



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष ३, अंक ३९]

शनिवार, मे ६, २०१७/वैशाख १६, शके १९३९

[पृष्ठे ५, किंमत : रुपये २७.००

असाधारण क्रमांक ८४

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि 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 Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment and Continuance) Ordinance, 2017 (Mah. Ord. VII of 2017), is hereby published under the authority of the Governor.

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

P. H. MALI,
Principal Secretary to Government,
Law and Judiciary Department.

[Translation in English of the Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment and Continuance) Ordinance, 2017 (Mah. Ord. VII of 2017), published under the authority of the Governor.]

URBAN DEVELOPMENT DEPARTMENT

Mantralaya, Madam Cama Marg, Hutatma Rajguru Chowk,
Mumbai 400 032, dated the 6th May 2017.

MAHARASHTRA ORDINANCE No. VII OF 2017.

AN ORDINANCE

*further to amend the Mumbai Municipal Corporation Act and
Maharashtra Municipal Corporations Act.*

Mah. Ord. III of 2017. WHEREAS the Governor of Maharashtra has promulgated the Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment) Ordinance, 2017 (hereinafter referred to as "the said Ordinance"), on the 8th January 2017;

AND WHEREAS upon the reassembly of the State Legislature on the 6th March 2017, the Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment) Bill, 2017 (L. A. Bill No. II of 2017), for converting the said Ordinance into an Act of the State Legislature, was passed by the Maharashtra Legislative Assembly on the 15th March 2017 and was transmitted to the Maharashtra Legislative Council;

(१)

AND WHEREAS thereafter as the Maharashtra Legislative Council was prorogued on the 7th April 2017, the said Bill could not be passed by the Maharashtra Legislative Council;

AND WHEREAS as provided by article 213(2)(a) of the Constitution of India, the said Ordinance has ceased to operate at the expiration of six weeks from the reassembly of the State Legislature, that is, on the 16th April 2017;

AND WHEREAS it is considered expedient to continue the operation of the provisions of the said Ordinance;

AND WHEREAS 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 to continue the operation of the provisions of the said Ordinance;

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:—

CHAPTER I

PRELIMINARY

- Short title and commencement. 1. (1) This Ordinance may be called the Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment and Continuance) Ordinance, 2017.
- (2) It shall be deemed to have come into force on the 8th January 2017.

CHAPTER II

AMENDMENT TO THE MUMBAI MUNICIPAL CORPORATION ACT

- Amendment of section 152A of III of 1888. 2. In section 152A of the Mumbai Municipal Corporation Act, in sub-section (1), for the words “ shall be liable to pay every year a penalty, which shall be equal to twice the property tax leviable on such building”, the following shall be substituted, namely :—
- “ shall be liable to pay a penalty, at such rate as may be decided by the corporation, on such building”.

CHAPTER III

AMENDMENT TO THE MAHARASHTRA MUNICIPAL CORPORATIONS ACT

- Amendment of section 267A of LIX of 1949. 3. In section 267A of the Maharashtra Municipal Corporations Act, in sub-section (1), for the words “ shall be liable to pay every year a penalty, which shall be equal to twice the property tax leviable on such building”, the following shall be substituted, namely :—
- “shall be liable to pay a penalty, at such rate as may be decided by the corporation, on such building”.

CHAPTER IV

MISCELLANEOUS

- Power to remove difficulty. 4. (1) If any difficulty arises in giving effect to the provisions of the Mumbai Municipal Corporation Act or, as the case may be, the Maharashtra Municipal Corporations Act, as amended by this Ordinance, the State
- III of 1888. LIX of 1949.

Government may, as occasion arises, by an order published in the *Official Gazette*, give such directions not inconsistent with the provisions of the relevant Act, as amended by this Ordinance, as may appear to it to be necessary or expedient for the purpose of removing the difficulty.

(2) Every order issued under sub-section (1) shall be laid, as soon as may be, after it is issued, before each House of the State Legislature.

