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Welcome to this issue of **Prop Digest**

We welcome you all to the highly anticipated third issue of Prop Digest. We hope our esteemed readers will find our insights into the real estate sector helpful.

In this edition of Prop Digest, we draw your attention to some key judicial pronouncements made by the Supreme Court. These include its orders that, (i) relaxes its earlier directives concerning eco- sensitive zones; (ii) declare settlement deeds executed without written consent of all parties as unlawful; (iii) declare arbitration agreements contained in unstamped instruments that are exigible to stamp duty as non-existent. This issue attempts to provide its readers with insights into some of the important rulings by various High Courts and Real Estate Regulatory Authority. These include (i) The Bombay High Court's rulings that: (a) ULC premium applies only to surplus vacant land; and (b) the Permanent Alternate Accommodation Agreement does not need to be assessed for stamp duty if the Development Agreement has already been stamped; (ii) The Himachal Pradesh High Court's ruling that secured agricultural property being used for agricultural purposes should be exempted from SARFAESI provisions; and (iii) Rajasthan RERA's order that declared any change made in an agreement for sale that deviates from the model agreement for sale as void *ab initio*. This issue further dwells on making its readers conversant with some key state level legislative updates, such as the Maharashtra Government's notification that mandates the publishing of commencement and occupation certificates on the website of the local bodies, the Karnataka Government's Ordinance increasing the vertical threshold of a building from 15 meters to 21 meters for being recognised as 'High Rise Building', the Uttar Pradesh Government's notification providing stamp duty exemption on acquisition of land under various schemes and the Gujarat Government's policy for allotment of government wasteland to solar, wind and solar-wind hybrid projects.

Please feel free to send us your valuable feedback and suggestions on cam.publications@cyrilshroff.com. It will help us immensely in improving Prop Digest and ensuring its continued success among readers.

Regards,

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JUDICIAL UPDATES

I. Supreme Court (SC)

A. Supreme Court modifies its June, 2022 order and relaxes its directions concerning the eco-sensitive zones

The Supreme Court *vide* its order dated April 26, 2023 ("**SC Order of 2023**") in T. N. Godavarman Thirumulpad Vs. Union of India ("**UOI**") and Ors.[1], modified directions issued under its earlier order dated June 3, 2022[2] ("**SC Order of 2022**") pertaining to eco-sensitive zone ("**ESZ**"). The Supreme Court, through its 2022 order, had, *inter alia*, issued directions **(i)** mandating each protected forest (i.e. national park or wildlife sanctuary) to have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which activities prescribed in the ESZ guidelines dated February 9, 2011 ("**ESZ Guidelines of 2011**")[3]; and **(ii)** allowing the continuation of activities within the one kilometre or extended buffer zone (ESZ) (and which were not prohibited by the ESZ Guidelines of 2011), as long as the permission was obtained from the Principal Chief Conservator of Forests of each State and Union Territory within a period of six months. The Applicant (Union of India and Ors.) contended that: (i) there cannot be a uniform boundary for all the national parks and wildlife sanctuaries; (ii) ESZ Guidelines of 2011 provides for a detailed procedure for submitting a proposal for declaration of the areas around National Parks and Wildlife Sanctuaries as ESZ; (iii) the effect of the SC Order of 2022 would stall necessary developmental activities like construction of schools, dispensaries, anganwadis, public health centres, etc.; and (iv) continuation of the embargo on construction would forbid the land owners of the area to construct or reconstruct their houses. After considering the contentions of the Applicant, Supreme Court *vide* its Order, modified its directions issued under the SC Order of 2022 *inter-alia*, to state that (i) the same would not apply to: (a) the ESZs for which the Ministry of Environment Forest and Climate Changes ("**MoEF & CC**") has issued a draft and final notification and for which it has received proposals; and (b) the national parks and sanctuaries located on inter-State borders and/or sharing common boundaries; (ii) mining within an area of one kilometre from the boundary of the national park and wildlife sanctuary shall not be permissible; and (iii) the directions requiring the permission of the Principal Chief Conservator of Forests to be obtained for carrying on the permitted/ regulated activities in the ESZ shall be modified and replaced to state that MoEF & CC shall strictly follow the provisions in the ESZ Guidelines of 2011 and the respective ESZ notifications with regard to prohibited, regulated and permissible activities.

B. Compensation Deposited: Acquisition is Valid

Land acquisition and compensation hold significant relevance for land-owners. Adequate and timely compensation ensures that land losers are not left economically disadvantaged and helps them transition to new livelihoods or even acquire alternate land. A fair and equitable compensation is not only a legal obligation but also a moral imperative to address the socio-economic impact on those who bear the brunt of land acquisition.

In *Delhi Development Authority Vs. Anita Singh*[4], the Supreme Court, following the ratio laid down by its Constitutional Bench in the case of the *Indore Development Authority Vs. Manoharlal and Others*[5] ("**Indore Case**"), has opined that satisfaction of either of the conditions namely taking possession of the acquired land or making payment of compensation to the landowners would be sufficient to save the acquisition from being lapsed in terms of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("**2013 Acquisition Act**").

[1] I. A. No. 131377 of 2022 in Writ Petition (Civil) No. 202 of 1995.
[2] (2022) 10 SCC 544.
[3] Government of India [MoEF (wildlife division)] Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries dated February 9, 2011, bearing no. F. No. 1-9/2007 WL-I (pt).
[4] Civil Appeal No.2994/2023.
[5] 2020 (8) SCC 129.

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In the instant case, notification under Section 4 of the Land Acquisition Act, 1894 ("**1894 Acquisition Act**") was issued on April 7, 2006 and notification under Section 6 was issued on April 4, 2007. The Award under Section 11 of 1894 Acquisition Act was announced on December 30, 2008 and on December 27, 2013, i.e., within five years, the money was deposited with the Reference Court. Due to dispute of ownership, compensation deposited with the Reference Court was not paid to Anita Singh i.e., the Respondent in the instant case.

Under Section 24(2) of the 2013 Acquisition Act, if five years of more had passed since the announcement of an Award under 1894 Acquisition Act and until the commencement of 2013 Acquisition Act on January 1, 2014, neither the land was physically possessed nor the compensation been paid, then the acquisition proceedings shall be deemed void/terminated. In the *Indore Case*, it is held that the provisions of Section 24(2) are applicable if authorities' inaction have led to the land remaining unpossessed and compensation unpaid for five years or beyond before the 2013 Acquisition Act came into force. However, in computing the five-year period, the period of subsistence of interim orders passed by the Court has to be excluded.

In the instant case, the Supreme Court opined that once the compensation amount has been tendered, the Land Acquisition Collector has satisfied the payment obligation, which is one of the conditions under Section 24(2) of 2013. Now, the landowners cannot contend that the compensation amount has not been paid and thus,the proceedings should end.

C. Settlement Deed without written consent of all the parties is unlawful: Supreme Court

In Prasanta Kumar Sahoo & Ors. Vs. Charulata Sahu & Ors.[6], Mr. Kumar Sahoo, who passed away in 1969, was survived by his three children --- two daughters and a son, namely, Ms. Charulata & Ms. Santilata and Mr. Prafulla, respectively. In 1980, Ms. Charulata had filed a suit for partition before the Trial Court, claiming 1/3rd share in the ancestral as well as self-acquired properties of her deceased father. Trial Court held that

Ms. Charulata and Ms. Santilata were entitled to 1/6th share in the ancestral properties and1/3rd share in the self-acquired properties and mesne profits of Late Kumar Sahoo. However, as regards Mr. Prafulla, he was entitled to 4/6th share in the ancestral properties and 1/3rd share in the self-acquired properties of Mr. Kumar Sahoo including the mesne profits. Mr. Prafulla then filed first appeal before the Hon'ble Orissa High Court, contending that all properties of Mr. Kumar Sahoo are ancestral properties. During the pendency of the appeal, Ms. Santilata and Mr. Prafulla entered into a Settlement Deed in 1991, whereby Ms. Santilata relinquished her share in the joint property in favour of Mr. Prafulla, in lieu of a consideration of INR 50,000/-. However, such Settlement Deed was not signed by Ms. Charulata, who held a share in the joint property. Mr. Prafulla continued litigating the first appeal before the Hon'ble Orissa High Court to ascertain whether certain properties, being the subject matter of partition suit, were ancestral or self-acquired properties of his father. In a parallel appeal, Ms. Charulata challenged the validity of the Settlement Deed entered into between her sister and brother. Mr. Prafulla filed a compromise petition in the said first appeal pending before the Hon'ble Orissa High Court. The Single Judge of Hon'ble Orissa High Court, in view of the settlement deed, disposed of the first appeal by modifying the order of the trial court to the effect that Mr. Prafulla shall also be entitled to the share of Ms. Santilata. However, as nothing was decided on the

[6] Civil Appeal No. 2913-2915 of 2018.

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question of which suit properties were ancestral or self-acquired, a Letter Patent Appeal was filed by Mr. Prafulla before Division Bench of Hon'ble Orissa High Court on this issue alone. In 2011, the Division Bench of the High Court dismissed the appeal filed by Mr. Prafulla and invalidated the Settlement Deed entered between Mr. Prafulla and Ms. Santilata. Mr. Prafulla filed an appeal before the Supreme Court against the Order. It was argued that the 2005 amendments to the Hindu Succession Act, 1956, whereby daughters became equal co-parceners as sons, cannot be pressed into service after so many years. Further, it was also argued that the rights of Ms. Santilata stood extinguished and were transferred to Mr. Prafulla in view of the Settlement Deed. The Hon'ble Supreme Court, *inter-alia*, observed that, in the instant case, the Settlement Deed (in respect of the joint property, which was held by the three siblings) was executed only between Mr. Prafulla and Ms. Santilata. Ms. Charulata being the third sibling and co-owner of the joint property, had not signed the settlement and hence on this ground alone, the settlement could be said to be unlawful, being without any written consent of all the parties. Dismissing the appeal, the Hon'ble Supreme Court, inter-alia, held that, *"(i) the preliminary decree drawn by the Trial Court as affirmed by the High-Court is modified to the extent that the daughters are entitled to 1/3rd share in all properties scheduled in the plaint i.e. ancestral and self-acquired properties of Late Shri Kumar Sahoo. The Trial Court shall modify the decree accordingly; (ii) As we have held that the settlement between the Original Defendant Nos. 1 and 2 is not in accordance with law, the Appellants herein will not be entitled to the share of the Original Defendant No. 2".*

