

mamata

From: secretariat [secretariat@mchi.net]
Sent: Saturday, June 29, 2013 5:00 PM
To: 'President-MCHI-CREDAI'; 'Hon. Secretary - MCHI-CREDAI Nainesh Shah'; 'MCHI-CREDAI - CEO'
Subject: Notice & Agenda for the Managing Committee Meeting on Tuesday, July 2, 2013 at 06.00 P.M. at MCHI-CREDAI Conference Room
Attachments: Agenda & Notice of Mg. Com. Mtg..pdf; Task Owners (Final).doc

To
All MCHI Managing Committee Members

Dear Friends,

Please find attached herewith the Notice & Agenda for the Managing Committee Meeting scheduled on **Tuesday, July 2, 2013 at 06.00 P.M. at MCHI-CREDAI Conference Room, Mumbai.**

MCHI-CREDAI Secretariat

**Notice of the 2nd Managing Committee Meeting of MCHI-CREDAI
for the term 2013 – 2014**

To
All Managing Committee Members

Dear All,

Notice is hereby given that a meeting of the Managing Committee of MCHI-CREDAI will be held on **Tuesday, July 2, 2013 at 06.00 P.M. at MCHI-CREDAI Conference Room, Mumbai**, to transact the following business.

SR. No.	AGENDA ITEM
	Refreshments and Networking.
1.	To read and confirm the Minutes of the meeting held on June 11, 2013 (Annexure – I, Pg. No. <u>2</u> to <u>8</u>)
2.	To grant leave of absence to members.
3	Presentation of the work allotted to the concern Task Owners
4	Legal Matters for discussions.
	i. Contribute Rs. 1 Lakh from MCHI-CREDAI Members to MCHI Legal Fund A/c
	i. On June 27, 2013 the Writ Petition challenging the notification issued by Ministry of Environmental & Forest dated January 6, 2011 in respect of CRZ – II Areas and Slum Rehabilitation Scheme providing for stake of the State Government or its parastatal entities to be not less than 51% (CRZ Notification) is logged it will come for admission in due course.
	ii. MOEF Writ Petition under No. 1180 of 2013 disposed by Bombay High Court on June 24, 2013 order given by Shri S. J. Vazifdar & Shri M. S. Sonak, JJ. (Order attached As Annexure – II, Page No. <u>8</u> to <u>20</u> .
5.	Liaison:
	i. 2 nd meeting of High Rise Study Technical Group with Hon. Chief Secretary CEO and General Manager (Liaison) of MCHI-CREDAI attended the meeting with Hon.ble Chief Secretary on a very short notice to discuss about the issues related to the High Rise. In this meeting CEO suggested that Government should cancel the HRC and make a peer review of the High Rise Structure through international consultants.
	ii. Discussion on meeting with Shri Rajeev Kukunur, Chief Engineer DP Regarding changing 10% payment for condoning the deficiency in open space that arises due to use of Fungible FSI.
6.	Any other matter with the permission of Chair

All Members of the Managing Committee are requested to kindly make it convenient to be on time and be present for the meeting.

Attendance is mandatory for all Members.