- Mah. Ord. III of 2017. III of 1888. LIX of 1949. Mah. Ord. III of 2017.
- 5.** (1) The Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment) Ordinance, 2017, is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the corresponding provisions of the Mumbai Municipal Corporation Act and the Maharashtra Municipal Corporations Act, as amended by the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of the relevant Act, as amended by this Ordinance.
- III of 1888. LIX of 1949. Mah. Ord. III of 2017.
- 6.** For the removal of doubt, it is hereby declared that all the provisions of the Mumbai Municipal Corporation Act and the Maharashtra Municipal Corporations Act, as amended by the Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment) Ordinance, 2017, shall continue to be in force and be deemed to be continuously in force.
- Repeal of Mah. Ord. III of 2017 and saving.
- Removal of doubt.

STATEMENT.

Section 152A of the Mumbai Municipal Corporation Act (III of 1888) and section 267A of the Maharashtra Municipal Corporations Act (LIX of 1949) provide for levy of penalty on unlawful building.

By sub-section (1) of the said sections, it was provided that whoever unlawfully constructs or reconstructs any building or part of a building on his land without prior permission under those Acts or any other law for the time being in force or in contravention of the provisions attached to the permission or, on a site without approval under the law relating to Regional and Town Planning or, on his land in breach of any provision of Act or the rules or bye-laws made thereunder or in breach of any direction or requisition given under those Acts or, on any land belonging to or leased by the Corporation, or the Central or, State Government or a statutory organisation or company set by such Government, in breach of the provisions of the Act or any law for the time being in force, shall be liable to pay every year, a penalty which shall be equal to twice the property tax leviable on such building, so long as such building remains unauthorised. The said sections further provided that such levy shall be without prejudice to any proceedings which may be taken against such person for such unlawful construction. It is also provided that the levy and collection of the tax and penalty shall not be construed as regularization of such unlawful construction or reconstruction for any period whatsoever of its unlawful existence.

Sub-section (2) of the said sections provide that the penalty provided under sub-section (1) shall be determined and collected as if the amount due were arrears of property tax.

2. It had been observed that, some unscrupulous elements after constructing the building unlawfully, sell the flats and units thereof to the buyers, who purchase the flats under genuine belief that such construction is duly authorised under the law. Since the amount of penalty is recovered as if it were the arrears of property tax, such buyers are required to pay the penalty, not for his fault.

3. It was, therefore, proposed to provide that, instead of levy of penalty at twice the amount of property tax, the amount of penalty shall be decided by the respective corporation, within whose jurisdiction such building is situated. This levy of penalty shall not, however, preclude the corporation from undertaking any proceedings against the person in respect of such unlawful construction.

4. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Mumbai Municipal Corporation Act (III of 1888) and the Maharashtra Municipal Corporations Act (LIX of 1949), for the purposes aforesaid, the Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment) Ordinance, 2017 (Mah. Ord. III of 2017), was promulgated by the Governor of Maharashtra on the 8th January 2017.

5. Thereafter, upon the reassembly of the State Legislature on the 6th March 2017, the Mumbai Municipal Corporation and the Maharashtra Municipal Corporations (Amendment) Bill, 2017 (L. A. Bill No. II of 2017), for converting the said Ordinance into an Act of the State Legislature, was passed by the Maharashtra Legislative Assembly on the 15th March 2017 and was transmitted to the Maharashtra Legislative Council. However, as

thereafter the Maharashtra Legislative Council was prorogued on the 7th April 2017, the said Bill could not be passed by the Maharashtra Legislative Council.

6. As provided by article 213(2)(a) of the Constitution of India, the said Ordinance has ceased to operate at the expiration of six weeks from the reassembly of the State Legislature, that is, on the 16th April 2017. It is, therefore, necessary to take immediate action to continue the provisions of the said Ordinance by promulgating a fresh Ordinance.

7. 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 to continue the operation of the provisions of the Maharashtra Ordinance No. III of 2017, this Ordinance is promulgated.

Mumbai,
Dated the 6th May 2017.

CH. VIDYASAGAR RAO,
Governor of Maharashtra.

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

MANISHA PATANKAR-MHAISKAR,
Principal Secretary to Government.