

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

Ref. : No.: MCHI/CEO/14-15/135

December 15, 2014

**Sub: Not to demand Royalty/Penalty on Excavation of Extracted Earth.**

**Ref: Order dt. 3<sup>rd</sup> December, 2014, passed in C.A. No. 10717 of 2014  
Arising out of SLP No. (C) No. 33002 of 2010 & others**

Dear Sir,

MCHI-CREDAI and its Units are an Association of Real Estate Developers in MMR region, who always strive for common cause and serve for common purpose, i.e., to benefit people at large by providing housing/homes.

The Hon'ble Division Bench of Supreme Court, on 3<sup>rd</sup> December, 2014, passed an order in SLP (c) No. 33002 of 2010, filed by Promoters and Builders Association Pune, along with other SLPs.

The issues challenged in the SLP was, "The Excavation activity even for the purpose of laying foundation of the building would still attract rigours of sec. 48 (7) of the Maharashtra Revenue Code", which also indicate that the aforesaid provision of the code, extraction of the minerals by any person without assignment of any right by the State Government make such person liable to penalty.

The Hon'ble Supreme Court opined that, "what is the purpose of extraction or excavation? That is to be seen? When an excavation is done only to undertake to lay down the foundation of the building and the extracted earth was not used commercially but was redeployed in the building operation, can't be termed as violation of sec. 48(7) of Maharashtra Land Revenue Code."

The purpose for raising this representation by MCHI-CREDAI is, some of our members would like to know and get clarified that after the outcome of the order dt. 3<sup>rd</sup> December, 2014, what would be responsibility of the Developer and whether;


- 1) The Royalty/Penalty amount that was paid as per notices received, can the refund of such amount be applied for to the Collector/ Department?
- 2) What if the excavated material is unable to be reused on the site, can the Collector/Department charge for such excavated material unused on the site?
- 3) The excavated earth is utilized at same site from where it is excavated- although, Survey No, may be different but the Layout is same?

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

As an association we would like some clarification on these issues, which will help our members to proceed in a proper, legal manner to fulfill their liability as developer on the site. Suitable, necessary orders may also be issued for the field/implementing officers to avoid any misinterpretation of the order and the legal provisions.

In view of the directions & suitation taken up in the Order dt.3<sup>rd</sup> December, 2014, also a personal hearing in this regards is requested.

*With regards,*

Yours Sincerely  


S. S. Hussain



To,  
**Shri S S. Sandhu (I.A.S.)**  
Principal Secretary (Revenue)  
Revenue & Forest Department,  
Government of Maharashtra,  
Mumbai - 400 032.

Encl: Copy of Order dt.3<sup>rd</sup> December, 2014.