For MCHI-CREDAI,

Sd/-
Nainesh Shah
Hon. Secretary

Annexure – I, (Point No. 1 as per Agenda)
MINUTES

Name of the Meeting	1st Meeting of Managing Committee 2013 – 14							
Meeting Chaired by	Shri Vimal Shah, President, MCHI-CREDAI							
Meeting Conducted by	Shri. Nainesh Shah, Hon. Secretary, MCHI-CREDAI							
Date of the Meeting	Tuesday , June 11, 2013				Time of the Meeting	6:00 pm		
Venue of the Meeting	MCHI-CREDAI Conference Hall							
Total Committee Members (42)	No. of Member Present	16	Leave Granted to	18	No. of Members Absent	6	Guest Attended	3
Member Present	<ol style="list-style-type: none"> 1. Shri Vimal Shah, President 2. Shri Mayur Shah, Vice President 3. Shri Nayan Shah, Vice President 4. Shri Boman Irani, Vice President 5. Shri Nainesh Shah, Hon. Secretary 6. Shri Sukhraj Nahar, Hon. Treasurer 7. Shri Ashok Mohanani, Hon. Jt. Secretary 8. Shri Mukesh Patel, Hon. Jt. Treasurer 9. Shri Rasesh Kanakia, Co-ordinators 10. Shri Jagdish Ahuja, Co-ordinators 11. Shri Pujit Aggarwal, Co-ordinators 12. Shri Jayesh Shah, Committee Member 13. Shri Nayan Bheda, Committee Member 14. Shri Mukesh Mehta, Invitee Member 15. Shri Shailesh Sanghvi, Hon. Secretary, MCHI-CREDAI Mira Virar City Unit 16. Shri Arvind Goel, President, MCHI-CREDAI Navi Mumbai Unit 							
Leave of Absence Granted to	<ol style="list-style-type: none"> 1. Shri Paras Gundecha, Immediate Past President 2. Shri Dharmesh Jain, President-elect 3. Shri Deepak Goradia, Vice President 4. Shri Harish Patel, Hon. Jt. Secretary 1. Shri Bandish Ajmera, Hon. Jt. Secretary 2. Shri Lakshman Bhagtani, Hon. Jt. Treasurer 3. Shri Parag Munot, Co-ordinators 4. Shri Sujal Shroff, Committee Member 5. Shri Rajan Bandelkar, Committee Member 6. Shri Sanjay Chhabria, Committee Member 7. Shri Sandeep Raheja, Invitee Member 8. Shri Rakesh Sanghvi, Invitee Member 9. Shri Suhail Khandwani, Invitee Member 10. Shri Shailesh Puranik, President, MCHI-CREDAI Thane Unit 11. Shri Shrikant Shitole, Hon. Secretary, MCHI-CREDAI Kalyan Dombivali Unit 12. Shri Rajesh Prajapati, President, MCHI-CREDAI Raigad Unit 13. Shri Mohan Deshmukh, Past President 14. Shri Mofatraj Munot, Past President 15. Shri Rajni S. Ajmera, Past President 16. Shri G. L. Raheja, Past President 17. Shri Munish Doshi, Special Invitee Member 18. Shri Jitendra C. Jain, Special Invitee Member 							
Name of Members Absent	<ol style="list-style-type: none"> 1. Shri Sandeep Runwal, Hon. Jt. Secretary 2. Shri Vikas Walawalkar, Committee Member 3. Shri Rajendra Chaturvedi, Committee Member 4. Shri Suil Mantri, Past President 5. Shri Pravin Doshi, Past President 6. Shri Niranjana Hiranandani, Past President 							
Guest Attended	<ol style="list-style-type: none"> 1. Shri Hiten J. Thakkar 2. Shri Manoj Awasthi 3. Shri Jeetu Hira 							

Sr. No. Agenda	DISCUSSION & DECISION	
1.	<p>To read and confirm the Minutes of the meeting held on April 16, 2013 Minutes of the Meeting held on April 16, 2013 were taken as read and confirmed.</p>	
2.	<p>To grant leave of absence to members As mentioned on Page 1, leave of absence granted to names mentioned (Nos. 1 to 22).</p>	
3.	<p>Legal Matters for discussions. Two draft petitions relating to Heritage and SRA are received from Shri Parimal Shroff and these two Writ Petition will be filed.</p> <p>Shri Vimal Shah, President, pointed out that 3 Writ Petition will be filed shortly. Shri Parimal Shroff & Co will be filling these Writ Petitions on behalf of MCHI-CREDAI.</p>	
	a.	<p>Challenging the heritage rules and list where in more <i>than</i> 900 properties are listed in heritage site</p> <p>It is pointed out there is no process and system prescribed, no guidelines issued about the selection of Heritage sites for categorizing the building as Heritage premise, unless government does that the Heritage Committee cannot penalize.</p>
	b.	<p>SRA the draft Writ Petition is ready to challenge the government participation which is beyond the environment laws.</p>
	c.	<p>MOEF Shri Pujit Aggarwal said that our plea is that local body should not be subjected to Environmental restrictions, which is central act. He said planning authority, DC Regulations are beyond the jurisdiction of the Act, and cannot be secondary to MOEF. Environmental Act cannot cover DCR, they cannot take over the role of planning authority. It is beyond their power to prescribe construction rules as those Town Planning norms cannot be taken over by MoEF, which is a technical and professional planning authority as per the Town Planning laws.</p> <p>These 3 draft Writ Petitions are already circulated to Managing Committee Members but there is no response or comment received from any one. Managing Committee approval are required to appoint Parimal Shroff & Co. to file these 3 Writ Petitions on behalf of MCHI-CREDAI and pay professional fees as charge.</p> <p>Proposed by Shri Nayan Shah Seconded by Shri Pujit Aggarwal</p> <p>Work comment – as a rule- lets also get official estimates of litigation costs & get it approved by MC- this 3 can be takenup in cmng MC & henceforth prior estimate required to approve</p>
4.	<p>Discussion on</p>	
	a.	<p>Meeting held with Chief Secretary, Shri J. K. Banthia (I.A.S.) for “Technical Study Group” for scrutinizing various proposals to review the present arrangement and to make recommendations for the construction of High-rise building in jurisdiction of MCGM on April 17, 2013.</p> <p>CEO informed to the committee that he already sent a D.O. to Hon’ble Chief Secretary related to the issue of High Rise.</p> <p>He also informed that MCHI-CREDAI sent a format of height of the proposed High Rise building structure and also mentioned some methods of international practices.</p>

