

OFFICE CIRCULAR No.338 Dated 20-6-2008.

Sub:- Recording of the 'Transferable Development Rights (TDR) of the land owned by trusts/societies upon the Schedule – I of the trusts maintained in the office of the Deputy/Assistant Charity Commissioner of respective regions.

It has been brought to the notice of undersigned by Under Secretary(J), Law and Judiciary Department, Mantralaya, that a reference; to subject referred above has been made by Shri Shivraj P. Kadam, (Jahagirdar) Advocate, Pune vide his letter dated 3rd September, 2007, relevant paras of which are as under;

- 1) TDR is granted in lieu of monetary compensation for implementation of reservation, acquisition of land, acceleration of infrastructural development or for providing civic amenities. In Maharashtra there are many Trusts registered under the Bombay Public Trusts Act, 1950 and Societies which are registered under the Societies Registration Act, 1860. Out of them many trusts/societies possess open lands lying idle due to paucity of funds, implementation of reservation, acquisition of trust land or for any other like-styled reason, the trustees/ managing committee of a society cannot implement actual construction activities upon the said land, in furtherance of its objects. By the emergence of the concept of TDR it has opened an avenue for such trusts/ societies to

procure a certificate of TDR from the Municipal Corporation in respect of such undevelopable property and sell it to a prospective purchaser. On lines of share transfer transaction, such TDR can be easily sold and purchased. Moreover this transaction does not require any type of registration in the Sub-Registrar Office.

- 2) Thus, this intangible property of the trusts/society, in the nature of TDR can be exposed for unfair trade, if an unscrupulous board of trustees or members of the managing committee of a society are lured by persons having vested interests. In order to curb such iniquitous deal of this property of immense value belonging to a trust/society, it is utmost necessary to adopt appropriate measures, as expeditiously as possible, to get recorded the TDR of open lands owned by all trusts/societies, in the Register of Public Trusts maintained as and commonly called as Schedule –I.
- 3) Therefore, in order to facilitate the recording of TDR in Schedule – I of the relevant trust/society, it should be made incumbent upon the concerned officials of the Municipal Corporation/ Local Bodies to intimate in writing, to the Joint Charity Commissioner of concerned region about the grant of TDR to any such trust/society. This petty precaution shall bring this valuable property of the trusts/societies under the direct control of the Charity Commissioner.

- 4) By making appropriate amendments, the transfer of TDR of any land owned by trust/society can be made conditionally alienable by seeking prior approval of the Charity Commissioner. This will enable the Charity Commissioner to scrutinize the sale proposal of said TDR, submitted by the trustees/managing committee members. In the process, it can be ascertained by the Charity Commissioner as to whether the TDR, intended to be sold, has fetched a reasonable price to the trust/society or not.
2. Off late, Our Hon'ble High Court in a case of Chhada Housing Development Corporation v. Bibijan Shaikh Farid reported in 2007(3) Mah. L. J., P. 402 was pleased to lay down that "the expression TDR, is transfer of development rights, which enables the FSI to be used on any other plot of land generated from some other plot and can be used in terms of DC Regulations in force. It is the benefit arising out of land and is immovable property. TDR may be owned by the holder but not the land on which TDR was generated. It can only be used on the owners property in terms of DC Regulations. Therefore it is the FSI of entire property including of RG and D.E roads which alone in terms of agreement prima facie can be enforced."
3. Once it is held by Our Hon'ble High Court in the above referred judgment, that TDR is the immovable property and

is transferable in the terms of DC Regulations, it is required to be recorded with concerned regional office of Charity Commissioner, on reporting the change in that regard by the trustees of the trust. No doubt, acquiring authority is expected to inform Assistant Charity Commissioner, for short 'ACC' or Deputy Charity Commissioner, for short 'DyCC', concerned within his jurisdiction in the event of acquisition of the property and generation of TDR pursuant to acquisition of land of the trust. It is however, obligatory on the part of the trustees to report the change and get TDR recorded in Schedule – I by filing appropriate Change Report.

4. Reference, thus, made by Shri Shivraj P. Kadam, Advocate is worthy to be considered and accepted and thus stands accepted. At the same time I am require to extend my gratitude to Shri Shivraj P. Kadam, Advocate; which would enable this office and authorities below to check unscrupulous elements in transferring TDR, without getting necessary permission from this authority, under relevant provisions of law; who made comprehensive study and made this reference, bringing legal position with regard to TDR, to the notice of this authority, which is in the benefit and betterment of the trusts registered under the Bombay

Public Trusts Act, 1950 and societies registered under the Societies Registration Act, 1860.

5. It is therefore, directed by this circular that in event of generation of TDR on acquisition of land by local authorities, trustees of the trust concerned, do report the change and get the same recoded with ACC or Dy.CC concerned.

(S.D. Mohod)
Charity Commissioner,
Maharashtra State, Mumbai.

Mumbai,
Dated : 20-6-2008.

To

The Joint Charity Commissioner,
Greater Mumbai Region/Nasik/Pune /Kolhapur/
Aurangabad/Latur/Amaravati/Nagpur.
The Deputy Charity Commissioner,
Maharashtra State, Mumbai/Greater Mumbai
Region/Nasik/Pune/Kolhapur/Aurangabad/Latur/Amravati.
The Assistant Charity Commissioner,
Maharashtra State, Mumbai/Greater Mumbai
Region/Thane/Raigad/Nasik/Dhule/Jalgaon/Pune/Ahmednag
ar/Satara/Sangli/Ratnagiri/Sindhudu-
rg/Aurangabad/Jalana/Parbhani/Nanded/Latur/
Solapur/Osmanabad/Beed/Amravati/Akola/Buldhana/Yeotm
al/Nagpur/Wardha/Bhandara/Chandrapur/Gadchiroli.