D. Unregistered agreement to sell property is admissible in evidence in a suit for specific performance: Supreme Court

In R. Hemalatha ("**Appellant**") Vs. Kashthuri ("**Respondent**")[7], the Appellant had executed an unregistered Agreement to Sell dated September 10, 2013 in favour of the Respondent. In 2014, the Respondent instituted a suit for specific performance of the Agreement to Sell, wherein the Trial Court framed a preliminary issue on the admissibility of the Agreement to Sell dated September 10, 2013 in evidence.

Section 17 of the Registration Act, 1908 ("**Registration Act**") provides for the documents that require mandatory registration and the explanation therein provides that a document to effect sale of immovable property in future would not require registration. The state of Tamil Nadu has subsequently amended the aforesaid Section 17 *vide* Tamil Nadu Amendment Act No. 29 of 2012 and inserted Section 17(1)(g), wherein the explanation to Section 17(2) has been omitted. Section 17(1)(g) requires compulsory registration of agreements relating to sale of immovable property valued at INR 100 or above. Further, the proviso to Section 49 of Registration Act also provides that an unregistered Agreement to Sell can be admitted as evidence in a suit for specific performance. Therefore, the Appellants submitted that in view of the Tamil Nadu Amendment Act, 2012, the said unregistered document shall be inadmissible in evidence, whereas, the Respondent argued that as per proviso to Section 49, an unregistered Agreement to Sell can be admitted as evidence of a contract.

While the Trial Court held that the unregistered Agreement to Sell is not admissible in evidence, however, High Court of Judicature at Madras ("**High Court**") while setting aside the Trial Court's order relied upon Section 49 of Registration Act, and observed that the suit in question was a suit for specific performance, which fall within the first exception carved out in the proviso to Section 49 and held that the said unregistered Agreement to Sell under question be treated as evidence.

The Appellant thereafter filed an appeal before the Supreme Court challenging the High Court's order wherein the preliminary issue framed by the Supreme Court was whether an unregistered Agreement to Sell for sale of immovable property, which otherwise requires compulsory registration, can be received in evidence in a suit for specific performance?

[7] Civil Appeal No. 2535/2023 (SLP (C) No. 14884/2022).

It was observed by the Supreme Court that no corresponding amendment has been made to Section 49 of the Registration Act despite the insertion of Section 17(1)(g) and omission of the "explanation" to Section 17(2). It was also noted that the proviso to Section 49 was inserted in the year 1929 and Section 17(1A) was inserted in the year 2001 in the Registration Act. Section 17(1A) requires compulsory registration of documents executed on or after 2001, which includes contracts to transfer for consideration any immovable property for the purpose of Section 53A of Transfer of Property Act, 1882. The effect of non-registration of such documents shall have no effect for the purposes of said Section 53A and therefore, the exception to proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable. The Supreme Court upheld the High Court's view that the unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance as the proviso is exception to the first part of Section 49.

E. Arbitration agreement contained in an unstamped instrument which is exigible to stamp duty is non-existent: Supreme Court

In M/s. N.N. Global Mercantile Private Limited ("**Appellant**") Vs. Indo Unique Flame Limited ("**Respondent 1**") and Others[8], Respondent 1 entered into a sub-contract with Appellant for a work order and such work order provided for an arbitration clause. As per the terms of the work order, the Appellant furnished a bank guarantee. Such bank guarantee was sought to be invoked by Respondent 1 owing to a dispute, however, the invocation was challenged by the Appellant in a suit. Taking recourse to Section 8 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), Respondent 1 sought the matter to be referred to arbitration, but was rejected by a commercial court. This order was then challenged by Respondent 1 in a writ petition filed in the Bombay High Court, which was allowed. The decision of the Bombay High Court was challenged

in the Supreme Court, wherein the three-judge Bench, while using the doctrine of separability, held that the arbitration agreement is an independent and distinct contract and would not be rendered unenforceable even if the substantive contract (to which the arbitration agreement belongs) is held inadmissible in evidence due to being unstamped or being deficiently stamped. However, since such view was contrary to certain existing judgments, the three- judge bench referred the matter to the constitution bench. The constitution bench held that an instrument chargeable to stamp duty under Section 3 of the Indian Stamp Act, 1899 ("**Stamp Act**"), being unstamped, is the subject matter of Section 33 of the Stamp Act and the bar under Section 35 of the Stamp Act, and subsequently, the 'Arbitration Agreement' contained in such instrument is rendered non-existent in law unless the instrument is validated under the Stamp Act. Additionally, the bench while discussing the scope of powers under Section 11 (6A) of the Arbitration Act, clarified that the Supreme Court or the High Court while considering an application under Section 11 of the Arbitration Act, is duty bound under Section 33 of the Stamp Act to impound an unstamped instrument (exigible to stamp duty) containing the arbitration clause that constitutes the 'Arbitration Agreement'.

[8] Civil Appeal No(s). 3802-3803 of 2020.

F. Article 226 cannot be invoked to amend the terms of a registered lease deed: Supreme Court

In the case of Gwalior Development Authority and Anr. Vs. Bhanu Pratap Singh[9][10], the Supreme Court examined whether Article 226 of the Constitution of India ("**Constitution**") can be invoked to amend the terms of a registered lease deed. In this case, Gwalior Development Authority ("**GDA**") invited bids for a plot with the area of land admeasuring 27,887.50 square meters ("**Proposed Plot**"). Mr. Bhanu Pratap Singh ("**Bhanu Pratap**"), being the highest bidder of the Proposed Plot, was issued a letter of allotment by the GDA, whereby he was directed to deposit the entire bid amount before October 31, 1999, in lieu of the said allotment. The letter of allotment, among others, contained a rider that failing to deposit the bid amount in terms thereof would result in forfeiture of the security deposit paid by the winner of the bid (Bhanu Pratap in this case). Bhanu Pratap failed to deposit the bid amount in terms of the conditions laid down in the bid document and the letter of allotment, and only managed to deposit the entire bid amount on August 25, 2005, instead of October 31, 1999. Despite the delay in depositing the final tranche of the bid amount, a lease deed was executed between GDA and Bhanu Pratap ("**Lease Deed**") on March 29, 2006, in respect of a reduced plot admeasuring 18,262.89 square meters ("**Leased Plot**") as opposed to the entire Proposed Plot. Pursuant to the execution, the Lease Deed was duly registered under the provisions of Section 17 of the Registration Act.

Three years later, in 2009, Bhanu Pratap approached the High Court of Madhya Pradesh at Gwalior seeking a writ of *mandamus* against GDA under Article 226 of the Constitution to execute the lease deed for the remaining area of 9,625.50 square meters, in addition to the Lease Deed already executed, as was promised under the bid document.

The High Court allowed the writ petition and directed (i) GDA to execute the lease deed in favor of Bhanu Pratap for the remaining plot admeasuring 9,625.50 square meters; and (ii) Bhanu Pratap to make payment of interest, as may be determined by the GDA, on the delayed payment of instalment amounts. This order was challenged by the GDA before the Supreme Court by way of the current Civil Appeal *inter alia* on the ground that the auction proceedings in relation to the Proposed Plot culminated with the execution of the Lease Deed and the transaction attained finality upon execution of the Lease Deed since '*...the lease deed was duly executed between the parties without demur, and with the consent of the parties...*'. The Supreme Court resonated with these submissions and observed that whenever there is such a commercial transaction, it is to be examined purely on commercial principles as envisaged under the contract. In other words, the Supreme Court took the view that once a lease transaction is concluded by execution of a lease deed, and the said lease deed is duly registered under law, the transaction attains finality. Thereafter, it is not open to either party to amend the commercial understanding of the transaction by invoking writ jurisdiction of the constitutional courts.

II. Bombay High Court

A. ULC premium applicable solely on surplus vacant land: Bombay High Court

In the matter of Salim Alimahomed Porbanderwalla and Anr ("**Petitioners**") Vs. The State of Maharashtra and Anr.[11] ("**Respondent**"), the question before the Hon'ble Bombay High Court was whether one-time payment (premium) can be charged by the Government of Maharashtra ("**GOM**") on the entire land [consisting the surplus vacant land and the land retainable under the Urban Land (Ceiling and Regulation) Act, 1976 (since repealed) ("**ULC Act**")], or only on the surplus vacant land. The Division bench of the Hon'ble Bombay High Court has, while disposing the aforesaid Writ Petition, clarified that though the term used in the Government Resolution dated August 1, 2019 ("**Resolution**") is "entire land", it has to be read in context. It cannot be unreasonably expanded to include lands that by no logic or law be subjected to a premium. If the GOM

[9] 2023 SCC Online SC 450.

[10] https://corporate.cyrilamarchandblogs.com/2023/05/can-article-26-be-invoked-to-amend-terms-of-a-lease-deed-sc-says-no/

[11] Writ Petition No. 4849 of 2022 of Bombay High Court, https://corporate.cyrilamarchandblogs.com/2023/05/ulc-premium-applicable-solely-on-surplus-vacant-land-bombay-high-court/

interpretation of the Resolution is to be accepted, this will be nothing but the reintroduction of Section 27(1) of the ULC Act (which was held to be unconstitutional by the Apex Court), relating to restriction on transfer of urban or urbanisable land, with a building or portion of a building on it, however, in a different form. The Hon'ble Bombay High Court has held that the GOM cannot charge a premium on retainable land (i.e. the land which the Petitioners were anyway entitled to continue to hold) and there cannot be any revenue entry relating to Section 20 ULC exemption order in respect of such retainable land. It further held that against the payment of premium on the surplus vacant land, the Petitioners are entitled to have the revenue entry deleted. The Hon'ble Bombay High Court clarified that on payment of premium on surplus vacant land, the land becomes free of all conditions stipulated by the Section 20 exemption order.

