

निवासी, व्यावसायिक वर्गीकरणानुसारच विकास शुल्क आकारले जावे उच्च न्यायालयाचे पालिकेला आदेश

9

लोकसत्ता प्रतिनिधी

मुंबई : कुठल्याही इमारतीचे निवासी आणि व्यावसायिक असे वर्गीकरण करूनच विकास शुल्क आकारा, असे आदेश उच्च न्यायालयाचे पालिकेला दिले आहेत.

विकास शुल्काच्या वसुलीसाठी मार्कोटेक डेव्हलपर्सवर कोणतीही कठोर कारवाई करूनये, असे आदेश देताना न्यायालयाने हे स्पष्ट केले. पालिकेने कंपनीला विकास शुल्काचे २६.३० कोटी रुपये आकारले होते. मात्र कंपनीकडून विकास शुल्काचे केवळ १३.१५ कोटी रुपयेच घ्यावेत, असे न्यायमूर्ती के. के. तातेड आणि न्यायमूर्ती मिलिंद जाधव यांच्या खंडपीठाने पालिकेला बजावले. याशिवाय विकास शुल्काची रक्कम

भरली गेल्यानंतर कंपनीला व्यावसायिक गाळ्यांचे बांधकाम सुरू करण्यासाठीचे प्रमाणपत्र (कमेन्समेंट सर्टिफिकेट) देण्याचेही स्पष्ट केले.

वरळी येथील व्यापारी संकुलाच्या व्यावसायिक इमारतीतील निवासी मजल्यांचे बांधकाम सुरू करण्याच्या प्रमाणपत्रासाठी पालिकेने कंपनीला २६.३० कोटी रुपये विकास शुल्क आकारले होते. त्याविरोधात कंपनीने उच्च न्यायालयात धाव घेतली होती. महाराष्ट्र प्रादेशिक आणि नगरनियोजन (एमआरटीपी) कायद्यातील तरतुदीनुसार रेडी रेकनरचा विचार करता निवासी बांधकामाला चार, तर व्यावसायिक बांधकामाला आठ टक्के विकास शुल्क आकारले जाते. इमारतीतील ७८ टक्के बांधकाम हे निवासी स्वरूपाचे असतानाही

कायद्याविरोधात जाऊन विकास शुल्क आकारल्याचा कंपनीने दावा केला.

कंपनीच्या या युक्तिवादाला आणि दिलासा देण्याच्या मागणीला पालिकेतर्फे विरोध करण्यात आला. काम पूर्ण केल्यानंतर उर्वरित विकास शुल्क भरणार नाही, असेही पालिकेच्या वतीने न्यायालयाला सांगण्यात आले. न्यायालयाने मात्र पालिकेचा दावा अमान्य केला. तसेच कंपनीच्या युक्तिवादात सकृतदर्शनी तथ्य दिसत असून कंपनी विकास शुल्काबाबत दिलासा मिळण्यास पात्र असल्याचे न्यायालयाने म्हटले. त्याच वेळी विकास शुल्काचा विचार करता इमारत निवासी की व्यावसायिक वर्गात मोडते याचे वर्गीकरण करणेही आवश्यक असल्याचे न्यायालयाने नमूद केले.

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WP LD.VC. NO. 108 OF 2020

Macrotech Developers Ltd .. Petitioner

Versus

Municipal Corporation of Greater Mumbai & Anr. .. Respondents

-
- Mr. Sharan Jagtiani, Sr. Advocate a/w Mr. Atharva A. Dandekar and Mr. Rahul Soman for the Petitioner
 - Mr. A.Y. Sakhare, Sr. Advocate a/w Ms. Pallavi Thakar for MCGM - Respondent Nos. 1 and 2
-

**CORAM : K.K. TATED &
MILIND N. JADHAV, JJ.**

**DATE : JULY 3, 2020.
(Through Video Conferencing)**

P.C.:

1. Heard learned counsel for the respective parties.
2. This petition challenges the demand note dated 1.7.2020 issued by the respondents, inter alia, calling upon the petitioner to pay development charges of Rs. 26,30,47,200.00 calculated @ 8% of the Ready Reckoner rate for grant of Commencement Certificate (CC) for the 17th to 26th floor of the Commercial Wing of the buildings being construed on land bearing Survey Nos. 443, 444,

2/445 and 446 of Lower Parel Division and known by the name of "World Towers". This development consists of buildings having 3 residential wings and 1 commercial wing.

