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Prakash Baviskar

Ref. No. MCHI/PRES/19-20/071

November 5, 2019

To,
Shri Anil Kawade (I.A.S.),
Inspector General of Registration &
Controller of Stamps,
Department of Registration & Stamps,
Government of Maharashtra.

Sub: Pending issues related to Stamp duty in MMR

1. Stamp Duty payable on Instruments executed for purpose of Rehabilitation of slum dwellers as per the Slum Rehabilitation Scheme.
2. Request to roll back the levy of 1% surcharge on stamp duty for immovable property in Mumbai
3. Stamp Duty assessment and charge on Joint Venture Agreement or Development Agreement
4. Rs. 100/- Stamp duty on Conveyance or Agreement for Development in respect of land declared as Slum or Slum Rehabilitation under Maharashtra Slum Act.

Respected Sir,

1. Stamp Duty payable on Instruments executed for purpose of Rehabilitation of slum dwellers as per the Slum Rehabilitation Scheme under Maharashtra Slum Areas (IC&R) Act, 1971 in respect of properties situated within city of Mumbai District & Mumbai Suburban District.

Issuance of Clarification in respect of Govt. order no.STP.1096/4565/CR-915/M-1, dtd.19/12/1997 read with order no. Mudrank.2002/941/CR-217/M-1, dtd.4th March, 2008 issued by Revenue & Forest Department, Govt. of Maharashtra

- a. Based on the report of study group of experts set up by the State Govt. under Chairmanship of Shri. Dinesh K. Afzulpurkar, then Chairman of Bombay Port Trust dtd.20/07/1995 & with a view to provide decent permanent accommodation to the hutment dwellers in Mumbai, the State Govt. of Maharashtra vide its notification dtd.01/04/1998 published in official Gazette of Govt. of Maharashtra dtd. 09.04.1998 has sanctioned & notified General Slum Rehabilitation Scheme for implementation Slum Rehabilitation Scheme of Mumbai, as per the provisions of section 3(B) of Maharashtra Slum Areas (IC&R) Act, 1971. The fundamental principle behind the said scheme is to consider land underlying slum as a "Resource" for implementation of the Slum Rehabilitation Scheme.

To facilitate effective implementation of the said Slum Rehabilitation Scheme, Govt. of Maharashtra vide order dtd.19/12/1997 issued by Revenue & Forest Department, has reduced Stamp duty chargeable under Article 5 (g-a), 25 & 36 in Schedule-I to the Bombay Stamps Act, 1958, on the instruments executed for purpose of rehabilitation of slum dwellers as per the Slum Rehabilitation Scheme under Maharashtra Slum Areas (IC&R) Act, 1971 in respect of properties situated within city of Mumbai

District & Mumbai Suburban District, to Rs.100/- (Rupees One hundred only). Copy of the above said order dtd.19/12/1997 is attached herewith for ready reference (Annexure-I). Accordingly, the said order dtd.19/12/1997 was implemented & reduced amount of stamp duty of Rs.100/- was applied while registering the instruments such as Conveyance Deed, Development Agreement, Deed of Assignment etc. in respect of land occupied by slums.

