



महाराष्ट्र शासन राजपत्र असाधारण भाग आठ

वर्ष २, अंक ३४]

मंगळवार, सप्टेंबर २१, २०१०/भाद्र ३०, शके १९३२

[पृष्ठे ४, किंमत : रुपये १९.००

असाधारण क्रमांक ६७

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधी व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Regional and Town Planning (Amendment and Validation) Ordinance, 2010 (Mah. Ord. XIII of 2010), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

H. B. PATEL,
Secretary to Government,
Law and Judiciary Department.

(Translation in English of the Maharashtra Regional and Town Planning (Amendment and Validation) Ordinance, 2010 (Mah. Ord. XIII of 2010), published under the authority of the Governor.)

URBAN DEVELOPMENT DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 21st September 2010.

MAHARASHTRA ORDINANCE No. XIII OF 2010.

AN ORDINANCE

*further to amend the Maharashtra Regional
and Town Planning Act, 1966.*

WHEREAS both Houses of the State Legislature are not in session ;

AND WHEREAS the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Maharashtra Regional and Town Planning Act, 1966, for the purposes hereinafter appearing ;

Mah.
XXXVII
of
1966

मा. आठ-६७-१

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely :—

Short title
and
commence-
ment.

1. (1) This Ordinance may be called the Maharashtra Regional and Town Planning (Amendment and Validation) Ordinance, 2010.

(2) It shall come into force at once.

Amendment
of section 22
of Mah.
XXXVII of
1966.

2. In section 22 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the principal Act"), in clause (m), for the words "including imposition of", the following shall be substituted and shall be deemed to have been substituted, with effect from the 11th January 1967, namely :—

Mah.
XXXVII
of
1966.

"including imposition of fees, charges and premium, at such rate as may be fixed, by the State Government or the Planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of".

Validation.

3. Notwithstanding anything contained in the principal Act, or in any rules or regulations made thereunder or in the Development plan or in any judgement, decree or order of any court, tribunal or other authority, any levy and collection of fees, charges and premium by the State Government or the Planning Authority for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the provisions of the principal Act, or any rules or regulations made thereunder, prior to the date of commencement of the Maharashtra Regional and Town Planning (Amendment and Validation) Ordinance, 2010, shall be deemed to be validly levied and collected, and shall be deemed always to have been validly levied and collected, under the regulations made under section 22, as amended by the said Ordinance, and accordingly no suit, prosecution or other legal proceedings shall lie in any court or before any tribunal or other authority on the ground that, the provisions of the principal Act or the Development plan prepared thereunder, prior to such commencement, did not provide for making of the regulations regarding levy and collection of such fees, charges and premium by the State Government or the Planning Authority. No suit, prosecution or other legal proceedings shall lie or be maintained or continued in any court, or before any tribunal or other authority, for the refund of any such fees, charges and premium, so levied and collected.

Mah.
Ord.
XIII
of
2010.

STATEMENT

The Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966) provides for preparation of Development plan. Section 22 of the said Act provides for the contents of the Development plan. The Development plan *inter alia* provides for preparation of Development Control Regulations.

2. It has been observed that, the urban local bodies and other Planning Authorities in the State have been levying premium, whenever under the relevant Development Control Regulations, an additional Floor Space Index (FSI) was allowed to be consumed or special permissions are given for certain free of FSI uses or when discretionary powers are exercised by the authorities. The premium so collected is primarily meant for providing infrastructure facilities.

3. In the Public Interest Litigation No. 94 of 2008 (Amit Maru and Others *vs.* State and Others) and Writ Petition No. 1874 of 1998 (M/s. Buildarch and Others *vs.* Municipal Corporation of Greater Mumbai and Others), the Bombay High Court has held that the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966) does not expressly authorise the levy of premium. In view of this, the levy of premium is hampered and resulted in loss of revenue of the urban local bodies and the State Government, which was primarily meant to be used for providing infrastructure facilities, and also rendered the instrument of premium incapable of being used to control the rates of Transfer of Development Rights (TDR), which experience uncontrolled escalations in a near monopolistic regime.

4. The Government, therefore, considers it expedient to amend section 22 of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), so as to make the provisions explicit to the effect that the Development Control Regulations may provide for imposition of fees, charges and premium, at such rate as may be fixed, by the State Government or the Planning Authority, from time to time, for grant of an additional Floor Space Index (FSI) or for the special permissions or use of discretionary powers under the relevant Development Control Regulations. It is also proposed to provide for validation of the levy and collection of the fees, charges and premium, as deemed to have been validly levied and collected under the relevant Development Control Regulations, as deemed to have been validly made under the provisions of the amended section 22. It is, therefore, proposed to amend the said Act, with retrospective effect, *i.e.* with effect from the 11th January 1967, being the date of commencement of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966).

महाराष्ट्र शासन राजपत्र असाधारण भाग आठ, सप्टेंबर २१, २०१०/भाद्र ३०, शके १९३२

5. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), for the purposes aforesaid, this Ordinance is promulgated.

Mumbai,

K. SANĀKARANARAYANAN,

Dated the 21st September 2010.

Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra.

T. C. BENJAMIN,

Principal Secretary to Government.