

**MANAGING COMMITTEE
2014 - 2015**

PRESIDENT
Vimal Shah

IMMEDIATE PAST PRESIDENT
Paras Gundecha

PRESIDENT-ELECT
Dharmesh Jain

VICE PRESIDENTS
Mayur Shah
Nayan Shah
Deepak Goradia
Boman R. Irani

HON. SECRETARY
Nainesh Shah

HON. TREASURER
Sukhraj Nahar

CEO
S. Shahzad Hussain
I.A.S. (Retd.)

HON. JOINT SECRETARIES
Harish Patel
Ashok Mohanani
Sandeep Runwal
Bandish Ajmera

JOINT TREASURERS
Lakshman Bhagtani
Mukesh Patel

CO-ORDINATORS
Rasesh Kanakia
Jagdish Ahuja
Pujit Aggarwal
Parag Munot

COMMITTEE MEMBERS
Vikas Walawalkar
Jayesh Shah
Nayan Bheda
Sanjay Chhabria
Rajendra Chaturvedi
Shailesh Sanghvi
Tejas Vyas

INVITEE MEMBERS
Sandeep Raheja
Munish Doshi
Jitendra Jain
Domnic Romell

PAST PRESIDENTS
Sunil Mantri
Pravin Doshi
Mohan Deshmukh
Mofatraj Munot
Niranjan Hiranandani
Rajni S. Ajmera
G. L. Raheja
Lalit Gandhi
Babubhai Majethia

MCHI-CREDAI UNITS

President, Thane
Suraj Parmar

President, Kalyan-Dombivli
Johar Zojwalla

President, Mira Virar City
Ashit Shah

President, Raigad
Vikas Bhamre

President, Navi Mumbai
Arvind Goel

MCHI - CREDAI

o/c

Ref. No. MCHI/PRES/14-15/047

August 14, 2014

To
Hon'ble Shri Balasaheb Thorat
Minister for Revenue Department
Government of Maharashtra
Mantralaya,
Mumbai 400 032.

**Sub : Suggestions for Department of Relief & Rehabilitation
& the Inspector General of Registration and Controller
of Stamps for State of Maharashtra.**

Respected Sir,

Please find enclosed herewith the suggestions to Inspector General of Registration and Controller of Stamps for State of Maharashtra regarding day to day difficulties being faced by MCHI-CREDAI Members on certain issues before the office of Inspector General of Registration and Controller of Stamps for State of Maharashtra and our suggestions are submitted by Annexures with this letter.

Sir, I kindly request you to please give us time for a meeting along with the Secretary for Relief and Rehabilitation and the Inspector General of Registration and Controller of Stamps for State of Maharashtra along with Department officials to discuss our issues in brief.

Thanking you,
Yours Sincerely,
For MCHI-CREDAI



Vimal Shah
President

- Encl :** 1) First copy of Suggestions to Inspector General of Registration and Controller of stamps for improving the process of Stamp Duty and Registration
2) Complaint filed with Controller of stamps and C.C. to Inspector General of Registration
3) Government Resolution dated 9th May 2014
4) Supported by translation of the GR in English
5) Judgement from Mr. A.A. Sayed dated 17th April 2012 with observation
6) Second copy of suggestions to Inspector General of Registration
7) Papers related to acquisition of land
8) Our suggestions regarding difficulties arises at various offices coming under "Revenue Secretary" while obtaining documents
9) Our suggestions regarding difficulties arises at various offices coming under "Settlement Commissioner" while obtaining documents

MCHI-CREDAI (ISO 9001:2008)

Maker Bhavan II, 4th Floor, 18, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai - 400 020.

Tel.: 4212 1421, Fax : 4212 1411 / 407 • Email: secretariat@mchi.net

Website : www.mchi.net

MAYFAIR HOUSING PVT. LTD.

Regd. Office : 1, Mayfair Meridian, Near St. Blaise Church, Ceaser Road, Andheri (W), Mumbai - 400 058, India, | CIN : U70100MH1986PTC041829
Tel : 6723 2300 | Fax : 6723 2358 | E-mail : info@mayfairhousing.com | Website : www.mayfairhousing.com

Ref. : MH-25/PG/2014

Date : 30th July 2014

To,
Shri. S.S. Hussain,
CEO,
MCHI – CREDAI,
Maker Bhavan II, 4th Floor,
New Marine Lines,
Mumbai – 400 020.

Respected Mr. Hussain,

Sub : Suggestions to Inspector General of Registration and Controller of stamps

9/2
Please find enclosed herewith the suggestions to Inspector General of Registration and Controller of stamps regarding day to day difficulties being faced by us on certain issues before the Office of Inspector General of Registration and Controller of stamps.

The suggestions are total into 24 Pages.

In this regard my request is –

If you could forward this suggestions to the Inspector General of Registration and Controller of stamps and thereafter, please organise the meeting with him.

Thanking you,

Yours truly,
For **Mayfair Housing Pvt. Ltd.,**


(Nayan A. Shah)
CEO

- Encl : 1)** First copy of Suggestions to Inspector General of Registration and Controller of stamps for improving the process of Stamp Duty and Registration
2) Complaint filed with Controller of stamps and C.C. to Inspector General of Registration
3) Government Resolution dated 9th May 2014
4) Supported by translation of the GR in English
5) Judgement from Mr. A.A. Sayed dated 17th April 2012 with observation
6) Second copy of suggestions to Inspector General of Registration
7) Papers related to acquisition of land

WED 24 JULY 2014.

Date :-- 24/7/2014.

