



MUMBAI METROPOLITAN REGION SLUM REHABILITATION AUTHORITY
(excluding the Brihan- Mumbai Municipal Corporation Area)

No.MMR,SRA/Circular/21/2021

Date : 28 MAY 2021

CIRCULAR NO.- 19

Sub :- Submission of MOEF Clearance/No Objection for S.R. Schemes, to carry out construction beyond 20,000 Square Meters. .

Ref :- Mumbai SRA's Circular No.136 dtd.05/07/2012.

As considering the Mumbai SRA's Circular No.136, dtd.05/07/2012, the Chief Executive Officer, MMR/SRA has decided as follows;

As per the order dtd.29/03/2012 passed by the Hon'ble Division Bench comprising of His Lordship Chief Justice Shri Mohit Shah and His Lordship Justice Shri Ranjit More, J.J. passed in Writ Petition No.504 of 2012,

Naresh Janardan Mali Petitioners

V/s

State of Maharashtra and Others Respondents.

It has been observed by the Hon'ble Division Bench, after taking into consideration the Notification dtd.14/09/2006 issued by the Ministry of Environment and Forest, Government of India, under the provisions of the Environment Protection Act,1986 read along with Rules 1986; the relevant portion of Para 7 of the order is as under:-

"..... and also having regard to the fact that large number of environmental clearance applications are pending with the Government and that environmental clearance is required only when the built up area exceeds 20,000 Sq.Meters and having regard to the aforesaid undertaking given on behalf of respondents No.3, we are inclined to accept the submissions made on behalf of respondent No.3 and 4."

Thus, from the aforesaid order passed by the Hon'ble High Court, it can be said that Hon'ble High Court has expressed their views, after taking into consideration the Notification and the Acts / Rules framed therein. As such, the said decision of the Hon'ble High Court which has been expressed and founded on reasons and has proceeded on the consideration of the issue (viz. MOEF Notification) shall be deemed to have binding effect on the concerned authority i.e. S.R.A. till the same is reversed by the Hon'ble Supreme Court of India.

Further, the aforesaid Judgment passed by the Hon'ble High Court has been passed after taking into consideration the MOEF Notification No.SO 1533 dated 14.09.2005 issued by the Government and has specifically observed that a clearance is required only if the construction exceeds 20,000 sq.mtrs. and if the developer restrict the construction work of built-up area admeasuring 20,000 sq.mtrs., then in that event, undertaking may be obtained from the developer that he will not exceed the construction work beyond built-up area admeasuring 20,000 sq.mtrs. As such, the said Judgement is a Judgement "per-curim" and "Ratio-decidenti" as the same is based on the facts actually decided and is an authority for those facts. The ratio of the Judgements will be binding on the SRA unless it is set aside by the Supreme Court as stated earlier.

In view of the aforesaid order passed by the Hon'ble High Court at Bombay, the Commencement Certificate cannot be withheld for want of MOEF clearance for the construction up-to built-up area admeasuring 20,000 sq.meters. As per above referred Court Order and Notification No. SO 1533 dated September 14, 2006 under which built-up area is to include covered construction and in the case of facilities open to sky continue to be activity area. The Commencement Certificate to be granted by obtaining Affidavit Cum Undertaking from the concerned Developer as well as Architect stating that they shall not construct an area beyond built-up area admeasuring 20,000 Sq.Meters and shall submit MOEF Clearance as per LOI condition.



Chief Executive Officer
MMR Slum Rehabilitation Authority

Copy to :-

1. P.A. to Hon'ble Chief Executive Officer, MMR, SRA.
2. Secretary, MMR, SRA.
3. Finance Controller, MMR, SRA.
4. Dy.Chief Engineer, MMR, SRA.
5. Deputy Collector & Competent Authority (1,2,3), MMR, SRA.
6. DDTP, ADTP, MMR, SRA.
7. DSLR, MMR, SRA.
8. Chief Legal Consultant, MMR, SRA.
9. Executive Engineer, MMR, SRA.
10. Assistant Registrar, MMR, SRA.
11. Estate Manager, MMR, SRA.
12. I.T., MMR, SRA.
13. PRO, MMR, SRA.