged 60 to 90 who were in the hospital with type 2 diabetes, 204 with and 135 without foot ulcers. Most people, 8 out of 10, had vitamin D deficiency (generally defined as less than 50 nmol/L or less than 20 ng/mL). But vitamin D deficiency was more common among those with a diabetic foot ulcer compared with those without.

Researchers said the findings should encourage patients to ask about screening for low vitamin D with a simple blood test and/or whether they should be taking vitamin D supplements, which may help lower risk for foot ulcers. The study also showed that how long someone had diabetes and having high systolic blood pressure (the top number) also increased risk of foot ulcers.

How Vitamin D Helps Your Body Use Insulin

Another study tied higher vitamin D to a lower risk of insulin resistance, when the body is unable to respond to or use the insulin that it's producing. Researchers found that the chance of developing insulin resistance went down with each additional amount of vitamin D supplement taken. Researchers say this might indicate that vitamin D3 is a protective factor in the occurrence of insulin resistance because it helps lower inflammation and inflammation raises your risk for insulin resistance.

More studies are needed to understand the relationship between vitamin D and insulin activity and whether it's different for certain groups of patients.

Did you know?

- About 4 in 10 adults are vitamin D deficient, meaning they don't get or make enough
- Vitamin D is found in just a few foods, such as fortified milk and cereals, egg yolks, and fatty fish such as salmon, mackerel, and sardines
- It's called the "sunshine" vitamin because we mainly get it from sunlight
- Low vitamin D can affect bone health and it's also been linked to depression, low energy and certain skin and other conditions

Discover Your Vitamin D Levels

If you're unsure what your vitamin D levels are, talk to your doctor about getting tested, and ask them about nutrition and how to make sure you have healthy levels of vitamin D and other essential nutrients.

Sources:

<https://doi.org/10.21203/rs.3.rs-1613316/v1> 

<https://doi.org/10.1186/1758-5996-5-8> 



American Diabetes Association

2451 Crystal Drive, Suite 900
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