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Dhaval Ajmera

TREASURER

Pritam Chivukula

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Parag Munot
Rajesh Prajapati
Harshul Savla
Parth Mehta

HON. JT. SECRETARIES

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Tejas Vyas

JT. TREASURERS

Mukesh Patel

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Subodh Runwal
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Gautam Chatterjee
Ar. Hafeez Contractor
Anuj Puri
Ankur Gupta
Adv. Parimal Shroff

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Jackbastian Nazareth
Venkat K. Narayan
Abhishek Kapoor
Amit Thacker
Gurminder Singh Seera
Munish Doshi
Nishant Agarwal
Cherag Ramakrishnan
Azim F. Tapia
Jayesh C. Shah
Shailesh Sanghvi
Sunny Bijlani
Binitha Dalal
Sahil Parikh
Nikhun Sanghavi
Rushank Shah
Ricardo Romell
Samyag Shah
Rushi Mehta
Rajeev Jain

YOUTHWING CONVENOR

Naman Shah

PROCUREMENT CONVENOR

Nimish Ajmera

WOMEN'S WING CHAIRPERSON

Mona Ajmera

CREDAI-MCHI UNITS

THANE
KALYAN-DOMBIVLI
MIRA VIRAR
RAIGAD
NAVI MUMBAI
PALGHAR BOISAR
BHIWANDI
SHAHAPUR-MURBAD
URAN-DRONAGIRI
ALIBAG
KARJAT-KHALAPUR-KHOPOLI

To,

Shri Shravan Hardikar (I.A.S.)

Inspector General of Registration and Controller of Stamps,
Ground Floor, Opposite Vidhan Bhavan (Council Hall),
New Administrative Building,
Pune - 411001, Maharashtra

Sub: Charging of Stamp Duty Twice on existing member's New Premises in redeveloped Buildings (New Buildings) undertaken by Developers in Co-operative Housing Societies.

Ref: Circular No.K.5/Stamp-17/Pra.Kr.10/13/303/17 dated 30th March 2017, Department of Stamps, Inspector General of Registration & Controller of Stamps (Maharashtra State).

Respected Sir,

1. We are writing instant letter to beseech you to issue a clarificatory Circular to preclude logistical hassles in a redevelopment project to avail benefit of section 4 of the Maharashtra Stamp Act, 1958.
2. In any redevelopment scheme, principal Agreement is the Development Agreement (hereinafter referred to as 'DA'), executed between the Developer and the Society. The DA of such projects are duly adjudicated by the competent authority and then registered at the office of Sub-Registrars of Assurances. The levy of stamp duty on the DA is based on various parameters like construction cost for rehab components, rent in lieu of transit accommodation, corpus, transportation charges, brokerage, car parking's to each Existing Member, construction Cost for Society Office & Security Cabin/ other amenities etc. It is pertinent to note that the DA invariably enumerates detail entitlement of each member of Society in the redevelopment project.
3. At the time of registration of Permanent Alternate Accommodation Agreements (hereinafter referred to as 'PAAA') for individual Society Members, again stamp duty payment from such member is being insisted upon based on IGR's Circular No. K.5/Stamp-17/ Pra.Kr.10/13/303/17 dated 30th March 2017 (hereinafter referred to as 'said Circular') unless if members are parties to the DA. A copy of the said Circular is enclosed herewith for ease of your reference.
4. The said circular enumerates that only if individual existing members of the co-operative housing societies are parties to the DA, only those members would be entitled to nominal stamp duty of Rs. 100/- on their respective Permanent Alternate Accommodation Agreement by extending benefit under section 4 of the Maharashtra Stamp Act, 1958. It is pertinent to note that insistence of each member as party to DA to avail benefit of section 4 of the Maharashtra Stamp Act, 1958 is unnecessarily burdensome.

Maharashtra Chamber of Housing Industry

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.
Tel: 42121421, Fax: 4212 1411/407 Email: secretariat@mchi.net Website: www.mchi.net

5. We hereby reproduce section 4 of the Maharashtra Stamp Act, 1958 verbatim for ease of your reference:-

“4. Several Instruments used in single transaction of [development agreement] sale, [lease], mortgage or settlement.

- (1) Where, in the case of any [development agreement], sale, [lease], 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], [lease], 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.*
- (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 purpose 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.

