

MCHI
Managing Committee
2011 - 2012

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(MCHI Mira Virar City Unit)

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(MCHI Kalyan-Dombivli Unit)

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Rakesh Sanghvi

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Ajay Ashar - Secretary

(MCHI Thane Unit)

Shrikant Shitole - Secretary

(MCHI Kalyan-Dombivli Unit)

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(MCHI Mira Virar City Unit)

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(MCHI Raigad Unit)

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(MCHI Navi Mumbai Unit)

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(Late) Lalit Gandhi

(Late) Babubhai Majethia

Ref. No. MCHI/SEC/11-12/107

September 20, 2011

To,
ALL MEMBERS OF MCHI

Dear Sirs,

Sub: Transfer fee of 50% levied by Municipal Corporation on their leasehold plot.

In Mumbai, there are about 4000 Municipal Leasehold properties. There are two types of clauses in the lease documents executed by MCGM with the Lessees. There are :

1. Not to assign or transfer the premises hereby demised or any part thereof for the whole of the term hereby granted without the previous consent in writing of the commissioner to such assignment or transfer.

OR

2. So often as the said premises or any part thereof shall by assignment or transfer or by death or by operation of law or otherwise howsoever become assigned or transferred for the Estate in perpetuity hereby granted to cause every deed or instrument of assignment or transfer and every probate of a will or letters of Administration Decree order certificate or other document effecting or evidencing the assignment or transfer to be left within a period of four calendar months after the date of such document and for seven days at least at the office of the Corporation PROVIDED ALWAYS that the time occupied in registering any document with the Sub-Registrar of Assurances shall not be included in computing the period aforesaid AND in case the commissioner shall deem it necessary or advisable to take legal advice as to any such assignment or any other document on demand to pay to the Corporation all costs which the commissioner may incur in and about the obtaining of such advice as aforesaid.

As regarding the lease clause stated in category 2, the corporation started recovering 7% premium of the total consideration amount mentioned in the documents for the transfer since 2003. Subsequently, the improvement committee / Corporation vide resolution No. 185 dated 26th March 2008 and 81 of 7th April 2008 revised premium of transfer of lease to 50% adopting Government policy.

It was felt that these transfer fee is exorbitant and without authority of law. MCHI decided to challenge the same in High Court. MCHI filed Writ Petition under No. 2370 of 2006 challenging the policy of the Corporation levying 7% transfer fee on leasehold Property which was enhanced to 50%. The said Petition alongwith 3 other petitions came up for final hearing in High Court. After hearing the



Maharashtra Chamber of Housing Industry

Maker Bhavan - II, 4th Floor, 18, Vithaldas Thackersey Marg, New Marine Lines, Mumbai - 400 020.
Tel.: 42121421 • Fax : 40020362 • E-mail : secretariat@mchi.net • Website : www.mchi.net

Advocates of all the parties by common order Hon'ble Mr. Justice D. K. Deshmukh & Mr. Justice N. D. Deshpande has hold that the Corporation was not entitled to claim premium for taking entry about assignment of the leasehold rights i.e. transfer fee as there is no provision in any law nor there was contractual terms permitting Corporation to recover transfer fees. As prior permission is not contemplated, there is no question of the Corporation levying any penalty and/or transfer fee for assigning the leasehold rights without prior permissions of the corporation. The Demand Notice by the Corporation in that regard is without authority of law. In the light of this observation the Petitions were allowed. The amount that might have been collected by the corporation pursuant to the Demand Notice which have been paid in these petitions, are directed to be refunded by the Corporation after adjusting any legal demands that may be due to the Corporation from the Petitioners within a period of eight weeks from the date of order.

The Municipal Corporation aggrieved by these orders and filed four Special Leave Petitions in Supreme Court of India. These matters came up for admission before Hon'ble Mr. Justice Aftab Alam & Hon'ble Mr. Justice R. M. Lodha on 12th September 2011. Shri Goolam E. Vahanvati, Attorney General for Municipal Corporation & Dr. A. M. Singhvi, Sr. Advocate, Mr. Milind Sathe, Sr. Advocate & Mr. Ranjit Shetty, Advocate & Mr. Mukul Rohatgi, Sr. Advocate, Ms. Indu Malhotra, Sr. Advocate, Mr. Chirag Shroff, Advocate & others appeared for the Respondents.

Shri Gulam Vahanvati contended that the Hon'ble High Court has not examined all the Lease Deed of all the MCHI members. Therefore, the matter should be remanded. Shri Milind Sathe made the statement that there are two Petitioners alongwith MCHI and the cancellation or withdrawal of the Demand Notice will be applicable to the Petitioners who are party to the Petition only. In view of this order if any member has paid the transfer fee on the leasehold property covered under category 2, can make representation to the Corporation for refund as it is upheld with Municipal Corporation has no power to recover transfer fee. If the Corporation fails to consider the representation in that event such member will have to file separate petition for refund. Copy of the Mumbai High Court judgement and Supreme Court Judgement is enclosed for your ready reference.

Thanking you,

Yours Sincerely,

For Maharashtra Chamber of Housing Industry


Boman Irani
Hon. Secretary

Encl : As above