

MCHI - CREDAI

(ISO 9001:2008)

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Ref. No. MCHI/CEO/13-14/003

May 31, 2013

To,
Shri Manu Kumar Srivastava (I.A.S.)
Principal Secretary (I)
Urban Development Department
Government of Maharashtra
Mantralaya,
Mumbai

Sub: Effect of the Repeal of ULC Act, 1976 (ULCR Act/ Principal Act)

Ref: Meeting of Officer Bearers of MCHI-CREDAI with the Hon'ble Chief Minister, Shri Prithviraj Chavan on 09th May 2013.

Dear

Please refer to the discussions in the meeting of MCHI-CREDAI's Office Bearers with the Hon'ble Chief Minister, Shri Prithviraj Chavan, Government of Maharashtra held on 09th May 2013 on the above subject.

In this meeting MCHI-CREDAI raised certain points about the applicability of the ULC Act to old proposals and the Authority to charge fee, or withhold approval on non-payment of such fees and to ask for NOC. The process or rules being followed after the Repeal Act, only delay the projects.

During the meeting it was explained by your goodself that the imposition of certain conditions has financial implications, because if any change in the use of land is asked for or if time has to be extended for any project, government has to charge fee for the same. Certain points and issues are put up below for your kind consideration.

There are many orders from the Hon'ble High Courts of Bombay, Madras and Andhra Pradesh on the relevant issues on the imposition of the ULC provisions after the adoption of Repeal Act 1999. There are also some studied opinions and on the interpretation of the provisions of the Act by the Legal Experts like Shri Iqbal Chagla. After going through them it appears that authority with the Government does not remain to enforce the exemption order by adopting measures which are contrary to the law of the land. In the order of the Hon'ble Madras High Court, after quashing the impugned notice issued by the government of Tamilnadu, after Repeal of the Act, it went on to observe, "It is not even open to the State to take any action for the alleged violation of

PAST PRESIDENTS

Sunil Mantri, Pravin Doshi, Mohan Deshmukh, Mofatraj Munot, Niranjani Hiranandani, Rajini S. Dimora

conditions, even if any". It is settled proposition of law that if Public Authority wants to take any action to the detriment of its citizens it must be backed by the authority of law. And once the Principal ULC Act is not in force, the power u/s. 20(2) of the Act, with the Government ceases to operate. Therefore, from the High Court orders and the reading of the cases, it appears that the State Government does not have the authority of law to take any action on account of such breaches, non compliances and request for change of use or extensions. The Provision of the Principal Act, after the repeal, are therefore not available to the State.

Government would have to take a call on the financial implications as well as the legality of the actions being taken against the projects and the proposals'.


We would also like to bring to your notice that it was clarified in the meeting that even if the State loses the amount in revenue terms, the state is losing much more in Registration, payment of Stamp Duty, other levies, missing the creation of Housing stock and lots of job opportunities etc. It impacts State efforts negatively.

It also appears that the Maharashtra is the only State which is still trying to keep in operation the ULC Provisions in spite of adoption of the Repeal Act.

Finally, as discussed and as directed by Hon'ble Chief Minister, the opinion of the Attorney General of Maharashtra was to be taken by the department for taking the further necessary actions. I am sure you must have initiated the process and the opinion might have been received.

If deemed fit, we would like to get appraised of the progress of the case to expedite solving these issues once for all.

Yours Sincerely,


S. S. Hussain, I.A.S. (Retd.)

C.E.O

MCHI-CREDAI

To,
Shri Manu Kumar Srivastava (I.A.S.)
Principal Secretary (I)
Urban Development Department
Government of Maharashtra
Mantralaya,
Mumbai

Encl: Minutes of the Meeting held with Hon'ble CM on 09th May 2013.