Sr. No. Agenda	DISCUSSION & DECISION	
	b.	<p>11th Homes for All Committee Meeting with Chief Secretary, Shri J. K. Banthia (I.A.S.) on April 25, 2013.</p> <p>It has been decided by President that CEO will speak with Shri J. K. Banthia (I.A.S.), Hon'ble Chief Secretary to deliberate and expedite important issues which are creating major hurdles in Real Estate Industry.</p>
	c.	<p>Meeting held Chief Minister, Shri Prithviraj Chavan on May 9, 2013</p>
	d.	<p>Letters sent to Principal Secretary – I of UD Department from CEO of MCHI-CREDAI regarding effect of the repeal of ULC Act, 1976.</p>
	e.	<p>Letter sent to Addl. Chief Secretary (Revenue) & Forest Department from CEO of MCHI-CREDAI regarding Auto NA Nashik Pattern.</p> <p>CEO informed to the committee that he has already written D.O. to various secretaries related to the topics which were discussed in meeting. Reminder letters would be further sent to them. Time has also been sought for meeting to follow up the issues.</p> <p>The Task Owner of Urban Development Department, Shri Mayur Shah will follow up this matter in next meeting with Shri Manu Kumar Srivastava (I.A.S.), Principal Secretary, UD-I with the help of CEO.</p>
	f.	<p>Meeting held with MCGM Commissioner, Shri Sitaram Kunte (I.A.S.) regarding Mosquito Abatement Committee on May 28, 2013.</p> <p>This matter was not discussed in the meeting.</p>
5.		<p>To discuss the list MCHI-CREDAI's Task Owners for 2013-2014.</p> <p>Task Owners Note is attached below.</p>
6.		<p>Nomination forms received for Youth Committee of MCHI-CREDAI.</p> <p>The above point was not discussed in the meeting</p>
7.		<p>To discuss about the email received from Ms. Pallavi Shrivastava about the study retreat that is being planned in September in New York City.</p> <p>The above point was not discussed in the meeting</p>
8.		<p>To discuss regarding Portal of Bulk Procurement.</p> <p>The above point was not discussed in the meeting</p>
9.		<p>Any other matter with permission of Chair.</p>
	a.	<p>Notice from Maker Bhavan No. II regarding Increase of property Tax Levied by Bombay Municipal Corporation.</p> <p>As per the notice received from Maker Bhavan No. II a sum of 4,86,488/- have to be paid regarding Increase of Property Tax Levied by Bombay Municipal Corporation.</p> <p>The president approved the mentioned amount.</p>
	b.	<p>Proposed Filing of Writ Petition against MCGM for charging 100% premium for condoning open space deficiency for utilization of the fungible premium.</p> <p>Managing Committee decided that to obtain the opinion from attorney Shri Rahul Dwarkadas.</p>

Meeting ended with thanks to the chair.