6. The gist of relevant para of a typical PAAA is as follows:

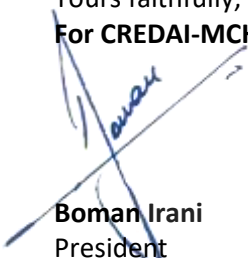
“This Agreement does not envisage any independent or new transactions save and except as contemplated and recorded in the Redevelopment Document. Vide this Agreement only the New Flat is being identified and is agreed to be provided by the Developer to the Member/s in discharge of the obligations of the Developer under the Redevelopment Document. No fresh or new obligation of the Developer is envisaged or contemplated or agreed upon vide this Agreement save as the obligations already recorded under the Redevelopment Document. This Agreement, is a document incidental to the Redevelopment Document within the meaning of Section 4 of the Maharashtra Stamp Act, 1958 and is accordingly being stamped as per the said provision.”

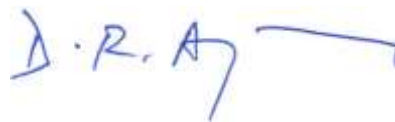
7. By now it is well established position in law established by various Judgments of Hon’ble Supreme Court of India and Hon’ble High Court of Judicature at Bombay that once a person becomes a member of the Cooperative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and Bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body (see Daman Singh & ors. v/s. State of Punjab reported in AIR 1985 SC 973). This view has been followed in the subsequent decision of the Apex Court in the case of State of U.P. v/s. Chheoki Employees Cooperative Society Ltd. reported in AIR 1997 SC 1413. In this decision the Apex Court further observed that the member of Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. The Court also observed that the stream cannot rise higher than the source.
8. It is submitted that all existing member of the Society is entitled to treat his/her/ their Permanent Alternate Accommodation Agreement as incidental instrument to the DA and avail benefit of section 4 of Maharashtra Stamp Act, 1958 regardless of whether they are party to the DA or not as the DA’s executed between the Society and the Developer is the Principal Agreement, which is duly stamped as per Schedule-I.

9. The levy of separate stamp duty on Permanent Alternate Accommodation Agreement is subject matter of various Writ Petitions, which are pending adjudication before the Hon'ble High Court of Judicature at Bombay. After issuance of the said Circular, lot of societies have started asking all individual members to become necessary parties to the DA and further attend the office of Sub Registrar of Assurances for registration. This has caused lot of rush and unnecessary load at the office of Sub-Registrar of Assurances across the city and state of Maharashtra coupled with logistical nightmare.
10. The said Circular is now a subject matter of challenge before the Hon'ble High Court of Judicature At Bombay in Writ Petition (L) Nos. 13218 of 2021, 13224 & 13225 of 2021. The Hon'ble High Court of Judicature At Bombay by its order dated 9th December, 2021 was please to issue rule and grant interim reliefs in favour of Petitioner in said Writ Petitions. A copy of said order dated 9th December, 2021 is enclosed herewith for ease of reference.
11. It is submitted that it is abundantly clear from section 4 of the Maharashtra Stamp Act, 1958 that each member of the Society is not required to be a party to the DA to avail benefit of section 4 of the Maharashtra Stamp Act, 1958 on his/her/their Permanent Alternate Accommodation Agreement.
12. In light of above facts and circumstances, we earnestly request you to issue clarificatory Circular permitting all existing members of Society to avail benefit of section 4 of the Maharashtra Stamp Act, 1958 on their respective Permanent Alternate Accommodation Agreement, once the DA of society is duly stamped, irrespective of the individual member being party to such DA.

Thanking you,

Yours faithfully,
For CREDAI-MCHI


Boman Irani
President



Dhaval Ajmera
Hon. Secretary

Encl : As above

क्र.का.5/मुद्रांक-17/प्र.क्र.10/13/303/17
नोंदणी महानिरीक्षक व मुद्रांक नियंत्रक,
(महाराष्ट्र राज्य), तळमजला,
नविन प्रशासकीय इमारत,
विधान भवन समोर, पूणे-1.
दि.30/03/2017

परिपत्रक:

विषय: सहकारी गृहचरणा संस्थेच्या मिळकतीच्या पुनर्विकासानंतर, सभासदाच्या
लाभात होणा-या दस्ताचे मुद्रांक शुल्काबाबत.

