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MUNICIPAL CORPORATION OF GREATER MUMBAI

No. Dy. Ch. E/B.P./

4558/WS-I

4 AUG 2017

Sub:- Legal opinion in case of variety of building proposal cases in respect of Hon'ble High court order in PIL No. of i.e. MCGM vs Shri. Pandurang Patil & Anr. in dumping ground matter.

Ref:- 1) Hon'ble High court order dt. 11/03/2016 in Civil application No. 110 of 2015 in Public interest litigation No. 217 of 2009. (C/11)
2) New road width TDR policy under Govt. notification under no.TPS-1813/3067/C.No.122/12/MMC-Gr. Mumbai/UD-13 dated 16/11/2016. (C/129 to C/169)

Reference is requested to Hon'ble High Court order in PIL No. 217 of 2009 i.e. Dumping ground case wherein judgment has been passed for not to grant the building permissions for the proposals submitted from 01/03/2016. In the recent past, this office has come across variety of cases described in sr. No. 1 to 8 below, wherein there is lack of clarity with respect to dumping ground directives vide the said Hon'ble High court order. Therefore such cases are shortlisted and it is felt that the legal opinion from Sr. counsel/Attorney General is required in such cases.

1) Whether to continue building proposal file and process the same for full potential FSI including additional FSI for additional construction wherein proposal was submitted prior to 1st march 2016 and the IOD has already lapsed by revalidating the same.

As a routine practice, earlier in such cases IOD was revalidated by charging penalty and the said file was allowed to be continued by insisting fresh PRC, CTS plan, D.P. remarks etc.

In one of the case the proposal was submitted prior to 1st march 2016. The IOD was granted for the building comprising of Stilt + 1st to 7th upper residential floor on 12/12/2005. The C.C. for proposed building was not granted. The IOD was revalidated till 2009 and subsequently it is lapsed. The revised concessions are also approved by CE (DP)/Hon'ble M.C. in the year 2014.

Further due to some unforeseen reason the IOD was not issued till date. In the mean time the said guidelines are received from Hon'ble High court in PIL u/r.

Architect has represented & requested to allow to continue the file as the proposal is already submitted on 07/10/2005 i.e prior to 01/03/2016 & the notice under 44/69 stands valid till date as per the Hon'ble High court which states that:-

"The development permission/IOD shall be granted either the said MCGM or the state Govt. on application/proposal submitted from 01/03/2016 for construction of new building for residential or

commercial use.....these restriction shall apply only to the application/proposals submitted from tomorrow i.e. 01/03/2016". (C/36-C/37)

Law officers/Sr. Counsel/Attorney General's opinion is requested whether such proposals can be processed as the application/proposal (Notice under 44/69) was submitted prior to 01/03/2016 by virtue of revalidation by charging penalty though the IOD is lapsed.

2) Whether to continue building proposal file and process the same for full potential FSI including additional FSI, wherein proposal was submitted prior to 1st march 2016 but IOD has already lapsed due to pending decision in court matters between the parties.

In one such case IOD was issued on 04/01/1992, for wing 'C' comprising of stilt + 4th upper floors in lieu of balance plot + area of staircase, lift, lift lobby area claimed free of FSI. As per IOD conditions, necessary documents was submitted but the C.C. for the same is not granted. IOD is revalidated up to 03/01/1993.

In the meantime one of the member has filed petition no. 39/2010 against Sky lark society regarding carpet area. Hon'ble Supreme Court has ordered to approve 17554.00 sq.ft. (i.e. 1630.81 sq.mts.) Carpet Area for 25 nos. of existing members.

Further on 19/12/1996, Shri. Ajit Gupte has submitted supervision memo for the proposal u/r. but supervision memo is not yet accepted by this office. Now, Shri Vishwas Joshi has submitted supervision memo as mentioned above; hence to accept supervision memo of Shri. Vishwas Joshi, NOC from architect Shri. Ajit Gupte was not required since his supervision memo is not accepted.

Accordingly amended plans are submitted by new architect Shri. Vishwas Joshi of M/s. V.V. Associates, for wing 'C' comprising of stilt + 1st to 10th (part) upper floors,, in lieu of balance plot potential + area of D.P. Road + area of staircase, lift area claimed free of FSI.

