

11th Feb. 2011

To,
Municipal Commissioner,
Municipal Corporation of Greater Mumbai,
MUMBAI.

SUB: Action to initiated by building proposal department / ward offices for expeditious demolition of unauthorized works/ structures.

CIRCULAR NO. CHE / 1943 / DP / GEN, dated. 15/01/2011.

CIRCULAR NO. CHE /2053/ DP / GEN, dated. 4/02/2011.

Respected Sir,

We remind you regarding our letter dt. 5th Jan. 2011 wherein we had introduced our association & requested for your early appointment for presentation. We are still anxiously waiting for the same.

Further, referring to the Circulars dated 15th Jan. 2010 and 4th Feb 2011, while appreciating your concern to bring control in the development process by introducing strict measures for unauthorized development we are perturbed to note the harsh measures proposed against our fraternity.

We feel that while taking such harsh measures ground realities need to be understood in adhering to the rules & regulations as prescribed under M.R.T.P. Act & D.C. Regulation. Besides it is necessary to understand the difference between illegal structure & unauthorized structures.

Clause No. 6 at pg. No. 2 of the (said) circular dt. 15/1/2011 is pertaining to Architect/ License Surveyor which states about professional misconduct & action to be taken by M.C.G.M.

The said attitude towards professional is grossly unfair & shocking to our fraternity. We feel it is absolutely necessary for us to understand the role being played by an Architect/License Surveyor in present scenario of practice.

Our submission to you is as follows:-

1) **ROLE OF ARCHITECT IN THE DEVELOPMENT :**

Owner appoints Architect, and signs notices u/s 337, 342 of BMC Act and signs the printed format of supervision memo, Architect also signs notice u/s 44/69 of M.R.T.P. Act and gives notice for commencement of the work. Approvals in the form of I.O.D, C.C. are issued in the name of owners.

The owner of the property is fully aware about the details of approval granted to him, such as number of floors allowed to be constructed, exact stage upto which C.C. is granted etc. Moreover all the plans are signed by owner before they are approved and assuming that owner is carrying out work without knowledge is wrong. Whenever work exceeds the Commencement Certificate stage, the owner is doing it with full knowledge about illegality of the same. As per law all the powers of stopping the work on site vest in MCGM, therefore Architect is not called upon to make any attempt on site to stop the work as envisaged in the Circular. Moreover when BMC, has

not issued any stop work notice to such work, builders may not bother about any such instruction given by an Architect.

2) **PROVISION OF SECTION 53 OF M.R.T.P. ACT:**

Section 53 of M.R.T.P. Act, deals with unauthorized work carried out by the land owner and there is a statutory period of one month granted to obtain permission and thereafter when as per section 53 (5), wherever there is a permission granted the action against such unauthorized work is withdrawn, as per section 53 (6) (a), there is a provision of prosecution against owner and not against the Architect, who is providing only professional services to the owner.

3) **REGULARIZATION POLICY OF M.C.G.M.**

Reference is invited to proceedings of High Court in case of 154 unauthorized buildings in city of Mumbai. All the issues related to illegal and unauthorized works were discussed in the judgement. In the course of hearings honorable judge had asked corporation to submit their policy against unauthorized work The Corporation by way of affidavit had submitted to the court a policy of levying heavy penalty up to 40% of the land rate for regularization of unauthorized work. It was an observation of court that demolition of work should be the last resort.

The said policy was accepted by the court and accordingly work of several buildings was regularized. It is interesting to note that court did not consider that the act of builder to construct illegal buildings is act of misconduct on part of Architect.

4) POLICY CIRCULAR OF MCGM AS PER JNNURM GUIDELINES

As per the said policy circular, dated.23rd Oct. 2008, signed by earlier commissioner Shri. Jairaj Phatak. which clearly states that there is a time bound schedule for disposing of application for I.O.D, CC, and Occupation Certificate. Prior to I.O.D./C.C. Architect/ License Surveyor has to obtain nearly 30 to 35 N.O.C from different department which takes long time. It is our experience that the time schedule as prescribed in the circular is not followed and even there is a delay in disposing of application by MCGM Building Proposal Officers for the following reasons:

- i) Building Proposal Staff is over loaded and not available in fixed time.
- ii) There are several meeting in Head Office, Ward Council meeting, Corporators meeting to be attended by Sub Engineers.
- iii) Staff has to attend R.T.I. Complaints.
- iv) Staff has to attend Court and Legal department.
- v) Many times remarks/ N.O.C. from different department are not being issued in prescribed time limit.

Due to the above reasons, approvals for C.C., I.O.D. and O.C. is delayed indefinitely.

Without understanding the working system of B.P./ D.P. & concerned allied departments of M.C.G.M holding professionals responsible for work beyond C.C. & punishing them

will not solve the problem. In Mumbai major stake holder in construction activity is “Developer” who is doing the business without holding any “License” and unfortunately in present scenario professional who can’t practice without “License” has very little “say” into it.

5) **Circular dated 4/2/2011:**

Clause 6(c) proposes actions on Architects. Action on Architect is a sole prerogative of Council of Architecture under Architects Act, 1972 and MCGM cannot assume such an authority. In case of Licensed Surveyors such authority vests in Standing Committee, please note. Further, what is the propriety in taking action when work is regularized under Clause 3 (b) of the same Circular ?

We humbly request you to reconsider both the circulars, particularly clauses pertaining to Architect/ License Surveyor

Lastly on behalf of PEATA(I) we once again request you to give us an opportunity at an early date to express our view on all aspects including present circulars through “Power Point Presentation” before you.

Thanking you,

Yours Faithfully,

(Ar. Pravin Kanekar)
President, PEATA (I)