Suggestions to Inspector General of Registration and Controller of Stamps Government of Maharashtra:--

- 1) There should be maximum stamp duty of Rs.100/- on Tripartite Permanent Alternate Accommodation Agreements between Society, Member and Developer for the reason that section 4 of Maharashtra Stamp Act, 2005 clearly says that when several instruments are used in single transaction of Development Agreement and parties mutually determine for themselves which of the instruments shall be principal instrument and Developer pays highest stamp duty on principal instrument then on incidental instruments that is Permanent Alternate Accommodation instrument stamp duty Department shall levy maximum stamp duty of Rs.100/- as per the law. Government Resolution dated 9/5/2014 issued by Govt. of Maharashtra, Revenue & Forest Dept. clearly says so. Bombay High Court Judgment of Guruashish Construction Pvt. Ltd. V/S Collector of stamps dated 17/4/2012 Judgment passed by A.A. Sayed Justice supports the above submissions. Copy of the said documents are hereto marked and annexed as **Exhibit A** hereto.
- 2) while doing work of Redevelopment with society when Developer is paying individual rent to members of society which is the cost incurred by the Developer, then in that event stamp duty Dept. should not take into account Rent component while carrying out assessment of stamp duty to be payable on Development Agreement between society and Developer.
- 3) Efficiency of Man power should be increased. Qualified people can be recruited in the stamp duty and Registration Dept.
- 4) Refusal to register the documents should be immediately given in writing by the Registrar with reasons and the same should not be the case in past approval.
- 5) All the recovery of stamp duties and Registration should be transparent, clear and in black & white.
- 6) There should be decentralized office so that document can be registered in any jurisdiction.
- 7) Soft copy of the registered document should be available to the party on his E mail I.D. within 3 working days from the day the document is registered to avoid delay.
- 8) Stamp duty and Registration procedure should be I.T. Savvy and no physical presence of the party is required for payment of stamp duty and Registration charges of documents.

Page No. 1 of 24

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Exhibit A

भारतीय डाक



India Post

FLAD ANDHRI RGFO (400053)

A. RM628015602IN

Counter No:1, CP-Code:MDI

To: THE HON. INSPEC. GENER.

Pune H.O., PIN:411001

From: HITESH D PATWARGAHI, PUNE 53

Wt: 44 grams.

Amt: 35.00, 21/07/2014, 12:35

Advocate, High Court.

To,
The Honourable Inspector General of Registration &
Controller of stamps, Townhall Chowd Court
Maharashtra, Peshwa Chowd - 1
Tel :- (020) 26124012.

Date :-- 15th July, 2014.

~~Kind Attention :- Dr. Shrikar Pardeshi (I.A.S.).~~

Sub :- Levy of stamp duty on Permanent Alternate Accommodation Agreements.
on Redevelopment projects.

THROUGH HAND DELIVERY

Hounourable sir,

Your attention is invited to recent Government Resolution No. 2013/1425/260/1 issued by Government of Maharashtra, Revenue & Forest Department on 9th May 2014 copy of the said GR in Marathi and English translation is annexed and marked as Exhibit A hereto.

Your attention is further invited to clause 2 of the clarification issued which clearly states that while executing Development Agreement between Developer and society, as per that agreement when there is assignment of constructed area to society, an incidental document has to be executed, and since there is no assignment of any property on executing an incidental document, on such type of documents assessment of stamp duty shall be as per the provisions of section 4 of Maharashtra Stamp Act. Copy of said provision of law is annexed and marked as Exhibit B hereto.

Therefore provisions of said GR is very clear and is applicable to all future documents of similar nature to be executed by society and Developers all across state of Maharashtra, and also for the reason that since there is no assignment of any property on executing an incidental document i.e. Permanent Alternate Accommodation Agreement then on such incidental document only Rs.100/- stamp duty shall be levied by Sub-Registrars all over state of Maharashtra.

Reviewed by Sub-Registrars all over
 पांच
 दिनांक 15 JUL 2014
 सुट
 ज्योतिष अर्थशास्त्र पांचांगकारिता

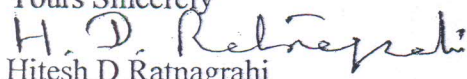
Page No. 5 of 24

There is direct judgment of our Honourable High court passed by A.A. Sayed J dated 17th April, 2012 on the similar facts of the case. Honourable Judge has analysed provisions of section 4 of Bombay Stamp Act, 1958 and has set aside an order issued by Collector of stamps & passed an order that stamp duty on instruments shall be paid in accordance with the said law. **Copy of Judgment passed by HHJ A.A. Sayed is annexed and marked as Exhibit C hereto.**

My humble submission is as you are aware that our Honourable courts are already flooded with pending litigations and it is anticipated that since there is no clarity in the said GR there will be series of litigations regarding interpretation on quantum of stamp duty to be levied in future on Permanent Alternate Accommodation Agreements between society, Member and Developer.

I sincerely request your goodselves for a hearing in the said matter and to take up the said matter on priority and issue further clarifications that Rs.100/- shall be levied by stamp duty authorities on Permanent Alternate Accommodation Agreements all over state of Maharashtra in compliance with section 4 of Maharashtra Stamp Act in letter & spirit and Government Circular dated 9th May, 2014 with prospective effect.

Yours Sincerely


Hitesh D Ratnagrahi
Advocate.

MEM Regn No. MAH/645/1995

Encl. :- As Above..

C.C. :- 1) - Office of the Inspector General of Registration & Controller of stamps,
Ground Floor,
Opposite Vidhan Bhawan (Council Hall),
New Administration Building,
Pune :- 411001 Maharashtra India.

2) Ramesh S Prabhu C.A.
Chairman, Maharashtra Societies Welfare Association,
A/2-302, Laram Centre,
S.V. Road,
Opp Railway Station,
Andheri (west),
Mumbai :- 400058.
Tel :- (M) 9820106766
(022) 42551414.

with a request to follow up with the department and further request to chairman of MSWA Shri Ramesh S Prabhu to accompany Hitesh D Ratnagrahi Adv. to get required clarification.