संदर्भ: नोंदणी महानिरीक्षक कार्यालयाचे परिपत्रक क्र.का.15/बामुदत/मार्गदर्शक
सुचना/621, दि.23/06/2015.

प्रस्तावना -

1) शासनाचे महसुल व वनविभागाचे परिपत्रक क्र.याचिका-
2013/1425/प्र.क.260/म-1, दि.09/05/2014 अन्वये, स्थावर मिळकतीचा मालक
आणि विकासक यांचे दरम्यान निष्पादित झालेल्या विकसन करारानुसार मालकास
भिळणारे बांधीव क्षेत्र, उक्त मालकास हस्तांतरीत करताना निष्पादित करण्यात येणा-या
अनुषंगिक दस्तऐवजामुळे मिळकतीचे हस्तांतरण होत नसल्याने अशा दस्तऐवजांवर
मुद्रांक शुल्काची आकारणी महाराष्ट्र मुद्रांक अधिनियमाच्या कलम 4 नुसार करण्यात यावी
असे स्पष्ट करण्यात आले आहे.

2) यास अनुसरून, नोंदणी महानिरीक्षक कार्यालयाचे परिपत्रक क्र.का.15/
बामुदत/ मार्गदर्शक सुचना/ 621, दि.23/6/2015 अन्वये, सहकारी गृहनिर्माण
संस्थेच्या जुन्या इमारतीच्या पुनर्विकास प्रकल्पामध्ये नविन इमारतीत जागा देताना
(म्हणजेच जर मुळ मालक ही एखादी गृहनिर्माण संस्था असेल तर) मुद्रांक शुल्काची
आकारणी कशी करावी याबाबत स्पष्टीकरण करण्यात आले आहे. यामध्ये असे स्पष्ट
करण्यात आले आहे की,

अ) जर गृहनिर्माण संस्था (मुळ मालक) व विकासक यांचेमध्ये विकसन
करारनामा झालेला असेल व त्या करारनाम्याच्या पूर्ततेच्या अनुषंगाने गृहनिर्माण

संस्थेच्या लाभात करण्यात येणा-या अनुषंगिक दस्तऐवजावर महाराष्ट्र मुद्रांक अधिनियमाच्या कलम 4 नुसार मुद्रांक शुल्क आकारणी करणे आवश्यक आहे.

ब) मात्र केवळ गृहनिर्माण संस्था (मुळ मालक) व विकासक यांचेमध्ये विकसन करारनामा झालेला असल्यास गृहनिर्माण संस्थेच्या मुळ सभासदाचे वैयक्तिक लाभात सदनिका/गाळा हस्तांतर करण्याचा दस्तऐवज हा मुळ विकसन करारनाम्याच्या पुर्ततेच्या अनुषंगिक दस्तऐवज म्हणून समजता येणार नसून तो स्वतंत्र दस्तऐवज आहे. त्यामुळे अशा दस्तऐवजान्वये हस्तांतरीत होणा-या सदनिकेसाठी गृहनिर्माण संस्थेने मान्यता दिलेल्या क्षेत्रासाठी बांधकाम खर्चावर मुद्रांक शुल्क आकारणी करण्यात यावी.

3) या स्पष्टीकरणाविषयी आणखी सविस्तर खुलासा करण्याची मागणी या कार्यालयाकडे नॅशनल रियल इस्टेट डेव्हलपमेंट कॉन्सील, मुंबई व इतर विविध घटकांकडून करण्यात आलेली होती, विशेषतः विकसक, गृहनिर्माण संस्था व सभासद या तीन पक्षात झालेल्या विकसन करारनाम्याच्या अनुषंगाने सभासदाचे वैयक्तिक लाभात निष्पादित होणारा हस्तांतरणाचा दस्त देखील मुळ विकसन व्यवहार/कराराचा अनुषंगिक दस्त समजणे आवश्यक असल्याने व त्या करारास कलम 4 ची तरतुद लागू करण्याची मागणी करण्यात आली आहे.

या सर्व बाबींचा विचार करून पुढील प्रमाणे खुलासा करण्यात येत आहे.-

(1) ज्या प्रकरणामध्ये केवळ गृहनिर्माण संस्था (मालक) व विकासक या दोन पक्षांमध्येच विकसन करार झालेला असेल, तेथे त्या विकसन करारास वैयक्तिक सभासद पक्षकार नसल्यामुळे त्यांचे लाभातील हस्तांतरण दस्तास कलम 4 ची तरतुद लागू होणार नाही आणि प्रस्तावनेमध्ये 2(ब) मध्ये नमुद केल्याप्रमाणे मुद्रांक शुल्काची आकारणी करणे आवश्यक राहिल.