As mentioned above due to court case, the proposal was held up, hence revalidation of the proposal was not done.

As per clause 6 of modified DCR 1991 "commencement certificate/development permission shall remain valid for four years in the aggregate, but shall have to be renewed before the expiry of one year. If the work has not already commenced, such renewal can be done for three consecutive terms of one year each, after which proposals shall have to be submitted to obtain development permission afresh"

Further as per Hon'ble High court order in CIVIL APPLICATION NO. 221 OF 2013, it is stated that "that condition shall not apply for consideration of the proposals for repairs/reconstruction of the existing buildings which do not involve use of any additional FSI in addition to the FSI already consumed. This restriction shall apply only to the Application/proposals submitted from tomorrow i.e. 1st march 2016".

In this specific case, IOD is revalidated up to 03/01/1993, i.e. IOD is not revalidated beyond 4 years due to pending supreme court matter and the work on site is not yet commence; hence to continue the same file and to revalidate the IOD, specific approval is required from competent authority.

In this case due to the court case the said proposal was held up since 03/01/1993 and it is felt that the substantial time was lapsed & IOD could not be revalidated.

In view of above Law officers/Sr. Counsel/Attorney General's opinion is requested whether to process the proposal upto full potential FSI including additional FSI i.e Plot potential + 0.50 additional FSI + TDR + FCFSI as the proposal was submitted prior to 01march 2016 and IOD could not be revalidated due to pending Supreme court matter in the file.

3) Whether to continue the proposals for full potential including additional FSI where the Further particular letter was issued & the proposal is not recorded till date.

In some of the cases proposals are submitted prior to 01/03/2016 wherein as per the routine practice the F.P. letter were issued for want of some requisite documents from Owner/Architect etc. Such proposals are not recorded by this office. In such cases Architect/L.S./Owners has represented that these cases shall be processed as the notice u/s. 44/69 stands valid till today.

In view of above Law officers/Sr. Counsel/Attorney General's opinion is requested whether to process such proposal upto full potential FSI including additional FSI in lieu of Plot potential + 0.50 additional FSI + admissible TDR + FCFSI.

4) Whether to process the proposals for additional FSI/TDR as per new TDR Notification issued u/no. TPS-1813/2067/C.No.122/12/MCGM/UD-13 dtd. 16/11/2016 wherein the OCC is already granted.

As per the new road width policy guidelines the additional TDR is allowed to utilize on the plots with respect to road existing width. This office is in receipt no. of proposals for utilizing additional F.S.I. for additional construction in form of TDR wherein the occupation was already granted & B.C.C. is yet to be granted.

Law officers/Sr. Counsel/Attorney General's opinion is requested whether the additional FSI in form of TDR can be allowed with respect to new road width policy guidelines & Hon'ble High court directives given under said PIL u/r in cases where OCC is granted but B.C.C. is yet to be granted.

5) Whether to process the proposals for utilization additional FSI/TDR for reconstruction which was earlier allowed free of FSI in OCC approved plans as per new TDR Notification issued u/no. TPS-

1813/2067/C.No.122/12/ MCGM/UD-13 dtd. 16/11/2016 wherein the OCC is already granted.

As per the new road width policy guidelines the additional TDR is allowed to utilize on the plots with respect to road width. This office is on receipt no. of proposals for utilizing additional F.S.I. within the approved building in form of TDR wherein the occupation was already granted & B.C.C. is yet to be granted without involving additional construction.

Law officers/Sr. Counsel/Attorney General's opinion is requested whether the additional FSI in form of TDR can be allowed with respect to new road width policy guidelines & Hon'ble High court directives given under said PIL u/r in cases where OCC is granted.

6) Whether to process the proposals for full potential including additional FSI which was submitted prior to 01/03/2016 to other planning authorities such as MMRDA(ODC) & subsequently forwarded to MCGM due to denotification of area from ODC and included in MCGM jurisdiction.

The proposal submitted by Architect Shri. Amber Natekar on the CTS on which Govt. of Maharashtra (U.D.D. & Public Health Dept.) notification u/r. no TPB 4382/26/UD-5 dtd. 18/06/1982, as per clause (c) of sub-sec. (1) of sec. 40 of MRTP Act 1966, the govt. of Maharashtra has appointed MMRDA as the special Planning Authority (S.P.A.) for the notified area of the Oshiwara District Centre (ODC) and the plot under report bearing C.T.S. Nos. 437, 437/1 to 5, 438, 442, 442/1 to 24, 439, 439/1 to 8, of village Oshiwara, was earlier falling in ODC (Oshiwara District Centre) wherein the developments therein are permissible in accordance to the sanctioned planning proposal of ODC approved u/r. Govt. notification no. TPB-4391/2885/UD-11 dtd. 16/01/1992.

Accordingly a development proposal on the plot u/r. was submitted on 06/08/2012 to MMRDA for a proposed Commercial cum Residential building by availing the permissible base FSI of 1.50 as per the sanctioned Planning Proposal for ODC, after completing the documentation procedures for Conveyance and Lease of the said land, as per MMRDA policy and after payment of the requisite Lease premium for the same, and the proposal was under scrutiny.

Subsequently as per the notification u/r. no. CMS/TPB-4313/658/CR-116/2014/UD-11 dtd. 18/11/2015, the area on the west of S.V. road is excluded from the notified area of jurisdiction of the M.C.G.M as a planning Authority, and accordingly the application file of the said proposal is now transferred by MMRDA to MCGM to the office of Ex. Eng. (Bldg. Prop.) W.S.-I (K-Ward), MCGM and for the necessary action on _____.

As mentioned above development proposal on the plot u/r. was submitted on 06/08/2012 to MMRDA for a proposed commercial cum residential building by availing the permissible base FSI of 1.50 as per the

sanctioned Planning Proposal for ODC, i.e. the proposal submitted prior to 1st March 2016.

In this case as per the online procedures the entire new proposal will have to be submitted by the Architect & the entire file no. will be different than the proposal no. granted by ODC.

Law officers/Sr. Counsel/Attorney General's opinion is requested whether to process such proposal for full potential including additional FSI involving additional construction as the same was submitted to other planning authorities prior to 01/03/2016 & subsequently transfer to MCGM due to denotification of area from MMRDA/ODC or change of policies.

7) Whether to process the proposal for grant of total permissible FSI including additional FIS/TDR submitted prior to 01/03/2016 with temporary file No. is generated online /physically submitted in building proposal office.

There are certain cases which are physically submitted / online submitted & temporary file No. is generated prior to 01/03/2016 or after 01/03/2016. However, permanent file no. is not created or created after 01/03/2016. As per routine practice in Building Proposal Office, on receipt of the proposal temporary file No. is provided and once the scrutiny fees are paid the permanent file no. is allotted and proposal is processed further.

Law Officer/Sr. Counsel /Attorney General's opinion is requested whether proposal can be processed for full potential FSI including additional FIS/TDR wherein the proposal is submitted physically/online with temporary no. & permanent file No. created before or after 01/03/2016.


8) Whether to process the proposal of residential /commercial buildings submitted by obtaining necessary development permission from E.E.(DP) under Reg.57(4)(c) by demolishing existing Industrial Building.

There are cases where plots are in Industrial Zone and Industrial building is existing on the plot. As per DCR 57(4)(c) necessary development permission has been obtained to allow users of residential / commercial zones on the plot as per DCR 1991 prior to 1.3.2016 and proposal of residential / commercial building are submitted to E.E.(BP)WS-K after 01.03.2016 by demolishing existing Residential Building, whether such cases can be processed for full potential of FSI admissible as per DCR 1991 since development permission of conversion of Industrial to Residential / Commercial is obtained prior to 1.3.2016 and actual proposed of residential building is submitted after 1.3.2016, whether IOD/approval of building can be granted for the existing built up area consumed in the existing industrial building.

All the relevant documents are enclosed herewith.

In view of above, Law officer is requested to obtain the opinion from Sr. Counsel/Attorney General on the above sr. no 1 to 8 cases described above on priority basis in light of Hon'ble High Court's order in dumping ground case & the new road width TDR policy dated 16/11/2016.

Submitted please.


2/8/17
Dy.Ch.Eng.(B.P.) W.S.-I

Ch. Eng. (D.P.)
Law Officer