

PRESIDENT
Vimal Shah

IMMEDIATE PAST PRESIDENT
Paras Gundecha

PRESIDENT-ELECT
Dharmesh Jain

VICE PRESIDENTS
Mayur Shah
Nayan Shah
Deepak Goradia
Boman R. Irani

HON. SECRETARY
Nainesh Shah

HON. TREASURER
Sukhraj Nahar

CEO
S. Shahzad Hussain
I.A.S. (Retd.)

HON. JOINT SECRETARIES
Harish Patel
Ashok Mohanani
Sandeep Runwal
Bandish Ajmera

JOINT TREASURERS
Lakshman Bhagatani
Mukesh Patel

CO-ORDINATORS
Rasesh Kanakia
Jagdish Ahuja
Pujit Aggarwal
Parag Munot

COMMITTEE MEMBERS
Jayesh Shah
Nayan Bheda
Sanjay Chhabria
Rajendra Chaturvedi
Shailesh Sanghvi
Tejas Vyas
Jitendra Jain

INVITEE MEMBERS
Sandeep Raheja
Munish Doshi
Domnic Romell

PAST PRESIDENTS
Sunil Mantri
Pravin Doshi
Mohan Deshmukh
Mofatraj Munot
Niranjan Hiranandani
Rajni S. Ajmera
G. L. Raheja
Lalit Gandhi
Babubhai Majethia

MCHI-CREDAI UNITS

President, Thane
Suraj Parmar

President, Kalyan-Dombivli
Johar Zojwalla

President, Mira Virar City
Ashit Shah

President, Raigad
Vikas Bhamre

President, Navi Mumbai
Arvind Goel

Ref. No. : MCHI/PRES/14-15/131

February 6, 2015

To,
Hon'ble Shri M. Venkaiah Naidu
Minister of Parliamentary Affairs, Urban Development
Housing & Urban Poverty Alleviation,
Nirman Bhawan,
Government of India,
New Delhi - 110011.

Sub: Effect of the Repeal of Urban Land Ceiling Act, 1976 (Urban Land Ceiling Repeal Act/ Principal Act)

Ref: (1) High Court order dtd. 3rd September 2014, in Writ Petition No. 9872 of 2010 passed by Hon'ble Full Bench

(2) Supreme Court Order dtd. 10th November 2014 & 6th January 2015 in MCHI's ULC SLP No. 29006 of 2014.

Respected Sir,

MCHI-CREDAI is an apex body consisting of members from Real Estate Industry among Mumbai Metropolitan Region (MMR) in State of Maharashtra. The focus of our Chamber is not only to provide Affordable Housing to buyers but also, is for meditating and negotiating with Central and State Governments for the purpose of Policy making and growing Economy for the State, through Real Estate sector.

We are very happy that, the Maharashtra Government has put one Giant step further by taking initiative for making its new Housing Policy for Development sector related to Real Estate Industry. Since, few months after BJP-Shivsena alliance Government takeover in Maharashtra, many positive changes have happened in various departments for their Policy formation and 'Ease of Doing Business in Construction Industry'.

Some issues relating to the Repeal of Urban Land Ceiling Act, 1976, are put herein below for your kind consideration;

1. The Urban Land (Ceiling and Regulation) Act, 1976 ("the Principal Act") came into effect on 17th February 1976, when Proclamation of emergency was in operation. The Principal Act was enacted to provide for implementation of a ceiling on vacant land in urban agglomerations, acquisition of lands in excess of the ceiling limit prescribed in the Act. Chapter III of the Principal Act contemplates vesting in favor of State and taking over possession of the surplus vacant land.
2. Sections 20, 21 and 22 empower the Government to exempt surplus vacant land from the operation of the Act subject to such conditions as the Government may deem fit. Section 20 contemplates the following two circumstances under which an exemption can be granted:-

