

S. S. Hussain I.A.S. (Ex)
Chief Executive Officer

Ref. No. MCHI/CEO/13-14/289

March 7, 2014

To,
Shri R. A. Rajeev (I.A.S.)
Principal Secretary,
Environment Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032

Sub: Permission for 'Consent to Establish & Operate', under the provisions of Sec 25 of the Water (Prevention & Control of Pollution) Act, 1974 & Sec 21 of Air (Prevention & Control of Pollution) Act, 1981.

Ref: Judgment dt.23rd January 2012, passed by Hon'ble High Court of Delhi.

Dear Shri Rajeev,

MCHI-CREDAI is recognized by Government of Maharashtra and the Central Government and helps in meeting the objectives of providing housing, which is a basic necessity. The main objective is to work towards raising awareness among the General Public, Real Estate and Construction Industry while providing them information on new developments in and around Mumbai and MMR.

The purpose of MCHI-CREDAI for this representation, is to apprise the Environment Department and request, that obtaining the previous consent of Pollution Control Authorities, u/s. 25 of Water Act & u/s. 21 of Air Act, that no person/company to establish or take any steps to establish any industry, operation or process, which is likely to discharge sewage or trade effluent, may not be made applicable to the Housing Projects.

Our Association would like to bring to your kind attention and notice that recently the Division Bench of the Hon'ble Delhi High Court in a group of 38 Writ Petitions has interpreted the aforesaid Sections of the Water and the Air Act. The Hon'ble Court has observed that a conjoint reading of the words operation and process under Section 25 of the Water Act would mean that the expression "establish or take any steps to establish any industry, operation or process, or any treatment and disposal system, which is likely to discharge sewage or trade effluent" would mean to take steps of a practical or technical nature for a particular purpose. It has further observed that the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process. Hence, section 25 of

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the Water Act would not apply to buildings housing, residential apartments/units but would apply to all other buildings like commercial shopping complexes, shopping malls where effluent or trade effluent is discharged, where manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

The aforesaid order further held that under Section 21 of the Air Act the obligation to obtain the consent of the State Pollution Control Board is only for establishing or operating any industrial plant in an Air Pollution Control Area. The Hon'ble Bench therefore held that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and commercial shopping complex trade is carried on, prior consent under the Air Act would be required. The Hon'ble Bench however clarified that with respect to residential complex, neither to establish nor to operate, any permission is required under the Air Act.

The aforesaid order passed by the Hon'ble Delhi High Court has in effect held that the provisions of Section 25 of the Water Act and Section 21 of the Air Act requiring prior permission of the Competent Authorities are not applicable in case of residential complexes for the reasons set out in the above Order by the Hon'ble Court. A copy of the said order passed by the Division Bench of the Hon'ble Delhi High Court is enclosed herewith for your ready reference.

Our request to you, in view of the said Order, is to please consider our earnest request and issue directions to the department so that the Developer/builder can commence construction in case of residential buildings, without applying to the department for obtaining prior permission u/s. 25 & 21 of Water & Air Act respectively.

With kind regards.

Yours Sincerely



S. S. Hussain
C.E.O.

To,
Shri R. A. Rajeev (I.A.S.)
Principal Secretary,
Environment Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032

Encl: Judgment dt. 23rd Jan 2012.