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Ref. No. MCHI/PRES/23-25/009

Date : 27/4/2023

To,
Shri Bhupendraji Yadav
Hon'ble Minister for Environment,
Forest & Climate Change,
Indira Paryavaran Bhavan,
Jor Bagh Road,
New Delhi - 110003

Subject: Regarding Slum Redevelopment projects In CRZ area In Greater Mumbai, as per CRZ Notification 2019.

Reference: CRZ Notification, 2019 dated 18.01.2019

Respected Sir,

CREDAI-MCHI is an apex body comprising members from the Real Estate Industry in the Mumbai Metropolitan Region (MMR) with an impressive membership of over 1800+ leading developers in MMR. Being the only Government-recognized body for private sector developers in MMR, CREDAI-MCHI is dedicated to promoting the industry's organization and progress.

The Government of Maharashtra has launched a comprehensive slum rehabilitation scheme by introducing an innovative concept of using land as a resource and allowing incentive floor space index (FSI) in the form of tenements for sale in the open market, for cross-subsidization of the slum rehabilitation tenements, which are to be provided free to the slum-dwellers.

As you are aware, the slum rehabilitation schemes have achieved in improving infrastructure of this city by clearing public utility plots like roads, infrastructures, reservations and open spaces. These schemes have been a role model for not only our country but also internationally wherein various dignitaries from across globe have visited and appreciated the scheme.

Since 2001, there has been no development of slum schemes in CRZ area (Affecting more than one million slum dwellers) due to no clarity of these regulations or having norms which made development of these schemes unviable. A glimmer of hope came in 2019 where in all the restrictions of development were opened up and the slums in CRZ could be developed in similar manner as any other slum scheme across the city.

However due to misreading and misinterpretation of these regulations contained in CRZ notification 2019 has led to MCZMA asking for clarification from your office and have withheld granting permission to any of slum rehabilitation schemes in CRZ area for this clarity from MoEFCC.

The MCZMA, vide its 162nd meeting minutes Copy of the same is enclosed as **Annexure A**, as well as correspondence with MoEFCC, appears to have misinterpreted the above provisions by asking for clarification on issue of slum redevelopment in CRZ Area.

We have time and again represented to MCZMA that all the properties (whether occupied by slum or otherwise) situated on the landward side of existing road can be developed under Cl. 5.2(ii) and 5.2(iii) of the CRZ notification 2019. (Extract attached herewith as **Annexure B**).

The said clauses are a clear code for construction of buildings on landward side of existing road or existing authorized structure. These clauses read together are wide enough to include any kind of development in CRZ.

Maharashtra Chamber of Housing Industry

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.
Tel: 42121421, Fax: 4212 1411/407 Email: secretariat@mchi.net Website: www.mchi.net

CREDAI-MCHI CHAPTERS : THANE | KALYAN-DOMBIVLI | MIRA BHAYANDAR | RAIGAD | NAVI MUMBAI |
BHIWANDI | PALGHAR BOISAR | SHAHAPUR-MURBAD | URAN-DRONAGIRI |
VASAI VIRAR | ALIBAG | KARJAT-KHALAPUR-KHOPOLI | YOUTH NMR

It may be noted that the Hon'ble High Court of Mumbai has passed Orders dated 20th October 2022 in WP(L) No. 32454/2022 (Akshay Sthapatya Pvt. Ltd. vs Union of India & Ors). The Hon'ble High Court has directed the MCZMA to appraise the slum rehabilitation projects on the subject plot under CRZ 2019 Notification and applicable laws within a time bound manner by disregarding the clarification sought by MCZMA in its letter dated 8th February 2019.