Sd/-
Nainesh Shah
 Hon. Secretary

NOTE - TASK OWNERS

Mr. Vimal Shah said there will be no ambiguity in the ownership of tasks. Setting out the guidelines for Task Owners, The President said:

- 2 members, each, from the Youth Wing will be assigned/attached to each Task Owner.
- Task Owners can employ a professional to get their work done.
- No permanent employees will be hired by the Task Owners.
- Task Owners will have to deliver results within the assigned Budget. If, task completed under budget, then balance funds will be returned to the association. If expenditure exceeds assigned budget, then Task Owner will pay the extra expenditure so incurred.
- Task Owner will be the Principal Owner, and he will be supported by others.
- Task Owners are requested to take domain/knowledge experts for the successful execution of their tasks.
- To prepare budget and spend accordingly. The expenses by the Task Owner would not be audited. Only monitoring by MCHI for Accountability and Transparency.

The list of Task Owners was displayed, and discussed. The following decisions were made:

Task	Task Owner
ACS, CS, IGR	Mr. Nayan Bheda with Mr. Sanjay Chhabria
Stamp Duty	Mr. Jayesh Shah
Auto NA	Mr. Nayan Bheda (Mr. Rasesh Kanakia)
Ready Reckoner (Housing, Retail & Commercial)	Mr. Sanjay Chhabria
Chief Minister's Office and UD Assistance	Mr. Sandeep Runwal & dharmesh jain
Affordable Housing	Mr. Deepak Goradia With Mr. Mayur Shah
New DCR	Mr. Mayur Shah
<i>The Municipal Commissioner is ready to send the recommendation to UD</i>	
<i>It was recommended that separate DCRs be framed for</i>	
<i>A) City B) SRA C) Greenfield Projects</i>	
<i>All Rehabilitation Projects under various sub rules under Sec. 33., and all issues under -- - Reservations.</i>	
MMRDA	Mr. Bandish Ajmera and Mr. Nayan Shah and Mr. Deepak Goradia – mention areas/ zones pls
ULC	Mr. Nainesh Shah

Task	Task Owner
33.9	Mr. Rajendra Chaturvedi
33/7	Mr. Pujit Agarwal (Mr. Sanjay Chhabria?)
33/10	Mr. Jagdish Ahuja
MOA	Mr. Sanjay Chhabria
<i>Shielding benefit being restored</i>	
CIDCO	Mr. Arvind Goel 3 Items, Naina, 55 & reservation for infrastructure under new Town Planning System, N.A. & Environmental issues.
Handbook of Procedures for approval	Mr. Nayan Shah
Co-ordination With MCHI- CREDAI Units	Mr. Deepak Goradia, Mr. Bandish Ajmera, Mr. L P Bhagtani- mention areas/ zones
IT & Upgradation of Website	Mr. Ashok Mohanani
5 Units' Handbook of Operation & Procedures	Mr. shailesh sanghvi
<i>Mr. Vimal Shah said that a Handbook on policies and procedures, viz. Units' Managing Committee meetings, funding, banking, budgeting, expenses, maintenance of records, auditing, membership enrolment, events organisation, and other aspects will need to be prepared with a view to maintaining transparency and accountability. MCHI-CREDAI will not act as investigators, looking into the running of the Units' affairs. He said MCHI-CREDAI Units could take the advice of Mr. Sukhraj Nahar, Hony. Treasurer, wherever required.</i>	
Mediation Committee	Mr. Rajni S Ajmera
<i>Mediation, inter se, between Members, between Customers & Members, And between Members & Suppliers.</i>	
Mr. Vimal Shah also said that an Advisory Centre will be set up for relations with CREDAI associations.	
CSR	Mr. Pravin Doshi
<i>The first task will be for Construction Labour & their Childrens' Welfare. MCHI-CREDAI shall fund scholarships, set up crèches, fund skills development initially from own funds, and secure support directly from participating members.</i>	
Youth Wing	Mr. Boman Irani
<i>He will mentor the Youth Wing, co-ordinate relations with bodies like CII, FICCI, invite dignitaries from such national bodies for addressing our members. Will schedule 4 such meetings. Youth Wing Zonal meetings will be held with the support of the 3 VPs, Mr. Deepak Goradia, Mr. Nayan Shah, Mr. Mayur Shah.</i>	
<i>Schedule of Meetings :Youth Wing Meetings will be held every 2 months, following the Managing Committee meeting.</i>	

Task **Task Owner**
Zonal Meetings will be held every 3 months.