- (i) That it is necessary or expedient in public interest to exempt the land from the operation of the Act;
 - (ii) Such exemption order is to be made if the Government is satisfied that otherwise the holder would be subject to undue hardships.
3. Sections 20, 21 and 22 also contains provisions for recalling/cancelling the exemption orders in case the holder of the exemption order commits a breach of any of the conditions subject to which the exemption orders are issued. If exemption orders are withdrawn or cancelled on account of the holder committing breaches thereof, then it was open to the Government to apply Chapter III of the Principal Act.
4. The Urban Land (Ceiling and Regulation) Repeal Act 1999 ("**the Repeal Act**") was passed by the Parliament in the year 1999 during the tenure of Bharatiya Janta Party rule at Central Government. The Principal Act was repealed as the same failed to achieve its objective as expected. In fact, on the contrary the Principal Act pushed up land prices, practically brought the Housing Industry to a standstill and provided opportunities for corruption. The Principal Act stood repealed in the State of Maharashtra w.e.f. 29th November, 2007 as the Repeal Act was adopted by the State of Maharashtra by passing a Resolution.
5. The Repeal Act contains two important provisions; one in section 3 and the other one in section 4. Section 3 contains the saving clause and section 4 deals with abatement of all proceedings under the provisions of the Principal Act. It is evident that the Repeal Act has come into force in a way so as to destroy the impact of the Principal Act, completely as far as possible. In fact Sections 3(2) and 4 of the Repeal Act clearly show that the Government has no power to take possession of any exempted surplus land and all pending proceedings abate and therefore, the question of initiating any question of initiating any fresh proceedings does not arise. It is pertinent to note that Sections 21 and 22 of the Principal Act have not been saved while passing the Repeal Act.
6. In Writ Petition filed by MCHI, the Full Bench of the Hon'ble High Court has interpreted that by way of exercising power under Section 20(2) of the Principal Act even after repeal, fresh proceedings can be initiated whereas Section 4 of the Repeal Act clearly provides for abatement of all proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of the Repeal Act.
7. It is to be noted that several other High Courts in the Country, i.e. High Courts of Madras, Andhra Pradesh and Delhi, have taken the view that section 3(1)(b) of the Repeal Act does not save the Schemes sanctioned under Section 20(1) of the Principal Act. The said Schemes cannot be enforced post repeal of the Principal Act.
8. In the order of the Hon'ble Madras High Court, after quashing the impugned notice issued by the government of Tamilnadu, after Repeal of the Act, it went on to observe, "*It is not even open to the State to take any action for the alleged violation of conditions, even if any*". It is settled proposition of law that if Public

Authority wants to take any action to the detriment of its citizens it must be backed by the Authority of Law. And once the Principal Urban Land Ceiling Act is not in force, the power u/s. 20(2) of the Act, with the Government ceases to operate. Therefore, from the High Court orders and the reading of the cases, it appears that the State Government does not have the authority of law to take any action on account of such breaches, non compliances and request for change of use or extensions. The Provision of the Principal Act, after the repeal, are therefore not available to the State.

9. The view taken by the Full Bench of the Hon'ble Bombay High Court is also contrary to the law laid down by the Hon'ble Supreme Court of India while interpreting the provisions of the same Repeal Act, particularly Section 3(1)(a).
10. Being aggrieved by a Judgment of the Full Bench of the Hon'ble Bombay High Court, MCHI has filed Special Leave Petition (Civil) No.29006 of 2014. The Hon'ble Supreme Court of India has granted Interim reliefs against the State of Maharashtra. The same is pending before the Hon'ble Supreme Court of India.
11. In view of the various Judgments passed by the aforesaid High Courts, the large developable land is available for providing the affordable housing, but due to the interpretation of Section 3(1)(b) of the Repeal Act by the Full Bench of the Hon'ble Bombay High Court the developments of affordable housing in the State of Maharashtra has come to stand still. It is to be noted that development to the extent of 2.5 Lacs affordable homes has been stalled only in the Mumbai Metropolitan Region.

MCHI-CREDAI has raised certain points about the applicability of the Urban Land Ceiling Act to old proposals and the Authority to charge fee, or withhold approval on non-payment of such fees and to ask for NOC. The process or rules being followed after the Repeal Act, only delay the projects.

Government would have to take a call on the financial implications as well as the legality of the actions being taken against the projects and the proposals'. It is clarified that, even if the State loses the amount in revenue terms, the State is losing much more in Registration, payment of Stamp Duty, other levies, missing the creation of Housing stock and lots of job opportunities etc. It impacts State efforts negatively.

