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To,
Dr. Iqbal Singh Chahal (I.A.S.),
Municipal Commissioner,
Brihanmumbai Municipal Corporation,
Fort, Mumbai – 400

Sub: Provision of Amenity Open Space under Section 14(A) under DCPR-2034.

Ref: Orders passed by the Hon'ble High Court in Writ Petition No. 6656 of 2015, Writ Petition No.8696 of 2015 with Writ Petition No.8697 of 2015 dated 15th December, 2022.

Respected Sir,

1. As per the DCPR-2034, in case of development of land admeasuring 4000 sq.mtrs. above (excluding area under ready setback / DP Road) in residential and commercial zones, amenity areas as specified under Regulation 14(A) as required to be handed over to the MCGM. In this regard, reference is requested to the Orders of the Hon'ble High Court in the above referred Writ Petition. The ratio laid down by the Hon'ble High Court is as under:

“ 18. It is not disputed that the Petitioners’ proposals for development were made and consequent tentative layouts were sanctioned in October / November 2012, which is much prior to the new DC Rules coming into force. In view of this, it cannot be said by any stretch of imagination that, Petitioners’ proposals can be treated as ‘completely new proposals’ after 21.11.2013. What is being suggested by Respondent No.1 is that since the sanction of final layout was pending as on 21.11.2013, when new DC Rules came into force, the Petitioners’ proposals should be considered as new proposals. This suggestion cannot be accepted in view of mandate of Rule 46 of new DC Rules which provides that clarification issued by the Director Town Planning shall be final and binding on all concerned parties. It is needless to mention that, Respondent Nos. 1 and 2 are concerned parties in these matters, on whom also, the clarification is binding.

19. It is clear that the new DC Rules cannot be applied to Petitioners’ proposals and therefore, the impugned orders holding that the tentative layouts sanctioned to the Petitioners cannot be converted into final layouts, is not sustainable.

20. The reliance placed on Section 46 of the M.R.T.P. Act by the Respondent/State to contend that the Planning Authority while considering application for permission, shall have due regard to provision of any draft or final plan and if the DC Rules are yet to be sanctioned, then in considering applications for permission, the Planning Authority shall have due regard to provision of draft or sanctioned regional plan, will have to be read along with saving clause 1.4 and clarification issued under Rule 46 of the new DC Rules. Similarly reliance placed on Section 31(6) and 42 of the M.R.T.P. Act by Mr. Kulkarni on behalf of the Respondent No. 1, will also have to be read along with saving clause 1.4 and clarification issued under Rule 46 of the new DC Rules.

21. It is to be noted that the savings clause 1.4 of the new D.C.Rules starts with a non-obstante clause, which provides that notwithstanding anything contained in the Rules, any permission granted or any action taken under the regulations in force prior to these Regulations shall be valid and continue to be so valid, unless otherwise specified. Perusal of clarification issued by Respondent No. 3 – Director Town Planning, Pune, under Rule 46 is in fact 'specific reiteration' that only for completely new proposals received after 21.11.2013, the new DC Rules shall apply and therefore, it cannot be said that 'anything otherwise' is specified.

22. The argument of Mr. Kulkarni, learned counsel for the Respondent No.1 that there is no clarity about at what stage the new D.C. Rules should be made applicable and therefore Rule No.3, which speaks about applicability of the Regulations at various stages of the development such as part construction, change of occupancy, reconstruction etc., has no merit. The saving clause 1.4 as well as clarification issued under Rule 46 of the new D.C. Rules have given sufficient clarity for which proposals, the new DC Rules would apply and at what stage. In the facts and circumstances of the present case, new D.C.Rules will not apply to the pending proposals of the Petitioners for sanction of final lay out."

2. Further reference in this regard is requested to the Notification dated 8th May 2018 accompanying DCPR-2034 and in particular in para 21 of the said Regulation which inter-alia reads as under:-

"(21) Where layouts are approved and IOD granted prior to 27th May 2016 (i.e. date of publication of D.P. under section 26 of MRTP) which are valid then the proposals of 1991 D.P., on such land shall prevail over proposal under 2034 D.P."

3. A cogent reading from the above, it is clear that once a layout is approved under the Old Regulation, no further approval of the layout plan is required to be undertaken as per the new regulation and in particular the requirement of the approved amenity open space under Regulation 14(A) would seize.
4. We have consistently submitting to the MCGM that several layouts which have already approved under DCPR-1991 cannot provide for the amenity under Regulation 14(A) as the layout are already approved and / or developed. In view thereof, it is submitted that the requirement of Regulation 14(A) would not be applicable in respect of layout already approved under DCPR-1991, if the same are already approved under DCPR-2034. In view thereof, you are requested to kindly have the matter examined and thereafter issue necessary directions in accordance with the ratio laid down in the Hon'ble High Court as well as the spirit in which it is intended in DCPR-2034.

Thanking you,

Yours faithfully,
For CREDAI-MCHI


Boman Irani
President


Dhaval Ajmera
Hon. Secretary