- b. Subsequently, the State Govt. has issued explanation in respect of the said order dtd.19/12/1997 vide order dtd.04/03/2008 issued by Revenue & Forest Department, Govt. of Maharashtra. Copy of the said order dtd.04/03/2008 is attached herewith for ready reference (Annexure-II). We understand that, the said explanation was issued by the Govt. with a view to clarify that, reduction of Stamp duty as per the above-mentioned order dtd.19/12/1997 shall not be applicable to the instruments executed in respect of free sale component under the Slum Rehabilitation Scheme. However, the phrase, "any other instrument of the developer" in the said order dtd.04/03/2008 led to the interpretation that, the benefit of reduced stamp duty as per order dtd.19/12/1997 shall not be applicable to the instruments such as Conveyance Deed, Development Agreement, Deed of Assignment etc. executed in respect of land occupied by slums for implementation of the Slum Rehabilitation Scheme & the office of the Stamp Collectors while carrying out adjudication of such instruments, are calculating stamp duty on such instruments at market rate considering the permissible higher FSI under Slum Rehabilitation Scheme. Therefore, undue hardship is caused in implementation of the Slum Rehabilitation Scheme.
- c. With reference to the representations made by the developer's association earlier to the Slum Rehabilitation Authority & the State Govt. in this regard, the CEO (SRA) has also taken up this issue with your office as well as with the State Govt. In the letter of CEO (SRA), CEO (SRA) has annexed the list of instruments which are executed while implementing Slum Rehabilitation Scheme which need to be considered for levy of stamp duty at reduced rate as per order dtd.19/12/1997 issued by Govt.
- d. Until 10/04/2008, the public land occupied by slums owned by State Govt. including authorities of State Govt. such as MHADA, MMRDA etc. & Municipal Corporation was allowed to be utilized for implementation of the Slum Rehabilitation Schemes by sparing the said land on lease at nominal lease rent of Rs.1001/- for every 4000 sq.mtr land or part thereof. Thereafter, the State Govt. has decided to recover premium at the rate of 25% of the ASR for developed land for sparing public land for implementation the Slum Rehabilitation Scheme by private developers. Thus, State Govt. has decided to value the lands occupied by slums at the rate of 25% of the ASR for developed land. The Slum Rehabilitation Authority vide its letter no. SRA/LA/opinion/07/08, dtd. 07/01/2008 had sought opinion from Hon'ble Advocate General regarding certain provisions relating to the Slum Rehabilitation Scheme in Mumbai. Query no. 3 of the said letter of SRA pertains to parity of public land & private lands while undertaking Slum Rehabilitation Schemes. The said query

no.3 & opinion of Hon'ble Advocate General thereon is reproduced hereunder for ready reference.

Query No. 3:

Whether right of land owner will prevail over the right of Co-op. Hsg. Society of occupants/Developers appointed by the Co-op. Hsg. Society of occupants/N.G.O appointed by the CHS of occupants for implementation of the scheme in respect of land belong to public authorities of the State Government of Maharashtra, where proposal have already been received on or before 31/01/2006; from various developers appointed by the Co-op. Hsg. Society of slum dwellers or Co-operative Hsg. Society of slum dwellers itself or N.G.O?

Answer to Query No. 3

No. Under the law as it stands today, all persons who are entitled to put up a proposal for redevelopment of slum land stand on an equal footing for the purposes of D.C Regulations 33(10). The land owner has no special rights and the law does not permit him to override a proposal for redevelopment from any of the other eligible persons mentioned in the preamble/opening words of Appendix-IV and they all stand on an equal footing with the land-owning authority. The DCR including Appendix-IV being delegated legislation amount to a legislative mandate to this effect. The pending proposal are required to be processed as per the judgment of the Hon'ble Division Bench in Awadesh Tiwari V/s. CEO (SRA) reported in 2006(5) BCR 772.

Thus, private land occupied by existing slums are at par with public land occupied by slums & therefore the private lands occupied by slums needs to be valued on equal footing with the public land occupied by slums which are valued by the State Govt. at 25% of the ASR of developed land.

- e. We would like to further state that, the provisions of Slum Rehabilitation Schemes formulated by Govt. u/s 3(B) of Slum Act, provides for obligatory participation of the land holders & occupants of the area declared as Slum Rehabilitation Area. In the event, the private land owners do not come forward for undertaking redevelopment as per Slum Rehabilitation Scheme or do not co-operate with the society of occupiers of slum area for implementation of Slum Rehabilitation Scheme, there is provision under section 14 of the Slum Act for compulsory acquisition of the private land occupied by slum for the purpose of implementation of the Slum Rehabilitation Scheme. In such case, the owner of the land is entitled for compensation equal to 60 times monthly rent of the hutments on said land. The said amount of compensation is meagre & not even close to the value as per 25% of ASR.
- f. Slum Rehabilitation Scheme is a self-financed scheme which works on the principle of cross subsidization. The free-sale component is not generated as inherent FSI potential of the land like open lands having inherent FSI potential. There are huge costs on account of rent, expenses on site on several different heads.