Exhibit A

स्थावर मिल्करीचा मालका व विकसक यांच्या
दरम्यान होणाऱ्या विकसन करारावर व विकसन
करारानुसार मालकास मिल्करीच्या याचिके
क्षेत्रावर मुद्रांक शुल्काची आकारणी
करणयाबाबत.

महाराष्ट्र शासन
महसुल व येन विभाग
शासन परिपत्रक क्रमांक - याचिका-२०१३/१४२५/प्र.क्र.२६०/ग-१
मंत्रालय, मुंबई-४०००३२.
दिनांक: १ मे, २०१४.

प्रस्तावना:-

स्थावर मिल्करीचा मालक आणि विकसक यांच्या दरम्यान विकसन करार होताना, वयाची
वेळा मिल्करीचा मालक/भूखंड मालक, मायबळी म्हणून त्याची मिल्करी/भूखंडावर विकसित
होणा-या इमारतीमधील काही भाग/सदनिका खालीलप्रमाणे राखून ठेवतात. सदर राखून ठेवण्यात
आलेल्या बांधीय क्षेत्रासंदर्भात विकसक आणि जमिनी मालक यांचे दरम्यान होणा-या
वस्तुपत्रावर आकारणी करावयाच्या मुद्रांक शुल्काबाबत मा.उच्च न्यायालय, मुंबई यांचे समोर
जमाहित याचिका क्र.५४/२०११ (याप्रमाणे नामावर विवाद महाराष्ट्र शासन व इतर) मालक
करण्यात आली होती.

मा.उच्च न्यायालयाने जनहित याचिका क्र.५४/२०११ मध्ये दिनांक १९ मार्च, २०१४ रोजी
निर्णय देताना जमिनी मालकासाठी राखून ठेवण्यात आलेल्या सदनिका किंवा गाळे यांच्या
अनुषंगाने आकारणी करावयाच्या मुद्रांक शुल्का संदर्भात, मा.उच्च न्यायालय, मुंबई येथील रिट
याचिका क्र.५४६/१९९७ प्रभा लक्ष्मण घाटे विरुद्ध महाराष्ट्र शासन मध्ये दि.२९/०१/२००४ रोजी
दिलेल्या निर्णयातील सत्य कायदा असल्याने त्यानुषंगाने शासनाने स्पष्टीकरणात्मक परिपत्रक
निर्गमित करणे वरचे निदेश दिले आहेत.

प्रभा लक्ष्मण घाटे विरुद्ध महाराष्ट्र शासन (याचिका क्र.५४६/१९९७) या रिट याचिकेची
बाबी (जमिनीचे मूळ मालक) यांनी आपली मिल्करी विकसित करणे साध्या सांगुन विना
१०/४/१९८९ रोजी एका ठिकाणी केला होता. या ठिकाणी मिल्करी यांनी मिल्करीचा
विकास करायचा होता आणि विकसित एकूण सहा सदनिकांची दोन सदनिका बाबी (मूळ
मालक) यांचेसाठी राखून ठेवण्याच्या होती.

या वस्तुपत्रा मुद्रांक जिल्हाधिकारी, मुंबई यांचे समोर, मुद्रांक शुल्क निश्चितीसाठी सादर
आला असता, संबंधित मुद्रांक जिल्हाधिकारी यांनी बाबी (जमिनीचे मूळ मालक) यांचेसाठी राखून
ठेवलेल्या, दोन सदनिकांचे अधिस्तरांतरण होत आहे, असा निष्कर्ष काढला व त्याप्रमाणे मुद्रांक
शुल्काची मागणी केली. श्रीमती प्रभा घाटे, बाबी यांनी सदर निर्णयाविरुद्ध मा.उच्च
न्यायालयासमोर दंड यागितली होती. या याचिकेवर दि.२९/०१/२००४ रोजी निर्णय देताना
मा.उच्च न्यायालयाने, मुद्रांक जिल्हाधिकारी यांचे आदेश रद्दवाचल ठरविताना प्रामुख्याने
मुद्रांकप्रमाणे दोन गुण स्पष्ट केले.

आ) मुंबई मुद्रांक अधिनियम, १९५८ ला दि. १६/०५/१९९७ रोजी दुरुस्ती करण्यात येऊन विकसन करारनामा अनुच्छेद (५-ग-अ) हा पूर्विल्ल्या प्रमाणाने दि. ०७/०२/१९९० पासून नव्याने अंतर्भूत करण्यात आला आहे. श्रीमती प्रभा घाटे यांच्या प्रकरणातील विकसन करार हा दिनांक १० एप्रिल, १९८९ रोजी निष्पादित करण्यात आलेला असल्यामुळे मुंबई मुद्रांक अधिनियम, १९५८ (सध्याचा महाराष्ट्र मुद्रांक अधिनियम) चे अनुच्छेद ५ (ग-अ) यावर केलेली सुधारणा ही विषयाधीन करारनाम्याच्या दिनांकांनंतर म्हणजेच दिनांक ०७/०२/१९९० पासून अमलात आली असल्याने विषयाधीन वस्तुऐवजात त्या सुधारणेचा लागू होणार नाही.

भा) श्रीमती प्रभा घाटे यांच्या प्रकरणातील करारान्वये दोन राबटिका जमिनीच्या मूळ मालकांना विकसनाच्या सुवातीच्या वेळच्यात राखून ठेवण्यात आल्या असल्याने त्यांच्या लाभात कोणत्याही अर्थाने हस्तान्तरण होत नाही. त्यामुळे त्या राखून ठेवलेल्या राबटिका राबटिका, अधिहस्तान्तरणाप्रमाणे मुद्रांक शुल्काची आकारणी करून येणार नाही.

तसेच वक्तव्याप्रमाणे खालीलप्रमाणे स्पष्टीकरण करण्यात येत आहे.

१) मा. उच्च न्यायालय, मुंबई येथील रिट याचिका क्र. १४६/१९९७ प्रमाणे लक्ष्मण घाटे विलास दुय्यम निबंधक आणि मुद्रांक जिल्हाधिकारी, पुणे मध्ये मा. उच्च न्यायालय, मुंबई यांनी दि. २९/०४/२००४ रोजी दिलेल्या न्यायनिर्णयातील निर्देशानुसार महाराष्ट्र मुद्रांक अधिनियम, १९५८ मध्ये अनुच्छेद ५ (ग-अ) नव्याने अंतर्भूत करण्यापूर्वी म्हणजेच दि. ०७/०२/१९९० पूर्वी निष्पादित झालेल्या विकसन करारनाम्यासाठी मुद्रांक शुल्क लागू नाही. तथापि, दि. ०७/०२/१९९० रोजी याप्रमाणे निष्पादित झालेल्या विकसन करारनाम्यास महाराष्ट्र मुद्रांक अधिनियम, १९५८ चे अनुच्छेद ५ (ग-अ) प्रमाणे मुद्रांक शुल्क देणे आहे.

२) जी प्रकरणी प्रमाणलक्ष्मण घाटे यांच्या प्रकरणासारखीच आहेत म्हणजेच ज्या प्रकरणात, मिकलतीचा मूळ मालक आणि विकासक यांच्या तरेच्या निष्पादित होणा-या करारात, मालक स्वतःसाठी जे बांधिव क्षेत्र राखून ठेवत असोत त्यावर मुद्रांक शुल्काची आकारणी करण्यात येऊ नये. तसेच सदर करारानुसार मूळ मालकास बांधिव क्षेत्र हस्तान्तरित करताना करण्यात येणाऱ्या अनुषंगिक वस्तुऐवजांमुळे मिकलतीचे हस्तान्तरण होत नसल्याने अशा वस्तुऐवजावर मुद्रांक शुल्काची आकारणी महाराष्ट्र मुद्रांक अधिनियमाच्या कलम-४ नुसार करण्यात यावी.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार प. गोमाने.

(राजनिर्वाचक)
संप्रसारित

प्रति,

- १) सीसपी महाप्री शिक्षक व मुद्रांक निबंधक, महाराष्ट्र राज्य पुणे
- २) आगर मुद्रांक निबंधक, मुंबई, प्रमाण मुद्रांक पोस्टलिय, फोर्ट, मुंबई.
- ३) राबट मोदणी उपमहाप्री शिक्षक व मुद्रांक संप्रनिबंधक.
- ४) आवायक सरकारी येथील उच्च न्यायालय, अपिल शाखा (रिट सेल), मुंबई - ४०० ०३२
- ५) निबंध नरसी कावोसिने मि-१, महसूल व जमन विभाग, मंत्रालय, मुंबई - ४०० ०३२.

Exhibit A

**Development Agreement between owner and
Developer of Immovable property and as per
Agreement on assessment of stamp duty on
constructed area which owner will get.**

Govt. of Maharashtra
Revenue & Forest Department
Govt. Circular No. petition- 2013/1425/260/1
Mantralaya , Mumbai :--400032.
Date :--9th May, 2014.

Proposal :--

As per Public Interest Litigation bearing No. 54/2011 (Chandrakant Manekar V/S Govt. of Maharashtra & others which was filed before Bombay High Court in respect of Development Agreement of immovable property between Owner and Developer, sometimes owner by way of consideration retain for himself certain Galas/ premises. On such constructed area retained by owner and on such document which will be executed between owner and Developer the issue was for assessment of stamp duty to be payable on such document.

Honourable High Court in respect of PIL No.54/2011 has passed an order dated 19th March, 2014 in respect of premises/ Galas retained by the owners on the issue of assessment of stamp duty on that premises Bombay High Court directed Government to issue circular clarifying the above matter and to follow order dated 29/01/2004 (prabha Laxman Ghatte V/S State of Maharashtra & others) in writ petition No.146/1997 passed by this Bombay High Court.

In the matter of Prabha Laxman Ghatte V/S Government of Maharashtra matter (Petition No. 146/1997). In the said writ petition petitioners (original owner of land) has executed Development Agreement dated 10/4/1989 and as per the said Development Agreement Developer has to develop and out of total six premises, two premises has to be retained by original owner.

This document was produced before Stamp collector, Pune for fixation of stamp duty on document, the said Stamp collector has come to the conclusion that those two premises which are to be retained by the owner as per Development Agreement has the effect of an Assignment of property and therefore has demanded stamp duty. Smt. Prabha Ghatte , petitioners has filed petition challenging this order passed by stamp collector, Pune. Bombay High Court on 29/1/2004 has issue order quashing order of stamp collector, Pune and clarified two issues :--

- 1) As per Bombay Stamp Act, 1958 dated 16/5/1997 on Development Agreement Article 5-G-The assessment of stamp duty is calculated with effect from 7/2/1990. In the case of Smt. Prabha Ghatte matter since Development agreement was executed on 10th April, 1989. As per Bombay Stamp Act, 1958 (Now Maharashtra Stamp Act) amended

Article 5-G-A provisions came to be implemented after 7/2/1990 said provisions are not applicable to present Development Agreement.

- 2) In Smt. Prabha Ghate matter, as per Development Agreement two premises has to be retained by the landowner in lieu of Development rights of the owner and therefore there is no assignment in true meaning for the benefit of the owner. and therefore there is no assessment of stamp duty on those retained premises for the reason of law of assignment.