It also appears that the Maharashtra is the only State which is still trying to keep in operation the Urban Land Ceiling Act, Provisions in spite of adoption of the Repeal Act.

Thanking you,

Yours faithfully,
For MCHI-CREDAI



Vimal Shah
President

Encl : As Above

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 29006/2014

(Arising out of impugned final judgment and order dated 03/09/2014
in WP No. 9872/2010 passed by the High Court of Bombay)

MAHARASHTRA CHAMBER OF HOUSING INDUSTRY & ORS. Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ANR.

Respondent(s)

(With appln. (s) for exemption from filing c/c of the impugned
judgment)

WITH

SLP(C) No. 29459/2014

(With appln. (s) for exemption from filing c/c of the impugned
judgment and Interim Relief)

SLP(C) No. 33731/2014

(With Interim Relief and Office Report)

SLP(C) No. 33988/2014

(With Interim Relief and Office Report)

Date : 06/01/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mr. Ankur Saigal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. E. C. Agrawala, Adv.
Mr. Pratyush Panjwani, Adv.
Mr. Suneet Tyagi, Adv.Mr. Pratap Venugopal, Adv.
Mr. Gaurav Nair, Adv.
Ms. Niharika Kaim, Adv.
For M/s. K. J. John & Co.Ms. Kiran Suri, Sr. Adv.
Mr. Ankur S. Kulkarni, Adv.
Mr. Anand Srivastava, Adv.Signature Invalid
Digitally signed by
Narendra K. J.
Date: 2015.01.06
17:11:15 IST
Reason:

For Respondent(s) Mr. Vinay Navare, Adv.
 Mr. Satyjeet Kumar, Adv.

 Ms. Asha Gopalan Nair, Adv.
 Mr. A.P. Mayee, Adv.

 Mr. P.S. Narsimha, ASG
 Mr. B.B. Sawhney, Sr. Adv.
 Ms. Kiran Bhardwaj, Adv.
 Ms. Sushma Suri, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Perused the letter.

Four weeks' time is granted for filing Counter affidavit.
Rejoinder affidavit, if any, may be filed within two weeks
thereafter.

List thereafter.

Petitioners are directed to take necessary steps to serve
unserved respondents.

Interim order granted on 10.11.2014 shall continue to operate
until further orders.

(NARENDRA PRASAD)
COURT MASTER

(SHARDA KAPOOR)
COURT MASTER

ITEM NO.49

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 29006/2014

(Arising out of impugned final judgment and order dated 03/09/2014 in WP No. 9872/2010 passed by the High Court of Judicature at Bombay)

MAHARASHTRA CHAMBER OF HOUSING INDUSTRY & ORS. Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ANR. Respondent(s)

(With application for exemption from filing certified copy of the impugned judgment and interim relief)

WITH

SLP(C) No. 29459/2014

[IBRAHIM ABDUL KABER V. THE MUNICIPAL CORPORATION OF CITY OF THANE, THANE & ORS.]

(With application for exemption from filing certified copy of the impugned judgment and Interim Relief)

Date : 10/11/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s)
In SLP 29006

Mr. Harish N. Salve, Sr. Adv.
Mr. Shyam Divan, Sr. Adv.
Mr. Nivit Srivastava, Adv.
Mr. Devender tripathi, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. E. C. Agrawala, A.O.R.
Mr. Suneet Tyagi, Adv.
Mr. Ankur Saigal, Adv.

in SLP 29459

Mr. Venkatesh Dhond, Adv.
Mr. Pratap Venugopal, Adv.
Mr. Akashay Kolse Patil, Adv.
Mr. Gaurav Nair, Adv.
Mr. Naishadh Bhatia, Adv.
Mr. Bulbul Singh Rajpurohit, Adv.
Ms. Shruti Murarka, Adv.
For M/s. K. J. John & Co., Advs.

Signature valid
Digitally signed by
Kalyan G. J.
Date: 2014.11.12
14:00:00
Reason:

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Issue notice returnable in six weeks.

Dasti service, in addition, is permitted to be effected on the Standing Counsel.

As Union of India is a necessary party, it is added as a necessary party on an oral prayer in both the matters. Cause title be amended accordingly.

Let notice be issued to the newly added party.

No coercive steps shall be taken in the meanwhile.

List the matters on 6th January, 2015.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER