

MUNICIPAL CORPORATION OF GREATER MUMBAI

Dy.Ch.E. (B.P.) 8983 W.S./P&R

6 FEB 2017

of Dy. Ch. Eng. (B.P.) W.S. II
Sanskriti Complex, 2nd floor, 'C'
Wing, 90' D.P. Road, Opp. St.
Lawrence School, Kandivali (East),
Mumbai-400 101

To,

- ✓ 1) **M/s. S. D. Corporation Pvt. Ltd.**
S.P. Centre, 41/44 Minoo Desai Marg,
Colaba, Mumbai-400 005.
- 2) **Chairman / Secretary,**
Samta Nagar C.H.S. Union Ltd.,
Bldg., No. 19D/304, Samata Nagar,
Kandivali (East), Mumbai-400 101.
- 3) **Shri. Anil Kodkani**
S.P. Centre, 41/44 Minoo Desai Marg,
Colaba, Mumbai-400 005.

Sub: Proposed Bldg. No.1 on land bearing CTS No. 837 to 840 of
Village Poisar at Kandivali (East).

- Request for permitting exemption of staircase, Lift, lift
Lobby area from FSI computations without charging
premium.

Ref: Orders of Hon'ble High Court in OOCJ, WP No. 1699 of 2016
dt.07.12.2016, 15.12.2016, 22.12.2016, 18.01.2017 &
03.02.2017.

Sir,

Please refer to orders of Hon'ble High Court referred as above. In pursuance
to the same, hearing was held in the chamber of Hon'ble M.C. on 16.01.2017,
while you/ your Advocates/ your Architects/ your Engineers, were present.

2. After hearing both the parties (MCGM & Petitioners), Hon'ble M.C. has passed on
orders u/no. MCP/6999. The said original orders passed by Hon'ble M.C. are sent
herewith to Chairman/Secretary of Samta Nagar C.H.S. Union Ltd. & certified true
copy of the same is sent herewith to M/s. S. D. Corporation, for record & further
necessary action please.

Acc: AS above.

Your Faithfully,

(Signature)
08/10/2016

Ex. E. (B.P.) 'R' Wards.

AJOY MEHTA

I. A. S.
Municipal Commissioner



बृहन्मुंबई महानगरपालिका

No. : MCP/8999

Date : 4/2/17

SPEAKING ORDER

Subject:-Request for grant of approval in respect of Building No. 1 on land bearing CTS No. 837 to 840 of Village Poisar, Samata Nagar at Kandivali (East) belonging to MHADA under the provisions of Reg. No. 33(5) of DCR 1991.

Pursuant to the directions of Hon'ble High Court in OOCJ WP No. 1699 of 2016 dated 07.12.2016, 15.12.2016 & 22.12.2016, an intimation in advance was sent to the Petitioner for hearing by letter of E.E.(B.P.)'R' ward dated 13.01.2017 u/No. Dy.Ch.E.(B.P.)/MGC/A/5607/WS/P&R.

By orders dated 07.12.2016, Hon'ble High Court observed that the Petitioner (M/s. S. D. Corporation) will make comprehensive representation to the Municipal Corporation of Greater Mumbai within one week from 07.12.2016. By orders dated 15.12.2016, Corporation Authority was directed to take appropriate decision on the issue raised on its merits. By orders dated 22.12.2016, Hon'ble High Court has clarified that Corporation to decide the representation submitted by the Petitioner within four weeks from 22.12.2016 onwards. By latest orders dated 18.01.2017, Hon'ble High Court has directed to pass appropriate orders on merit within two weeks from the date of orders.

The said orders are passed pursuant to Petitioner challenging the letter issued by Dy.Ch.E.(B.P.)WS-II to the Petitioners on 22.4.2016 under No. Dy.Ch.E.(B.P.)/470/WSII/P&R.

The representation was received by MCGM on 09.12.2016 from the Petitioner. In compliance of the orders of Hon'ble High Court, the notice for hearing was also given to M/s. S.D. Corporation u/no. Dy.Ch.E.(B.P.)/MGC/A/5607/W.S./P&R dtd. 13.01.2017 as mentioned above & hearing in the case was held in the office of Municipal Commissioner on 16.01.2017, which was attended by Petitioner M/s. S. D. Corporation along with

Advocates, Engineers & Architects of Petitioner. Before concluding the hearing on 16.01.2017, Municipal Commissioner had directed the Petitioner to make further representation with supportive documents before 20.01.2017 as expeditiously as possible so as to enable Municipal Commissioner to pass orders on merit. However, the Petitioner has not made any further representation.

During the course of hearing, the Petitioner/their advocate /Engineers/Architects were requested to present their submission at the outset while the Petitioner's Advocate discussed the provisions of Regulation No. 33(5)(6) read with the provisions of regulation No. 33(10) – Appendix IV, Clause No. 6.15, 6.20, 6.21 & 6.22 of DCR 1991. While concluding her submission Advocate of the Petitioner Ms. Jasmine Kachalia contended that whether or otherwise the building is composite or not, the case of Petitioner shall be considered at least ipso-facto to the extent of rehabilitation component as per clause No. 6.21 & 6.22 of Appendix IV of Reg. No. 33(10) since the building under reference is entirely proposed for rehabilitation of flat owners of existing buildings & further since the provisions of Regulation No. 33(5)(6) of DCR 1991 is non-obstante.

The main contention of the advocate of Petitioner was that the provision of DCR 33(5)(6) provides that *“Notwithstanding anything contained in these Regulations, the relaxation incorporated in Regulation No. 33(10) of these Regulations shall apply to the Housing Schemes under this Regulation for construction of tenements under EWS/LIG and MIG categories. However, the front open space shall not be less than 3.6 mt.”*

Further she pointed out that as per Appendix IV, clause 6.22 *“All relaxations outlined herein above shall be given to the rehabilitation component, and also to the composite buildings in the project. Premium shall not be changed for all or any of the relaxations given herein above, or for any other mentioned in DCR 35(2)(C).”* Accordingly the Petitioner are eligible to get concession to allow area of staircase without charging premium.

It was then clarified by Ch.E.(D.P.) that the provisions of Regulation No. 33(10) applicable to S.R. schemes mandate providing the fixed size of

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tenement i.e. carpet area of 269 Sq.Ft. The relevant provision under Appendix IV of DCR 33(10) clause 1.2 provides that

“Even those structures having residential areas more than 25.00 sq.m.(269 sq.ft.) will be eligible only for 25.00 sq.m.(269 sq.ft.) of carpet area. Carpet area shall mean exclusive of all areas under walls including partition walls if any in the tenement. Only 25.00 sq.m.(269 sq.ft.) carpet area shall be given and if proposal contains more area, it shall not be taken up for consideration.”

Whereas the carpet area of size 45 sq.mt. and up to 80 sq.mt. is offered in this case to the individual tenements and it is therefore not correct to work out rehabilitation component by applying the area of 45 sq.mt. and up to 80 sq.mt. to the individual tenements for the rehabilitation purpose. It was then argued by the Petitioner's Architect that the said areas are provided as per the circular/direction issued by Dept. of Housing, Govt of Maharashtra. Municipal Commissioner clarified then that said circular/direction is subordinate to the DCR-1991, sanctioned by Legislation & therefore the provisions of DCR-1991 shall prevail over any such circular. It was also clarified by M.C. that to get benefit of clause 6.21 and 6.22 the proposal must also follow the provision of clause 1.2 as explained above. The Petitioner can not use pick & chose option available under 33(10) and 33(5) as per their convenience for their benefit.

There was no reply from the advocate of Petitioner on this point. Then M.C. directed the Petitioner advocate to submit their say on this point with supporting document if they wish before 20.01.2017 supported by document supporting their claim. However, no further representation is received pursuant to the hearing held on 16.01.2017.

In this case, MHADA has so far issued following documents with respect to NOC.


1. Mumbai Board's NOC letter No. CO/MB/ARCH/NOC/F-/1163/2008 dt. 29/02/2008 for an area adm. 51172.00 sqm.
2. Mumbai Board's offer letter No. CO/MB/Arch/NOC/F-59/4848/2009 dt. 09/10/2009.
3. Mumbai Board offer letter No. CO/MB/Arch/NOC/F-67/7295/2010 dt. 01/12/2010.

4. NOC under no. CO/MB/REE/NOC/717/2014 dt. 01.07.2014, mentioning total built up area as 300411.88 sqm.
5. NOC for redevelopment of building No. 93 (Takshashila CHSL), 163 (Poisar Shantai CHSL) under No. CO/MB/REE/NOC/1075/2016 dated 12.07.2016.

Considering the submission of the Advocate of the Petitioner & considering the rehab area mentioned in the NOC from MHADA, only existing BUA of the tenements being rehabilitated, can be considered for the purpose of relaxation to be given as per 6.21 & 6.22 of DCR 33(10).

Order

Having heard both parties, considering their submissions and perusing the provisions of the D.C. Regulations 1991, it is concluded that, the provisions of DCR 33(10), clause 6.21 & 6.22 i.e. allowing concessions for area of staircase, lift etc. without charging premium is applicable only in case if it follows provisions 1.2 of Appendix IV to DCR 33(10). In the present case, the rehabilitation areas proposed are more than 25 sq.m. and hence is not eligible for concession under clause 6.21 & 6.22. However, the area of staircase, lift etc. proportionate to the existing built up area of existing occupants as certified by MHADA can only be considered and the premium shall be charged on balance area.


(Ajoy Mehta)

Municipal Commissioner