B. Municipal Corporation cannot cancel Occupation Certificate for developer's failure to obtain NOC from land-owning authority: Bombay High Court

In the matter of M/s. Satra Plaza Premises Co-operative Society Limited ("**Petitioner**") Vs. Navi Mumbai Municipal Corporation and Ors[12]., the Petitioner had filed the Writ Petition before the Hon'ble Bombay High Court, *inter-alia*, seeking a declaration that (i) condition no. 4 appended to the Occupancy Certificate ("**OC**") by the Navi Mumbai Municipal Corporation ("**NMMC**") requiring the developer M/s. Satra Properties (India) Limited to furnish a no-objection certificate ("**NOC**") from City and Industrial Development Corporation ("**CIDCO**") was/ is ultra-vires, the Maharashtra Regional Town Planning Act, 1966 ("**MRTP Act**"), the Maharashtra Municipal Corporation Act, 1949 [which substituted the Bombay/Maharashtra Provincial Municipal Corporation Act, 1949] and Development Control Regulations for Navi Mumbai Municipal Corporation 1994 provisions, and hence liable to be quashed and set aside; and (ii) the NMMC has no jurisdiction in law to cancel any OC and thus its order cancelling the OC and seeking revised Commencement Certificate to declare a building illegal/ unauthorised is liable to be quashed. The Hon'ble Bombay High Court has, *inter alia*, held that

incorporation of a condition in the OC by the NMMC to obtain a NOC from the CIDCO was illegal and without any authority of law. Further, it quashed and set aside the order of the Municipal Commissioner cancelling the OC and the revised Commencement Certificate due to non-obtainment of NOC from CIDCO.

C. Membership in Co-operative Housing Society cannot be restricted to 5% of membership for each community as such resolution is against Section 22 and 23 of the Maharashtra Co-operative Society Act, 1960: Bombay High Court

In Blue Haven Co-operative Housing Society Limited and Anr. Vs. The State of Maharashtra and Ors.[13], the petitioner society (a registered housing society) at the time of its registration, approved and registered the Bye-laws made by the promoter members. and thereafter in the year 1989 adopted the Model Bye-laws. In the year 2008, the petitioner society by its resolution passed in its Special General Body Meeting, unanimously resolved to amend its Bye-laws by putting a cap of 5% on membership of every community. As required under the Maharashtra Co-operative Society Act, 1960 ("**Act**"), the petitioner society submitted a proposal to the Deputy Registrar of Co-operative Societies, praying for registration of the proposed amendment to its Bye-laws. However, the said proposal was rejected by the

[12] Writ Petition No. 1374 of 2017 in the Bombay High Court, https://corporate.cyrilamarchandblogs.com/2023/05/municipal-corporation-cannot-cancel-occupation-certificate-for-developers-failure-to-obtain-noc-from-land-owning-authority/

[13] Writ Petition No. 421 of 2012 of Bombay High Court

Deputy Registrar and on appeal was further rejected by the Divisional Joint Registrar, Co-operative Societies, as being contrary to the provisions of the Section 22(1), 22(2) and Section 23 of the Act. Being aggrieved by the orders of the Deputy Registrar, Co-operative Societies and the Divisional Joint Registrar, Co-operative Societies, the petitioner society filed a writ petition before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court dismissed the Petition and upheld the orders passed by both the Deputy Registrar and the Divisional Joint Registrar of Co-operative Societies. It, *inter-alia*, observed that the petitioner's proposed amendment to the Bye-laws not only sought to defeat Section 22 (1) of the Act but also desired insertion of a condition that would disallow membership to a person who is otherwise qualified under Section 22 (1) of the Act -- to be a member. The Hon'ble Bombay High Court also observed that if the proposed amendment is approved, it will divide the society on community basis. The building in the instant case was not constructed on community basis nor were there any such Bye-laws of mathematical division of 5% per community during its inception. Therefore, if the proposed amendment is approved, and in a situation where a member wants to sell his flat, and the community to which he belongs already has 5% membership out of 100%, in that situation he would have to search for a buyer of his community only. In such a situation, the sale is likely to be a distress sale. Therefore, the proposed amendment is not in the interest of the society.

D. Relief to all the developers whose project were stalled due to non-consenting tenants of building demolished under Sec 354 of the Mumbai Municipal Corporation Act: Bombay High Court

In (i) Raj M. Ahuja & Anr. Vs. the Municipal Corporation of Greater Mumbai ("**MCGM**") and Anr.[14] ("**First Petition**"); and (ii) M/s. Mangal Buildhome Private Limited Vs. the State of Maharashtra & Ors.[15] ("**Second Petition**"), the petitioners had filed the respective Writ Petitions for determining whether MCGM is justified in imposing a condition that the owner/landlord who intends to undertake redevelopment of a demolished building, is required to obtain 100% consent of all the erstwhile tenants/occupants, as a condition for issuance of a commencement certificate ("**CC**"). In the First Petition, MCGM had issued a notice to the petitioners under Section 354 of the Mumbai Municipal Corporation Act, 1888 ("**MMC Act**"). Consequently, the petitioners (being the owners of the land on which the building is constructed) requested the occupants/tenants to vacate the subject building. After completion of all the formalities, MCGM demolished the building. The petitioners submitted plans for the proposed redevelopment with MCGM, which thereafter issued an Intimation of Disapproval to the petitioners. One of the conditions therein for the issuance of OC was a consent/agreement between the owner/landlord and the existing tenants. However, out of 39 occupants/ tenants , there were seven non-consenting occupants/ tenants due to which the MCMG did not issue the CC to the petitioners. The petitioners challenged the validity of clause 1.15 of the '2018 Guidelines' issued by MCGM on May 25, 2018 ("**Guidelines**") for declaring private and municipal buildings as 'C1' category, which, *inter-alia*, provides that no CC shall be issued unless an agreement/ settlement between the owner/landlord and the existing tenants is arrived at. The Hon'ble Bombay High Court, *inter-alia*, observed that clause 1.15 of the Guidelines does not use the word "all the tenants and/ or occupiers", thus to read such words or attribute such meaning would render such condition unreasonable, unworkable as also arbitrary when some of the tenants/ occupants/members who are minority in number are not willing to consent to redevelopment and/or not ready to enter into permanent alternate accommodation agreement. Accordingly, while disposing the aforesaid Writ Petitions, the Hon'ble Bombay High Court, *inter-alia*, held that clause 1.15 of the Guidelines does not mandate consent/agreement to be obtained from all (100%) tenants/occupants, as consent of 51% to 70% of the occupants/tenants of the building, as applicable to the proposals made under the relevant regulations DCPR 2034, shall amount to sufficient compliance for processing development/redevelopment proposal for a commencement certificate to be issued including in respect of buildings covered under Section 354 of MMC Act.

[14] Writ Petition No. 5130 of 2022 of the Bombay High Court.

[15] Writ Petition (L) No. 8486 of 2022 of the Bombay High Court.

E. Once the Development Agreement is stamped, the Permanent Alternate Accommodation Agreement cannot be separately assessed to be stamped beyond the INR 100 requirement: Bombay High Court

In Adityaraj Builders ("**Petitioners**") Vs. State of Maharashtra and Ors. ("**Respondent**")[16] read with other writ petitions, which challenged the validity of two circulars dated June 23, 2015 and March 30, 2017 (collectively "**said Circulars**") issued by the Inspector General of Registration and Controller of Stamps, Maharashtra, a common question of law was raised with respect to the stamp duty sought to be levied on the Permanent Alternate Accommodation Agreements ("**PAAA**") under the Maharashtra Stamp Act, 1958 ("**Act**"). The said Circulars contemplate that any PAAAs between the Society and the developer is different from the DA between the Society and the developer and the document transferring the flat/ unit in individual favour of the original member of the housing society will not treated as an incidental document made in compliance of the original development agreement but will be an independent document and the stamp duty on such document would be charged on the construction cost. Disposing the said Writ Petitions and quashing the circulars dated March 30, 2017 and June 23, 2015, the Hon'ble Bombay High Court, *inter-alia* held that once the development agreement is stamped, the PAAA [which would be considered as an incidental document within the meaning of Section 4 (1) of the Maharashtra Stamp Act, 1958] cannot be separately assessed to stamp beyond the INR100 requirement if it relates to the rebuilt or reconstructed premises in lieu of the old premises used/occupied by the member. It was further clarified that even if the PAAA includes any additional area available free to the member, PAAA cannot be separately assessed to stamp beyond the INR 100 requirement because it is not a purchase or a transfer of premises but the said additional free area is in lieu of the member's old premises. Thus a PAAA between a developer and a society member is to be additionally stated only to the extent that it provides for the purchase by the member for additional area over and above any area that is made available to the member in lieu of the earlier premises. Bombay High Court further

clarified that reference to re-development and homes is to be read to include garages, galas, commercial and industrial use and every form of society re-development.

III. Himachal Pradesh High Court

A. SARFAESI Act's applicability on agricultural land hinges on actual land use: Himachal Pradesh High Court

In the case of *Rakesh Kumar Kashyap Vs. State Bank of India and others*[17], the Himachal Pradesh High Court examined whether Section 31 (i) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") is applicable on agricultural land, which is offered as collateral. Section 31(i) of the SARFAESI Act states that the provisions of the SARFAESI Act shall not apply to any security interest created on agricultural land. However, this restriction would not be applicable merely because the collateral is recorded to be agricultural land in nature in the revenue records. For the exception, as provided under Section 31 (i) of SARFAESI Act to be applicable, the property in question ought to be actually used as agricultural land at the time when the security interest was sought to be created. Further, since no security interest can be created in respect of agricultural land and yet, it was so created, it would be considered that

[16] Writ Petition No. 4575 of 2022 of Bombay High Court (pronounced along with several other writ petitions before the Bombay High court)

[17] Judgment in CWP No. 8578 of 2022 dated May 9, 2023

the parties did not treat the land as agricultural land and the debtor offered the land as security on this basis. Therefore, the secured property will attract exemption under Section 31(i) of the SARFAESI Act, 2002 only when it is actually used as agricultural land.

