



G. E. VAHANVATI
ATTORNEY GENERAL FOR INDIA

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Legal/Confidential

To,

The Municipal Commissioner
Municipal Corporation of Gr. Mumbai
MUMBAI

Dear Sir,

In the matter of the judgment of the Supreme Court dated 17th December, 2013, a Case for Opinion was sent to me on 31st December, 2013, raising certain issues of practical consideration for implementation of the judgment, particularly, in respect of Issues 1 and 4.

I had a detailed conference today at which Mr. J.J. Xavier, (Advocate and Deputy Law Officer), along with two Executive Engineers from Building Proposal Section of Development Plan Department Mr. Sandip M. Gaiwal, representing Suburb Area and Mr. C.H. Kandalkar, representing City Area were present.

After a lengthy discussion with the Executive Engineers it appears to me that this judgment will make Redevelopment in the city of Mumbai virtually impossible. Several important questions arise which require the immediate filing of a Review Petition in the first instance and, thereafter, if necessary, a Curative Petition.

In the first place it appears to me that the manner in which this matter proceeded throws up serious questions of jurisdiction. Special Leave Petition (Civil) No. 33402/2012 arose in a specific case against the Order of the Division Bench of the High Court dated 9th July, 2012, pertaining to Kohinoor City Infrastructure Co. Pvt. Ltd.

In the Supreme Court itself, after some hearings, a settlement was arrived at between the parties. This settlement was the subject matter of an order dated 25th July, 2013.

Thereafter, certain "issues" were sought to be framed. It is difficult to understand how these issues could arise in a proceeding which was disposed off. The extended proceeding cannot be described as a PIL, nor did consideration of these further issues arise by virtue of Article 142 of the Constitution of India. The parameters and limits of Article 142 are also clear and laid down in a series of judgments of the Supreme Court. It can be shown that the further proceedings did not arise.

The Court virtually undertook the exercise of Reviewing certain portions of the Development Control Regulations, 1991. Under the Maharashtra Regional and Town Planning Act, 1966 there is a well defined procedure for review and consideration of the Regulations. This is a statutory exercise. The suggestions and objections are to be

called for and the parties concerned have to be heard. No Public Notice seems to have been issued by the Court in these proceedings, even if it was to be assumed that such a "statutory" exercise was being undertaken. The hearing has been limited and the factual impact has not been placed before the Court.

Town Planning and Regulations are a matter for experts. Apart from this, can, for instance, one Regulation, namely, DCR 23 be elevated to a level of an immutable principle? Is the principle of "reading down" at all applicable? What would have happened if DCR 23 was proposed to be deleted from the Regulations?

Discussion with the Executive Engineers shows that by reason of this judgment redevelopment in the Island City as well as in the Suburbs will come to a halt/standstill. It is practically impossible to implement this judgment. Para 40 of the judgment, which makes an exception in the Commencement Certificate granted is hardly the way to look at the matter.

This apparent "relaxation" is no relaxation at all. So many steps have to be taken before Commencement Certificate is issued. Occupants/tenants are shifted from the old buildings, transit accommodations have been provided and thereafter the old buildings are required to be demolished along with compliance of other conditions of approval before grant of Commencement Certificates. Several steps have already been taken. Now if, at this stage, plans have to be resubmitted, the Projects will become completely unworkable. Therefore, it is necessary that a full and detailed Note be prepared in respect of the various pending projects in the City to show the huge effect and impact of this judgment.

In paragraph 38 of the judgment the Court has noted the judgment in the case of Jayant Achyut Sathe. In that case the Supreme Court set aside the judgment of the High Court which read the additional requirements in to Regulation 33(7). The present judgment completely ignores this judgment of the Supreme Court itself and reinstates what was held to be impermissible in Jayant Sathe's case. This, by itself, raises some issues which I do not want to elaborate at this stage.

I am, therefore, of the opinion that having regard to the huge consequences of this judgment, all the necessary information on the lines which I have suggested above, should be collected and a Review Petition be immediately filed in this behalf. I repeat that it is absolutely necessary that detailed facts have to be brought on record to show the impact of this judgment with regard to Regulation 33(7), (8) (9) and (10), and development in Suburbs

With regards,

Yours sincerely,



(G.E. Vahanvati)

Attorney General for India