- g. We would like to respectfully submit that, valuation of slum occupied lands by office of the Stamp Collectors considering permissible higher FSI is unreasonable & it severely affects implementation of the Slum Rehabilitation Scheme. Due to valuing the slum occupied land at unreasonably high value, implementation of the Slum Rehabilitation Schemes becomes unviable. Due to this the instruments for transfer of slum occupied lands/ development agreements in respect of slum occupied lands etc. are not registered. This has resulted in stalling Slum Rehabilitation Schemes resulting in blocking of huge revenue to the Govt. on account of stamp duty & registration charges on instruments executed in respect of free-sale component which otherwise would have been earned by the Govt. through implementation of Slum Rehabilitation Schemes on private land occupied by declared & notified slums. In Mumbai, the private land occupied by slums is estimated to be around 1.2 crore sq.mtrs. Considering average Land ASR rate (as per ASR 2018) of Rs.50,000/- per sq.mtr., the value of the said land would be Rs.60,000/- crores & amount of stamp duty calculated at the rate of 6% on the basis of 25% of the said land value would be Rs.900/- crores. Besides, the amount of stamp duty on instruments in respect of free-sale areas which are valued at full market value will be exponentially high. In case of a single Slum Rehabilitation Scheme with 100 free-sale units of an average area of 500 sq.ft. on a one-acre slum affected plot, with an average residential sale unit ASR rate of Rs.100,000/- per sq.mtr., the stamp duty @6% works out to Rs.2.79 crores. Effectively, from 3000 acres of privately help slum affected land, the government stands to gain approximately Rs.8,400/- crores in Stamp Duty from the free-sale component. Overall, the estimated stamp duty collection of the Government is likely to be no less than Rs.9,000/- crores.

Sir, we would like to request you to kindly consider levy of stamp duty by adopting value of the land at 25% of the ASR for developed land on instruments such as Conveyance Deed, Development Agreement, Deed of Assignment for transfer /assignment /development rights executed in respect of private lands occupied by slums for the purpose of implementation of the Slum Rehabilitation Scheme & necessary report in this regard may kindly be submitted to the State Govt.

2. Request to roll back the levy of 1% surcharge on stamp duty for immovable property in Mumbai

As you are aware that the Real Estate Industry is going through some of the toughest times; just when it was recovering from the triple whammy of Demonetisation, RERA and GST, the NBFC crisis hit the sector. While the impacts of such events or any policy reform are usually transient in nature, the government's decision to levy a 1% surcharge on stamp duty for immovable property in Mumbai would be permanent and directly impacts the consumer sentiments.

As per the provisions of the Mumbai Municipal Corporation Act (second amendment) bill, this move may be aimed at creating sufficient corpus for infrastructure projects for an already rich MCGM, the common man would suffer this unnecessary and unwarranted burden with the cost of home

ownership going up. As it is, the current levy of 5% Stamp Duty itself is a big dampener and impacts the affordability to a very large extent. Besides, MCGM imposes a surcharge on Development of 4% of land ASR (ready reckoner) on BUA as part of the building plan approval charges. To top it, there is a GST of 12% payable by the end buyer. How much of a burden of tax should be on the consumer?

It may also be pertinent to note here that infrastructure projects like Metro rail, construction of the Sewri-Nhava Sheva sea link, a Bus Rapid Transport System to name a few, are going to benefit the state in a much larger way. It is going to open new locations for real estate development thereby increasing the revenue collection from property tax; bring business districts closer home by virtue of improved commute helping creation of more jobs - this is going to impact the overall economy in a very big way by increasing all round consumption of goods & services. Needless to say that the biggest beneficiaries would be the services and manufacturing sectors, besides the IT/ITeS and BFSI industries. Also, such infrastructure projects would inadvertently give a fillip to all round development and growth of regions like Panvel, Kalyan Dombivli, Palghra & Boisar etc. to name a few. As such, this levy on Real Estate alone appears onerous and regressive.

CREDAI-MCHI very sincerely and humbly requests your immediate review of the decision and roll back the levy to ease the pressure on the common man, especially at a juncture where after painful 6~8 quarters, some traction could be seen in the residential markets of MMR.

3. Stamp Duty assessment and charge on Joint Venture Agreement or Development Agreement

With ever increasing land ASR rates, it is becoming that much more difficult for builders to do a land transaction and achieve viable financial closure of their projects. With land deals becoming elusive, builders are resorting to entering into DMA to keep their business model asset light. Reputed Builders and regional players in the real estate industry are actively participating in DMAs (Development Management Agreements) wherein, the land remains to be with the land owner. There is a 10% revenue sharing between the landlord and the builder.