Taking into account the above background clarification is issued as follows :--

- 1) As per the Honourable Bombay High court Judgment in writ petition No. 146/1997 Prabha Laxman Ghate V/S Sub-Registrar and stamp collector, Pune Bombay High Court has issued order dated 29/04/2004 Maharashtra Stamp Act, 1958 Article 5 (G-A) THAT IS PRIOR TO 7/2/1990 there will be no stamp duty on executed Development Agreement. And therefore with effect from 7/2/1990, All Development agreements executed on or after that date as per provisions of Maharashtra Stamp Act, 1958 Article 5 (G-A) stamp duty will be payable.
- 2) In all other matters like Prabha Laxman Ghate matter, in those situations when there is executed Development Agreement between original owner of property and Developer , owner who retains for himself constructed area on that No assessment of stamp duty shall be done. As per that agreement when there is assignment of constructed area to original owner, an Incidental document has to be executed, and since there is no assignment of any property on executing an Incidental document, on such type of documents assessment of stamp duty shall be as per the provisions of section 4 of Maharashtra Stamp Act.

In the name of and order of Governor of Maharashtra

Rajesh Narvekar
Deputy Secretary

- C.C. 1) Sub Registrar & Stamp Controller, Pune
- 2) Stamp Controller, Main stamp office, Fort, Mumbai
 - 3) All Sub Registrars and Stamp Dy Controllers.
 - 4) Assistant Govt. pleader, Bombay High Court, Appellate Branch, (writ cell), Mumbai :-32
 - 5) Office of Revenue 7 Forest Dept, Mantralaya, Mumbai :-- 32.

Exhibit "B"
Section 4 of New Maharashtra Stamp Act

Section 4 Several Instruments used in single transaction of VV32[development agreement] sale, mortgage or settlement

- (1) Where, in the case of any 1 Inserted by Mah.32 of 2005 (w.e.f. 7-05-2005)[(development agreement)] sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, 2 Inserted by Mah.32 of 2005 (w.e.f. 7-05-2005) [(development agreement)] mortgage or settlement, and each of the other instruments shall be chargeable with a duty of 3 These words were substituted by Mah Act No.13 of 2004 S.3.[one hundred rupees] instead of the duty (if any) prescribed for it in that Schedule.
- (2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument.
- 4 Sub-sec (3) was inserted by Mah.27 of 1985, S.4(b), (w.e.f. 10-12-1985)(3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the principal instrument:] Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed

Guruashish Construction Pvt. Ltd vs The Collector Of Stamp & Anr on 17 April, 2012

Bombay High Court

Bombay High Court

Guruashish Construction Pvt. Ltd vs The Collector Of Stamp & Anr on 17 April, 2012

Bench: A.A. Sayed

Dmt 1 wp842-12 IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 842 OF 2012

Guruashish Construction Pvt. Ltd., Petitioner. vs.

The Collector of Stamp & Anr. Respondents. Mr. Raju Subramaniam with Mr. A.Joshi and Mr. Atul Kshatriya i/by M/s. Markant Gandhi & Co. for the Petitioner.

Mr. G.W. Mattos, AGP., for the Respondents. CORAM : A.A. SAYED, J.

DATE : 17 APRIL 2012.

P.C.

Rule. Rule made returnable forthwith. Learned AGP waives service on behalf of the Respondents. By 1/24

Dmt 2 wp842-12 consent, the Petition is taken for hearing and final disposal at the admission stage.

2. The above Petition impugns an order dated 5 March 2012 passed by the Collector of Stamps, Borivali. By the impugned order, the Respondent No. 1 - Collector of Stamps, Borivali, has reviewed his order dated 16 October 2010 and held that the 'Shifting Agreements' between the Petitioner and tenement holders be treated as 'Agreements for alternate accommodation' and has fixed the market value and the stamp duty payable under Article 25(d) of the Bombay Stamp Act, 1958 (hereinafter referred to as 'the said Act') and directed the Petitioner to deposit the stamp duty within 30 days.

3. The Petitioner is a Builder and Developer. Respondent No. 1 is the Collector of Stamps, Borivali. 2/24

Dmt 3 wp842-12 Respondent No. 2 is the State of Maharashtra.

4. The facts which led to the filing of the present Petition are as under :

The Petitioner had entered into tripartite Joint Development Agreement dated 10 April 2008 (hereinafter referred to as "the said Agreement") between themselves, the Maharashtra Housing and Area Development Authority (hereinafter referred to as "MHADA") and Goregaon Siddharth Nagar Sahakari Grahaniirman Sanstha Limited (hereinafter referred to as "the said Sanstha") whereby the Petitioner agreed to develop a piece of land more particularly described in the Schedule to the said Agreement. The said property was occupied by the members of the said Sanstha who were erstwhile tenants of MHADA. Under the said Agreement, the Petitioner was 3/24

Dmt 4 wp842-12 required to provide housing to individual members of the said Sanstha. The Petitioner executed individual Agreements with each of the members describing them as 'Shifting Agreements' for shifting them from the area in their occupation to a temporary alternate accommodation. The 'Shifting Agreement' provide for a separate Agreement to be executed in future for alternate permanent accommodation. This Agreement for alternate permanent accommodation was agreed in the 'Shifting Agreement' to be treated as the 'principal document' for payment of appropriate stamp duty. The Petitioner has executed 648 such 'Shifting Agreements'.

5. Prior to the execution of the aforesaid 'Shifting Agreements', the Petitioner applied to the Respondent No. 1 under Section 31 of the said Act for adjudication for the purpose of paying the stamp duty. Pursuant thereto, the Respondent No. 1 adjudicated the said 'Shifting Agreements' 4/24

Dmt 5 wp842-12 and called upon the Petitioner to pay a sum of Rs. 100/- as the stamp duty. The amount was paid by the Petitioner and the Respondent No. 1 issued adjudication certificate by making an endorsement on the 'Shifting Agreements' as required under Section 32(1) of the said Act. The said documents were then registered with the Sub-Registrar of Assurances.