IV. RAJASTHAN RERA

A. Promoter cannot change the terms of Agreement for sale: Rajasthan Real Estate Regulatory Authority

In Pramod Kumar Vs. Jaipur Dream Buildcon Private Limited[18], Rajasthan Real Estate Regulatory Authority ("**Authority**") examined the validity of modified agreement for sale entered into by the Promoter ("**Respondent**") with the Allottee ("**Appellant**") and the relief sought by the Appellant for the delay in refund of the amount deposited by the Appellant to the Respondent in furtherance of agreement for sale. The Authority held that any changes made by the Respondent in the agreement for sale which are contradictory to the model agreement for sale envisaged under the Rajasthan Real Estate (Regulation and Development) Rules, 2017 ("**Rules**") are *void ab initio*. Further, the Authority held that even if the Respondent had filed the modified Agreement for sale as part of the registration of the project with the Authority, it will not grant any acceptance to the modified agreement for sale as the Authority does not have any power to amend statutory provisions, including the model agreement for sale. On a comparison of the amended clauses of the executed agreement for sale with the model agreement for sale, Authority reckoned that the model agreement for sale does not envisage resale of the booked unit as a condition for refund of the amount deposited by the Respondent to the Appellant and hence, it does not have any backing under the Rules. It also held that once the Respondent has agreed to refund the deposit amount, one cannot take defense of the modified provisions under agreement for sale. Further, the Authority held that any such act of the Respondent is in violation of the Rules and imposed a penalty on the Respondent.

[18] Comp. No. RAJ-RERA-C-N-2021-4708.

LEGISLATIVE UPDATES

I. Maharashtra Legislative Updates

A. Maharashtra Government introduces Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold lands into Occupancy Class-I lands) (Amendment) Rules, 2023

In exercise of powers conferred under the Maharashtra Land Revenue Code, 1966, the Maharashtra Government (Revenue and Forest Department) *vide* a notification dated March 27, 2023[19], has introduced the Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold lands into Occupancy Class-I lands) (Amendment) Rules, 2023 ("**2023 Amendment**") to amend the Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold lands into Occupancy Class-I lands) Rules, 2019[20] ("**Principal Rules**").

Prior to the 2023 Amendment, any holder of land, which is granted on Occupancy Class II or leasehold basis, could make an application to the concerned District Collector for conversion of such leasehold land into Occupancy Class- I land. However, after the 2023 Amendment, (i) such holder of Occupancy Class II land or leasehold land can make an application for conversion of his land into Occupancy Class- I land, only after the lapse of the period of five years from the date of commencement of actual use of land for which the land was granted originally; and (ii) the Collector is not permitted to pass any order of the conversion of Occupancy Class II or leasehold land to Occupancy Class I land, where the premium for such conversion exceeds INR 1 crore unless prior approval of the State Government (except the land granted to Co-operative Housing Society) is obtained. Under the Principal Rules, there were different rates of premium depending upon whether the application for conversion is made within a period of three years from the date of the publication of the Principal Rules or after the expiry of the said period of three years. Under the 2023 Amendment, the above period of three years has been substituted with a period of five years.

B. Publishing of Commencement Certificate and Occupation Certificate on the website of the local bodies- now mandatory: Maharashtra Government

To prevent the developers from registering projects with Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") on the basis of a fake commencement certificate and to prevent fraud with the flat buyers, the Maharashtra Government (Urban Development Department) issued a government resolution dated February 23, 2023 ("**said GR**")[21]. By the said GR, the State Government, directed all the local government institutions (municipal corporations/ municipal councils/ nagar panchayat) in the State as well as planning authorities to (i) email the commencement certificates and occupancy certificates to MahaRERA; (ii) publish on their websites (for their respective areas) the commencement certificates and occupancy certificates issued by the planning authorities; and (iii) update the information on the said website, from time to time. If these websites are either not developed or updated, then the Directorate of Municipal Council Administration shall, prior to March 31, 2023 (i) co-ordinate with the concerned municipal corporations/ municipal councils/ nagar panchayat, to develop and/ or update the websites; and (ii) ensure that the said websites are integrated with the website of MahaRERA.

[19] No. Jamin-2021/C.R.170/J-1.
[20] No. Jamin. 2018/C.R.90/J-1.

[21] Government Decision No: Nyaya P-2023/P. No. 13/ Navi-20.

C. MahaRERA to verify commencement certificates before processing the application for registration of real estate projects

In view of the aforementioned Government Resolution dated February 23, 2023[22], MahaRERA, by an order dated May 15, 2023[23] has issued further directions with respect to procedural compliance with the aforementioned Government Resolution until the competent authority integrates their website with the website of MahaRERA (“**said Order**”). According to the said Order, with effect from June 19, 2023, the commencement certificate submitted by the promoters along with their application for registration of real estate projects shall be compared and verified for its authenticity/ genuineness with the commencement certificate attached and forwarded to the designated email set apart by MahaRERA. Only after the commencement certificate is confirmed as having been issued by the respective issuing authority, shall the application submitted for registration of real estate projects be processed further for grant/ issuance of MahaRERA project registration certificate, subject to the promoters complying with the scrutiny remarks if any issued by MahaRERA.

