

Bulletin

The Property Owners' Association

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Mumbai

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Happy New Year 2014



URGENT SPECIAL GENERAL MEETING WILL BE HELD ON FRIDAY THE 24th JANUARY, 2014 AT 6.00 P.M. AT JAI HIND COLLEGE AUDITORIUM, CHURCHGATE, MUMBAI-400 020 ON EXTREMELY HIGH MUNICIPAL TAX ON CAPITAL VALUE OF PREMISES/PROPERTY AND HON'BLE HIGH COURT INTERIM ORDER AS WELL AS FILING OBJECTIONS & SUGGESTIONS ON PROPOSED AMENDMENT TO DCR 33(9) DATED 27.12.2013 (REDEVELOPMENT OF PROPERTIES UNDER DCR 33 (9)) IN ISLAND CITY AND SUBURBS IN MUMBAI AND RECENT HON'BLE SUPREME COURT ORDER DATED 17.12.2013.

VERY URGENT

To,
The Owners/Members of Association,
Members of Co.op. Society etc.,
Mumbai.

28th December, 2013

Dear Members,

The New Property Tax Bill, shows that MCGM has fixed extremely high Capital Value of property in Crores and tax is levied on the said basis of Capital Value of premises/market value of the premises.

The Writ Petition challenging the New Property Tax based on Capital Value (Market Value) has been filed in the Hon'ble Bombay High Court on 23.09.2013. The Hon'ble Division Bench of Hon'ble High Court on 22.10.2013 has admitted the Writ Petition and on 23.12.2013 has passed the interim relief interalia in para 4 of Order – "In the meantime, the Petitioners will pay municipal taxes at the pre – amended rates and also the additional tax at the rate of 25% of the differential tax between the tax payable under the old regime and now payable on the basis of capital value of the property. Such amounts shall be accepted by the MCGM without prejudice to the rights and contention of the parties". The Order of the Division Bench dated 23.12.2013 is reproduced on pages 7 & 8 of this bulletin.

Further State Govt. has invited objections & suggestions on proposed amendment in DC Regulations 33(9) vide Govt. notice dated 27.12.2013. The Govt. policy earlier was for Cluster Development only in Island City. The proposed amended in Cluster Development Policy is for Island City as well as for entire suburbs. In the Island City, minimum plot area is 4000 sq.mts. and in suburbs minimum plot size is 10000 sq.mts. The redevelopment is permitted under DCR 33(9) on

Gross plot area with minimum FSI 4 or FSI required for rehabilitation plus additional incentive FSI ranging from 55% to 100% whichever is more. (Copy of proposed DCR 33(9) is available on website of Property Owners' Association (www.poamumbai.org) and shall be distributed in the meeting in the Hall on Friday the 24th January, 2014 at 6.00 pm.

Further the Hon'ble Supreme Court in recent judgment dated 17.12.2013 has interalia given certain directions to Municipal Corporation on providing RG on ground level, 6m open spaces, etc. the relevant part of judgment is reproduced on page 8 of this bulletin. The said Supreme Court Order has far reaching consequences on redevelopment of property under DCR 33(6), 33(7), 33(9) & 33(10) etc. (The said Full Judgement is available on website of Property Owners' Association www.poamumbai.org)

THE SPECIAL URGENT MEETING HAS BEEN CALLED TO DISCUSS THE ABOVE THREE ISSUES, THE NEW PROPERTY TAX & REDEVELOPMENT OF PROPERTY UNDER DCR 33(9) AND SUBMIT THE OBJECTIONS & SUGGESTIONS TO THE SAID PROPOSED DCR 33(9) AND STEPS TO BE TAKEN IN THE HON'BLE SUPREME COURT BY WAY OF REVIEW PETITION AND/OR CURATIVE PETITION IN RESPECT OF THE SAID SUPREME COURT JUDGMENT, DATED 17.12.2013.

All are requested to remain present without fail on time.

Thanking you,

Yours sincerely,
for **THE PROPERTY OWNERS' ASSOCIATION,**

M.N. PITTIE
PRESIDENT

B.R. BHATTAD
(VICE-CUM-EXECUTIVE PRESIDENT)

APPEAL FOR FUNDS

APPEAL FOR FUNDS IS MADE TO ALL THE PROPERTY OWNERS CO-OPERATIVE HOUSING & COMMERCIAL PREMISES, SOCIETIES TO FIGHT THE WRIT PETITION FILED, CHALLENGING THE CONSTITUTIONAL VALIDITY OF CAPITAL VALUE BASIS PROPERTY TAX.