However, MCZMA on the basis of its misinterpretation of the aforementioned CRZ 2019 notification, has continued to read as clause 5(iv) of the notification has an overriding effect over clause 5(ii) read with clause 5(iii). The clause 5(iv) is clearly applicable only to properties situated on the seaward side of the existing road, where only authorised structures are allowed to be developed. The position of only authorised structures being allowed to be developed on the seaward side of existing road, is consistent with the provisions of CRZ notification of 1991 and 2011. While clause 5(ii) read with 5(iii) are complete code of development applicable to the properties (whether occupied, vacant, slum or otherwise) on the landward side of the existing road, the clause 5(iv) is applicable only to properties which are located on the seaward side of the existing road.

We request to issue a clarification from MoEFCC that

- (i) **all the slum scheme situated on the landward side of existing road should be examined by MCZMA under clause 5(ii) and 5(iii).**
And
- (ii) **The clarification of including protected structure in the definition of the authorised structure is only required for slums situated in the seaward side of the existing road.**

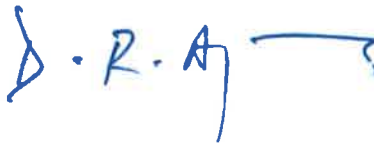
We request your earliest intervention in this issue as it will enable lakhs of families to get better livelihood through safe, hygienic homes with all basic necessary amenities. This would also drastically improve the coastal environment which currently is fully covered by large swathes of slums which do not leave an iota of openspace.

Thanking you,

Yours sincerely,
For **CREDAI-MCHI**



Dominic Romell
President



Dhaval Ajmera
Hon. Secretary

Encl: As above.

CC:

1. Shri Prawn Darade (I.A.S.), Principal Secretary, Environment Department, Govt. of Maharashtra, Mantralaya, Mumbai - 400032

2. Dr. H. Kharkwal, Additional Director/Scientist 'E' & MS, (CRZ), Govt. of India, MoEF & CC, New Delhi -110003

**Minutes of the 162nd Meeting of Maharashtra Coastal Zone Management
Authority (MCZMA) held on 7th December, 2022**

Discussion Item no. 3: Regarding SRA scheme 'Mariamma Nagar CHSL' on plot bearing CS no. 47 (pt) & 16/47 (pt) of Lower Parel Division situated at Dr. A. B. Road in G/S ward, Mumbai by M/s AkshatSthapatya Pvt. Ltd related to Hon'ble High Court order dated 20th Oct, 2022 passed in WP (L) No. 32454/2022 (AkshaySthapatyaPvt Ltd V/s Union of India &Ors)

INTRODUCTION:

The Authority noted the proposal of Amendment in CRZ Clearance for the SRA Project 'Mariamma Nagar CHS Ltd' at Worli, Mumbai. The project site falls in CRZ II area. The PP has applied for 3,28,932.89 m² of total covered built-up construction area. The Captive FSI of 4.00 is proposed. (1 Rehab Building having 2 Towers (Height: 119.95 m), One Sale Building having 2 Towers (Height: 273.95 m) and Nehru Centre Building (Height: 39.66 m)

The project was deferred in the 159th MCZMA meeting held on 07/06/2022 as the Authority needed clarification about the permissibility of the SRA scheme in CRZ-II areas and hence the matter was deferred.

Earlier, the Govt. of Maharashtra through Hon'ble Chief Minister vide letter dated 08/02/2019 had sought clarification from the MoEFCC regarding permissibility of the SRA scheme in CRZ-II areas under CRZ Notification, 2019. Further, Hon'ble Minister, Env&CC sent a communication dated 14th June, 2022 seeking guidance from the MoEF&CC, New Delhi regarding the permissibility of the SRA schemes in CRZ areas of the State of Maharashtra. In response, the Hon'ble Minister, MoEF&CC, New Delhi on 20th September, 2022 replied stating that the matter is under re-examination in the Ministry for necessary action.

The Authority noted that presently, Hon'ble High Court has passed orders dated 20th October, 2022 in WP (L) No. 32454/2022 (Akshay Sthapatya Pvt Ltd V/s Union of India & Ors). The Hon'ble High Court has directed the MCZMA to appraise slum rehabilitation project on the subject plot by applying Regulation 5.2 (ii) and (iii) of the CRZ 2019 Notification and applicable laws within a time bound manner and disregarding the clarification sought by the MCZMA in its letter dated 8th February 2019.


Member Secretary

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DELIBERATIONS:

The Authority noted that in view of the order passed by the Hon'ble High Court of Bombay, the matter will have to be decided without waiting for the clarification from MoEFCC, as per CRZ Notification 2019 and applicable laws. As such, MCZMA is obliged to decide the matter considering the documents on record and the CRZ Notification 2019 in totality and as it is, disregarding the clarification sought by the State Government in its letter dated 08/02/2019.

The Authority noted that the plot was preoccupied by the slums. The Authority is of the opinion that the CRZ Notification 2019 Clauses 5.2(ii) and 5.3(iii) may not be applicable to this SRA project case with FSI 4.0.

The Authority from the para 5.2 of the CRZ Notification, 2019 noted that, in CRZ II areas, the development and redevelopment is permissible in accordance with the town and country planning regulations existed as on 18.1.2019. It is further noted that the FSI entitlement for the normal vacant plot as per town & Country planning regulations i.e. DCPR 2034 differs from the FSI entitlement claimed in case of SRA project.

The Authority observed that this is the case of reconstruction of the plot populated with slums. It could have been covered under the Clause 5.2(iv) if the slums would have been authorized structure, which they are not. The Clause 5.2(iv) is only for the reconstruction of authorized buildings. The Clause 5.2(iv) is reproduced as below:

"Reconstruction of authorised buildings shall be permitted, without change in present land use, subject to the local town and country planning regulations as applicable from time to time, and the norms for the Floor Space Index or Floor Area Ratio, prevailing as on the date of publication of this notification in the official Gazette and in the event that there is a need for amendment of the FSI after the said date of this notification, the Urban Local Body or State Government or Union territory Administration shall approach the Ministry of Environment, Forest and Climate Change through the concerned State Coastal Zone Management Authority (SCZMA) or Union Territory Coastal Zone

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Management Authority, as the case may be and the CZMA shall forward the proposal to the National Coastal Zone Management Authority (NCZMA) with its views in the matter, and the NCZMA shall thereafter examine various aspects like availability of public amenities,.... "

The Authority observed that it doesn't fit in 5.2(iv) as it is not the case of reconstruction of authorized structure.

The Authority noted that recently, the MoEF&CC, New Delhi vide letter dated 7th November, 2022 requested to provide a detailed proposal with respect to SRA projects along with recommendation of the SCZMA to take further necessary action. Taking into account the communication received from the MoEF&CD, the MCZMA need to send the detailed proposal in the matter.

However, as per the order of the Hon'ble High Court, MCZMA is required to proceed further disregarding the clarification sought.

Dr. Shindikar, Expert Member opined that a clarification need to be sought from the Hon'ble Supreme Court of India on legal interpretation of the above said order dated 20th Oct, 2022 passed by the Hon'ble High Court. Dr. Kudale, Expert Member also agreed with the same.

During the meeting, the ACS, UDD-1 suggested to obtain opinion from the Advocate General of Maharashtra on the said order before taking further action in the matter.

DECISION:

Litigation Aspects:

Govt. of Maharashtra has asked the clarification from MoEFCC, which was not given. However, recently MoEFCC has asked to submit the proposal vide their letter 07/11/2022.


Hence, the Authority after deliberation decided to seek legal opinion from the Advocate General of Maharashtra on following points:


Member Secretary


Chairman

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- a. Whether the Authority can overlook the other provisions of the CRZ Notification 2019 and decide on the matter only considering Clauses 5.2 (ii) and (iii), neglecting other Clauses 5.2(iv) and 10.3?
- b. Whether the Authority has the power and source of authority to consider and recommend the proposal with a higher FSI 4.0 for the SRA Slum Redevelopment Development Scheme projects for in CRZ area?
- c. Whether MCZMA should go to Hon'ble Supreme Court by way of filing an appeal against the directions of the Hon'ble High Court.


