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BRIHANMUMBAI MAHANAGARPALIKA

D.M.C./R.E./44 dt. 12.04.2013

Office of Dy. Municipal Commissioner, (Removal of Encroachments) Near Vardhaman Heights,
A. S. Pawar Marg, Off. Dr. Babasaheb Ambedkar Marg, Kala Chawl, Byculla, Mumbai-400 027

Sub : Standard operating procedures (SOPs) for detection
and demolition of unauthorized structures.

As per the amendments made in MMC Act 1888 and MRTTP Act 1966, 64 Asstt. Engineers (B&F) are appointed as Designated Officers under Section 351 (1) of the M.M.C. Act 1888. Gazette notification for the same is published on 1.04.2013. These newly appointed designated officers will start functioning with effect from 15.04.2013. As the scope of work of Asstt. Engineers (B&F) of wards has been changed, following Standard operating procedures (SOPs) are being issued as guidelines:-

Detection of unauthorised construction- Each Designated Officer and the staff working under him will have to detect all types of unauthorized constructions in their jurisdiction irrespective of ownership of the land, including slum area.

- i) **Sources of detection-** The ongoing and completed unauthorized constructions can be detected through various sources i.e. Self detection, detection by the staff of B&F dept., public grievances, complaint/references by councillors/MLAs/MPs and other authorities, complaints from citizens, references from higher authorities, proposals rejected by B.P. Dept., complaints received through various control rooms, other resources.
- ii) **Detection -** Once the complaint is received, the same should be entered into the register. After registration of complaint, the designated officers and concerned staff should immediately visit the complaint site and find out the authenticity of the complaint matter. Photographs of the site, should be taken about the complaint site. Inspection report should be prepared. Designated Officer shall monitor the detection work carried out by his subordinate staff daily, also to check the complaints/grievances of unauthorized constructions receiving from various sources. For authenticity of such complaints and to get acquainted with genuinity of complaint or detection report of subordinates, designated officer has to inspect the site himself. After site visit, details of same in all respects i.e. dimensions, nature of construction, area details, photographs of sites from different angles with time and date, particulars of persons responsible etc., should be taken. If the construction activity is under progress, then immediately on the spot Notice u/s.354 A should be served to the Offender, if that area is under his jurisdiction.
- iii) **Jurisdiction of the complaint-** After finding out the genuineness of the complaint matter, the designated officer should confirm the jurisdiction of authorities. If the complaint is pertaining to the jurisdiction of other special planning authorities i.e. MMRDA, MIDC, DRP, Collector office etc., a reply should be sent to the complainant informing him the authority to which it pertains and complaint should be forwarded to concerned supervisory/monitoring authority. Subsequently, the complaint file should be sent to Asstt. Commissioner of the ward for approval to record the complaint. After inspection if it is found that, the complaint structure is

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authorized or carried out as per the permission granted by the competent authority, a reply should be sent to the complainant accordingly and after approval of Asstt. Commissioner of the ward, the complaint should be recorded.

- iv) Jurisdiction of MCGM - If the complaint pertains to the unauthorized construction notice under Sec. 351, 354A of MMC Act or under Sec. 53 to 56 of MRTA Act as per applicability should be prepared along with details, map etc. and issued immediately.

If the unauthorized structures is situated on municipal slum area, a report should be prepared by designated officer and it should be submitted to Asstt. Comm. of the ward for necessary orders under Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (MAH. XXVIII of 1971). AEBF and his staff will assist the Asstt. Commissioner of the ward to detect unauthorized construction in municipal slum areas, prepare notice under slum act and demolition of unauthorized work after following due process of law.

- v) Registration - Designated Officer shall maintain (i) Detection Register, (ii) Notice Register (iii) Court Injunction Register and (iv) Demolition Register in which all cases shall be registered systematically and kept as permanent record in the respective Ward Offices for future reference. These registers should be inspected every week to determine the cases of unauthorized works that have not reached demolition stage and to ascertain the reasons thereof.

The Designated Officer will be personally responsible, at all times, for safe custody of these registers as Designated Officer is Public Record Officer for the registers maintained under his jurisdiction.

- i) Unauthorized structures on the sites approved by BP dept. - If any unauthorized constructions is carried out beyond the approval of E.E.(B.P.), it will be the primary responsibility of the concerned building proposal dept. staff i.e. E.E.B.P. to inform in writing to concerned designated officer A.E.B.F. about the unauthorized work. After intimation from E.E.(B.P.) or self detection, Designated Officer will issue stop work notice or any other notice applicable under MRTA Act or MMC Act.

- 1) Jurisdiction, control, reporting system and work procedures of designated Officers (AEBF) -

1. Each Designated Officer shall exercise powers under MMC Act 1888 sections 351, 352, 352A & 354A and under MRTA Act sections 53 - 56 within the jurisdictions notified for them. They will be responsible on behalf of the Planning Authority, the MCGM, for all categories of unauthorized constructions, irrespective of the ownership of land. In respect of slums, the officers appointed/designated as Competent Authority under Sec. 3 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (MAH. XXVIII of 1971) under gazette notification no. Gvasu.1301/CR-375/Zopasu-1 dt. 25th October 2001 and 21st September 2004 will be responsible for taking action in respective declared slum area. If any complaint is received pertaining to the areas of Competent Authorities mentioned above, the Designated Officer should send the complaint to concerned authorities with suitable letter for taking necessary action under Slum Act and get it acknowledged.

2. Designated Officers will have two functions: a) to detect unauthorized constructions; and b) to deal with complaints of unauthorized constructions. Thus, Designated Officer shall hold PG meeting in every week at his level to hear complaints/grievances of unauthorized constructions and take suitable action in accordance with the relevant provisions of law. In addition he will also have the responsibility to detect unauthorized constructions in his jurisdiction.

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In performing these functions, Designated Officers will have jurisdiction in all types of unauthorized constructions, whether done in absence of any permission from Building Proposal, or in excess of permissions granted by Building Proposal, or after grant of OC/ before OC by Building Proposal, or in violation of any conditions of permissions.

4. Once the Designated Officer has detected unauthorized construction or taken cognizance of a complaint/grievance it will be the duty of the ward and the Building Proposal department to render all assistance to the Designated Officer to enable him to discharge his duties effectively. The Designated Officer may call for papers and documents that would have to be submitted to him to enable him to discharge his duties effectively.

Procedures/guidelines issued under Cir.no.DMC/RE/6418A dt. 18.02.2012 and DMC/RE/6618 dt.15.03.2012 should be followed strictly for taking action under MMC Act 1888. Circular issued under no. ACRE/City/OD/349 dt.14.12.2012 should be followed to take action under Sec.53 of MRTP Act 1966. Copies of the circulars are enclosed herewith, for ready reference.

5. Designated Officer shall perform his duties diligently and shall pass speaking orders under the aforesaid sections as applicable to the case after going through the documents produced and hearing the concerned parties if needed except in case where they are required to exercise summary powers under Sec.342. While passing orders, Designated Officer must give comments on each and every documents submitted by the party or by office.

6. The Designated Officer may record a detection or complaint if it is found without basis, or may proceed to deal with it in accordance with the aforesaid 8 sections. In case of constructions on going under the permissions of Building Proposal, the Building Proposal department shall act in accordance with the orders of Designated Officers, and ensure that the developers comply with the said orders before granting further CCs.

7. As per amended section 515 A of the MMC Act, 1888 any notice issued or order passed, direction issued by the designated officer under section 351 or 354 A of the MMC Act shall not be questioned in any suit or other legal proceedings. Similar provision already exists as per section 149 of the MRTP Act. Therefore, the civil courts are not supposed to grant any stay / status quo order on the action of designated officers under MMC or MRTP Acts. In spite of that if any civil court issues any such order, the provisions of the act be immediately brought to the notice of concerned court to get such orders vacated. Even after so pointing out the court does not vacate it, an appeal be filed in the High Court to get these vacated. The designated officers to take prompt actions accordingly through ward Asstt. Law Officer in this regard.

The Designated Officer after following the due procedure contained in the relevant sections, pass final orders for the demolition of unauthorized constructions. Thereafter, demolitions shall be carried out by Designated officers/staff with the logistical support from the Assistant Commissioners. The process flow diagrams (Visio Diagrams) as enclosed herewith shall be adopted by the Designated Officers.

Building Proposal department staff shall not exercise powers under sections 2, 352A and 354A of MMC Act and Sections 53 to 56 of MRTP Act henceforth. These powers shall be exercised by the Designated Officers only. Once Designated Officer starts to deal with a complaint or detects unauthorized construction, Building Proposal department shall cooperate with submission of relevant files and information and not pass any orders contrary to the ongoing

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proceedings before Designated Officers. Building Proposal department shall take into account all the orders and directions of Designated Officers before proceeding in the matters before them, where a proceeding has been instituted under the aforesaid 8 sections.

10. The administrative control of Designated Officers shall vest in the Assistant Commissioner of the ward and supervisory control shall vest in the zonal DMC. For the purposes of monitoring the work of Designated Officers, D.M.C.(R.E.) shall perform the role of central agency and compile and collate data from all sources and place it for review by the Municipal Commissioner, D.M.C.(R.E.) shall also get developed suitable IT systems for effective monitoring.

11. There shall be a grievance redressal mechanism to deal with the complaints of acts of commission or omission by the Designated Officers. This will be in the form of a Grievance Redressal Committee (GRC) at the zonal level, to be headed by DMC of the zone. Asstt. Commissioner of concerned ward, Asstt. Commissioner (Removal of Encroachment), Deputy Chief Engineer (Building Proposal), Deputy Law Officer, shall be members of the said committee. A.O. to DMC Zone will provide secretarial assistance. DCP will be the invitee member. Zonal Grievance Redressal Committee meeting will be held every month. D.M.C.(R.E.) shall collate data from these committees, compile the same and place them before the Municipal Commissioner for review.

12. As per Sec. 57 and Sec.53(6)(b) of MRTP Act, the Designated Officers shall recover any expenses incurred by MCGM for demolition and other activities under Sec.53, 54, 55 and 56 from the person in default or the owner of the plot.

13. As per Section 490,491 and 351 (2) of MMC Act the Designated Officer shall recover the expenses incurred for any demolition/other activities for exercising powers under Sec.351, 352, 352A and 354A.

14. AEBF of wards will continue to carry out all routine works like detection of dangerous and dilapidated buildings, helping other HODs in the wards, all other assignments being carried out presently.

Designated Officers should send monthly report in the prescribed format to ACRE's office for compilation and onward submission to higher authorities.

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A.C.(R.E.)

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D.M.C.(R.E.)

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A.M.C.(City)

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M.C.

A.O. to D.M.C.(R.E.)

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All Asstt. Commissioners/Designated Officers

Asstt. Commissioner - Ward

c to : All Zonal D.M.C.

Zone IV

प्रत माहितीचा आचकार आवागमन
सर्वगल देण्यात आली आहे
उप आयुक्त (अ.नि) यांचे
प्रशासकीय अधिकारी

सूचना नोंद घ्यावी व उपरोक्त
सूचनांनुसार आवश्यक कार्यवाही करावी.

उप आयुक्त (परि. ४)