

**Justice B. N. Srikrishna** (Retd.)

**Former Judge, Supreme Court of India**

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HBS VIEW PRIVATE LTD.

..... QUERIST  
Ex-parte

**O P I N I O N**

Facts:

1. The Central Government under the Environment (Protection) Act, 1986 and in supersession of the earlier Notification of the Government of India dated 19<sup>th</sup> February, 1991 issued Notification on 6<sup>th</sup> January, 2011. ("CRZ Notification 2011"). The CRZ Notification 2011 under Clause 8 (v) (c) provides for redevelopment of dilapidated, cessed and unsafe Buildings in Greater Mumbai and falling under CRZ II Area as under:

*"(c) REDEVELOPMENT OF DILAPIDATED, CESSED AND UNSAFE BUILDINGS:*

1. *In the Greater Mumbai, there are, also a large number of old and dilapidated, cessed and unsafe buildings in the CRZ areas and due to*



*their age these structures are extremely vulnerable and disaster prone and therefore there is an urgent need for the redevelopment or reconstruction of these identified buildings.*

2. *These projects shall be taken up subject to the following conditions and safeguards:*

*(i) such redevelopment or reconstruction projects as identified on the date of issue of this notification shall be allowed to be taken up involving the owners of these buildings either above or with private developers in accordance with the prevailing Regulation, directly or through joint ventures or through other similar models.*

*(ii) the Floor Space Index or Floor Area Ratio for such redevelopment schemes shall be in accordance with the Town and Country Planning Regulations prevailing as on the date on which the project is granted approval by the competent authority “*

2. The Ministry Of Environment and Forest has issued a Corrigendum on 29<sup>th</sup> March 2011 and published in the Gazette of India under part II – Section 3 – sub-section (ii),



wherein at page 49 of the CRZ notification dated 6<sup>th</sup> January 2011 (para A in part 8) would now be read as under:

*(a) In para 8(V)(b) in item 2 in the Provision in para (ii) in line 3, for "as on the date on which the project is granted approval by the competent authority" read "as on 6<sup>th</sup> January, 2011".*

*(b) In para 8(V)(c) in item 2, in sub item (ii) in line 2, for "as on the date on which the project is granted approval by the competent authority" read "as on 6<sup>th</sup> January, 2011".*

3. The Maharashtra Coastal Zone Management Authority ("MCZMA") in its 74<sup>th</sup> Meeting held on 23<sup>rd</sup> April, 2012 had occasion to consider applicability of various provisions of DCR 1991 amended upto 6<sup>th</sup> January, 2011 for redevelopment of cessed Buildings in CRZ II Area in Island City of Mumbai as Item No.2.1. The following is the Minutes of the 74<sup>th</sup> Meeting of MCZMA:-

*"Item No.2.1: Applicability of various provisions of DCR 1991 amended up to 6.1.2001 for redevelopment of cessed buildings in CRZ area in Island City of Mumbai.*

*The Authority noted the following:*

- 1) The MoEF published the CRZ Notification, 2011, superseding the old CRZ Notification, of 1991. The para clause 8V(c) of CRZ Notification,*



2011 stipulates the benefit of FSI for the SRA schemes/redevelopment of SRA/CESS. dilapidated and unsafe buildings, in Greater Mumbai. As per this, the FSI shall be in accordance with the Town and Country Planning Regulations prevailing as on 6.1.2011 i.e. FSI as per DCR 1991 amended till 6/01/2011 is applicable for the said redevelopment schemes in Mumbai area.

- 2) It was brought to the notice that DCR 1991 had a footnote dated 25.1.1991 which mentioned that "All regulations/ modifications mentioned in DCR 1991 shall not be applicable to the area which are affected by the CRZ Notification issued by MoEF, Government of India vide notification dated 19<sup>th</sup> February 1991 and order issued from time to time". The Regulation No.59 of DCR 1991 mentions that "All development permission within the ambient of CRZ shall be governed by the contents of the notification dated 19.2.1991, as modified from time to time, issued by MOEF, Government of India in this regard".
- 3) It was concluded that the foot note in the DCR 1991 was inserted because DCR 1991 was not applicable in CRZ area as per CRZ Notification, 1991. The MOEF has issued the new CRZ notification super ceding the notification of 1991. So provisions of CRZ Notification, 1991 are not applicable now for cess, dilapidated and SRA projects. The new CRZ Notification of 2011



*enabled the redevelopment of these old buildings as per the provisions of DCR 1991 amended up to 6.01.2011.*