When such agreements go for registration, for stamp duty considerations, the value is capped at 110% of the revenue accruals, without justification. The assessment should actually be carried out on the actual consideration which land lord pays to the Developer. So in case the developer is entitled to 10% of the revenue, then stamp duty should be calculated on the basis of 10% of the estimated sales realization based on discounted NPV value of constructed premises. Also, while earlier, only 1% stamp duty was leviable, it has now been increased to 5% putting undue financial pressure on the stake holders. It is such high stamp duty that is prohibiting many such deals to be stuck across MMR leading to revenue loss to the department.

So we would like to request you to consider our following two points;
Stamp duty assessment be carried out on the actual consideration of the Joint Venture or Development Agreement of the consideration estimated to be payable to Developer and not sale value, as there is no sale transaction;

Stamp duty rate be rolled back to 1% with immediate effect.

4. Rs. 100/- Stamp duty on Conveyance or Agreement for Development in respect of land declared as Slum or Slum Rehabilitation under Maharashtra Slum Act.

Stamp Duty on conveyance or agreement for sale or agreement for development or any other instrument including Joint Venture in respect of land declared as Slum under Slum Act, or which qualifies for slum rehabilitation scheme under DCR 33 (10) or Section 3 of Slum Rehabilitation Act should be Rs. 100 only.

The premium which is levied by Government for the land which is taken for redevelopment of slums on it, is 25% of the Ready Reckoner rate. Such premium is charged only at the time of sanction of the scheme on such land. Any land which is encroached as slum, and is to be acquired under Maharashtra Slum Act, then its valuation is done in accordance with the provisions of Section 14 of the Slum Act. Under Slum Act, the valuation of the slum land is equal to 100 months rent /compensation which is permitted to be charged and payable by the slum dwellers. This amount comes to not more than 5% of the Ready Reckoner rate of any property. In case of land encroached by the slum dwellers, under the Slum Act, the owner is not entitled to collect any rent and neither entitled to remove any encroacher from such land. In view of this, the maximum compensation, the owner can collect is Rs. 10/- per Slum Dweller unit under the Slum Act.

In view of the above reasons, the valuation of slum land can either be as per the consideration payable under the Maharashtra slum act at the time of acquisition or it can be premium being charged by Government for government land involved in slum rehabilitation. Only if the slum land is being transferred after issue of LOI sanctioning the rehabilitation scheme, the real valuation of the land can thus be based on the acquisition value of the slum land under the Maharashtra Slum Act. However, in such case of transfer of slum land where in rehabilitation scheme is sanctioned, then valuation of such land shall be @ 25% of the Ready Reckoner rate of such land. The present system of calculating the Stamp Duty based on FSI potential of the slum land is completely erroneous.

Therefore, our request is to accept Rs. 100/- as a Stamp Duty as a Conveyance for Agreement for Development in respect of land which is declared as Slum or Slum Rehabilitation under Maharashtra Slum Act.

CREDAI-MCHI's Prayers:

1. To consider levy of stamp duty by adopting value of the land at 25% of the ASR for developed land on instruments such as Conveyance Deed, Development Agreement, Deed of Assignment for transfer

/assignment/development rights executed in respect of private lands occupied by slums for the purpose of implementation of the Slum Rehabilitation Scheme & necessary report in this regard may kindly be submitted to the State Govt.

2. To review the decision and roll back the levy of 1% surcharge on stamp duty to ease the pressure on the common man, especially at a juncture where after painful 6~8 quarters, some traction could be seen in the residential markets of MMR.
3. Stamp duty assessment be carried out on the actual consideration of the Joint Venture or Development Agreement of the consideration estimated to be payable to Developer and not sale value, as there is no sale transaction; Stamp duty rate be rolled back to 1% with immediate effect.
4. To accept Rs. 100/- as a Stamp Duty as a Conveyance for Agreement for Development in respect of land which is declared as Slum or Slum Rehabilitation under Maharashtra Slum Act.

Thanking you,

Yours Sincerely,
For CREDAI-MCHI



Nayan Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer