



Ref. No. MCHI/CEO/15-16/119

October 23, 2015

**Sub: Levy of Property/Assessment Taxes on under construction lands
being developed under the purview of the SRA**

Respected Sir,

We take this opportunity to inform you about the immense hardship being caused due to unjustified levy and demand of exorbitant property/assessment taxes by the MCGM in respect of the under construction properties being developed under the purview of the Slum Act.

You are well aware that slums are an integral part of urban areas and contribute significantly to their economies through their labour market contributions and informal production activities, the Union of India formulated a Draft National Slum Policy. The National Slum Policy encourages and endorses upgrading and improvement approach in slums providing the hutment dwellers with a hygienic and habitable living condition. Keeping in view the objectives of the slum policy that is to say:

- (i) to integrate slum settlement and communities residing within them into urban area.
- (ii) to strengthen the legal and policy frame work to facilitate the process of slum development and improvement on sustainable basis;

The Government of Maharashtra, in order to achieve this objectives, launched a comprehensive slum rehabilitation scheme, with the concept of using the land as a resource and allowing incentive floor space index (FSI) in form of tenements for sale in open market, for cross subsidisation of slum rehabilitation tenements which are to be provided free of costs to the slum- dwellers.

In order to encourage the private players (Builders/Developers) to undertake slum rehabilitation schemes and to make the slum redevelopment scheme financially viable, the LOI holder (Builder/Developer) is offered compensatory FSI in terms of sale component to meet the expenses for construction of rehab tenements which are to be allotted free of cost to the eligible slum dwellers as well as hand-over of PAP's free of cost to MCGM, MHADA etc. The LOI holder who undertakes the slum rehabilitation scheme is also required to pay a sum of Rs.20,000/- for each rehabilitation tenement as well as Rs. 840 per sq. mtr. on additional built up area as development charges. The LOI holders have to bear huge expenses towards:

- (i) for construction of transit camps or, pay rent/displacement compensation for the entire period till the slum dwellers are rehabilitated in the newly constructed building,
- (ii) water taxes and sewerage taxes when the land is under construction;
- (iii) construction costs of the rehab building;

- (iv) Fees, charges etc. for obtaining all clearances etc.

The LOI holders are initially required to raise the money for the rehab buildings by way of bank loans to fund the rehabilitation part of the project. Once the Rehabilitation building has commenced the LOI holder can begin construction of the sale building for funding the project. The LOI holder can recover the costs only by way of the Sale component. Benefit in terms of profit is, thus, minimal and at a belated stage. On the other hand you get huge benefits in terms of:

- (i) removal/improvement of slums,
- (ii) free of cost tenements to the slum dwellers,
- (iii) free of cost tenements to project affected persons (PAP's) making it easier for you to implement Development plan reservations,
- (iv) handing over of Buildable & Non Buildable reservation to the MCGM eg. road setbacks,
- (v) ensuring future payments of taxes (i.e. municipal, water, sewerage etc.) by hutment dwellers albeit at a discounted rate but no more a loss for the MCGM as in the current situation.

Even though the land is owned by the Government and/or MCGM and/or any other authority, the occupiers are the slum dwellers and the Developer is only the LOI holders and erroneously made liable to pay the property/assessment taxes payable for the period when the slum rehabilitation scheme is under taken and till the time O.C. is received for both the Rehabilitation as well as the Sale components, which is extremely burdensome and economically unviable. The amended provision for levy of property tax on the basis of capital value which came into force from 2010, results in exorbitant, erroneous computation of taxes imposing heavy burden on the LOI holder undertaking slum rehabilitation scheme, making the project financially unviable. The LOI holders are neither the occupiers nor the owners as contemplated under the MMC Act, and hence cannot be subjected to any property/assessment taxes, much less exorbitant taxes based on capital value. In almost all instances the LOI holders have been subjected to levy and demand of exorbitant taxes.

We further bring to kind notice you that the slum redevelopments schemes are public welfare, social upliftment schemes and cross subsidy projects undertaken for the benefit of the slum dwellers as well as in the larger public welfare and interest. In such cases there should be no taxation or minimal/concessional taxation. The taxes levied and demanded by the MCGM are exponentially higher and burdensome and are likely to deter people from undertaking Slum Redevelopment Project.

Further, the land owned by the State/MCGM/any other authority cannot be subjected to taxation unless and until, title by way of Lease of 30 years granted in favour of the Society (Rehab/Sale) as contemplated under DCR 33 (10) clause 1.11 of Appendix IV.

Even, compensation payable to a private landlord on acquisition of his land u/s. 17 of the Slum Act is 60 times net average monthly income actually derived and compensation u/s. 44 of MHADA Act is 100 times the net average monthly income. So, if at all the LOI holder should be liable to pay property/assessment tax, on an amount equal to 60 times net average monthly income actually derived.

You have, Sir, by your notification issued through your Urban Development department under No. BMC-1996/6183/CR-50/97/UD-21 dated: 7/11/1997, reduced rates for property taxes in respect of low cost scheme for economically weaker section and low income group and under Slum Rehabilitation Scheme under the Maharashtra Slum Act, , for a period of 20 years. Under the said Notification the rehabilitation buildings have concessional taxation i.e. for

- a) 1-10 years 20% of the rate of property tax
- b) 11-15 years 50% of the tax
- c) 15-20 years onwards 80% tax

The LOI holder should also be entitled for concession in taxation since he provides free of cost tenements to all the eligible slum dwellers;

The LOI holder under SRA schemes cannot be placed on par with the developers who buy vacant lands, construct buildings and sell the flats. The amount of property/assessment tax being levied and demanded by the MCGM from the LOI holders during the under construction phase of both Rehab and Sale buildings is exponentially higher than the regular property tax levied by you after the completion of the rehab building, which is not proper and against the spirit of law and constitutional rights.

Rule 21 which enable you to arrive at capital value of open land by multiplying the SDRR rates by user category and further by permissible or approved FSI is contrary to the principal of natural justice and right to equality. The act nowhere makes any reference to the permissible or approved FSI of the land.

The property belonging to your organisation and/or Government and/or any other authority, occupied by slums is already assessed to property taxes. This taxation can be changed only when the legal status of the property changes that is from slums to legally occupiable (that is with occupation certification) rehab and/or sale buildings. Until then the taxation regime cannot change. The concept of land under construction as a different category of taxation, subject to different tax regime has been rejected by the Supreme Court in case of MCGM V/s. M/s. Polychem Ltd. - 1974 (2) SCC 198.

Formula set out in Rule 21(1) for fixing the capital value clearly indicates that the formula has relation to the inherent FSI potential generated from the land which is dependent on the plot area. Slum rehabilitation schemes, however, stand on a different footing as higher FSI is permitted without any reference to the area of the land. The formula

set out in the said Rule 21(1) therefore cannot and ought not be applied for fixing the capital value of the lands covered by Slum Rehabilitation schemes.

The slum projects are for urban renewal and for the social upliftment of economically weaker sections of society and for the Government objective to rehabilitate the affected residents. Various components of the project cannot be segregated and treated differently. You are hereby requested not to levy and demand any property/assessment taxes until building is ready with occupation certificate, as the slum redevelopment is a participatory process between MCGM, SRA, Slum dwellers and the LOI holder.

Please consider the principle and help in doing the needful.

Yours



(S. S. Hussain)

To,
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