*The Authority after deliberation came to the conclusion that, the foot note was inserted in the DCR 1991 considering the relevant provisions of the CRZ Notification of 1991 amended from time to time. However the MoEF vide CRZ Notification, 2011 superceded the CRZ Notification 1991 and allowed application of DCR 1991 amended time to time as per special provision for redevelopment of cessed, dilapidated and slum buildings as per para 8(v) of CRZ Notification 2011. Therefore, after discussion it was decided that foot note of DCR 1991 is not relevant and it is defunct with respect to the provision of CRZ Notification. Therefore redevelopment of the proposals under para 8(v) of CRZ Notification shall be undertaken as per the provision of DCR 1991 amended up to 6<sup>th</sup> January 2011.”*

4. In view of above the DCR 1991 which came into force on 25<sup>th</sup> March, 1991 as amended and/ or modified from time to time upto 6<sup>th</sup> January, 2011 is applicable to redevelopment of any identified dilapidated or unsafe or cessed building in

the Island City falling in CRZ II Area as per CRZ Notification 2011.

5. Pursuant to the Notification dated 6<sup>th</sup> January, 2011 read with the Corrigendum dated 29<sup>th</sup> March, 2011 and as per Clause 8 (v) (c) (2) the projects as identified under DCR 1991 alongwith its various sub-sections as existing on 6<sup>th</sup> January, 2011 are applicable for development in CRZ II Areas. These projects and sub-sections are in brevity mentioned as follows DCR 33(5), DCR 33(6), DCR 33(7), DCR 33(9) and DCR 33(24) etc.
6. The Notification for development as per DCR 33(24) dated 20<sup>th</sup> October, 2008 and issued under No. TPB 4305/2736/CR-338705/UD-11 by the Under-secretary, Government of Maharashtra existed and in force on 6<sup>th</sup> January, 2011, the date on which the CRZ Notification came into force and several approvals under the said Notification of 33 (24) have been sanctioned by the State Government and necessary buildings permissions/ commencement certificates as per MRTP, Act have been issued by MCGM. Annexed herewith as a illustration, is the Commencement Certificate issued by MCGM for a property under redevelopment as per DCR 33(7) in conjunction with DCR 33(24).



7. DCR 33(24) dated 20<sup>th</sup> October, 2008 issued under Notification No. TPB 4305/2736/CR-338705/UD-11 and forming part of DCR 1991 provides for development of Parking Lots with previous approval of Government on the Conditions mentioned therein. The said DCR 33(24) is reproduced hereinafter for ready reference.

“(24) **[Development of Multi storied/Parking lots:** -With previous approval of Govt., for development of multi-storied /parking lots on any plot abutting the roads and/or stretches of road, additional FSI, as specified below on built up parking area, created and handed over to MCGM free of cost, shall be allowed on the land belonging to the private owners, which is not reserved for any public purposes.

*This will be subject to following conditions:*

- i) *The minimum area of plot shall be 1000 sq.mt. in Island City & 2000 sq.mt. in suburb and extended suburbs of Gr. Mumbai. The minimum number of Motor Vehicle public parking spaces provided shall not be less than 50 subject to minimum parking space of 700 sq.mt. The location of parking spaces can be in basement, ground floor or upper floors, with access through ramps / lift or combination of both subject to clearance from Chief Fire Officer with special emphasis on fire hazard.*



- ii) A Committee under the Chairmanship of Municipal Commissioner, MCGM shall earmark / select the plots for public parking, on the basis of their suitability and seek Government's approval for it. The Committee shall comprise of (i) Joint Commissioner of Police (Traffic) or it's representative (ii) Metropolitan Commissioner, Mumbai Metropolitan Region Development Authority or it's representative (iii) Dy. Director of Town Planning, Gr. Mumbai (iv) Chief Engineer (Road, Municipal Corporation of Gr. Mumbai (Member Secretary).
- iii) The incentive FSI given on this account will be over and above the FSI permissible under any other provisions of DCR. This incentive FSI shall be allowed to be used on the same plot in conformity with DCR/DP, within the overall cap/limit of total maximum permissible FSI as given (vii) below.
- iv) The proposed development shall be further subject to such conditions as mentioned / prescribed by the Municipal Commissioner.
- v) Concerned land owner/development /society/company shall not be allowed to operate the public parking.



vi) Area covered under parking shall not be counted towards FSI consumption.

vii) Additional FSI on built up parking area and total permissible FSI including additional FSI shall be as follows.

Sr. No.	Location	Permissible additional FSI on built up Parking area	Total maximum permissible FSI including additional FSI
1	Within the area of 500 mt from precincts of Railway Stations, S.T. Bus Depots, Water Jetties & existing Govt. / Semi Govt. & Corporation Officers, Tourist Places identified by Tourism Departments, important Religious Places of Worship (Registered under Charity Act), etc. having inadequate Public Parking facilities.	50%	a) Island City = 4.00  b) Suburb & Extended Suburbs = 3.00  Independent as well as composite buildings for public parking.
2.	Remaining area of Gr. Mumbai.		a) Island City :  i) Independent = 3.50 Building.  ii) Composite = 3.00 Building.  For public parking.



			<i>b) Suburb &amp; Ext Suburbs:</i>
			<i>i) Independent = 3.00 Building.</i>
			<i>ii) Composite = 2.50 Building.</i>
			<i>For public parking. <sup>(24)</sup></i>

8. The Querists are desirous of developing a property in CRZ II Area in the Island City of Mumbai which is identified as dilapidated or unsafe or cessed property. The Project of the Querists therefore fall under Clause 8 (v) (c) of CRZ 2011 read with the Corrigendum dated 29<sup>th</sup> March, 2011, which permits the redevelopment of properties falling in CRZ II Areas with Floor Space Index or Floor Area Ratio in accordance with the Town & Country Planning Regulations prevalent as on 6<sup>th</sup> January, 2011. In the present case the "Town & Country Planning Regulation" prevailing will be DCR 1991 as amended or modified upto 6<sup>th</sup> January, 2011. The Querists therefore will be entitled to undertake the development of Parking Lots in the said property in the Island City of Mumbai.



9. DCR 33(24) was notified on 20<sup>th</sup> October, 2008 and thereafter was subsequently amended by way of a Corrigendum/ Notification dated 29<sup>th</sup> March, 2011.

{The Corrigendum and Circular which has been issued after 6<sup>th</sup> January, 2011 to DCR 33 (24) will not be applicable for development of properties falling in CRZ II Areas as per CRZ Notification 2011, as the same were issued subsequent to the Town & Country Planning Regulations prevailing on 6<sup>th</sup> January, 2011” .}

10. Based on the facts as stated herein, the Querist seeks my opinion sought on the following queries :-

- (a) *Whether under the CRZ Notification 2011 (under Clause 8(v)(c) redevelopment of any such identified dilapidated or cessed or unsafe buildings in Island City are allowed under CRZ II Areas?*
- (b) *Whether under the CRZ Notification 2011 (under Clause 8(v)(c), readwith the Corrigendum dated 29<sup>th</sup> March, 2011, “Town & Country Planning Regulations” prevailing on 6<sup>th</sup> January, 2011 will apply to the redevelopment of such identified dilapidated or unsafe or cessed buildings in the Island City in CRZ II Areas and which in the present case will be DCR 1991 duly modified upto 6<sup>th</sup> January, 2011?*
- (c) *Whether in CRZ II Areas in the Island City, any such buildings identified as dilapidated or unsafe or cessed can be redeveloped under DCR 33 (24) as notified on 20<sup>th</sup> October, 2008 and forming part of DCR 1991 which DCR / Town & Country Planning Regulation, is prior to the CRZ Notification dated 6<sup>th</sup> January, 2011?*
- (d) *Whether in CRZ II Areas in the Island City, any such buildings identified as dilapidated or unsafe or cessed buildings can be redeveloped under the modified section of DCR 33(24) notified on 19<sup>th</sup> March, 2012, forming part of DCR 1991 which DCR / Town & Country*

*Planning Regulations, is after the CRZ Notification dated 6<sup>th</sup> January, 2011?*

- (e) *Whether the "Incentive FSI" given under the Development Control Regulation 33 (24) on the Plot will be in addition to and/or will be over and above the existing F.S.I. and F.S.I permissible under any other provisions of Development Control Regulations such as DCR 33 (5), DCR 33 (6), DCR 33 (7), DCR 33(9) etc. (See DCR 33 (24) (iii) Page 8)*
- (f) *Generally.*

### **MY OPINION**

I have perused the case for opinion and the documents sent along with and also I had a conference with the Advocates for the Querist and their representatives. Based on the facts ascertained therefrom, I shall express my opinion on the queries addressed to me as follows.

#### **Query (a):**

CRZ Notification dated 6<sup>th</sup> January 2011 specifically provides in paragraphs 8(V)(c) for redevelopment of dilapidated, cessed and unsafe buildings. With regard to such buildings, the Notification provides several conditions and safe guards. The first condition is that the redevelopment should be "in accordance with the prevailing regulation" and the second is that the FSI for such redevelopment schemes shall be "in accordance with the Town and Country Regulations prevailing as on the date on which the project is granted approval by the Competent Authority". This



Notification was amended by a subsequent Notification dated 29<sup>th</sup> March 2011 by which the words "as on the date on which the project is granted approval by the Competent Authority" were substituted by "as on 6<sup>th</sup> January 2011".