(2) ज्या प्रकरणामध्ये, पुढील निकषाची पूर्तता होत असेल-

(अ) जर विकसन करारनामा गृहनिर्माण संस्था (मुळ मालक),

सभासद व विकासक या तीन पक्षांमध्ये झाला असेल आणि,

(ब) मूळ विकसन करारनाम्यामध्ये, प्रत्येक सभासदाचे लाभामध्ये

नवीन सदनिका हस्तांतरणाचा स्वतंत्र दस्त करण्याची अट

नमूद असेल, आणि

(क) सदर सभासदाच्या लाभातील हस्तांतरण दस्तामध्ये, मुळ

विकसन करारनाम्याच्या अटीशर्तीनुसार बांधीव क्षेत्र

हस्तांतरीत करण्याचा मर्यादित उद्देश असेल, आणि

(ड) सदर वैयक्तिक सभासदाचे लाभातील हस्तांतरणाच्या

दस्तामध्ये, गृहरचना संस्था मान्यता देणार पक्ष म्हणून

सामील असेल,

तर असा वैयक्तिक सभासदाचे लाभातील हस्तांतरण दस्त हा मूळ विकसन करारनाम्याचा अनुषंगिक दस्त समजून, त्यास कलम 4 ची तरतुद लागू करण्यात यावी.

(3) या ठिकाणी हे स्पष्ट करण्यात येते की, वरील स्पष्टीकरण हे विकसन करारानुसार ठरलेल्या क्षेत्रापुरते लागू राहील, त्या क्षेत्रापेक्षा वाढीव क्षेत्र उक्त सभासदास मिळत असल्यास/विकत घेत असल्यास, संदर्भित परिपत्रकामध्ये स्पष्ट केल्याप्रमाणे, त्या वाढीव क्षेत्रासाठी वार्षिक बाजारमूल्य दर तक्त्यानुसार येणारे (सदनिका/दुकानगाळा/ कार्यालय/ औदयोगिक) मुल्यांकन व मोबदला यापैकी जास्त त्या मुल्यावर मुद्रांक शुल्क आकारणी करण्यात यावी.

(4) मात्र वर क्र.2 मध्ये नमूद वैयक्तिक सभासदाचे लाभातील दस्ताचे बाबतीत, उक्त निकषांच्या, विशेषतः निकष (क) च्या पुर्ततेविषयी खातरजमा करणे ही समन्यायिक स्वरूपाची प्रक्रीया आहे. सबब, असेही निर्देश देण्यात येत आहेत की, जर अशा दस्तातील पक्षकारांना त्यांचे दस्ताचे बाबतीत या निकषांची पुर्तता होत आहे आणि त्यामुळे कलम 4 ची तरतूद लागू होत आहे असे वाटत असेल तर त्यांनी त्या पुनर्विकास योजनेतील अशा हस्तांतरणाचा एक दस्त मुद्रांक जिल्हाधिकारी यांचेकडून अभिनिर्णित करून घ्यावा आणि त्या निर्णयाप्रमाणे दुय्यम निबंधक यांनी त्या योजनेतील, त्याप्रमाणेच मसुदा असलेले इतर दस्त थेटपणे नोंदवावेत.

सदर परिपत्रकाची प्रत नोंदणी व मुद्रांक विभागाच्या www.igrmaharashtra.gov.in

या संकेतस्थळावर Publication या सदराखाली Circulars या ठिकाणी उपलब्ध आहे.

सही/-XXX

(डॉ. रामास्वामी एन)

नोंदणी महानिरीक्षक व मुद्रांक नियंत्रक,
महाराष्ट्र राज्य, पुणे

प्रति,

- 1) सर्व मुद्रांक जिल्हाधिकारी
- 2) सर्व दुय्यम निबंधक

प्रत माहिती व कार्यवाहीसाठी :-

- 3) सहनोंदणी महानिरीक्षक, नोंदणी महानिरीक्षक कार्यालय, पुणे.
- 4) उपसंचालक, नगर रचना, मुंबई प्रदेश मूल्यांकन मुंबई.
- 5) सहायक संचालक, नगर रचना, मूल्यांकन, कोकण / पुणे / नाशिक / औरंगाबाद / अमरावती / नागपूर.
- 6) नोंदणी उपमहानिरीक्षक व मुद्रांक उपनियंत्रक (मुख्यालय), पुणे.
- 7) नोंदणी उपमहानिरीक्षक व मुद्रांक उपनियंत्रक (संगणक), पुणे.

