

**MANAGING COMMITTEE
2011 - 2012**



Ref No.: MCHI/SEC/11-12/206

March 19, 2012

PRESIDENT

Paras Gundecha

IMMEDIATE PAST PRESIDENT

Sunil Mantri

PRESIDENT-ELECT

Vimal Shah

VICE PRESIDENTS

Dharmesh Jain

Mayur Shah

Nayan Shah

Deepak Goradia

HON. SECRETARY

Boman Irani - President

(MCHI Mira Virar City Unit)

HON. JOINT SECRETARIES

Rasesh Kanakia

Harish Patel

Nainesh Shah - President

(MCHI Thane Unit)

TREASURER

Ashok Mohanani

JT. TREASURERS

Mukesh Patel, L. P. Bhagtani

CO-ORDINATORS

Sukhraj Nahar, Pujit Aggarwal

Sandeep Runwal

COMMITTEE MEMBERS

Sandeep Raheja

Bandish Ajmera - President

(MCHI Kalyan-Dombivali Unit)

Sujal Shroff, Parag Munot

Rajan Bandelkar, Vikas Walawalkar

Jayesh Shah, Nayan Bheda

Sanjay Chabria

Rajendra Chaturvedi

INVITEE MEMBERS

Mukesh Mehta, Rakesh Sanghvi

Jagdish Ahuja

Ajay Ashar - Secretary

(MCHI Thane Unit)

Shrikant Shitole - Secretary

(MCHI Kalyan-Dombivali Unit)

Shailesh Sanghvi - Secretary

(MCHI Mira Virar City Unit)

Rajesh Prajapati - President

(MCHI Raigad Unit)

Suresh Haware - President

(MCHI Navi Mumbai Unit)

PAST PRESIDENTS

Pravin Doshi, Mohan Deshmukh

Mofatraj Munot

Niranjan Hiranandani

Rajni S. Ajmera, G. L. Raheja

(Late) Lalit Gandhi

(Late) Babubhai Majethia

To,

- **Managing Committee Members**
- **Patron Members**
- **Life Members**
- **Corporate Members**
- **MCHI Units All Members**

**Sub :- WP No.6702 of 2011(Reg. Royalty for Excavation)
Maharashtra Chamber of Housing Industry
V/S
State of Maharashtra & Others.**

**Ref the letter no. MCHI/SEC/11-12/094 of dated 7th September
2011 from MCHI**

MCHI and all the MCHI Units have filed a WP challenging the Notices issued by the Government u/s 48(7) of the Maharashtra Land Revenue Code Of 1966(MLRC), whereby the petitioners & their members were called upon to show cause, why the amount mentioned in the respective notices for payment of Royalty and or Penalty under the provisions of MLRC, on account of carrying out excavation for the purpose of laying foundation of building & or for the purpose of land filing on site or another plot etc.

The above petition came for hearing before Hon'ble D.D. Sinha & R. Y. Ganoo, J.J. on 5-09-2011.

It was contended by the Counsel, appearing for the petitioners, that similar/identical challenge was raised by the petitioners in petition no. 7390 of 2010 & other connected petitions. The Hon'ble Court by Order dt. 13th April 2011 admitted the petitions and granted ad interim Order in the said petition by giving reasons.

Maharashtra Chamber of Housing Industry (ISO 9001:2008)

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.

Tel: 42121421, Fax : 4002 0361/62. Email : secretariat@mchi.net

Website : www.mchi.net

Considering all the facts the Hon'ble Court has granted interim relief in terms of prayer in clause (D) of the petition which reads under :-

[D] During the pendency of the Writ Petition, be pleased to restrain the Respondent herein from exercising their power u/s 48 of the MLR Code against the members of Petitioners Nos. 1 & 6 herein inclusive of Petitioners Nos.7 & 8 and further be pleased to stay the proceedings based on the show caused notice dated 02.5.2011 and 04.6.2011 (Exh. M & O), ISSUED BY Respondent No.2 to Petitioner No.7

In view of this Order the further proceedings are stayed & there is no need to pay the Penalty etc under MLR Code to the Government (Copy of Hon'ble High Court Order is enclosed). Dy. Secretary Revenue & Forest Department, by his letter dated 17th November 2011 has informed all the District Collectors of Govt. of Maharashtra to implement the Hon'ble High Court order dated 5th September 2011 (Copy of Revenue & Forest Department's circular is enclosed).

Therefore, I informing all members of MCHI-CREDAI that inspite of the government instructions, if any District Collector demands royalty, in that event inform him in writing about the order of Hon'ble High Court & circular of Dy. Secretary of revenue & Forest Department

For MCHI - CREDAI

Sd/-
Boman Irani
Hon. Secretary

Encl :- Copy of Hon'ble High Court Order & Copy of Revenue & Forest Department's circular

क्रमांक : गौखनि १०/१०११/प्र.क्र. ६१८/ख

महसूल व वन विभाग

मंत्रालय, मुंबई ४०००३२.

दिनांक : १७/११/२०११

प्रति,

सर्व जिल्हाधिकारी.