APPEAL FOR FUNDS IS ALSO MADE TO FILE REVIEW PETITION OR CURATIVE PETITION IN HON'BLE SUPREME COURT OF INDIA IN RESPECT OF ORDER DATED 17.12.2013 AFFECTING THE REDEVELOPMENT OF PROPERTIES IN MUMBAI.

THE ASSOCIATION APPEALS TO EACH OWNER & SOCIETIES ETC. TO CONTRIBUTE ATLEAST RS. 10,000/- (RUPEES TEN THOUSAND ONLY) OR SUCH AMOUNT PER PROPERTY TO SAFEGUARD YOUR INTEREST.

KINDLY SEND THE CHEQUES IN FAVOUR OF "THE PROPERTY OWNERS' ASSOCIATION" AND SEND IT AT THE ASSOCIATIONS OFFICE ADDRESS: 204, CHANDRA MAHAL, PREMISES NO. 9, 1ST FLOOR, THAKURDWAR ROAD, ABOVE CHANDU HALWAI, MUMBAI – 400 002.

VERY URGENT

Hon'ble Shri. Prithviraj Chavan,
Hon'ble Chief Minister,
Govt. of Maharashtra, Mantralaya, Mumbai.

17th December, 2013

Respected Sir,

The Property Owners' Association was formed in 1924. The property Owners' Association's vision is affordable Housing for all; a home for our people; a global city of distinction & making Mumbai a dream destination. the private Owners / landlord have build almost 20000 buildings in the Mumbai Island city and more than 14000 buildings in suburbs prior to Independence, also constructed several buildings thereafter and provided further houses at affordable rents.

As per the Maharashtra State Housing Policy 2007 (Presented by then Hon'ble Chief Minister Shri. Vilasrao Deshmukh dtd. 23.07.2007) wherein it is admitted in para 18 that : **“During the last 40 years, the Repairs & Reconstruction Board of MHADA has been able to undertake redevelopment of 442 old and dilapidated buildings under DCR 33(9).... “** In last 5 years owners / developers have redeveloped mor than 2000 properties. Now the said properties containing old buildings be allowed to be redeveloped by the owners of the porperties. **The DCR 3399) was amended to allow owners / Landlords to come together and jointly develop their property in cluster. DCR 33(9) relaxation was in furtherance to relaxations to DCR 33(7).**

The right of the Owner to redevelop their properties vest in the Owners only and the Property Owners strongly object to anyone intermeddling with their properties. All the Owners are redy and willing to redevelop theri properties and the unanimous resolutions passed and duly signed by more than one thousand Owners are submitted to Government in the past.

We give below some important suggestions for your kind consideration :-

- 1. The government must allow land owners to redevelop theri properties under DCR 33(7) giving Minimum FSI 4 and DCR 3399) giving minimum FSI of 5 on Gross Plot area or area required to rehouse tenants plus 100% incentive FSI whichever is mor to enable them to redevelop theri own properties without surrender of any area to MHADA or MCGM and without insisting of 70% Consent of tenants / occupants and without deducting the land component occupied by non-cess structure and reservations.**
- 2. Under the present DCR 33(9) dated 2.3.2009, Clause 5(d) provides that only if MHADA / MCGM land is under Cluster Development than the sharing is in proportion to their land in the ration of 1:0:5. There is no cost to the Developer for acquiring development rights of MHADA / MCGM lands. On the private property redevelopment, there was no sharing of area with MHADA / MCGM. The present provision Clause 5(d) must be continued in the new amended scheme. The MHADA / MCGM is now proposing to have shares in redevelopment of private land only to obstruct Cluster redevelopment being undertaken by Private Owners of their property. The Cluster redeelopment as a scheme shall be turning out to be unfeasible and unviable for owners.**

We humbly request you to delete such provisions if any, for the sharing of area proposed in the scheme with MHADA / MCGM on redevelopment of private property to make the Cluster development successful in the City of Mumbai.

- 3. The restriction of any plot under development under DCR 33(7) is undertaken and Commencement Certificate is issued can not be included in DCR 33(9) should be deleted. Any**

Maharashtra Regional & Town Planning Act. 1966.
Proposed Modification to Regulation 33(9) of
Development Control Regulation for Gr. Mumbai, 1991
under Section 37(1AA)

27-12-2013

Government of Maharashtra
Urban Development Department,
Mantralaya, Mumbai 400 032.
Dated 27th December, 2013

NOTICE

No. TPB 4313/CR-185/2013/UD-11 :

Whereas the Development Control Regulations for Greater Mumbai, 1991 (hereinafter referred to as "the said Regulations or the DCR") have been sanctioned by the Government in the Urban Development Department, under section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Act") vide Notification No. DCR 1090/RDP/UD-11 dated 20th February, 1991 so as to come into force with effect from 25th March, 1991.

And whereas, the Regulation 33(9) of the said Regulations deals with reconstruction or redevelopment of Cessed buildings / Urban Renewal Schemes on extensive areas in the Island City of Mumbai.

And whereas, the Govt. in the Urban Development Department vide Notification No. TPB4307/2346/CR-106/2008/UD-11 Dated 2nd March 2009, has substituted the said Regulation 33(9) by a new Regulation 33(9), adding Appendix - IIIA under the said new Regulation 33(9) so as to allow redevelopment in the Island City of the Mumbai over clusters, each of which has a minimum area of 4000 sq.mtrs., bounded by existing distinguishing physical boundaries such as roads, nallas, railway lines etc. and which consists of a mix of structures of different characteristics as provided in the said Appendix - III A.

And whereas, the Govt. in the Urban Development Department vide Govt. Resolution No. TPB-4312/Cr-35/2012/UD-11, dated 10/09/2012 has constituted a Study Group (hereinafter referred to as "the said Study Group") to study all the sub-Regulations under Regulation 33 of the DCR and make suitable recommendations for their effective implementation;

And whereas, the said Study Group, after deliberations has submitted its Report on Regulation 33(9) of the DCR, as Part-2 of the Report of the said Study Group, alongwith draft modification necessary in the said Regulation 33(9);

And whereas, the Govt. has accepted most of recommendations made in the said Report of the said Study Group and is satisfied that in the public interest it is necessary to accordingly carry out urgently a suitable modification to the existing Regulation 33(9) (hereinafter referred to as "the said proposed modification").

Now, therefore, a draft of modification as per the Schedule appended here which the State Government proposes to make in exercise of the powers conferred behalf, is hereby published as required by clause (a) of sub-section (1AA) of section for information of all persons likely to be affected thereby; and notice is

hereby given that the said draft will be taken into consideration by the Government of Maharashtra after the expiry of one month from the date of publication of this Notice in the Maharashtra Government Gazette;

Any objections / suggestions upon the said proposed modification may be forwarded before the expiry of one month from the date of publication of this Notice in the Maharashtra Government Gazette to the Deputy Director of Town Planning, Greater Mumbai, having his office at ENSA Hutments, E-Block, Azad Maidan, Malapalika Marg, Mumbai 400 001. Any objection or suggestion, which may be received by the Deputy Director of Town Planning, Greater Mumbai within the said period will be dealt with in accordance with the provisions of the said sub-section (1AA) of Section 37.

PROPOSED MODIFICATION

Existing Regulation 33(9) of the said Regulations is proposed to be deleted and replaced by a new Regulation 33(9) as per the Schedule appended hereto.

By order and in the name of the Governor of Maharashtra,

(S. R. Kudey)

Joint Secretary to Government

SCHEDULE

(Accompaniment to Notice No. TPB 4313/CR-185/2013/UD-11 dated 27/12/2013)

The existing Regulation 33(9) of the said Regulation be substituted by the following new Regulation-

33(9) : Reconstruction or redevelopment of Cluster (s) of Buildings under Urban Renewal Scheme(s)

For reconstruction or redevelopment of Cluster(s) of buildings under Urban Renewal Scheme(s) in the Island City and Mumbai Suburbs, undertaken by (a) the Maharashtra Housing & Area Development Authority (MHADA) or the Municipal Corporation of Gr. Mumbai (MCGM) either departmentally or through any suitable agency or (b) MHADA / MCGM, jointly with land owners and / or Co-op. Housing Societies of tenants / occupiers of buildings and / or Co-op. Housing Society of hutment dwellers therein, or (c) land owners and / or Co-op. Housing Society of tenants / occupiers of buildings and or or Co-op Housing Society of hutment dwellers, independently or through a Promoter / Developer, the FSI shall be 4.00 or the FSI required for rehabilitation of existing tenants / occupiers plus incentive FSI as per the provisions of Appendix-III-A, whichever is more.

Please Note : the Appendix III A of D C Regulation 33(9) can be downloaded from the Association's website :- www.poamumbai.org.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2592 OF 2013

Property Owners Association and others

Petitioners

versus

State of Maharashtra & others

Respondents

AND

OTHER WRIT PETITION

Mr. C. S. Balsara with H. N. Valeit i/by Mulla & Mulla & CBC for Petitioners in WP Nos. 1812/13, 2592/13 and 2948/2013.