I am of the opinion that the CRZ Notification dated 6<sup>th</sup> January 2011, as amended by subsequent Notification dated 29<sup>th</sup> March 2011, permits redevelopment of identified, dilapidated, cessed or uncessed buildings in Island City in CRZ II areas, as long as such redevelopment is in accordance with the Development Rules/Regulations prevailing as on 6<sup>th</sup> January 2011.

**Query (b):**

There is no doubt that when the CRZ Notification 2011 was made effective, the Development Control Rules that were applicable were DCR, 1991. As a result of the CRZ Notification dated 6<sup>th</sup> January 2011 as amended by the further Notification dated 29<sup>th</sup> March 2011, the Development Control Rules that were applicable as on 6<sup>th</sup> January 2011 are the Rules to be applied to development of buildings identified as dilapidated, unsafe or cessed buildings in the Island City CRZ II areas.

In my opinion, therefore, for the redevelopment of identified dilapidated, unsafe or cessed buildings in the Island City



in CRZ II areas, DCR, 1991 as amended and in force on 6<sup>th</sup> January 2011 would be applicable.

**Query (c):**

DCR 33(24) was notified on 20<sup>th</sup> October 2008 and continued to be a part of DCR, 1991 as on 6<sup>th</sup> January 2011. In my opinion, therefore, DCR 33 (24), which was part and parcel of DCR 1991 as on 6th January 2011, would apply to land in the CRZ II areas in the Island City, with respect to buildings identified as dilapidated or unsafe or cessed within the meaning of paragraph 8 (V) (c) of the CRZ Notification dated 6<sup>th</sup> January 2011.

**Query (d):**

In my opinion, DCR 33(24) as notified on 19<sup>th</sup> March 2012 was not part of the DCR 1991 that was in effect on 6<sup>th</sup> January 2011. Hence, In my opinion, the modified Section of DCR 33(24) notified on 19<sup>th</sup> March 2012 cannot apply in the CRZ II areas in the island city as the CRZ Notification dated 6<sup>th</sup> January 2011 (as amended by Notification dated 29<sup>th</sup> March 2011) makes it clear that the redevelopment of dilapidated or unsafe or cessed buildings within CRZ II areas in the Island City is subject to the condition that the redevelopment can be done only with in accordance with the Development Regulations which were operative as on 6<sup>th</sup> January 2011.

BSM

**Query (e):**

DCR 33(24) issued by the Notification dated 20<sup>th</sup> October 2008 contained Clause (iii), which provided that the incentive FSI given under DCR 33(24) would be available 'over and above the FSI permissible under any other provisions of DCR' and that the said incentive FSI could be used on the same plot in conformity with the DCR and the DP within the overall cap/limit of total maximum permissible FSI as given in Clause (vii), which in the case of the island city would be 4.00. This incentive FSI formed a part of the DCR 33(24) notified on 20<sup>th</sup> October 2008 and continued as a part of DCR 1991 which continued to be operative as on 6<sup>th</sup> January 2011.

In my opinion, therefore, the incentive FSI given under DCR 33(24) under the Notification dated 20<sup>th</sup> October 2008 was in addition to and over and above the FSI permissible under any other provision of DCR but subject to the cap of 4.00 in the Island City.

I am of the opinion that the special incentive FSI given under the Notification dated 20<sup>th</sup> October 2008, was part and parcel of DCR 1991 which was operative and effective on 6<sup>th</sup> January 2011. This incentive FSI was intended to be over and above any other existing FSI permissible under any other provisions of DCR and, therefore, this shall be allowed to be used



on the same plot but within the over all cap/limit of the total maximum permissible FSI of 4.00 in the Island City.

**Query (f):**

I have nothing further to add.

**Mumbai**

**March 11, 2013**



(B.N. SRIKRISHNA)

**MEMO OF FEE**

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Memo No.39/2012-2013

DATE:

11<sup>th</sup> March, 2013

PARIMAL K. SHROFF & CO.

ADVOCATES

MUMBAI

PFROM:

JUSTICE B.N. SRIKRISHNA (RETD.)

