

## IN BRIEF - REAL ESTATE



An agreement to sell cannot be treated on par with a sale deed and does not convey title to the property in view of Section 54 of the Transfer of Property Act, 1882 (TPA).

The Court also opined that the GPA and the Will executed by the seller cannot be recognized as documents of title or documents conferring a right in the immovable property, as no action in furtherance of the GPA has been taken and the Will has not yet come into force.

The Court, however, considered various factors of the transaction together, such as the presence of an agreement to sell, receipt of the entire sale consideration by the seller, the purchaser being in possession of the property, and consequently held that the purchaser obtained de-facto possessory rights of the property, as he has performed his part of the contract, which is well recognized under Section 53A of the TPA and hence cannot be disturbed by the seller. The Court also confirmed that the purchaser is entitled to obtain a decree of eviction along with mesne profits.

### **I. Supreme Court - Recognition of the possessory right of the prospective purchaser under Section 53A of the Transfer of Property Act, 1882 in the matter of Ghanshyam v. Yogendra Yatri, Civil Appeal Nos. 7527-7528 of 2012 decided on 02/06/2023**

**Brief background of the case:** The seller of a residential property entered into an agreement to sell with a prospective purchaser, on the basis of which the seller received the entire sale consideration. Instead of executing and registering a sale deed, the seller executed a Will bequeathing the property in favour of the purchaser, executed a general power of attorney (GPA) and put the purchaser in possession of the property. On the request of the seller, the purchaser allowed the seller to utilize the property as a licensee for a period of 3 months. The seller, however, refused to vacate the property after a few months, against which the purchaser filed a suit for eviction.

The Supreme Court on June 2, 2023, clarified the following position of law in relation to the aforesaid matter:

### **II. Supreme Court – Emphasized the importance of including the value of plant and machinery in the assessment of stamp duty under a Sale Deed in the matter of Sub-Registrar Amudalavalasa v. Dankuni Steels Ltd. and Others decided on 26/04/2023**

**Brief background of the case:** A company in Hyderabad, Telangana was wound up through an order passed by the High Court of Andhra Pradesh and its assets were disposed off by the official liquidator through an auction sale to the highest bidder. The immovable property and assets were bundled in one lot and were sold to the bidder's nominee for a total consideration of Rs. 8.35 crores (the sale consideration for the immovable property was Rs. 1.01 crores). The crux of the case revolves around the registration of the sale deed for the property that includes land, building, civil works, plant & machinery and current assets, with a total value of Rs. 8.35 crores. The jurisdictional Sub-Registrar kept the registration pending on the premise that the buyer of the property declared and paid stamp duty and registration fees only on the immovable property and omitted the movable properties, plant & machinery, etc., attached thereto from the purview of stamp duty and registration fees.

Consequently, a writ petition was filed by the buyer before a Single Judge of the High Court. Upon a collective reading of Section 3 of the Transfer of Property Act, 1882 (TPA), Section 2(6) of the Registration Act, 1908 and Section 3(26) of the General Clauses Act 1897, the Court ordered for the value of the plant & machinery to also be considered along with the value of the land for the purposes of the payment of stamp duty and registration fee.

Two writ appeals were filed before the division bench which in turn ruled that the parties cannot be compelled to register and pay stamp duty specifically for the plant & machinery since the registration request was solely for the land.

The Respondent (Sub-Registrar) appealed before the Supreme Court which stated that the actions of the parties were aimed at evading the legally required payment of stamp duty. Additionally, the Court pointed out that the Division Bench had made an error by failing to recognize the true purpose and implications of the Sale Deed in conjunction with Section 8 of the TPA and the definition of “immovable property”. According to Section 8 of the TPA, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, including the property and the machinery attached to the earth and moveable parts thereof.

The Court emphasized that in relation to plant & machinery, only those items that were permanently fixed to the ground and met the criteria of being classified as immovable property should be taken into consideration when calculating the payment of stamp duty. The Supreme Court concluded that the entire property along with the plant & machinery should be considered for calculating the stamp duty and registration fees by the Sub Registrar.

### **III. Madras High Court – Highlighted the importance of transparency in determining the ownership pertaining to the lands classified as common areas, in the matter of Abbotsbury Owners’ Association v. The Member Secretary and Others W. P No. 5765 of 2020, decided on 20/01/2023**

Recently, the Madras High Court ruled that in an apartment complex the common area and facilities belong to the flat owners which the developer is not permitted to sell.