3. Mr. Jagtiani, learned Sr. counsel appearing on behalf of the petitioner submitted that the computation of the rate at which the development charges have been levied / demanded by the respondents is contrary to the provisions of Sections 124A and 124B of the Maharashtra Regional & Town Planning Act, 1966 (hereinafter referred to as the "**said Act**") and as such, the petitioner is not liable to pay the same @ 8% of the Ready Reckoner rate. He has fairly submitted that the petitioner is liable to pay the development charges calculated @ 4% of the Ready Reckoner rate i.e 50% of the charges which are levied / demanded which comes to Rs. 13,15,23,600.00 and the petitioner is ready and willing to deposit the same with the respondents immediately. In support of his submissions, he has drawn our attention to the provisions of Sections 124A and 124B of the said Act which reads thus:-

" 124A. Levy of Development Charge

(1) Subject to the provisions of this Act, the Planning Authority

or the Development Authority (hereinafter in this Chapter collectively referred to as "the Authority"), shall levy within the area of its jurisdiction development charge on the institution or 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:

Provided that, *where land appurtenant to a building is used for any purpose independent of the building, development charge may be levied separately for the building and the land.*

(2) The development charge shall be leviable on any person who institutes or changes the use of any land or undertakes or carries out any development:

Provided that, -

(i) no such development charge shall be leviable under the provisions of this Chapter in respect of use or change of use of any land or building, or development of any land or building; or both, for which a development permission has had already been granted or deemed to have been granted by the Planning Authority or the Development Authority either by way of commencement certificate or by way of any other mode of permission for development granted under this Act or any other law for the time being in force or by way of approval subject to condition in the form of a written notice (Intimation of Disapproval) by the Commissioner under section 346 of the Bombay Municipal Corporation Act, before the 10th day of August 1992, being the date of commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1992 (Mah. XVI of 1992) (hereinafter, in this section, referred to as "the said date"), irrespective of whether or not the institution of use or change of use or actual development work, of land or building or both, has been effected or commenced or completed, as the case may be, and whether or not the completion certificate for any such use, change of use or development is granted by the Planning Authority or Development Authority, before the said date;

(ii) where the development permission for land development including permission for sub-division of a land, land development or land reclamation, not involving any building or construction operations has already been granted by the Planning Authority or the Development Authority before the said date, no development charge in respect of such land shall be leviable for the land development activities, irrespective of whether or not development of such land (not involving any building or construction operations) has actually been commenced or completed before the said date. However, if at

a later date, a permission for construction operations is granted, the development charge in respect of such land shall be leviable only for the building or constructed activities:

Provided further that, nothing in this Chapter shall apply to demolition of any existing building, structure or erection, or part of such building, structure or erection.”

124B. Classification of user of lands and buildings, rates of development charge and procedure for levy thereof

(1)(a) For the purposes of assessing the development charge, the user of land and building shall be classified under the following categories, namely :-

- (i) Industrial;*
- (ii) Commercial;*
- (iii) Residential;*
- (iv) Institutional.*

(b) In classifying the user of land and building under any of the categories mentioned in clause (a), the predominant purpose for which such land and building is used shall be the basis for such classification.

(2) On and from the date of commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 2010, development charge shall be levied and collected by the Authority at the rates specified in column (4) of the Second Schedule; and the Authority may, subject to the other provisions of this Chapter, enhance, from time to time, the rate specified in column (4) of the Second Schedule and levy the development charge at such enhanced rate:

Provided that, the Authority may, subject to the other provisions of this Chapter, reduce from time to time, the enhanced rate and levy development charge at such reduced rate, so however that in no case the rate shall be reduced below the rate specified in column (4) of the Second Schedule.

(2-1A) In respect of the area under the jurisdiction of any Planning Authority or a New Town Development Authority under this Act, where State Government declares its intention to undertake one or more Vital Urban Transport Projects, the development charges levied and collected under the provisions of sub-section (2)

shall be increased by one hundred per cent.

Explanation - For the purposes of this section, the term "Vital Urban Transport Project" means a project related to Mass Rapid Transport System such as Metro Rail, Bus Rapid Transport System and includes Freeway, Sealink etc. in respect of which the State Government has, by notification in the Official Gazette, declared the intention to undertake such project either on its own behalf or through the Planning Authority, a New Town Development Authority, any other statutory authority, an agency owned and controlled by the Central Government or State Government, or a Government company incorporated under the provisions of the Companies Act, 2013 or any other law relating to companies for the time being in force.]