MCHI-CREDAI Problem Resolution Cell

The brief of this Task will be to ask all members, every month, to give their long-delayed problems. The association will then go in a group, to the concerned officer(s)/offices for resolution. In case this does not yield the desired results, the issue will be taken up with the Municipal Commissioner/Govt. Department.

Online Question Corner **Mr. Ashok Mohanani, with Mr. Mukesh Patel.**

The objective will be for members to seek information, by posing their question/problem, and other members, having an answer, would write in with their answers/suggestions. The OQC will be open to all members.

The OQC will be like an internet forum/community.

Research & Training **Mr. Vimal Shah**

Keep Secretariat In Loop: All correspondence undertaken by Task Owners will be routed through the Secretariat, so that the Secretariat is kept aware and informed of all developments, and can undertake requisite action for followup, et al.

Funds for -MCHI Navi Mumbai Property

Mr. Arvind Goel, President, MCHI-CREDAI, Navi Mumbai, put in a request for funding so that the Navi Mumbai Unit can purchase a proper office. He said that Navi Mumbai Unit will provide a portion of the cost, while balance could come from MCHI-CREDAI. Navi Mumbai Unit will pay off the loan received through instalments, based on the revenue from membership, exhibition and events. Proposal could be submitted by them.

Exhibition Targets

Task Owners to provide information about their professionals/consultants help Team and a Road Map for three months with their strategy to complete and achieve the allotted tasks.

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION LODGING NO.470 OF 2013**

M/s.Saumya Buildcon Pvt. Ltd.

...Petitioner

Versus

Union of India & Ors.

...Respondents

Dr. Milind Sathe, Senior Advocate with Mr. Vishal Kanade and Mr. Hemant Shah i/b. IC Legal and Mira Lalani for petitioner.
Mr. N.D. Sharma with Mr. H.V. Mehta for respondent No.1.
Mr. Niranjani Pandit, AGP for respondent State.
Ms. Sharmila Deshmukh for respondent MCZMA.
Ms. Sharmila Modle for respondent B.M.C.

**CORAM : MOHIT S. SHAH, C.J. &
ANOOP V. MOHTA, J.**

DATE : 06 March 2013

ORAL JUDGMENT (PER CHIEF JUSTICE)

Rule. Respective counsel waive service of Rule. In the facts and circumstances, the matter is taken up for final hearing today.

2. The petitioner is a developer who had acquired development rights over the land situated and lying at Survey No.777, 778, 779 and 780 (Part) of Worli Division, Mumbai admeasuring 7872.14 sq. meters. The petitioner is in the process of implementing the project as contemplated under Article 33(7) of the Development Control Regulation, 1991.

3. The land belongs to respondent No.4 which had constructed flats for municipal tenants, who have formed a Co-operative Housing Society which is respondent No.6 herein. The petitioner had submitted

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building plans to the Municipal Corporation for construction of buildings with 99 flats for rehabilitation of the municipal tenants and 9 shops, municipal school building, having ground plus 5 floors and a free sale building having various floors, for parking, club, etc. and first to 33 upper residential floors.

4. When the building plans were submitted in the year 2004 and they were approved, the applicable notification was Environment Impact Notification dated 14 September 2006 which lays down the following requirements for obtaining environmental clearance:-

“2. Requirement of prior Environmental Clearance (EC):-

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be the Central Government in the Ministry of Environment and Forests for matters falling under Category “A” in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category “B” in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this Notification.
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”

(See Paragraph 2 and 7)
 LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR
 ENVIRONMENTAL CLEARANCE:

Project or Activity	Category with threshold limit		Conditions if any	
	A	B		
1	2	3	4	5
8	Building/Construction projects/Area Development projects and Townships.			
8(a)	Building and Construction project		> 20000 sq.mtrs and < 1m 50,000 sq.mtrs. of built-up area #	# (built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area > 50 ha and or built up area > 1,50,000 sq.mtrs. ++	++ All projects under Item 8(b) shall be appraised as Category B1.

5. The petitioner also applied to the MCZMA which granted approval by communication dated 14 February 2007 at Exhibit "F", in the following terms:-

"Accordingly, the proposal was forwarded to the Ministry of Environment & Forests, Govt. of India for grant of necessary CRZ clearance vide letter No.MCZMA/54, dtd. 16/10/2006. Now, the Ministry of Environment & Forests, Govt. of India (1A-III Division) vide letter dtd.24/1/2007 (copy enclosed) accorded CRZ clearance for the above project, subject to the following conditions:"

.....