**Brief background of the case:** In this case, the developer constructed 77 flats on a parcel of land in 2001. The builder sold the apartments along with the undivided share of the land. The builder also constructed a separate building within the common area and subsequently sold it to a different party for non-residential purposes.

The Flat Owners Association put forth that the contentious area was indicated as a common shared facility in the non-FSI construction plans. Conversely, the builder contended that since no ownership right was granted for the non-FSI area, the flat owners did not possess the authority to assert a claim over it. The petition before the Court was to seek the transfer of possession of the disputed land to the flat owners.

The Court identified flaws in the contentions raised by the builder and ultimately ruled in favor of the Flat Owners Association and mandated the respondents to carry out rectification deeds for the undivided share (UDS) in favor of each individual flat owner within a three-month time frame. In short, it was concluded that the builder is not allowed to exploit errors in UDS calculations and burden flat purchasers with the cost of unsold UDS portions.

### **IV. Madras High Court – Resident Welfare Associations do not have the authority to collect transfer fee on apartment sale transactions in the matter of Ankur Grand Owners Association v. District Registrar, WMP Nos.23325 of 2016 and 23601 of 2022, decided on 25/05/2023**

**Brief background of the case:** A Resident Welfare Association (RWA) of an apartment complex in Chennai charged a transfer fee of 1% of the sale value of the flat or Rs. 50/- per square foot, whichever is higher, on the basis of the provisions in its bye-laws. In 2013, one of the respondents bought an apartment and paid a transfer fee towards the RWA. Meanwhile, another individual in the same year refused to pay the transfer fee. As a result, a request for a refund of the transfer fee was made by the previous homebuyer.

The Court held that the apartment owners’ association does not have any role in either the purchase or sale of the flats. The association is not empowered to stop any apartment owner from alienating his/ her property, which is a constitutional right that cannot be infringed upon. While the ownership is transferred, the association can claim only maintenance charges. A transfer fee is not contemplated under the law and such collections are illegal and impermissible.

The Court ruled that charging excessive or collecting maintenance fees beyond the legally permissible limit is considered illegal. The RWA does not have the authority to take the law into their own hands and infringe upon the basic right of apartment owners to reside in their own units. The legal rights and obligations related to these transactions are usually governed by property laws and contractual agreements between the parties involved, rather than the RWA.

## **V. Reversal of Guideline Value in the State of Tamil Nadu to the rate that prevailed during 2012 to 2017**

The Government of Tamil Nadu maintains the register of guideline values for the properties situated within the State. The guideline value which was increased on 01.04.2012 was revised downwards uniformly by 33% with effect from 09.06.2017 and the registration fee was increased from 1% to 4% for deeds of sale, gift, exchange and settlement amongst non-family members. The Government of Tamil Nadu on 30.03.2023 decided to revise the guideline value to the rates prevailing till 08.06.2017.

## **VI. Reduction of Registration Fee - Amendments made to the Registration Act, 1908**

As part of the annual budget for 2023-2024, the Tamil Nadu government has made the decision to reduce the registration fees to 2% from 4% in respect of deeds of sale, exchange, gift and settlement among non-family members, which came into effect on April 1, 2023. Accordingly, under Section 78 of the Registration Act, 1908, the Governor of Tamil Nadu made the necessary amendments to the Table of Fees which prescribes the registration fees for various instruments in the State of Tamil Nadu.

***This newsletter has been compiled by :***

*Hari Karthik, Ajeetha Rajaram and Pooja Harani Dhanavel, Dua Associates, Chennai*

***For further information contact :***

P.V. Sajiv Kumar, Partner, Dua Associates, Chennai

E-mail : [sajiv@duaassociates.com](mailto:sajiv@duaassociates.com)

***Stay connected with Dua Associates***

[www.duaassociates.com](http://www.duaassociates.com)

**Disclaimer:** This newsletter is for information purposes only. Nothing contained herein is purported to be, or is intended as legal advice and the reader should seek formal legal advice before acting on any information or views expressed herein. Receipt of this newsletter shall not be construed as an attempt to advertise or solicit business in any manner whatsoever. For private circulation to the addressees only. This is not a Spam mail. You have received this mail because you have either requested for it and/or your name has been added to our mailing list. In case this mail doesn't concern you, please unsubscribe from mailing list.