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CRZ Notification 18th January 2019

5.2 CRZ-II:

- i. Activities as permitted in CRZ-I B, shall also be permissible in CRZ-II, in so far as applicable.
- ii. Construction of buildings for residential purposes, schools, hospitals, institutions, offices, public places, etc. shall be permitted only on the landward side of the existing road, or on the landward side of existing authorised fixed structures:

Provided that no permission for construction of buildings shall be given on landward side of any new roads which are constructed on the seaward side of an existing road.

- iii. Buildings permitted as in (ii) above, shall be subject to the local town and country planning regulations as applicable from time to time, and the norms for the Floor Space Index (FSI) or Floor Area Ratio (FAR) prevailing as on the date of this Notification, and in the event that there is a need for amendment of the FSI after the date of publication of this notification in the official Gazette, the Urban Local Body or State Government or Union territory. Administration shall approach the Ministry of Environment, Forest and Climate Change through the concerned State Coastal Zone Management Authority (SCZMA) or Union Territory Coastal Zone Management Authority, as the case may be and the SCZMA shall forward the proposal to the National Coastal Zone Management Authority (NCZMA) with its views in the matter, and the NCZMA shall thereafter examine various aspects like availability of public amenities, environmental protection measures, etc., and take a suitable decision on the proposal and it shall be the responsibility of the concerned Town Planning Authority to ensure that the Solid Wastes are handled as per respective Solid Waste Management Rules and no untreated sewage is discharged on to the coast or coastal waters.
- iv. Reconstruction of authorised buildings shall be permitted, without change in present land use, subject to the local town and country planning regulations as applicable from time to time, and the norms for the Floor Space Index or Floor Area Ratio, prevailing as on the date of publication of this notification in the official Gazette and in the event that there is a need for amendment of the FSI after the said date of this notification, the Urban Local Body or State Government or Union territory Administration shall approach the Ministry of Environment, Forest and Climate Change through the concerned State Coastal Zone Management Authority (SCZMA) or Union Territory Coastal Zone Management Authority, as the case may be and the CZMA shall forward the proposal to the National Coastal Zone Management Authority (NCZMA) with its views in the matter, and the NCZMA shall thereafter examine various aspects like availability of public amenities, environmental protection measures etc., and take a suitable decision on the proposal and it shall be the responsibility of the concerned Town Planning Authority to ensure that the Solid Wastes are handled as per respective Solid Waste Management Rules and no untreated sewage is discharged on to the coast or coastal waters.

Clarification required on the above is as follows:

Plain reading of the above Regulations clearly lays down that Regulations 5(ii) and 5(iii) are a complete code for development of any property in CRZ Area, on the landward side of the existing road and existing authorized structure. If the slum scheme to be implemented within the CRZ-II area, is behind the line of existing road or existing authorized structure, the same is clearly permissible without any fetters under Regulations 5.2(ii) and 5.2 (iii) and the aspect of whether the slums are authorized structures or not is irrelevant. Development of slum schemes on the landward side of the existing road in CRZ – II areas is not prohibited or forbidden under CRZ Notification 2019. The provisions of Regulation 5.2(ii) read with 5(iii) of the CRZ Notification of 2019 are so wide that slum schemes located on the landward side of the existing road in CRZ II areas clearly fit into the four corners of the same.

Regulation 5(iv) thus must be read as meant for reconstruction of an authorized structure on seaward side of the existing road and existing authorized structure. Regulation 5(iv) specifically deals with what can be developed towards the seaward side of the existing road and existing authorized structure and that clause cannot be extended to apply to the landward side of existing road and existing authorized structure. Regulation 5.2(iv) is applicable for construction permissible on the seaward side of the existing road only where reconstruction of authorized building is permissible, as per the norms set out in therein.