6. It is necessary to note that as per the criteria laid down in the aforesaid Notification dated 14 September 2006 the proposed construction was to the extent of 15,645.70 sq. meters. It is also necessary to note that as per Environment Impact Notification dated 14 September 2006 in the

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case of facilities open to the sky, it was to be treated as the activity area and not built up area and only covered construction was to be treated as built up area.

7. As per the IOD and the commencement certificate granted by the Municipal Corporation the petitioner proceeded to construct the buildings having 99 flats for rehabilitation of municipal tenants and 9 shops. The construction is almost complete. Similarly, the petitioner also proceeded to construct the Municipal School building of ground plus 5 floors and it is stated that the construction is almost complete.

8. It is necessary to note that when the petitioner was granted the MCZMA clearance in the year 2007 the built up area for the residential building and the shops was 6373.57 sq. meters and the built up area of the Municipal School building was 1045.54 sq. meters. However, by MOEF Notification dated 4 April 2011 the definition "built up area" was substituted as under:-

"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects."

In other words, what was earlier known non-FSI area was not included in the definition of built up area but by the aforesaid Notification dated 4 April 2011 the definition of "built up area" was expanded to include construction of not only covered area, but also basement and other service areas which were earlier not included in the definition of built up area. In view of the above Notification, the built up area of the residential building

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for 99 flats and 9 shops was re-computed at 8720.51 sq. meters and the built up area of the municipal school was re-computed at 1196.16 sq. meters aggregating to 9916.67 sq. meters as against the previous area aggregating to 7419.06 sq. meters.

9. In view of the above amended Notification the built up area of the proposed sale component building which was earlier computed at 8226.57 sq. meters would now be 14,000 and odd sq. meters and aggregating all the three built up areas of the residential building, 9 shops, municipal school building and the free sale component building the aggregate area would work out to 39,681.13 sq. meters.

10. In view of the above, as the construction area is to exceed 20,000 sq. meters, the petitioner is required to obtain environmental clearance from the State Expert Appraisal Committee (SEAC). The SEAC would forward its recommendation to the State Environment Impact Assessment Authority (SEIAA). The petitioner has accordingly submitted its application to the SEAC in June 2011. However, by the impugned decision dated 16 November 2011 the petitioner has been informed about the following decision :-

“Decision:

The case was discussed on the basis of the presentation made by the proponent. The proponent is requested to **comply** with the following observations:

1. The proponent shall obtain CRZ Clearance as per 4(d) of CRZ Notification 2011 which states that any construction involving more than 20000 m² BUA in CRZ-II, prior recommendation of concerned CZMA shall be essential for considering grant of environmental clearance as per EIA Notification 2006 or grant of approval by the relevant planning authority.

2. The proponent shall submit letter from MCGM (Municipal Corporation of Greater Mumbai) with detailed clarification on the following points:

a. Total area of the plot nearing C S No.777, 778 and 780.

b. Plot area on which “Prerna Co-op. Housing Society” is proposed.

c. Remaining plot area and details, if any other scheme, proposed thereon.

4. The draft general guidelines of MCGM dated 16th July 2011, including fire safety norms, for High Rise Building Proposals, shall be complied with.

5. Details of car park arrangement calculations.”

11. In the meantime, the petitioner has also been served with stop work notice dated 21 June 2011 from the Secretary, Environment Department of the State Government stating that since the petitioner's project construction is more than 20,000 sq. meters, it was obligatory on the petitioner's part to obtain prior environmental clearance from competent authority as per EIA Notification dated 14 September 2006

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before starting any building construction activity. The notice further stated that since the petitioner had failed to obtain prior environmental clearance before starting construction activities, there is violation of Notification dated 14 September 2006 and, therefore, the petitioner must stop the construction work forthwith. Consequently the Municipal Corporation of Greater Mumbai has also issued stop work notice dated 27 July 2011.

12. According to the petitioner the petitioner has complied with both the stop work notices and the petitioner has filed this petition under Article 226 of the Constitution challenging the above decision dated 16 November 2011 and the aforesaid two stop work notices.

