

c/189
to
c/197
c/203

Proposal to Collector(MSD):-

The proposal was submitted to Collector (MSD) on 29.3.2005 subject to approval from Corporation. Accordingly, the Corporation's approval was obtained vide resolution u.no. CR/45, dtd. 11.4.2005.

c/1609

The Joint Measurement was carried out on 18.1.2008. In the meantime the land owner M/s. Garden Securities approached to State Government in U.D. department with a request to issue directives mentioning that the reservations on the land under reference stands lapsed as MCGM failed to initiate action in the prescribed time as per the provisions of MR&TP Act, 1966.

c/233
f
c/281

This office vide letters dtd. 13.9.2005 & 25.6.2007 has submitted report to Under Secretary, U.D. dept mentioning that MCGM has submitted the application requesting to start acquisition to Collector (MSD) within a period of six months. As such, the contention of owner that the reservation stands lapsed cannot be accepted.

U.D. Department's directions:-

c/375-
c/376

The Under Secretary U.D. Dept vide letter u.no. CMS/TPB-4306/373/CR/174/2008/UD-11, dtd. 1.8.2008 addressed to Municipal Commissioner mentioned that, the opinion from Advocate General of Maharashtra state was sought and as per his remarks the contention that the acquisition has lapsed is reasonable and consistent with the law currently in force. It is also mentioned by the Under secretary, UD dept, that, MCGM shall take appropriate action, also if MCGM needs these reservations, the same can be acquired as per the provisions of L.A. Act, 1894, even though the reservations are lapsed.

Resubmission of proposal to Collector(MSD):-

c/1941-
c/1943
File-II

Improvement Committee & Corporation's sanction was obtained vide resolutions u. no. ICR/10, dtd. 11.4.2012 and CR/261, dtd. 23.4.2012 to acquire the land under reference admn. 16576 sq.mt. at the cost of 87.29 crore under the provision of section 91 of MMC Act 1888 along with section 4 & 6 of L.A. Act, 1894. The proposal for acquisition was submitted to the Collector (MSD) on 18.10.2012.

c/1012
c/1023
File-II

The Land Acquisition Act 1894 is repealed with effect from 01.01.2014. The new 'Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act 2013 has been come in to force with effect from 01.01.2014. Hence, fresh proposal in accordance with the provisions of new LA Act with the approval of Improvement Committee/Corporation needs to be resubmitted to the Collector(MSD).

Negotiation proposal from the Owner:-

c/701
c/725
c/1025
File-II

In the meantime, the owner M/s. Garden Securities and properties LLP has submitted the proposal for negotiation in anticipation of development of the plot under reference on 7.12.2011, 16.4.2012 & 27.11.2012. However, it appears that if the proposal submitted by the architect is accepted, then the F.S.I. to be consumed works out to 3.85 whereas as per the provisions of the DCR 1991 the permissible FSI in Mumbai Suburbs is 1.85 for the plots having area more than the 2125 sq.mt.

Hon'ble High Court's orders in Writ Petition no. 305 of 2014:-

In the meantime, M/s. Garden Securities and properties, the petitioner, filed Writ Petition no. 305 of 2014 against MCGM and others in the Hon'ble High Court for declaration that the reservation of PG, MH&D and 36.60 mt. wide DP road for the plot under reference has lapsed and petitioner is entitled to develop the same for the

N/103

cl/392-
cl/399
File-III

development otherwise permissible in the case of adjacent land under the development plan. In this case, this office vide note under no. ACQ/WS/2195, dtd. 24.3.2014 forwarded written instructions to Asst. Law Officer.

The said matter in writ petition no. 305 of 2014 was come up in the Hon'ble High Court & Hon'ble High Court on 28.8.2015 has disposed off the petition by issuing following order,'

i) The said plot shall be available to the owner thereof for development as otherwise permissible in the case of adjacent land under the sanctioned development plan.

ii) The statements made by the petitioner in paragraph 31 of the Petition is accepted. Notwithstanding the lapse of reservation, the Petitioner shall act in accordance with the said statements.

Paragraph 31 reads as follows,

'The Petitioner states that a part of said plot was under reservation for a D.P. road (Development Plan Road). The Petitioner states that the reservation for the D.P. road in the development plan on a portion of the said plot has also lapsed and the Petitioner is seeking reliefs in the present Petition on the basis of the said legal position. The Petitioner however wishes to make it clear that the Petitioner does not want to come in the way of the said proposed development road and that the Petitioner will be ready and willing to surrender the concerned portion of the said plot for the purpose of the proposed development road, to the Municipal Corporation on the usual terms and conditions with regard to grant FSI etc. The Petitioner further states that as and when the Petitioner develops the said plot the Petitioner will plan his development in such a manner that it would be possible to hand over to the Corporation the land required for the purpose of the proposed Development Road.'

cl/487
to
cl/511
File-III

'A'

In view of above, Dy. Ch. Planner(A.P.) is requested to offer the remarks as regards the provisions made in the DDP-2034 particularly in view of Court order issued in W.P. no. 305 of 2014, dtd. 28.8.2015 & regarding planning point of view and submit the file papers to Law officer/Hon.M.C.

Law Officer is requested to offer the remarks whether any law point involved to challenge the case in the Supreme Court of India. It is also requested to offer the remarks on the judgement of Hon'ble High Court dtd. 28.8.2015 in W.P. no. 305 of 2014 & submit the same to the Hon'ble M.C. for further orders please.

'B'

Submitted please.

Encl :- Semistiff files no. II & III

[Signature]
07/11/16
Dy.Ch.Eng.(D.P.)-II

Dy.Ch.Planner(A.P.)

Dy.Ch.Eng.(D.P.)-I

Law Officer

Hon.M.C.,

Sir,

lc

MUNICIPAL CORPORATION OF GREATER MUMBAI

No. CHE/50495/DPWS/P&R, dtd. 13 APR 2016
Aca/WS/2145

Sub :- Acquisition of land bearing CTS no. 177(pt.) of village Magathane reserved for Play Ground, Maternity Home & Dispensary and affected by 36.60 mt. & 13.40 mt. wide DP roads at Borivali(E) in R/C ward.

Ref :- 1) LCT/9808, dtd. 5.9.2015
2) अपिल/टिपीबी ४३१६/१४५/नवि-११, दि. २४.१.२०१६

Reference is please requested to the above referred letter from Under Secretary, UDD, GoM enclosing therein the letter from M/s. Garden Securities & Properties LLP, dtd. 21.12.2015 for the above cited subject matter and requested to submit the report/remarks regarding the said letter to Govt. of Maharashtra. M/s. Garden Securities vide above letter has requested UD department to instruct the MCGM to issue the notification about the lapsing of Play Ground reservation & DP road on the land bearing CTS no. 177(pt.) of village Magathane at Borivali(E) as per the provisions of M.R.&T.P. Act, 1966 in view of Hon'ble High Court's orders on 28.8.2015 in writ petition no. 305 of 2014.

Reference is also requested to Asst. Law Officer's note vide above reference no.1 enclosing therein the Hon'ble High Court's orders & requesting this office to inform whether to prefer S.L.P. before the Hon'ble Supreme court to challenge the said order.

Reference is further requested to the letter from M/s. TEEARCH u. no. TA/455/2016, dtd. 6.2.2016 requesting therein on behalf of their client M/s. Garden Securities to issue the D.P. remarks showing the deletion of reservation of Play Ground, MH & Disp. & DP road as per Hon'ble High Court order dtd. 28.8.2015.

The Gist of the case is as under:-

S.R.D.P., 1991 Remarks :-

Under the Sanctioned Revised Development Plan, 1993 of 'R' ward, the plot bearing CTS no. 177 of village Magathane is reserved for public purpose of Play Ground & Maternity Home & Dispensary (Both forming part of larger reservation). The land is affected by 36.60 mt. & 13.40 mt. wide DP road. The land under reference falls in Residential Zone.

Draft D.P. 2034 Remarks :-

As per the Draft D.P. 2034 published, the land bearing CTS no. 177 of village Magathane is reserved for public open spaces(ROS 1.1)(part of larger reservation), designated for Municipal Maternity/Post Partum centre(DH1.3)(part of larger designation) & affected by 36.60 mt. wide DP road. The plot is situated in Residential Commercial Zone.

As per Govt. directives, the work of corrections in DDP-2034 is under process.

Purchase Notice Served:-

The owner of the land under reference has served Purchase Notice on 1.10.2004 for the plot under reference. The Improvement Committee vide resolution no. ICR/181, dtd. 7.2.2005 has accorded sanction to acquire the land under reference.