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Partnered by



महाराष्ट्र शासन

Ref. No. MCHI/HOA/13-14/001

May 17, 2013

To,
The Personal Assistant
Office of the Principal Secretary,
Department of Urban Development (1)
Govt. of Maharashtra
Mantralaya,
Mumbai 400 032

8/5/13
Urban Development Dept.
Mantralaya, Mumbai - 32.

Dear Sir,

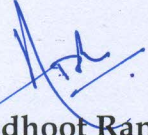
Greetings from MCHI-CREDAI

We referred to the 11th Meeting of "Homes For All Committee" held in committee room of Hon'ble Chief Secretary on April 25, 2013, wherein the issue of MHADA 33(5) on Private Land was discussed in presence of Principal Secretary UDD-1, and it was stated by the Hon'ble Chief Minister in this budget session to publish 37(1) of the reviewed scheme and may be called as 33(5).

For your kind perusal we are pleased to enclose a copy of the recent High Court Order passed in Writ Petition No. 8070 of 2012 dtd. 26th March 2013 along with Minutes of Order dated 18th April 2013 in respect to 33(5) on private land.

Thanking you,

Yours Sincerely
For MCHI-CREDAI


Avadhoot Rane
General Manager (Liaison)

Encl : As above



2010-2015
Joint Committee with
Govt. of Maharashtra

Chairman
Pravin Doshi

Joint GOM - MCHI
Committee
Paras Gundecha
Dharmesh Jain
Mayur Shah
Nainesh Shah

Core Committee
Members
amal Shah
Nayan Shah
Deepak Goradia
Boman Irani
Sandeep Runwal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

Writ Petition No.8070 Of 2012.

Along with

Writ Petition 11506 Of 2012.

M/s. CONCORDE DEVELOPERS :: Petitioner.

Versus.

**The Municipal Corporation of the
City of Thane & Ors. :: Respondents.**

Appearance =>

Ms. Gauri Godse, Advocate for the Petitioner.

Mr. P.G. Lad, AGP for Respondent No.2.

For speaking to minutes of order 26th March, 2013 passed in

W.P. 8070/12 a/w. CA No.2827/12 with W.P. 11506/12.

**Coram :: V.M. Kanade, &
F.M. Reis, JJ.**

Date :: 18th April, 2013.

P.C. :

Application is made for speaking to the minutes of the order dated 26th March, 2013 passed in W.P. 8070/12 a/w. CA No.2827/12 with W.P. 11506/12.

(2) Ms. Gauri Godse, learned counsel appearing for the applicant points out certain typographical error appearing in the said order. It is firstly submitted that :

(i) In paragraph No.4 of the order, internal page No.3 the sentence “ in the meantime, MHADA cancelled LOI since the construction work was not going according to the schedule”. It is submitted said reason which is mentioned is factually incorrect.

(ii) Secondly it is submitted that in paragraph No.5 internal page No.4 first line the word “not” is not mentioned after the word permission would be granted to construct the housing scheme by giving 2.5 %. It is submitted that, instead of “2.5 %” word “2.5 FSI” should be substituted.

(iii) Thirdly, it is submitted that in paragraph No.7 of the order, date of Notification is wrongly mentioned as “28.04.1998” instead of “28.04.1995”.

(iv) Fourthly, it is submitted that, in para No.8, internal page No.6 again the word “not” has been missing and is not typed in

the sentence "it is definitely now open for the corporation to refuse to grant FSI of 2.50 on the ground that....."

(v) Fifthly, it is then submitted that in the same paragraph of internal page No.7 the date of the order passed by the Executive Engineer is wrongly typed as "1.8.2007" instead of "01/08/2012" and lastly,

(vi) It is submitted that, in paragraph No.9, condition No.4 is wrongly typed in the first sentence of the same paragraph.

In this view of the matter, order is modified as follows :

In paragraph No.4 the sentence "since the construction work was not going according to the schedule" is deleted.

In paragraph No.5 internal page No.4 in the first line the word "not" is mentioned after the word permission would be granted to construct the housing scheme by giving 2.5 %. Instead of "2.5 %", word "2.5 FSI" is substituted.

In paragraph No.7 date of Notification is substituted as "28.04.1995" instead of "28.04.1998". In paragraph No.8 internal page No.6 word "not" is inserted in the sentence which now, reads thus, "it is definitely now not open for the corporation to refuse to grant FSI of 2.50 on the ground that....."

In the same paragraph of internal page No.7 the date of the order passed by the Executive Engineer is substituted "1.8.2007" instead of "01/08/2012" and in paragraph No.9, first sentence is corrected as " It is clarified that the condition Nos. 3,5,6 and 7 of the plinth certificate are quashed and set aside by deleting word condition No.4. Order to stand modified accordingly.