FORMER JUDGE, SUPREME COURT OF INDIA

II FLOOR, NATWAR CHAMBERS,

94, NAGINDAS MASTER ROAD,

FORT, MUMBAI - 400 001

**PAN NO. AAHPK 5283 G**

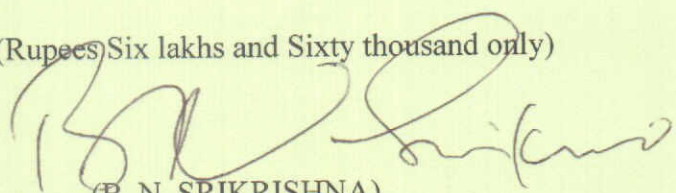
RE:

HBS VIEW PRIVATE LIMITED IN THE  
MATTER OF BCR 33(24) AND CRZ  
NOTIFICATION

Fees for holding conference  
on 1st March, 2013  
and giving written Opinion

44,000 Gms.  
Rs.6,60,000/-

(Rupees Six lakhs and Sixty thousand only)



(B. N. SRIKRISHNA)

Mr. Parimal Shroff

MUNICIPAL CORPORATION OF GREATER MUMBAI

FORM 'A'

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT. 1966.

No. EEBPCI/1328/FSIA

of

5/3/10

ISSUED

COMMENCEMENT CERTIFICATE

To,

Ardour Real Estate Pvt. Ltd.  
101, Kalpataru Synchry.  
Opp. Grant Hyatt  
Santa Cruz (E) Man - 55

Sir,

With reference to your application No. 2537 dated 19/06/2008

for Development Permission and grant of Commencement Certificate under Section 44 and 69 of the Maharashtra Regional and Town planning Act., 1966; to carry out development for Prop. residential bldg. called A.C. Road - Case - No. 1/296 CPD bldg. on c.s. no. 1/296 CPD of Parel - Sewri divn.

and building permission under section 346 of the Bombay Municipal Corporation Act., 1888, to erect a building in Building No. — on Plot No./C.S.No./C.T.S. No. 1/296 CPD P.S. Division/ Village/Town Planning Scheme No. Parel - Sewri divn. Situated at Road/Street S.S. Rao Road, Parel - Ward FLS the Commencement Certificate/Building permit is granted on the following conditions :-

- 1) The land vacated in consequence of the endorsement of the setback line/road widening line shall form part of the public street.
- 2) That no new building or part thereof shall be occupied or allowed to be occupied or used or permitted to be used by any person until occupancy permission has been granted.
- 3) The Commencement Certificate/Development permission shall remain valid for one year commencing from the date of its issue.
- 4) This permission does not entitle you to develop land which does not vest in you.
- 5) This Commencement Certificate is renewable every year but such extended period shall be in no case exceed three years; provided further that such laps shall not bar any subsequent application for fresh permission under section 44 of the Maharashtra Regional & Town Planning Act. 1966.
- 6) This certificate is liable to be revoked by the Municipal Commissioner for Greater Mumbai, if :-
  - a) The development work in respect of which permission is granted under this certificate is not carried out or the use thereof is not in accordance with the sanction plans.
  - b) Any of the conditions subject to which the same is granted or any of the restrictions imposed by the Municipal Commissioner for Greater Mumbai is contravened or not complied with.
  - c) The Municipal Commissioner for Greater Mumbai is satisfied that the same is obtained by the applicant through fraud or misrepresenting and the applicant and every person deriving title through or under his in such an event shall be deemed to have carried out the development work in contravention of Sec 43 & 45 of the Maharashtra Regional and Town Planning Act., 1966.

P.T.O.

7) The conditions of this Certificate shall be binding not only on the applicant but on his heirs, executors, assignees, administrators and successor and every person deriving title through or under him.

8) The Municipal Commissioner has appointed Shri. C.L. Undage  
Assistant Engineer, to exercise his powers and functions of the Planning Authority under section 45 of the said Act.

This Commencement Certificate is valid upto 4.12.11

*g) This C.C. is issued upto Plinth level only for M.C. Gov. coll. parking bldg. and upto top of 8th fl for residential bldg*

For and behalf of Local Authority  
The Municipal Corporation of Greater Mumbai.

*Recd. 2 copies  
to be  
for building plan.*

*4/5/10  
S/SP  
CO VIII*

*[Signature]*  
Assistant Engineer  
Building Proposals (City) (R&R) IV

For MUNICIPAL COMMISSIONER FOR GREATER MUMBAI.

*EB/1228/F3/A - 5/3/10*

**ISSUED**

*copy to: (1) Architect (2) A&P COMM. FT South level  
(3) A&P W FT SOUTH Wards (4) Dy. A&P C. City*

*4/5/10  
S/SP CO VIII  
of A&P COMM*