(2A) Notwithstanding anything contained in sub-section (1), when the Maharashtra Industrial Development Corporation is the Special Planning Authority deemed to have been appointed as such under sub-section (1A) of section 40, for a notified area under its jurisdiction as provided in the said sub-section (1A), it shall be lawful for such Planning Authority to levy within such notified area, the development charge at such rate which may be lower than the rates specified by or under the provisions of this Chapter, as it may fix, from time to time.

(3) The Authority, before enhancing or reducing the rate and levying the development charge at such rate shall observe the following preliminary procedure, namely :-

(a) the Authority shall, by a resolution passed at a special meeting, approve the regulations prescribing the rates of the development charge proposed to be levied by it;

(b) when such a resolution is passed, the Authority shall take further action to obtain the previous sanction of the State Government to the regulations."

4. The principal submission of Mr. Jagtiani is that the development carried out by the petitioner is predominantly in respect of residential user / purpose (78% approx.) and thus, the pre-dominant user of the building is residential. He submitted that the impugned demand note dated 1.7.2020

has sought to classify a portion of the development / building under the residential category and a part of the building under commercial category which is contrary to the mandate of Section 124B of the said Act. He further submitted that issuance of the impugned demand note is also contrary to the principles of natural justice as the petitioner was not given an opportunity of hearing and making appropriate submissions by respondent No. 2 before issuing the demand note. Finally, he submitted that the development of the building carried out by the petitioner would be stalled in the event if the Commencement Certificate (CC) in respect of the commercial wing of the building upto 26th floor is not issued by the respondents at this stage. He has, therefore, fairly submitted that the petitioner is ready and willing to deposit the development charges to be calculated @ 4% (predominant use as residential category) and deposit the same immediately with the respondent Corporation subject to the outcome of the petition.

5. PER CONTRA, Mr. Sakhare, learned Sr. counsel appearing on behalf of the respondents has vehemently objected to the submissions made on behalf of the petitioner. He has submitted that in the event, if the petitioner is given interim relief as prayed for at this stage, there is likelihood that the petitioner who is a developer shall complete the development and thereafter will vanish or run away from his liability.

6. On a careful perusal and consideration of the provisions of Section 124A read with Section 124B of the said Act, the petitioner has, prima facie, made out a case for seeking interim relief. We may state that it is clear that the classification of the building for the purpose of levy of development charges is required to be determined by its "predominant user" as stated in the provisions. It is the case of the petitioner that the FSI consumed / to be consumed in the development / building is as follows:

3 residential wings	-	152646.49 sq. mtrs.
1 commercial wing	-	43178.43 sq. mtrs.

Total	-	195524.92 sq mtrs.
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The petitioner has therefore submitted that the predominant purpose of the building is required to be classified as residential user as against commercial user and therefore, the petitioner is liable to pay development charges @ 4% of the Ready Reckoner rate as opposed to 8% of the Ready Reckoner rate. However, at the same time, interest of the respondents is also required to be protected and balanced.

7. In view of the above, following order is passed:-

(a) Rule;

(b) Learned counsel for the respondents waives service;

(c) Interim relief granted in terms of prayer clause (c) which reads thus:-

"(c) that pending the hearing and final disposal of this petition, the Respondents, their officers and subordinates be directed to:-

(i) . Refrain from acting in furtherance of and / or take any coercive action in furtherance of the impugned Impugned Demand Note;

(ii). Issue the Commencement Certificate in respect of the Commercial Wing of the Building upto 26 habitable floors, against the Petitioner

paying to the Respondents the development charges on the basis that the building being classified under Residential category as contemplated under Section 124B of the MRTTP Act."

(d) The petitioner to deposit a sum of Rs. 13,15,23,600/- being 50% of the development charges with the respondents within a period of one week from today;

(e) If the petitioner deposits the aforesaid sum with the respondents, respondents shall issue the Commencement Certificate (CC) in respect of the commercial wing of the development / building for 17th to 26th floors to the petitioner;

(f) Respondents are restrained from taking any coercive action in furtherance of the impugned demand note dated 1.7.2020;

(g) Hearing of the rule is expedited.

8. Parties are at liberty to apply for early hearing.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.

[MILIND N. JADHAV, J.]

[K.K. TATED, J.]

Ravindra
M.
Amberkar

Digitally signed by
Ravindra M.
Amberkar
Date: 2020.07.04
19:25:11 +0530