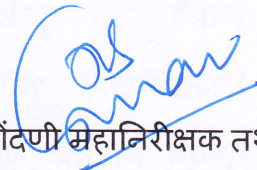
सदर परिपत्रकाची प्रत विभागाच्या संकेतस्थळावर Upload करणेबाबतची कार्यवाही करणेत यावी.

- 8) नोंदणी उपमहानिरीक्षक व मुद्रांक उपनियंत्रक, मुंबई / कोकण / पुणे / नाशिक / औरंगाबाद / लातूर / अमरावती / नागपूर यांना माहितीसाठी व आवश्यक त्या कार्यवाहीसाठी.

-/सदर परिपत्रकाची प्रत आपले अधिनस्त सर्व नोंदणी कार्यालयांना पुरविणेत यावी. तसेच सदर परिपत्रक त्यांना प्राप्त झाले असून, ते वाचलेबाबत (Read & Acknowledge) त्यांच्या कार्यालयाचा अहवाल प्राप्त करून घेऊन या कार्यालयास पाठविणेत यावा.

- 9) सर्व कार्यासन अधिकारी, नोंदणी महानिरीक्षक कार्यालय, पुणे

निर्गमित



सह नोंदणी महानिरीक्षक तथा मुद्रांक
अधिक्षक, (मुख्या). महाराष्ट्र राज्य, पुणे

Priya

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.13218 OF 2021

WITH

WRIT PETITION (L) NO.13224 OF 2021

AND

WRIT PETITION (L) NO.13225 OF 2021

Adityaraj Builders

...Petitioner

Versus

State of Maharashtra and Ors

...Respondents

Mr Dharam Sharma i/b Mr Sandeep Waghmare i/b Mr Jayesh Jain,
for the Petitioner.

Ms Jyoti Chavan, AGP, for the Respondents-State.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 9th December 2021

PC:-

1. Rule in all three Petitions.

2. The Petitions raised a question about the interpretation of validity of two circulars dated 23rd June 2015 and 30th March 2017 issued by the Inspector General of Registration and Controller of Stamps, Maharashtra State.

3. The issue will affect a large number of redevelopment projects across the State because it pertains to the stamp duty that is correctly payable on instruments typical in such projects. In Mumbai, in particular, redevelopment by societies will be affected.

4. The Petitioners have an estimated stamp duty liability adjudicated at about Rs 27 lakhs in each of the three Writ Petitions. They will be required to deposit 50% of the amount in each matter. Subject to that deposit being made by 3rd January 2022 and on the further undertaking, which we accept, to pay the balance if found due by this Court and if the Petitions fail, we permit the Petitioners to proceed with registration of the permanent alternate accommodation agreements in the form proposed.

5. The Sub-Registrar of Assurances and the Collector of Stamps will permit the registrations of the documents in question without insisting on payment of the adjudicated stamp duty liability. The deposit in Court is a pre-condition to registration. The Petitioners will have to place before the Sub-Registrar an authenticated copy of this order and proof of the deposit/s having been made. No registration is permitted unless and until the deposit/s are made.

6. If the deposits are not made by 3rd January 2022, this interim protection will cease without further reference to the Court and the Petitioners will not be entitled to have any of the documents registered.

7. The Sub-Registrar of Assurances and the Collector of the Stamps will act on production of an authenticated copy of this order.

8. We request Mr Samit Shukla who is present in Court to assist as Amicus. We also request him to brief counsel of his choice and if possible, either Mr Mayur Khandeparkar or Mr Karl Tamboly, each of whom has considerable experience in such matters.

9. Respondent Nos 1 to 3 waive service. So far as Respondent No 4 is concerned, we permit private service by courier.

10. Given the fact that the issue is relatively narrow but is likely to have a significant impact, we will give the matter priority and we list it for final disposal on 3rd February 2022.

11. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)