

Order Non-Occupancy charges

Dated 1st August, 2001

In respect of charging non occupancy charges from the member of
Co - Operative Housing Societies

Government of Maharashtra
Co-operation and Textiles Department

Govt. Order No.SAGRUYO-1094/15165/ case No. 317/14-C /Mantralaya Extension, Mumbai- 32 dated 1st August 2001.

Government Order No.: SAGRUYO-LOAN / 15165 / case No. 317/14-C/Mantralaya Extension, Mumbai- 32 dated 9th March, 1995.

Preface:

1. The government had determined under its above mentioned order dated 9th March 1995 that the assessment of non-occupancy charges shall not be more than one time of the service charges. Some Co-operative Societies had filed Writ Petitions in the High Court, Bombay, and had challenged the assessment of non-occupancy charges on different grounds. At the time of hearing of Writ Petition No. 1398/96, the Honorable High Court had suggested that directions in connection with assessment of non-occupancy charges should be based on the scientific footing, for example, the Honorable High Court had even suggested that proper directions may be given by taking into consideration the taxable value or rent of the tenements and classifications in that regard of experts and valuer in this field.
2. As per the above suggestions expressed by the Honorable High Court advice had been asked for from experts by guidance was invited by Urban Development Department. The Urban Development Department has suggested while charging non-occupancy charges it would not be proper to put criterion on taxable value or rent, because as per the decision passed by the Honorable Supreme Court in the case of (Delhi Municipal Corporation versus Diwan Daulatrao Kapoor, S. C. A.I.R 1980), once the Municipal Corporation fixes the taxable value, the same cannot be increased. On account thereof as great difference takes place in the taxable value of old buildings and new buildings, there will be great discontent among the members of the old and new Co-operative Housing Societies. If non occupancy charges are charged on the basis of taxable valuation then there will be discontent among the members of old and new co-operative housing societies. Similarly the rent is an income which the member gets on his investment and he even pays income tax thereon and on account thereof it will not be proper to fix assessment of non-occupancy charges on the basis of both criterions viz. Taxable value or rent.
3. The Commissioner, Co-operation and Registrar, Co-operative Societies, Maharashtra State, Pune has appointed a committee of experts in Housing and Co-operation fields for making recommendations in connection with assessment of non-occupancy charges by making study in respect thereof, as per the opinion expressed by the Honorable High Court in Petition No. 1398/96. The said committee had recommended as follows:
 1. The non-occupancy charges should not be levied on the Gala which is given by the member to his close relatives for residence.
 2. An amount equal to the total amount which is recovered per month from the member per month or 10% amount of rent which is received by the member, whichever is more should be charged as a non-occupancy charges.



3. The assessment of non-occupancy charges should not be linked with taxable value.
4. The government by studying the recommendations of the expert committee sent opinion of the Urban Development Department, and accordingly by considering the difference in taxable value for charging non-occupancy charges, it would be clear and proper that the criterion of taxable value would not be proper. That the criterion of taxable value would not be proper similarly, the rent received to the member is not equal in all cases. Moreover there may be different rate of the galas in the same building and of same size. Moreover assessment of rent is not made on any scientific basis. Therefore it would not be proper to determine non-occupancy charges on the rent received to the member. Therefore, in view to create feeling of equality among the members, it is necessary to charge non occupancy charges on same method and on same criteria for all types of co-operative Housing Societies in the state. By considering this matter, the government is pleased to give following order in this respect.

ORDER

As per the powers conferred upon government under section 79 A of the Maharashtra Co-operative Societies Act 1960, the government is pleased to give following order in the interest of public.

1. Government Order. No SAGRUYO - 1094 / 15165 / PRA. KRA. 317 / 14- C Mantralaya Extension, Mumbai-32, dated 9th March, 1995 is cancelled from the date of issue of this order.
2. Non-Occupancy charges shall not exceed 10% of service charges. (Excluding Municipal Corporation/ Municipal Taxes).
3. In case members have given their tenements/flats to their close relatives viz. mother, father, sister, brother, son, daughter, son-in-law, daughter-in-law, brother-in-law, sister-in-law, sadu (husband of wife's sister), granddaughter, grandson etc. and to other relatives recognized by the society, in such cases, non-occupancy charges shall not be recovered.
4. The said order shall be applicable to residential and commercial tenements/flats in all the Co-operative Housing Societies in the state.
5. All the housing Societies in the state shall take action to make proper amendment as above their bye-laws/ sub-rules. However, even if no amendment as above has been made, non occupancy charges should not be charged more than maximum limit mentioned in this order from the date of this order.
6. The said order shall come into effect from the date of its issue.

By order and in the name of the Governor of Maharashtra

sd/-
(Shri. Mukund T. Kamble)
Under Secretary, Government of
Maharashtra, Co-operation and
Textile Department.