विषय : रिट पिटिशन क्र. ६७०२/२०११

महाराष्ट्र चेंबर्स ऑफ हाऊसिंग

वि

महाराष्ट्र शासन व इतर

मुंबई उपनगर जिल्हातील इमारतीच्या बांधकामासाठी भुखंडाचा विकास यंत्रणा खोदकामासाठी वापरण्यात येणाऱ्या गौण खनिजापोटीच्या प्रकरणात जिल्हाधिकारी, मुंबई उपनगर जिल्हा यांच्याकडून महाराष्ट्र चेंबर्स ऑफ हाऊसिंग इंडस्ट्री (MCHI) च्या सदस्यांना महाराष्ट्र चेंबर्स महसूल अधिनियम, ४८ (७) नुसार नोटीस बजावण्यात आल्या आहेत. त्याविषयी महाराष्ट्र चेंबर्स ऑफ हाऊसिंग इंडस्ट्री (MCHI) च्या सदस्यांनी मा. उच्च न्यायालयात याचिका क्र.६७०२/२०११ दाखल केली आहे. या याचिकेत दि.५.९.२०११ रोजी सुनावणी होऊन न्यायालयाने अंतरीम स्थगिती दिली असल्याने न्यायालयाचे आदेश विचारात घेता अशा प्रकारची, स्वामित्वधन वसुली बाबतची प्रस्तावीत कार्यवाही बाबत मा. उच्च न्यायालयाच्या आदेशानुसार कार्यवाही करण्यात यावी, ही प्रस्ताव


(र. य. नलावडे)

उप सचिव

महसूल व वन विभाग

सोबत : न्यायनिर्णयाची प्रत

dgm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7390 OF 2010

P.S.C. PACIFIC Petitioner
vs
The State of Maharashtra & ors. Respondents

ALONG WITH
WRIT PETITION NO. 8019 OF 2010

Flagship Infrastructure Pvt.Ltd. Petitioner
vs.
The State of Maharashtra & ors. ... Respondents

WITH
WRIT PETITION NO.8020 OF 2010

Matrix Developers Pvt. Ltd. Petitioner
vs.
The State of Maharashtra & ors. ... Respondents

AND ALONG WITH
WRIT PETITION NO.8023 OF 2010

Eiffel Developers and Realtors Ltd. Petitioner
vs.
The State of Maharashtra & ors. ... Respondents

Mr. G.S. Godbole with Mr. D.S. Patil for the petitioners.

Mr. S.N. Patil, AGP for respondent in Writ Petition No.7390/2010.

Mr. S.R. Nargolkar, Addl. G.P. For respondents in Writ Petition No. 8019/2010, 8020/2010 and 8023/2010.

**CORAM: D. K. DESHMUKH &
ANOOP V. MOHTA, JJ.**

DATE : April 13, 2011

P.C.:

In all these Petitions, notices were issued under Section 48(7) of the Maharashtra Land Revenue Code, 1966 have been challenged. Those notices have been issued and proceedings have been taken up by the Authorities of the State Government against the Petitioner, because the Petitioners are digging the land which is granted to the Petitioner for construction of building for the purposes of laying foundation and for levelling the land.

2 The learned counsel appearing for the Respondent pointed out to us that in Writ Petition No.785/2008 – **Promoters and Builders Association vs. State of Maharashtra** and other connected Writ Petitions, the notices issued under Section 48(7) of the Maharashtra Land Revenue Code were challenged and a Division Bench of this

Court by its judgment dated 8 October 2010 has held that all those notices were valid. The learned counsel for the Petitioner states that that judgment has been challenged before the Supreme Court in Petition for Special Leave (Civil) No.33002/2011 and in that Petition on 24 October 2011 the Supreme Court has issued a notice and has granted "interim stay of the operation of the impugned judgment of the High Court".

3 We have also been pointed out that the Division Bench while deciding those Writ Petitions has not considered the provisions of Section 43 of the Maharashtra Land Revenue Code as also the provisions of the Rules framed under that provision. It was submitted that when land is granted for a particular purpose, then the grantee has implied authority to do everything on the land which is necessary for using the land for the purpose for which it has been granted. It is submitted that the land which is granted for the purposes of building site, can be excavated for erection of a building as also for digging of a well. We were taken through the provisions of the Maharashtra Land Revenue (Restrictions on use of Land) Rules, 1968, particularly, Rule 6 of those Rules, which lays down "no un-alienated land within the site of any village, town or city shall be excavated without the previous

written permission of the Collector for any purpose except for laying of foundation for buildings, the sinking of well and making of grain-pits. If excavation is to be done for any purposes other than laying foundation for building sinking of well, or making of grain-pits, then an application is to be made to the Collector for permission and under sub-rule (2) of Rule 6 of the said Rules of 1968. That application is to be considered by the Collector keeping in view the provisions of the Mines and Minerals (Regulations and Development) Act, 1957. It was submitted that these provisions clearly bring out that when land is granted for erection of building then statutory permission to dig the land for the purposes of laying of foundation for building, the sinking of well and making of grain-pits is granted. If the land is to be excavated for any other purpose then permission of Collector is necessary and then in granting that permission, the Collector has to have regard to the provisions of the Mines and Minerals Rules. It was submitted that under Section 48 (7), penalty can be levied by the Collector when any minor mineral is extracted from the land without lawful authority. It was submitted that when the land granted for building site is excavated for laying foundation, then that activity is with lawful authority and, therefore, there is no question of levying of any penalty for carrying out that activity. It was also submitted

before us that this aspect of the matter was pointed out to the Division Bench and that written submissions were also filed. However, the judgment of the Division Bench shows that these aspects have not been considered. In this situation, in our opinion, it will be appropriate to admit these Petitions for final hearing.

4 Hence, Rule.

5 Ad-interim order in terms of prayer (e).

(ANOOP V. MOHTA, J.)

(D. K. DESHMUKH, J.)