(F.M. Reis, J.)

(V.M. Kanade,J.)

VAT

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8070 OF 2012

WITH

CIVIL APPLICATION NO.2827 OF 2012

IN

WRIT PETITION NO.8070 OF 2012

WITH

WRIT PETITION NO.11506 OF 2012

M/s.Concorde Developers through

Partner Shri Suraj Parmar

...Petitioner

Vs.

The Municipal Corporation of the

City of Thane through the

Commissioner and Ors.

...Respondents

Ms.Gauri Godse for Petitioner

Mr.Mandar Limaye for Respondent No.1

Mr. P.G. Lad – AGP for Respondent No.2

Mr.Sushma Bhende for Respondent No.3

CORAM : V. M. KANADE, AND

F.M. REIS, JJ.

DATE : MARCH 26, 2013

P.C.:

1. Heard the learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Thane Municipal Corporation and the learned counsel for the MHADA.
2. By this petition, which is filed under Article 226 of the Constitution of India, the Petitioner is challenging the conditions imposed by the Thane Municipal

Corporation while granting the Plinth Certificate, directing the Petitioner to give an undertaking that they would not carry out the construction except the permission granted for two buildings and thirdly upto the 17th floor and not to create third party right.

3. Brief facts which are necessary for the purpose of deciding this petition as under:

4. A scheme was floated by MHADA and an advertisement was published on 3rd August, 2009 in various newspapers inviting developers and builders/ land owners for construction of affordable housing in partnership with Maharashtra Housing and Area Development Authorities. In the said advertisement, it was specifically mentioned that 2.5 FSI would be granted on the condition that 60% of the built up area has to be utilized for construction of affordable housing "in the category of EWS/LIG/MIG". In the said advertisement, it was mentioned that MHADA intended to share an exact FSI with the land owners who entered into a joint venture agreement on execution of the scheme. Pursuant to the said advertisement, the Petitioner entered into a joint venture agreement with MHADA and, thereafter, submitted a proposal for sanctioning the plans for construction of eight buildings. Out of eight buildings, two buildings were earmarked for MHADA for their utilisation for the scheme and the remaining buildings were to be utilized by the developer. After the plans were sanctioned, construction was made upto the plinth level and as per the provisions of the Acts and Rules, an application was made to obtain the plinth level certificate from the Corporation. The Corporation,

while granting the plinth level certificate, imposed certain conditions viz. Condition nos. 3,4,5,6 and 7 and also directed the Petitioner that he shall construct only two buildings and 3rd building upto the 17th floor and that he shall not carry further construction till the orders of modification are received by the Corporation. The Petitioner, accordingly, was forced to give the undertaking since the construction had begun and the Petitioner had invested huge amount of money in the said scheme. In the meantime, MHADA cancelled the LOI since the construction work was not going according to the schedule. The Petitioner was, therefore, constrained to file this petition in this Court and this Court directed the MHADA to cancel the order of withdrawal of LOI. The Petitioner, thereafter, has filed this petition, challenging the action of the Corporation.

5. It is submitted by the learned counsel for the Petitioner that the Government of Maharashtra had issued a Notification dated 27th February, 2009 and pursuant to that, the Development Control Rules were amended and the Rule 165(I) in term stated that if the scheme of MHADA Development Construction for economically weaker section, low income group and middle income group was accepted, then FSI of 2.50 would be granted for construction in accordance with the said scheme on vacant lands. It is submitted that in spite of the said Amended Development Control Rules, the Executive Engineer by his order dated 1st August, 2012, informed the Petitioner that the Municipal Corporation was informed that the Government of Maharashtra proposed to modify the Development Control Rules in respect of all

Corporations and as long as, the said modification was not made, permission would be granted to construct the said housing scheme by giving 2.5%. It is submitted that as of today, the Government of Maharashtra has not modified the scheme and secondly, the notice issued by the Government of Maharashtra dated 31.1.2011, clearly stated that it intended to give effect to develop on vacant lands to the low housing schemes of MHADA and it intended to make it applicable to all the Municipal Councils and Corporations. It is, therefore, submitted that the amendment which was made applicable to the Thane Municipal Corporation was sought to be made applicable to all the Municipal Councils and Corporations and, as such, the question of deletion of legally amended Development Control Rules by the Government of Maharashtra, will not arise.

6. On the other hand, the learned counsel for the Corporation submitted that the Corporation had an apprehension that in future, the Government of Maharashtra may delete the Rule 165(I) and, therefore, the Executive Engineer of the Corporation had imposed the said conditions. Secondly, it was submitted that the Petitioner had voluntarily given an undertaking to that effect to the Corporation. Thirdly, it was submitted that so far as Rule 165(I) is concerned, it clearly envisages that the construction should be on the vacant land owned by MHADA. It is submitted that in the present case the construction was sought to be made on the vacant land owned by the developer.

7. After having heard both the learned counsel at length, it is difficult to accept the submissions made by the learned counsel for the Corporation. Before we take into consideration the rival submissions, it is necessary to take into consideration the regulation. The Government of Maharashtra by Notification dated 27th February, 2009, was pleased to sanction the modification mentioned in the schedule and directed the Thane Municipal Corporation to make a new entry as per schedule enclosed in the schedule of modification appended to the Notification dated 28.4.1998 sanctioning the said development control regulation. After the said last entry, the said notification was issued in lieu of the powers vested under section 1(AA) of section 37 of the MRTP Act and after following the procedure laid down under the said provision, the said sanction was given under section 37(2) of the said Act. In the schedule, the following amendment was inserted. Section 165(I), which was amended, reads as under.

"165 Development / redevelopment of Housing Schemes of Maharashtra Housing & Area Development Authority:

- 1) The FSI for a new scheme on vacant lands of Low Cost Housing Schemes for Economically Weaker Section, Low Income Group & Middle Income Group of the MHADA having at least 60% built up area in the form of tenements under EWS, LIG & MIG categories shall be 2.50."

8. Perusal of the aforesaid provision, Rule 165(I) clearly discloses that the FSI for a new scheme of low cost housing scheme, for economically weaker section, low income group and middle income group of MHADA having at least

60% built up area in the aforesaid categories shall be 2.50. The said sub-clause (I) states that the said scheme should be on vacant land. The contention of the learned counsel for the Corporation that the said scheme has to be on the land of MHADA is without any substance. On a clear and literal interpretation of the said Rule, it is abundantly clear that the purpose for inserting this amendment was to encourage the developer to adopt affordable low housing scheme proposed by MHADA on vacant land and if such a proposal was accepted, the developer would be entitled to get FSI of 2.50. The Government of Maharashtra having approved and sanctioned the said amendment under section 37(ii) after following the procedure laid down under the said provisions, it is definitely now open for the Corporation to refuse to grant FSI of 2.50 on the ground that the Government of Maharashtra had proposed modification to the said rules. Perusal of the notice issued by the Government of Maharashtra dated 31.1.2011 clearly reflects the policy of the State of Maharashtra that if one goes to the recital mentioned in the said notice, it becomes very clear that Government of Maharashtra had taken a policy decision to encourage housing policy to facilitate affordable housing and adequate housing stock for low income group etc. and it proposed to make this policy applicable in development control rules of all Municipal Councils. Perusal of the said notice clearly indicates that the Government of Maharashtra did not propose to amend the rule which was already made applicable to the Thane Municipal Corporation vide Rule 165(I). On the contrary, the said notice indicates that it proposed to make that rule applicable to all Municipal Councils/ Corporations

all over Maharashtra. The apprehension expressed by the Executive Engineer of the Thane Municipal Corporation is, therefore, totally misconceived. The Municipal Corporation as also the Executive Engineer did not have any authority in law to impose the said conditions. On the face of the amended Rule 165(1) which did not grant any discretion in favour of the Municipal Corporation or the Municipal Commissioner or the Executive Engineer to curtail the FSI which was to be granted for such scheme. The wording which is used in Rule 165(I) is very clear since word 'shall' is not vague. Under the circumstances, the conditions imposed by the Corporation while granting plinth certificate are without application of mind. Apart from the said conditions being legally imposed, it is not open for the Corporation to say that the Petitioner had given an undertaking and, therefore, the Petitioner is bound by the said undertaking. It is obvious that after having invested crores of rupees in the said project the Petitioner had no other option but to give an undertaking in order to ensure that the development work does not come to halt. For the same reason, order passed by the Executive Engineer, Thane Municipal Corporation dated 1.8.2008 will have to be quashed and set aside. In the result, the petition is allowed in terms of prayer clause (a) and is, accordingly, disposed of.

9. It is clarified that the condition Nos. 3,4,5,6 and 7 of the plinth certificate are quashed and set aside. Similarly, order passed by the Executive Engineer is also set aside. The impugned order in the said petition is also quashed and set aside. In view of disposal of this petition, Civil Application No.2827 of 2012 does not survive and is, accordingly, disposed of. In view of this, writ petition No.11506/2012 does

not survive and is also disposed of. The learned counsel for the Corporation submits that the order passed by this Court may be stayed so that the Corporation is in a position to challenge the said order. The said request is rejected.

[F.M. REIS, J.]

[V. M. KANADE, J.]

Vaishali Tikam