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WP. 206-15

VPH

HIGH COURT, BOMBAY

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

WRIT PETITION No. 206 OF 2015

Samata Nagar Co-Op. Housing
Societies Union Ltd. & Ors.

... Petitioners

Vs.

The Mun. Corporation of Gr. Mumbai

... Respondents

Mr. Milind Sathe, Sr. Counsel & Lawcharter for the Petitioners
Mr. Vishwajit Sawant, for the Respondent No. 3.
Ms. Shobha Ajitkumar, for Respondent - BMC.
Ms. Uma Palsule Desai, AGP for Respondent No. 4.

CORAM: V. M. KANADE, J. & B. P. COLABAWALLA, JJ.

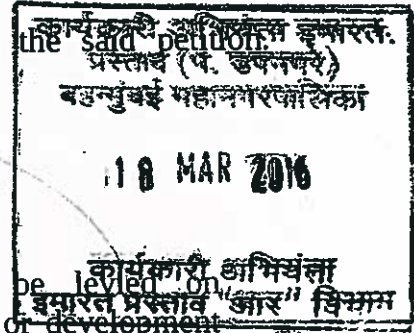
DATE : MARCH 16, 2016

PC.

1. Petitioner No. 1 is a co-operative housing society, which is seeking reconstruction of their building. It is, admittedly, constructed on MHADA land. The grievance of the Petitioners is that Respondent No. 1 Corporation has asked the Petitioner No. 1 to pay infrastructural charges and development charges under Section 124-A of the MRTP Act. It is submitted by Mr. Milind Sathe, senior counsel

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appearing on behalf of the Petitioners that under Section 124-F an exemption is granted from payment of development charges in respect of redevelopment of the building standing on the land, which is owned by the local authority. It is not in dispute that MHADA is a local authority. Our attention is invited to an order passed by this Court in Writ Petition (L) No. 2376 of 2015, dated 7th September, 2015. It is submitted that in the said case also the Corporation had demanded development charges under Section 124-F of the said Act, and this Court stayed the demand notice, impugned in the said petition. Section 124-F of the MRTP Act reads as under:



"124-F. Exemptions:-

(1) No development charge shall, be levied on institution of use or of change of use, or development of any land or building vested in or under the control or possession of the Central or State Government or of any local authority.

(2) Subject to such conditions as it may impose, the State Government may, by notification in the Official Gazette, exempt partially from the payment of development charge payable on the development of any land or building by any educational institution, medical institution or charitable institution.

1[(3) Notwithstanding anything contained in subsections (1) and (2), the State Government may, by notification

HIGH COURT, BOMBAY

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in the Official Gazette and subject to such terms and conditions as may be specified therein, exempt partially a Special Township Project undertaken by a private developer under the Special Development Control Regulations made under the provisions of this Act, from payment of the development charges.]”

2. In our view, prima-facie Petitioners are entitled to get exemption under section 124-F(1) of the MRTTP Act is clearly applicable to the facts of the present case. In view of this, interim relief is granted in terms of prayer clause (f). Respondents to file reply before the next date.

3. To be heard alongwith Writ Petition (L) 2376/2015. It is clarified petitions may be heard finally at the stage of admission. S. O. to 13th April, 2016.

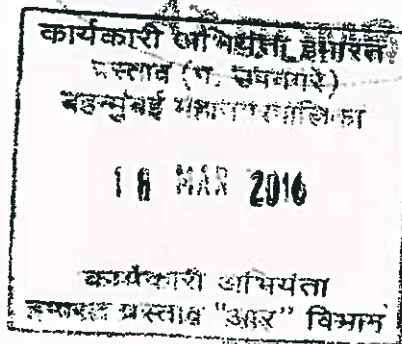
Sd/-

[B. P. COLABAWALLA, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath



TRUE COPY

Vinayak Halemath

Section Officer 31-3-16

High Court, Appellate Side
Bombay

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Sub: Request for grant of C.C. without insisting payment of development charges in respect of Building No. 01, comprising wings 'A' to 'G' on plot bearing CTS No. 837 to 840 of Village Poisar, at Samata Nagar, Kandivali (East), Mumbai-

Ref: Orders of Hon'ble High Court in Writ Petition No. 206 of 2015 dt. 16.03.2016 as at Pg. C/01-05 passed by **Bench of H.H.J. M/s. V.M. Kanade & B.P. Colabawala.**

Kind attention is requested to the orders of Hon'ble High Court referred as above in the case filed by Petitioner M/s. Samata Nagar Co-op. Housing Societies Union Ltd. & others (viz. M/s. S.D. Corporation Pvt. Ltd. & Mr. Shrikant Chavan) versus MCGM **passed by Bench of H.H.J. M/s. V.M. Kanade & B.P. Colabawala.**

2. The copy of Petition is at Pg. C/7-83, it may please be seen from the Petition that Respondents to the Petition are
- | | | | |
|----|----------------------|---|------------------|
| a) | M.C.G.M. | - | Respondent No.1 |
| b) | E.E. (B.P.) | - | Respondent No. 2 |
| c) | MHADA | - | Respondent No. 3 |
| d) | State of Maharashtra | - | Respondent No. 4 |

The petition bears stamping No. 3209 of 2014 i.e. the Petition is filed in the year 2014.

3. Besides the above referred Petition, orders in two other cases are also passed by Hon'ble High Court on this issue of Development charges as per details below :-

- i) In O.O.C.J. W.P. (L) No.2376 of 2015 filed by Petitioners, M/s. Versova Andheri Matruchaya CHSL jointly with Petitioner M/s. S.D. S.V.P. Nagar Redevelopment Private Ltd. Versus The State of Maharashtra (Respondent No.1), M.C.G.M. (Respondent No.2) and MHADA (Respondent No.3), the copy of **orders passed on 07.09.2015 by the bench of H.H.J. M/s. V.M. Kanade & Dr. Shalini Phansalkar-Joshi** at Pg. C/85-97, the copy of the Petition is at Pg. C/99-181.

- ii) In OOCJ WP (L) No.3526 of 2015 with Chamber Summons (L) No. 40 of 2015 filed by Petitioner M/s. MIG (Bandra) Realtors & Builders Pvt. Ltd. & another Versus Stage of Maharashtra, MCGM & MHADA dt. 10.02.2016 as at Pg. C/229-235 **passed on by the Bench of H.H.J. M/s. V.M. Kanade & Revati Mohite Dere.**

4. It may please be perused from the above mentioned three orders that the orders to not to insist the payment of Development Charges **are** in respect of cases of redevelopment as per Reg. No. 33 (5) of D.C.R. 1991 on the lands belonging to MHADA. **And the orders in all these three cases are passed on**

common ground that the lands belong / owned by MHADA and therefore payment of Development charges is exemptable as per the provisions of Section 124 (F) of M.R. & T.P. Act 1966.

5. It may also please be perused from all the three orders of Hon'ble High Court that all these three cases are still open and tagged together in O.O.C.J. WP (L) No. 2376 of 2015.

6. The copy of affidavit filed before Hon'ble High Court in the case of MIG CHS (Bandra) Versus MCGM by A.E. concerned is at Pg. C/183-227.

7. In this particular case of Samata Nagar Co-op. Hsg. Soc. Union Ltd., the plans for the building mentioned in the subject cited above were initially approved on 26.11.2010 by issuing IOD (Pg. C/265-275) and upon compliance of certain conditions including the condition of making payment of Development Charges, the C.C. was granted on 25.07.2011 (Pg. C/277). The plans were amended from time to time and the plans were approved lastly on 15.01.2016 (Pg. C/279-319) and as per these last approved plans, the building comprises Wings 'A' to 'G' wherein the composition of individual wing is as below :-

Basement (pt) for services and parking + Gr.(pt) for shops + 1st podium + 2nd (pt) podium for parking + 2nd (pt) podium for physical R.G. open to sky, on that

Wing A,B & C : 1st to 8th upper floors.
Wing D : 1st to 33th upper floors.
Wing E : 1st to 32th upper floors.
Wing F : 1st to 32th upper floors.
Wing G : 1st to 30th upper floors.

The **total built up area** of this building as per last approved plans dt. 15.01.2016 is **1,08,445.10 Sq.mt.**

The work is in progress at site as per C.C. granted.

8. The payment of Development Charges made in this case till date is as per details below :-

Sr. No.	Built up Area Sq. Mt.	Receipt No.	Date	Amount	Copy at Pg.
1	Com.-11,111.61	1000739399	26.11.2010	21,73,500/-	C/237
2	Res.-11,111.61	1000739382	26.11.2010	38,90,000/-	C/239
3	Com.-2,855.16 Res.-10,660.90	10001625348	21.12.2013	1,39,37,600/-	C/241
4	Res.-22,350.43	1001724703	10.04.2014	3,48,22,000/-	C/243
5	Res.-22,563.94	1001924259	19.11.2014	3,51,54,700/-	C/245
6	Com.-692.80 Res.- 11,275.29	1002116033	21.04.2015	2,12,80,000/-	C/247
Total	92,621.74 Sq.m.			11,12,57,800/-	

9. Besides this building, there are two other buildings in the layout viz. Bldg. No.2. & Bldg. No.3, both are being developed by Samata Nagar Co-op. Hsg. Soc. Union as per NOCs, Granted by MHADA. (Pg. C/253-263) As per these NOCs granted by MHADA, **an area of 3,00,411.88 Sq.Mt. totally, is allowed to be developed by MHADA.**

The Amended built up area of Bldg. No. 2 is 14,108.95 Sq. Mt. and the details of payment made by Developer towards development charges for Bldg. No.2 is as below :-

Sr. No.	Built up Area Sq. Mt.	Receipt No.	Date	Amount	Copy at Pg.
1	14,911.48	1001321816	17.01.2013	2,18,02,100/-	C/249
2	110.21	1001924148	19.11.2014	43,000/-	C/251
Total	15,021.69 Sqm.			2,18,45,100/-	

And whereas IOD for third building viz. Bldg. No. 3 is recently granted by this office on 17.03.2016 after obtaining approval of Hon'ble M.C. to various concessions and C.C. is not yet granted.

10) As well as, there are two transit camps temporary structures and one site office permitted in the layout.

11) As far as germane points/facts in the case are concerned, the submission is as below :-

A) **The provision to levy development charges came to be made in MR & TP Act 1966 w.e.f. 10.08.1992 by making an amendment to this act.**

B) **As per the provisions of MR & TP Act (amended upto date) 1966 in particular provisions of section 124 A therein, the development charges are leviable to the cases of change of use or development of land or to construction of building, for which permission is required under the provisions of this Act. The provisions of section 124 A (1) are reproduced as below:**
Levy of Development Charge

“Subject to the provisions of this Act, the Planning Authority or the Development Authority (hereinafter in this Chapter Collectively referred as “the Authority)”, shall levy within the arena of its jurisdiction development charge on the institution of use or change of use of any land or building, or development of any land or building, for which permission is required under this Act, at the rates specified by or under the provisions of this Chapter.”

Further the development charges are leviable on any person who carries out development of land or building or institutes change of user, the provisions of section 124 A (2) are reproduced as below :-

“The development charges shall be leviable on any person who institutes or changes the use of any land or undertakes or carries out any development.”

- C) The provisions of section 43 of MR & TP Act (amended up to date) 1966 define as to the person instituting User or change of User or carrying out development of land, requires permission. The relevant extract of said provision of section 43 is reproduced as below:

Restrictions on development of land

“After the date on which the declaration of intention to prepare a Development Plan for any area is published in the Official Gazette [or after the date on which a notification specifying any developed area as a notified area, or any area designated as a site for a new town, is published in the Official Gazette,] no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority.”

And further, whereas, the provisions of Section 43 (iv) defines that carrying out works by Central Govt., State Govt. & Local Authority does not require permission. The relevant provisions of Section 43 (iv) are as reproduced below:

“Provided that, no such permission shall be necessary for the carrying out by the Central or the State Government or any local authority of any works”.

- D) Besides, the provisions of section 44 of MR & TP Act (amended upto date) 1966, mentions about who should make an application for obtaining development permission i.e. any person not being Central Govt./ State Govt. / Local Authority shall make an application for obtaining development permission. The relevant extract of section 44 is reproduced as below :-

Application for permission for development

“(1) Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed”.

- E) Furthermore, Reg. No. 4 of DCR 1991 also mentions about necessity of obtaining permission, the provisions of Reg. No. 4(1) are reproduced as below:

Reg.4(1) Development permission and commencement certificate-

Necessity of obtaining permission - No person shall erect or re-erect a building or alter any building or carry out any development or redevelopment, on any plot or land or cause the same to be done without first obtaining separate development permission and a commencement certificate from the commissioner. And whereas provisions of Reg. No. 4(2) & 4(3) of DCR 1991 mentions about exclusion of items of operational construction from obtaining development permission. The relevant extract of Reg. No. 4(2) & 4(3) is reproduced as below :-

Reg.4(2) Items of operational construction by some authorities excluded -
construction for operational purposes, including maintenance or operational structures, by the following organizations, authorities or departments, whether temporary or permanent, may be exempted by the special permission of the commissioner in each case from the purview of these Regulation, except those relating to floor space index and fire precautions:-

- i. Railways;*
- ii. National Highways;*
- iii. National Waterways;*
- iv. Major ports;*
- v. Aerodromes and Airports;*
- vi. Post of Telegraphs, telephone, television, Wireless, Broadcasting authorities and the authorities of other similar forms of communication;*
- vii. Regional Grids, towers, gantries, switchyards, contact rooms for distribution, etc. of electricity;*
- viii. Defense Authorities;*
- ix. Any other essential public services as may be notified by the state Government;*

Reg.4(3) Operational constructions excluded. The following constructions for operational purposes of the organizations, authorities or department listed above are exempted from the purview of these Regulations except those relating spaces index and fire precautions:

- I) Repairs and renovation of existing installations of building used for operational purposes only which do not involve addition to or increase of build-up-areas.*
- II) In the case of Railways.*
 - a) Repairs and renovation of existing railway tracks, including culverts, over bridges, Under - passes or bridges, tunnels and side drains;*

b) Platforms , goods sheds and offices, parcel offices, sub-stations, footover bridges turn- table, lifting towers, gantries, signal and signal boxes or control cabins in hump yards;

c) Running (loco) sheds, carriage and wagon depots, carriage washing places, overhead or ground level water tanks, pipelines and pumping station: running rooms, train examiners" offices, yard depots, permanent way inspector's and signal inspector's stores in railway yards and all overhead electric equipments for traction;

III) Store sheds, when ancillary to operational requirement only:

Provided that, for the construction of new railway lines or tracks the approval of the state government shall be necessary. For construction of new building, goods stores, sheds or platforms, parcel offices and workshop or for purposes of major remodeling, the approval of the commissioner shall be necessary.

F) **The utmost important provision to Reg. No. 4(3) (iii) in particular explanation thereto, reproduced as below, may please be seen. "Further provided that, the following constructions by the organizations, authorities or department listed in sub-Regulations (2) herein shall not be deemed to operational for the purposes of exemption under the said Regulations, namely:-**

(i) **Residential building, commercial building , office building and industrial building (other than gate lodges, essential operational staff quarters and the like), roads and drains, hospital, clubs, institutes and school in residential, commercial or industrial areas of the colonies of such organizations, authorities or departments.**

(ii) **Construction, installation or any extension of any building in the case of any service other than those mentioned in this Regulation.**

G) **It is amply evident from the above that in the case of development from individuals, development permission is necessary and therefore payment of development charges shall be made as per section 124-A of M.R. & T.P. Act (amended upto date) 1966.**

It is only in the cases of State Govt., Central Govt. & Local bodies, the payment of development charges is exempted as per

Section 124 -F, reproduced as below :-

1) *No development charges shall not be levied on institution of use or of change of use, or development of, any land or building*

vested in or under the control or possession of the Central or State Government of any local authorities

2) Subject to such conditions as may impose , the state Government may, by notification in the official Gazette, exempt partially from the payment of development charges payable on the development of any land building by any educational institution, medical institution or charitable institution,

3) Notwithstanding anything contained in sub sections (1) and (2) the State Government may, by notification in the official Gazette and subject to such and conditions as may be specified therein, exempt partially a special Township project undertaken by a private developer under the special development control regulations made under the provisions of this Act, from payment of the development charges.)

H) **In this particular case, application for obtaining development permission is made by person i.e. Samata Nagar Co-op Hsg. Soc. Union Ltd. & therefore payment of development charges must be made by them.**

I) However, since interim relief is granted by Hon'ble High Court in WP No. 206 of 2015 vide orders dated 16.03.2016 as at pg. C/01-05 (para 2 at pg. C-05) & the owner/Lessee has submitted a Regd. Undertaking as at pg. C/331-367 (to the effect that in the event instant petition is decided against them, they undertake to make the payment of development charges as per the demand raised by them, the request to grant C.C. may be considered.)

J) **However, looking to the quantum of Revenue loss that may incur to MCGM, the cases are required to be fought by appointing Sr. Counsel by Legal dept. & incase the case is decided against MCGM, an appropriate appeal, shall have to be made in competent court, including Hon'ble Supreme Court, if required.**

K) In view of above, Law Officer shall be requested to appoint a Sr. Counsel in the cases and make an appeal, in competent Court including Supreme Court in case the adverse order is passed.

L) As put up above, C.C. to the building is granted on 25.07.2011 and whereas the instant Writ Petition referred as above, is filed in the year 2014. Thus, there is an admitted delay of more than three years in filing Writ Petition.

M) The provisions of Section 124 (G) of M.R. & T.P. Act provides the facility of making an Appeal against the levy of development charges before the State Government. In spite of having efficacious remedy of preferring Appeal before the State Govt., the Petitioner has chosen to file the above referred Writ Petition without exhausting the efficacious remedy available under Law to the Petitioner before approaching to Hon'ble High Court, the case under reference has therefore no any merit.

In view of above, Ch. Eng. (D.P.) / Hon'ble M.C.'s approval is requested to:

- a) To file affidavit on above lines
- b) To appoint Sr. Counsel by Legal Dept.
- c) To make an appeal in competent Court including Supreme Court in case adverse order is passed against MCGM.
- d) To grant C.C. in the instant case without insisting payment of development charges on the strength of Registered undertaking submitted by Petitioner to the effect that the Petitioner will make the payment of development charges in the event the petition is decided against Petitioner as per demand raised by M.C.G.M. as per orders of Hon'ble High Court dt: 16.03.2016 in WP No. 206 of 2015 as at Pg. 09 to 05.

Submitted please.

(Signature)
Dy.Ch.E. (B.P.) W.S.-II

(Recd: 1 Mark in PG)
Ch. Eng. (B.P.)

Hon'ble M.C.
Sir,

*Submitted for approval to 'A' above
Please, the C&EP/WS II will file appropriate
affidavit in consultation with the sr. counsel.
Submitted please.
(Signature)
16/05/16
Ch. Eng. (B.P.)*

शुहन्नाबई महानगर पालिका			
प्रमुख अधिकारी (विकास नियोजन)			
यांचे कार्यालय			
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क्र.प्र./दि.नि/			
यादाराचा	शहर	पूर्व उभ	प. उभ
मा. अदि.	टि.अ.अ.र	से.अ	आ.अ.

*Approved as proposed. However we
must also have sound to vacate
why granted on collection of development
charges.*

(Accl: 1 Mark in PG)

(Signature)
1/6/16

बृहन्मुंबई महानगरपालिका
आयुक्तांचे कार्यालय
 1 / MAY 2016
 समय ११, १२, १३, १४
 १५, १६, १७, १८
 क्रमांक MPP/26114

01/05/2016

(Acc 1 Nash MF3)

बृहन्मुंबई महानगर पालिका
 प्रमुख अभियंता (विकास नियोजन)
 यांचे कार्यालय

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शहर	पूर्व उप	प. उप
मा. अभि.	दिवी/१	आरथा

01/05/2016
 (Acc 1 Nash)

उपप्रमुख अभियंता
 शास्त्र घणार प.अ.-२,
 सी ४ मार यांचे कार्यालय
 मुंबई-४०००१९.
 03 JUN 2016
 क्र.सं-२५१/मार्.

CHP 28/0PP/16 alt n/s/2016

By ch E (CR) WSI

for n.a. & report on performance
orders of P.N.B.

01/06/16
 प्रमुख अभियंता
 (विकास नियोजन)

ए.प्र. (B.P) W.S.
 AE (B.P) W.S. → Ghode
 S.E. (B.P) W.S.
 A.O./H.C. (B.P) /III
 For Further Necessary action & Report Fine
01/06/16
 Dy.ch E (B.P) W.S./E.E. (B.P) W.S./A.E. (B.P) W.S./A.C.

01/06/16
 AE (B.P) W.S.
 4.5.16
01/06/16
 S.E. (CR) R/S

BRIHANMUMBAI MAHANAGARPALIKA

ISSUED

Dy.Ch.E. (B.P.) 1925 W.S./P&R 13 JUN 2016

Sub: Redevelopment on plot bearing CTS No. 837 to 840
of Village Poisar at Samata Nagar, Kandivali (East)

Ref: Orders of Hon'ble M.C. u/No.MCP/2644 dt.02.06.2016 2016 at Pg. N/8

Kind attention is requested to the above referred orders of Hon'ble M.C. in respect of orders of Hon'ble High Court in OOCJ W.P. No. 206 of 2015 dt. 16.03.2016 at Pg. C-1 to C-5.

As per the orders of Hon'ble High Court in OOCJ W.P.No.206 of 2015 dt.; 16.03.2016,C.C. in this case has been granted honouring the said orders of Hon'ble High Court on the strength of undertaking submitted by the respective Applicant to the effect that the said applicant shall pay the payment of development charges in case the orders of Hon'ble High Court are decided adversely against the said Applicant..

As submitted in the orders of Hon'ble M.C. referred above, there is no merit in the case and the orders of Hon'ble High Court mentioned above, needs to be challenged. Hon'ble M.C. has directed that we must also move to the Court to vacate the Stay granted on collection of development charges.

Law Officer is therefore requested to appoint competent Counsel to defend the case, prepare the necessary affidavit and arrange to vacate the Stay as per orders of Hon'ble M.C. The original approval of Hon'ble M.C. is enclosed herewith.

Please treat this as Most Urgent.

Acc: Complete file papers
In Nasli.

Law Officer

[Signature]
10.06.16
S.E.(B.P.) R/S

[Signature]
10.6.16
A.E.(B.P.)R/S

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01.06.16
Ex.E.(B.P.)R/S

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re
DY. CH.E.(B.P.) W.S.-II