13. Dr.Milind Sathe, learned counsel for the petitioner has urged the following contentions:

(i) That the petitioner's project was approved and the CRZ clearance was granted on 14 February 2007 by MCZMA. The project was for construction with built up area of only 15,645.70 sq. meters in view of the definition of "built up area" then prevailing. In fact, the petitioner has only constructed the residential building for rehabilitation of municipal tenants for 99 flats, 9 shops and the Municipal School building of ground plus 5 floors which is to be handed over to the Municipal Corporation of Greater Mumbai free of costs.

(ii) In any view of the matter, even the built up area of the sale component building added to the above constructions

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would be within 20,000 sq. meters (15,645.70 sq. meters as per the definition of "built up area" when CRZ clearance for the project was granted by MCZMA). The changed definition of built up area as per Notification dated 11 April 2011 cannot apply to a project which was sanctioned prior to 11 April 2011.

(iii) In any view of the matter, even if the changed definition under Notification dated 11 April 2011 were to apply to the petitioner's project, the petitioner has already applied to SEAC for environmental clearance for a project having built up area exceeding 20,000 sq. meters and the petitioner is awaiting the said environmental clearance, but there can be no requirement again to go back to MCZMA for getting CRZ clearance which was already granted earlier on 14 February 2007. The proposed construction at the time of grant of CRZ clearance on 14 February 2007 and the proposed constructions now are for the same construction areas and merely because there is change in the definition of built up area, there is no justification for the State Expert Appraisal Committee to require the petitioner to obtain CRZ clearance again from MCZMA.

(iv) Without prejudice to the above submissions, it is submitted that in any view of the matter since the environmental clearance from State Expert Appraisal Committee and the State Environment Impact Assessment Authority under the EIA Notification dated 14 September,

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2006 is required only when the construction exceeds 20,000 sq. meters, the petitioner is entitled to continue with the construction which would not exceed 20,000 sq. meters.

(v) Reliance is placed on orders dated 16 January 2013 in Writ Petition No.2809 of 2012 and 24 September 2012 in Writ Petition No.1919 of 2012 and other matters in support of the contention that the authorities cannot be permitted to object to the developer proceeding to construct upto 20,000 sq. meters without obtaining environmental clearance which is required to be obtained only when the construction is to exceed 20,000.

14. On the other hand, Ms. Sharmila Deshmukh, learned counsel for MCZMA and Mr. Niranjan Pandit, learned A.G.P., for the State Authorities have opposed the petition and submitted that the notification dated 4 April 2011 of the MOEF is merely clarificatory amendment relating back to the original Notification dated 14 September 2006. As per the amended definition of built up area, even the open construction areas are included in the built up area and since the petitioner's application to the said Expert Appraisal Committee itself indicates that as per the amended definition, the total construction area is going to be 39681.13 sq. meters, the authorities are justified in requiring the appellant to obtain not only environmental clearance, but also CRZ clearance from MCZMA. It is submitted that when the MCZMA had granted clearance on 14 February 2007 it was on the basis of the built up area being less than 20,000 sq. meters. Now that the built up area is going to exceed 20,000 sq. meters fresh CRZ clearance will be required from the MCZMA.

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wp-lodg.470-13.sxw

15. It is further submitted that the petitioner cannot be allowed to put up any construction and that the authorities are justified in issuing the stop work notices as the project is for construction exceeding 20,000 sq. meters of built up area.

16. As regards the decision of the State Expert Appraisal Committee that the petitioner should obtain CRZ clearance as per the CRZ Notification of 2011, when construction area remains the same, two views may be possible on the question whether the petitioner having obtained CRZ clearance from MCZMA with proposal for built up area upto 20,000 sq. meters should again be required to approach MCZMA for CRZ clearance when the built up area as per the amended definition is exceeding 20,000 sq. meters. However, in matters of environment concern, we would prefer to err on the safer side. We, therefore, do not find any fault with the decision of the State Appraisal Committee requiring the petitioner to move the MCZMA for environmental clearance because now the built up area of the project is computed at 39,681.13 sq. meters. We do not accept the petitioner's contention that because the petitioner's project was earlier granted CRZ clearance before 4 April 2011, the clarificatory amendment provided by the said Notification will not apply to the petitioner's project. The amendment dated 4 April 2011 is clarificatory as indicated in the preamble to the Notification itself. The change in the definition of built up area from merely covered area to areas including basement and service areas will significantly increase the construction area. After all, CRZ clearance is all about construction activity in a coastal zone and, therefore, merely because the construction is open to sky would not make it any less the construction than the construction of the covered area. We, therefore, find considerable substance in the submission made

gopi

wp-lodg.470-13.sxw

on behalf of the MCZMA that the Notification dated 4 April 2011 will apply to the pending projects as well, meaning thereby the projects are not already executed.

17. We do, however, find some substance in the last submission made by the learned counsel for the petitioner that even if the petitioner is required to obtain CRZ clearance from MCZMA again on the basis that the built up area of the project will exceed 20,000 sq. meters, the petitioner is entitled to get the same reliefs which this Court has been granting in case of many other parties where similar prayer was made. In **Writ Petition No.1916 of 2012 (Vardhman Developers Limited vs. Union of India & Ors.)** and **Writ Petition No.2809 of 2012 (Nahur Vivekanand Co-operative Housing Society Ltd. & Anr. vs. Union of India & Ors.)**. We have rejected a similar contention urged on behalf of the respondent authorities that when the project proponent cannot undertake construction project for more than 20,000 sq. meters of built up area without obtaining prior environmental clearance, the project proponent cannot be allowed to commence the construction within the limits of 20,000 sq. meters, without obtaining prior environmental clearance. This Court has held that when clearances are required only for projects with built up area exceeding 20,000 sq. meters, redevelopment projects for residential buildings should not be unnecessarily delayed even to the extent of construction upto 20,000 sq. meters when the developer is ready to give undertaking not to exceed the construction beyond 20,000 sq. meters without first obtaining environmental clearance. This Court has noted that the Authorities take considerable time for taking a decision on the application for environmental clearance or for CRZ clearance. In the meantime the redevelopment projects are being delayed. This Court has been granting

gopi

wp-lodg.470-13.sxw

relief in such cases on the basis that even if ultimately the authorities were to reject the applications for clearance, there will be no illegality in so far as the developer has made construction upto 20,000 sq. meters.

18. Following the orders in the aforesaid cases i.e. orders dated January 16, 2013 in Writ Petition No.2809 of 2012 and 24 September 2012 in Writ Petition No.1916 of 2012, we are of the view that the respondent authorities are not justified in calling upon the petitioner to stop work even within 20,000 sq. meters of work, particularly when the petitioner has already completed the construction of residential building for rehabilitation of 99 municipal tenants, 9 shops required for the ordinary needs of the residents and municipal school constructed by the petitioner for the benefit of the Municipal Corporation all free of costs. As regards the free sale building also, learned counsel for the petitioner gives an undertaking that the petitioner will construct only a portion of the free sale building to the extent that the aggregate construction of the rehabilitation building for 99 flats, 9 shops, municipal school building and the free sale building will not exceed 20,000 sq. meters, without first obtaining the CRZ clearance from the MCZMA and the environmental clearance from the State Environment Impact Assessment Authority.

19. Accordingly, the petition is partly allowed and the stop work notices dated 21 June 2011 issued by the Secretary, Environment Department, (Exhibit "I") and 27 July 2011 (Exhibit AA) issued by the Executive Engineer (Building Proposal, City) Municipal E-Ward of the Municipal Corporation of Greater Mumbai shall stand modified to the effect that the petitioner is restrained from putting up any construction in excess of 20,000 sq. meters computed on the basis of the MOEF

gopi

wp-lodg.470-13.sxw

Notification 4 April 2011, including the construction of the rehabilitation building for 99 flats, 9 shops and the municipal school building already constructed or almost constructed. An undertaking to this effect shall be filed by a Director of the petitioner company within two weeks from today and the petitioner shall commence construction only after such an undertaking is filed before this Court.

20. It is clarified that the above direction is given only in respect of the environmental clearance and the CRZ clearance and this judgment does not exempt the petitioner from complying with the other legal requirements in the matter of construction of the buildings in question.

21. It will be open to the petitioner to pursue their application for CRZ clearance before the MCZMA and for environment clearance before the State Expert Appraisal Committee and the State Environment Impact Assessment Authority.

22. Writ Petition accordingly stands disposed of.

CHIEF JUSTICE**ANOOP V. MOHTA, J.**