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Naman Shah

PROCUREMENT CONVENOR
Nimish Ajmera

WOMEN'S WING CHAIRPERSON
Jesal Shah

Ref. No. : MCHI/PRES/24-25/136

Date: 15/10/2024

To

Dr. Bhushan Gagrani (I.A.S.),
Municipal Commissioner,
Brihanmumbai Municipal Corporation,
Fort, Mumbai - 400 001



Respected Sir,

Reg; 1) Review of Guidelines / Approvals for Bldg., Construction in the Vicinity of Defence Establishments.

2) Letter No. 40/PC 125/2023/NV-11 from Department of Urban Development, Ministry to Slum Rehab Authority, Bandra dated 03rd November 2023.

We invite your attention to Letter dated 3rd November 2023 from Dept. of Urban Development wherein it has been mentioned that the Advocate General, state of Maharashtra had opined that Defence Circulars dated 18.05.2011; 18 Month 2015; 17th November 2015; and 23rd December 2022 were quashed and set aside by the court. Therefore, in our opinion, neither 2011 guidelines can be applied nor can 2016 guidelines can be applied today.

It has also come to our attention recently of another judgement by the Honorable Supreme Court on a Special Leave Petition No. 13483/2024 I filed by the Ministry of Defence who were aggrieved by the order of the Writ Petition 3145 of 2021 in High Court and the Order passed by learned Judge M.V Chandvani J and Sunil B. Shukre J. as below reproduced:

"In the present case, we have found that the aforesaid circulars of the Ministry of Defence are not even in the nature of executive instructions. Rather, they fall under a category of only departmental circulars binding upon the officers of the department and not the outsider or third parties. This category is even below the category of executive instructions of the Central Government, which instructions would operate until otherwise provided by Parliament, as provided under Article 73(2) of the Constitution of India. It would then follow that the law applicable to the executive instructions in a case, would be applicable with even greater force to the office circulars which are not issued in the name of the "President", contrary to mandate of Article 77(1) of the Constitution of India. For this reason also, the afore stated circulars cannot be relied upon by the petitioner so as to make an attempt to restrict the right of the petitioner to enjoy it's property, which includes right to make construction in accordance with the permission granted in that regard by the Competent Authority, which permission is already granted to the petitioner ay back on 8th August 2008."

The Honorable Supreme Court by Hon'ble MRS. JUSTICE B.V. NAGARTHNA and Hon'ble MR. JUSTICE NONGEIKAPAM KOTISWAR SINGH has rejected and dismissed the Special Leave Petition with the following order:

"Having regard to facts and circumstances of this case, we are not inclined to interfere in the matter. The Special Leave Petition is hence dismissed". (Copy of Order is enclosed).

Maharashtra Chamber of Housing Industry

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.
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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

As you are aware more than 200 Projects have been stalled which is not only a heavy financial loss to the Developers, but also unsurmountable difficulties to Individuals entitled to their Homes - a combination of both converts into heavy loss to the Real Estate Industry as well as County's Economy.

In light of above judgements, we request your goodself to consider granting Approvals/Sanctions of Redevelopment Projects which have been stalled for want of NOC from Defence.

Yours sincerely,
For CREDAI-MCHI



Domnic Romell
President



Dhaval Ajmera
Hon. Secretary

PS: Contact Person Mr. Sanjay Phope : 96193 45193