6. It appears that during the internal audit of the office of the Registrar General and Controller of Stamps, Pune, the Auditors raised an objection as regards the 'Shifting Agreements' not being appropriately stamped, as the said documents, according to them, were for alternate accommodation. Pursuant thereto, a notice dated 30 December 2011 was issued by the Collector of Stamps to the Petitioner proposing to levy and recover stamp duty treating the 'Shifting Agreements' as Agreements for 5/24

Dmt 6 wp842-12 alternative accommodation and calling upon the Petitioner to furnish their say. By a letter dated 31 January 2012 the Petitioner replied and objected to the same. The Respondent No. 1 proceeded to conclude the hearing in absence of the Petitioner and by the impugned order dated 5 March 2012 called upon the Petitioner to pay stamp duty of a sum of Rs. 38,975/- on certain documents and Rs. 59,500/- on other documents.

7. Heard learned Senior Counsel for the Petitioner and learned AGP.

8. Learned Senior Counsel on behalf of the Petitioner has urged the following submissions : (i) that in view of Section 53A of the said Act, only the Chief Controlling Revenue Authority had the 6/24

Dmt 7 wp842-12 power to revise, examine and order the recovery of deficient duty, if any, and the Respondent No. 1 had no power to review his own decision and the Respondent No. 1 had become functus officio;

(ii) that under Clause 13 of the 'Shifting Agreement', the parties had agreed that a final alternate permanent accommodation Agreement shall be executed between the parties for allotment of the new premises to the occupants and that such alternate permanent accommodation Agreement shall be considered as the 'principal document' for payment of stamp duty. Under Section 4 of the said Act, it is only the 'principal instrument' which is chargeable to prescribed duty, which 'principal instrument' is yet to be executed; 7/24

Dmt 8 wp842-12 (iii) that the 'Shifting Agreements' do not identify the premises nor do they identify the location, number of the building, the floor, the flat number, etc and that at the time of execution of the 'Shifting Agreements' even the plans were not finally sanctioned and that everything was to be determined after the plans were finally sanctioned and buildings were constructed and allotment made by the Society by draw of lots, and therefore the question of paying prescribed stamp duty on the 'Shifting Agreements' did not arise;

(iv) that the impugned order was passed without jurisdiction and that the Appeal under Section 32B and/or under Section 53(1A) of the said Act 8/24

Dmt 9 wp842-12 is illusory and will not be a sufficient and efficacious remedy.

9. Learned Senior Counsel for the Petitioner has relied upon a three-Judge Bench decision of the Hon'ble Supreme Court in the case of The Government of Uttar Pradesh & Ors. vs. Raja Mohammad Amir Ahmad Khan, (1962) 1 SCR 97 which considered the provisions of Sections 31, 32 and 33 of the said Act. He has also placed reliance upon a decision of a learned Single Judge of this Court in the case of Kumbhargaoon

Vividh Karyakari Sahakari Seva Society Ltd., vs. Assistant Registrar, Co-op. Societies & Ors. [1993] Mh.L.J. 178, in support of his submission of the alternative remedy not being an efficacious remedy and necessity for entertaining this Petition by this Court.

9/24

Dmt 10 wp842-12

10. The learned AGP, on the other hand, supported the impugned order.

11. Section 53A of the said Act is relevant for our purposes. The same is extracted hereunder : "53A. Revision of Collector's decision under sections 32, 39 and 41.

(1) Notwithstanding anything contained in sub-section (3) of section 32, sub-section (2) of section 39 and sub-section (2) of section 41, when through mistake or otherwise any instrument is charged with less duty than leviable thereon, or is held not chargeable with duty, as the case may be, by the Collector, the Chief Controlling Revenue Authority may, within a period of six years from the date of certificate of 10/24

Dmt 11 wp842-12 the Collector under section 32, 39 or 41, as the case may be, require the concerned party to produce before him the instrument and, after giving a reasonable opportunity of being heard to the party, examine such instrument whether any duty is chargeable, or any duty is less levied, thereon and order the recovery of the deficit duty, if any, from the concerned party. An endorsement shall thereafter be made on the instrument after payment of such deficit duty. (2)"

From a bare reading of the aforesaid section, it would be apparent that it is only the Chief Controlling Revenue Authority which has been given the power of revision, when through mistake or otherwise any instrument is charged with 11/24

Dmt 12 wp842-12 less duty than leviable thereon or is held not leviable with duty, as the case may be, by the Collector. Once the Collector has, in the present case, under Section 32 (1) of the said Act issued adjudication certificate by making an endorsement on the 'Shifting Agreements', the 'Shifting Agreements' are deemed to be duly stamped. Such endorsement having been made by the Collector, it was only the Chief Controlling Revenue Authority who had power to revise and examine the instrument for ascertaining whether the stamp duty was properly charged and the Collector had no power to review its own decision either suo moto or because of any objection raised by Auditors or otherwise. In reviewing his own order and passing the impugned order, the Collector, in my view, has clearly acted without jurisdiction.

12. In Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. (1998) 8 SCC 1, the Hon'ble 12/24

Dmt 13 wp842-12 Supreme Court has held that alternate remedy would not be a bar in three contingencies (i) where the writ petition seeks enforcement of any fundamental rights, (ii) where there is violation of principles of natural justice; or (iii) where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the present case, as stated earlier, the Collector in reviewing his own order has clearly acted without jurisdiction and hence, in the facts of the present case, I am inclined to exercise writ jurisdiction of this Court and set aside the impugned order on this count alone.

