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From: secretariat [secretariat@mchi.net]
Sent: Friday, July 26, 2013 11:25 AM
To: 'President-MCHI-CREDAI'; 'Hon. Secretary - MCHI-CREDAI Nainesh Shah'; 'MCHI-CREDAI – CEO'
Cc: 'anjana.chheda@yahoo.co.in'; 'Goyal'
Subject: Civil Court have no jurisdiction to try the issues relating to Sec. 351(A) or 354(A) of the MMC Act.
Attachments: Order dtd. 17 July 2013.pdf

Ref. No. MCHI/GEN/13-14/023

July 26, 2013

To,
All Members of MCHI-CREDAI & MCHI-CREDAI Units

Sub: Civil Court have no jurisdiction to try the issues relating to Sec. 351(A) or 354(A) of the MMC Act.

Ref: High Court, O.O.C.J., Writ Petition (L) No. 1709 of 2013, Abdul Razzaq Sunesra V/s. Municipal Corporation of Greater Mumbai

In the above matter, the Petitioners had challenged the Constitution validity of Sec. 515A reads as under;

“Save as otherwise provided in this Act, any notice issued, order passed or direction issued by the Designated Officer, under Section 351 or 354A shall not be questioned in any suit or other legal proceedings.”

By this amendment jurisdiction of the Civil Court is taken away.

The Petitioner has challenged the Constitutional validity of the amended provisions of Section 515A, on various grounds;

- A. The challenge to the constitutional validity of Section 515A is on the following grounds which have been urged at the hearing:
- (i) No requirement of a hearing has been stipulated in subsection 1(A) of Section 351 and in Section 354A;
 - (ii) Before initiation of an action under Sections 351 and 354A, a designated officer must be satisfied that the structure is unauthorized and he may pass an order of demolition;
 - (iii) Prior to the insertion of Section 515A, access to the civil courts was not barred, whereas, as a result of the bar of jurisdiction contained in the newly added provision, no civil suit can lie for the purposes of questioning an order, notice or direction issued under Section 351 or Section 354A of the Act;
 - (iv) Even though a structure is unauthorized, the statute does not mandate that it shall be demolished since under subsection 2 of Section 351, the designated officer may require the removal of the structure. An adequate machinery has not been provided in the statute for adjudication of all issues that may arise in the context of an action initiated against an unauthorized construction and consequently the bar of jurisdiction under Section 515A is arbitrary, and violative of Article 14 of the Constitution.

The Hon'ble Court has held that the requirement of compliances with the principle of natural justice does not necessitate a personal hearing. It is a well settled law that under Sec. "9" of the CPC action of civil nature can be barred by statute and moreover merely absence of appellate validity does not render a provision unconstitutional.

In substance, in view of this amendment the city civil court will have no jurisdiction to try any suit challenging the notice u/s. 351 and 354(A) of the MMC Act. If any person is aggrieved by the said notice or the order of the designated officer can avail the remedy under article 226 of Constitution of India.

A copy of the order dtd. 17th July 2013 is annexed for perusal.

Regards,

Sd/-

A. H. Chheda
Legal Advisor, MCHI-CREDAI