Mrs. kavita Shah for Petitioner in WP No. 1278 of 2013.

Mr. M. S. Doctor for Petitioner in WP No. 2969/2013.

Ms. geeta Shastri, Additional G. P. For State.

Mr. M. P. Jadhav, AGP for State.

Mr. A. Y. Bookwala with Mr. Tushar Deshpande, Mr. M. L. Chaturvedi and Mr. F. Frederick i/by FF & Associates for Petitioners in Group of WP(L) Nos. 2752/2013 to 2919/2013.

Mr. S. S. Pakle with Ms. Sharmila Modle and Yamuna Parekh for MCGB.

**CORAM : MOHIT S. SHAH, C. J. AND
M. S. SANKLECHA, J.**

Date : 23 December,, 2013

PC :

1. In spite of the fact that notice was issued in Writ petition No. 1812 of 2013 on 4 October 2013, no reply has been filed on behalf of the State Government. The reply affidavit on behalf of the State Government shall be filed by 15, January 2014.
2. Learned counsel for the Municipal Corporation states that the reply on behalf of the MCGB will be filed on 16 January 2014 and he will endeavour to supply advance copy of the reply affidavit to the respective advocates for the petitioners in all these petitions before reopening.
3. Rejoinder, if any, to the reply affidavits shall be filed by the Petitioners by 24 January 2014.
4. In the meantime, the Petitioners will pay municipal taxes at the pre-amended rates and also the additional tax at the rate of 25% of their differential tax between the tax payable under the old regime and now payable on the basis of capital value of the property. Such amounts shall be accepted by the MCGB without prejudice to the rights and contentions of the parties.
5. Stand over to 29 January 2014 at 3.00p.m.

(Chief Justice)

(M. S. Sanklecha, J.)

EXTRACT OF RECENT HON'BLE SUPREME COURT ORDER, DATED 17.12.2013

Supreme Court of India Civil Appeal No. 11150 of 2013
Mun.Corp.of Gr.Mumbai & Ors. Vs Kohinoor Ctnl Infrs.Co.P.Ltd.& ... on 17th Dec, 2013
JUDGEMENT - Mr. H.L. Gokhale J. & Mr. J. Chelameshwar R.J.

60 (2) The four additional issues framed in Part – II of the above order are decided as follows:

Issue No.(i) The minimum recreational space as laid down under Development Control Regulation (DCR) 23 cannot be reduced on the basis of DCR 38(34). The recreational space, if any, provided on the podium as per DCR 38(34) (iv), shall in addition to that provided as per DCR 23. Issue Nos.(ii) & (iii). The Govt. of Maharashtra, the Development Plan Drafting Committee, and the appellant – Municipal Corporation shall consider the suggestions as contained in paragraph Nos. 53 and 54 above, while framing the Development Plan for Greater Mumbai. Issue No. (iv). The second provision to DCR 43(1) (A), concerning fire protection requirements, is held to be in bad in law. We hold that even for the reconstruction proposals of plots upto size of 600 sq.mts. under DCR 33(7), open space of the width of 6 meters at least on one side at ground level within the plot, accessible from the road will have to be maintained for the maneuverability of a fire engine, unless the building abuts two roads of 6 meters or more on two sides, or other access of 6 meters to the building is available, apart from the road abutting the building.

(3) The decision as contained in Clauses 2(i) and 2(iv) above, will apply to these constructions where plans are still not approved, or where the Commencement Certificate (CC) has not yet been issued. All authorities concerned are directed to ensure strict compliance accordingly.

(4) The Govt. of Maharashtra shall issue the necessary notification within four weeks of this order, reconstituting the Technical Committee for the High – Rise Buildings., as directed in paragraph 56, including the additional terms of reference, as mentioned in paragraph 57 above. The appellant is directed to render assistance and provide the required honorarium, as mentioned in paragraph 58 above.

With Best Compliments From :



A Well Wisher

From ,
Edited & Published by **Shri. Priyavadan Bhatt** at Property Owners' Association, 204, Chandra Mahal, Room No.9, 1st Floor, Thakurdwar Road, Mumbai 400 002. Tel: 2385 3436 and printed by him at **M/s.Akshita Art**, Mumbai 400 001. Tel. : 2261 4968. The information contained has been obtained from sources believed to be reliable. The Association does not accept any responsibility for accuracy, completeness or adequacy of such information.

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