13. Apart from the above, it is required to be noted that under the 'Shifting Agreements', one of which Agreement has been annexed as Exhibit "A" to the Petition, it has been agreed between the parties in clause 13 as follows :

13/24

Dmt 14 wp842-12 "13. The Developers alone shall be liable to pay Stamp Duty, Registration Charges, etc. arising out of this Agreement. The parties however agree that a final Permanent Alternate Accommodation Agreement shall be executed between the parties for allotment of the new premises to the Occupant. Such Permanent Alternate Accommodation Agreement shall be considered as the principal document for payment of appropriate applicable stamp duty."

14. It is averred by the Petitioner in the Petition that at the relevant time when the 'Shifting Agreements' were executed, the building plans were not finally sanctioned and the allotment of draw of lots was not carried out by the Society. This position is not disputed before the Court. The 14/24

Dmt 15 wp842-12 final Permanent Alternate Accommodation unit/flat was, therefore, not determined and, therefore, the final 'principal document' was not executed at the relevant time. Clause 2 of the 'Shifting Agreement' is also relevant and provides as follows :

"2. The Occupant acknowledges and agrees that the allotment of the New premises shall be made by the Society by a draw of lots and as such the New Premises shall be of a lay out and pattern contained either in Type A or Type B as provided in Annexure A hereto."

Thus, the 'Shifting Agreements' do not identify the premises and/or the location, building, floor or flat number. That would have to be determined after the plans are finally sanctioned, the buildings are constructed and the allotment is made by the Society by draw of lots. 15/24

Dmt 16 wp842-12

15. It would be apposite here to refer to Section 4 of the said Act which reads as under :

"4. Several Instruments used in single transaction of development agreement sale, mortgage or settlement.-

(1) Where, in the case of any development agreement sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, development agreement mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty if any prescribed for it in that Schedule. 16/24

Dmt 17 wp842-12 (2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub- section (1), be deemed to be the principal instrument. (3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed." (emphasis supplied)

16. Perusal of the aforesaid section would make it 17/24

Dmt 18 wp842-12 clear that when there are several instruments employed for completing the transaction of development agreement, sale, mortgage or settlement, it is only the 'principal instrument' which will be chargeable to the prescribed duty under the said Act. Sub-section (2) of Section 4 gives a discretion to the parties to select and determine which of the several documents will be the principal document. Prima facie, in the facts of this case, the 'Shifting Agreements' are only preliminary Agreements which incorporate the principal intention of the parties and facilitates the Developer to shift the tenants temporarily to a temporary accommodation and incorporate the broad terms on which the permanent alternate accommodation on the permanent basis would be identified and allotted to them.

17. The impugned order, however, erroneously proceeds on the basis that since the new area which is to be 18/24

Dmt 19 wp842-12 allotted to the party is mentioned in the 'Shifting Agreement', the said document is to be treated as an Agreement for alternate accommodation. This finding clearly overlooks the fact that at the time of entering into the 'Shifting Agreements', the alternative accommodation had not been identified and the plan itself was not finally sanctioned. Moreover, under clause 13 of the 'Shifting Agreement' the parties had agreed to enter into a final permanent alternate accommodation Agreement which was to be considered as a 'principal document' for the purposes of stamp duty. Even Section 4 of the said Act clearly postulates that the parties have discretion to decide, in matters such as the present one, as to which would be the 'principal instrument' executed between them. Pertinently, the impugned order does not deal with any of the contentions raised by the Petitioner in its reply dated 21 January 2012 to the Show Cause Notice dated 30 th 19/24

Dmt 20 wp842-12 December 2012 issued by the Collector.

18. For the aforesaid reasons, the impugned order cannot be sustained and would have to be set aside. Rule is made absolute in terms of prayer clause (a) of the Petition. In the facts and circumstances of the case, there shall be no order as to costs.

19. Before closing, I record the Statement of the Petitioner through the learned Senior Counsel, that the Petitioner shall execute the final permanent alternate accommodation Agreements which would be the principal instruments and that the stamp duty on the said instruments shall be paid in accordance with law. It is, however, directed that unless the principal instrument is executed in accordance with law and the prescribed stamp duty is paid thereon, the Petitioner shall not put the tenant/occupant in 20/24

Dmt 21 wp842-12 possession/occupation of the permanent alternate accommodation.

(A.A. SAYED, J.)

21/24

Dmt 22 wp842-12 IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 842 OF 2012

Guruashish Construction Pvt. Ltd., Petitioner. vs.

The Collector of Stamp & Anr. Respondents. Mr. Raju Subramaniam with Mr. A.Joshi and Mr. Atul Kshatriya i/by M/s. Markant Gandhi & Co. for the Petitioner.

Mr. G.W. Mattos, AGP., for the Respondents. CORAM : A.A. SAYED, J.

DATE : 17 APRIL 2012.

OPERATIVE PART OF THE ORDER :

22/24

Dmt 23 wp842-12

18. For the aforesaid reasons, the impugned order cannot be sustained and would have to be set aside. Rule is made absolute in terms of prayer clause (a) of the Petition. In the facts and circumstances of the case, there shall be no order as to costs.

19. Before closing, I record the Statement of the Petitioner through the learned Senior Counsel, that the Petitioner shall execute the final permanent alternate accommodation Agreements which would be the principal instruments and that the stamp duty on the said instruments shall be paid in accordance with law. It is, however, directed that unless the principal instrument is executed in accordance with law and the prescribed stamp duty is paid thereon, the Petitioner shall not put the tenant/occupant in possession/occupation of the permanent alternate 23/24

Dmt 24 wp842-12 accommodation.

(A.A. SAYED, J.)

24/24

Suggestions to Inspector General of Registration and Controller of Stamp
Government of Maharashtra

- Stamp Duty on Surrender of Reserved land under D.C. Regulations to
MCGM in lieu of TDR

- 1) Under the D.C. Regulation certain land are reserved for various reservation and TDR are granted if such land are surrendered to MCGM free of cost as per the terms and condition as mentioned in the D.C. regulations.
- 2) Further Section 126(1)(b) of the MRTP Act stipulate that in such case of acquire reserved lands the owner is entitled for grant of TDR in lieu of cash compensation & it is one of the ways in which land is acquired for public purpose.
- 3) While there is no stamp duty on compensation paid for any land acquired under the Land Acquisition Act, However if the owner is surrendering reserved land to the MCGM free of cost in lieu of TDR the stamp authority is demanding stamp duty as on a conveyance on the market value of the land surrendered to MCGM free of cost by the owner.

This is absolutely absurd & ridiculous.

There should be no stamp duty on reserved land surrendered to MCGM in lieu of TDR under D.C. Regulation.

- Adjudication in Deemed Conveyance of the Society

Registrar should not ask Society for chain documents of the flat should registered of each and every members of Flats, registrar should not ask more documents from society.

Suggestions: Registrar should follow the smooth process of Deemed conveyance, Any member staying in the society last 15 years and his main/purchase document is registered properly, and he fulfil all formalities of registration, the same document should count as a valid document in the process of adjudication of deemed conveyance of society,

approach Government and make a claim for that. **Mohamadbhai s/o Miyabhai and others Vs. State of Maharashtra and others**, 2000(1) Bom. C.R. 841.

Sections 125, 126 and 127.—Reserve Land when can be dereserved.—Land reserved for development of Agricultural Market Committee. No action for 10 years from the date of reservation (i.e. 13-12-77). Notice by owners dated 18-12-89 served on A.P.M.C. to take steps for acquisition if so desired; but no acquisition done within six months of that. It was contended that reservation lapses after 10 years of notification and further if no steps are taken for acquisition within 6 months of notice, reservation automatically lapse. It was held that notice was sufficient to A.P.M.C. respondent 5 to take steps for acquisition. A.P.M.C. moved on that and addressed letter dated 24-1-1990 to Collector to initiate acquisition, who in turn wrote to S.D.O. on 27-11-92 to take steps. If deals are taken to account then letter dated 24-1-1990 of respondent 5 (A.P.M.C.) had initiated steps by asking Collector to take action for acquisition. This is within six months of notice served by petitioners on 6-12-1989 and is compliance of section 126(1)(c) of Act. Reservation could not automatically lapse after a period of 10 years, but only if no steps were taken within 6 months of the notice under section 127 of Act, which is not the case here. **Janardhan Appa Martand Appa Bondre Vs. State of Maharashtra and others**, 2003(4) Bom. C.R. 787.

S. 125.—Section 68 of the Madhya Pradesh Town Improvement Trust Act, 1961.—Acquisition compensation—Deduction towards development cost—acquired land already developed.—Landowner had already levelled land, constructed boundary wall, tube well, power house, time shed etc. Deduction of 25% towards development cost uncalled for. Land owner also held initiated to benefits which are admissible to a person whose land is acquired under 1894 Act including interest on solatium. **Shashikant Bansal Vs. Gwalior Improvement Trust/Gwalior Development Authority with Gwalior Improvement Trust/Gwalior Development Authority Vs. Shashikant**, AIR 2010 SC 2819.

126. Acquisition of land required for public purposes specified in plans.—(1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, ¹[any appropriate Authority may, except as otherwise provided in section 113-A, ²acquire the land—

- (a) by an agreement by paying an amount agreed to or,
- (b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis

1. This portion was substituted for the words "any appropriate Authority may acquire the land" by Mah. 21 of 1971, s. 11(1).
 2. These words were substituted for the words "acquire the land either by agreement or make an application to the State Government for acquiring such land under the Land Acquisition Act, 1894" by Mah. 10 of 1994, and shall be deemed to have been so substituted w.e.f. 25-3-1991, s. 12(a).

of the principles laid down in the Land Acquisition Act, 1894 Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

- (c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894,

and the land (together with the amenity, if any, so developed or constructed so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest in the Planning Authority, Development Authority, or as the case may be, any Appellate Authority.]

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or '[if the State Government (except in cases falling under section 49² [and except as provided in section 113-A] itself is of opinion that any land in any such plan is needed for any public purpose, it may make a declaration to that effect in the *Official Gazette*, in the manner provided in section 6 of the Land Acquisition Act, 1894, (I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

³[Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]

⁴[(3) On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act, and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be—

- (i) where the land is acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

1. These words were substituted for the words "if the State Government itself is of opinion" by Mah. 14 of 1971, s. 6(1)(a).

2. These portion was inserted by Mah. 21 of 1971, s. 11(2).

3. These proviso was substituted by Mah. 10 of 1994, s.12(b).

4. Sub-section (3) was substituted by Mah. 11 of 1973, s. 6.

Suggestions for e-registration of the documents implemented on 10 July 2014, by Govt of Maharashtra for the first time sale agreement from the builders.

1. If a builder is doing five or more projects in his different names of the companies, the condition of minimum number of 200 flats to be sold for eligibility of e-registration of the first document should be relaxed.
2. Preapproval condition for the e-registration of document should not be the case of exploitation. It should be hassle free and only the IOD approval of the project should be the basis of criterion for giving preapproval.
3. Installation of equipments and systems required for registration should be on rental basis.
4. On time of registration fee should be charged.
5. Other documents should be considered for e-registration from the builders organization e.g. undertakings, affidavits, development agreements and other permanent alternative accommodation agreements etc.