D. Documents needed for extending project registration without majority consent from Allottees: MahaRERA

In furtherance of MahaRERA Order dated December 27, 2022[24], relating to permitting the promoters to seek extension of validity of project registration in the absence of consent from majority of allottees, MahaRERA has issued a supplementary order dated May 15, 2023[25] (to be deemed to be part of Order dated December 27, 2022), listing the documents to be submitted by the promoters while complying with the procedure stated in the Order dated December 27, 2022. The required documents to be submitted to process the extension application, *inter-alia*, constitute of (i) consents as may have been obtained from the allottees; (ii) information (to be furnished on the letter head of the Promoter) relating to: (a) the reasons as to why the required consent of the allottees could not be obtained and why the application for extension should be considered; (b) an explanatory note setting out the grounds and reasons for delay in completion of the project, the need for grant of extension and the planning details describing in detail how the balance project work shall be completed; (c) the list of complaints filed before MahaRERA or before any Court of Law or Tribunal (along with the orders passed therein); (iii) a notarised declaration, *inter-alia*, declaring that: (a) the grant of extension of the project validity shall not affect/ jeopardise the rights accrued in favour of the allottees who have booked their plot, or unit or apartment or building in the project for which extension is sought (b) the promoter shall be bound by the terms and conditions as may be imposed by the authority; (c) the decision of the authority shall be final and binding upon the promoter; and (iv) updating of project details on the project webpage.

II. Karnataka Legislative Updates

A. ‘Skyward Soaring’ – Karnataka’s High Rise Buildings Ordinance

Building with height holds the key to unlocking greater floor space index (FSI) potential. As the structures reach for the sky, they not only expand their physical footprint but also maximise the efficient use of limited land resources. The concept of building upwards goes hand in hand with urban densification and sustainable growth.

In Karnataka, buildings crossing a vertical threshold of 15 meters and above were recognised as ‘High Rise Buildings’. The Government of Karnataka has revised the threshold from 15 to 21 by amending Section 13 of the Karnataka Fire Force Act, 1964 through the Karnataka Fire Force (Amendment) Ordinance, 2023[26]. The amendment further mandates that a No-Objection Certificate from the Karnataka State Fire and Emergency Services department is required to be obtained before constructing such high rise buildings in the State. Such permission will be granted according to the provisions of the National Building Code 2016.

[22] Government Decision No: Nyaya P-2023/P. No. 13/ Navi-20.

[23] No. MahaRERA/Secy /File No.27 /853 / 2023.

[24] MahaRERA/Secy/File No.27/853/2022, https://www.cyrilshroff.com/ p-content/uploads/2023/03/Prop-Digest-Volume-I-Issue-II.pdf.

[25] No. MahaRERA/ Secy/ File No.27/ 854/ 2023.

[26] Notification bearing No. DPAL 09 SHASANA 2023, Bengaluru dated March 24, 2023.

B. K-RERA permits extension of project time at a cost: the cost of project procrastination

Section 7 and 8 of Real Estate (Regulation and Development) Act, 2016 ("**RERA**") empowers the Real Estate Regulatory Authority ("**Authority**") to revoke the registration of a real estate project and take appropriate action as it may deem fit for carrying out the remaining development works. This power is generally exercised when the promoter of a real estate project is in breach of RERA and/ or the approvals granted by the Authority and/ or indulges in unfair practices and irregularities.

However, in order to protect the interests of the allottees and to achieve completion of real estate projects, Section 7(3) of RERA empowers the Authority to extend the validity of registration of a real estate project on specific terms and conditions instead of revoking the same. The Karnataka Real Estate Regulatory Authority ("**K-RERA**") has now exercised its power under Section 7(3) read with Section 34(e) (*functions of the authority*) and 85(h) (*power to make regulations*)[27] of RERA and decided to extend the validity of registration of incomplete real estate projects even after availing an extension of time in the past. This decision of K-RERA will provide additional time to complete the real estate projects. This extension can be availed from K-RERA by filing an application and paying 50% of the initial project registration fee.

III. Uttar Pradesh Legislative Updates

A. Uttar Pradesh Government announces stamp duty exemption on acquisition of land on freehold/ leasehold basis under various schemes

The Uttar Pradesh Government has announced stamp duty exemptions on acquisition of land for establishing new unit/park in private industrial parks[28] under its Promoting Leadership and Enterprise for Development of Growth Engines (PLEDGE) Scheme. The state government has also announced exemptions on acquisition of land on freehold and leasehold basis for setting up logistics parks under the Uttar Pradesh Warehousing and Logistics Policy, 2022[29], for establishing Micro, Small and Medium Enterprises units under the Micro Small and Medium Enterprises Promotion Policy-2022[30] and for setting up of solar energy parks across the state under the Solar Energy Policy 2022[31].

There is also a special stamp duty exemption of 100% for women entrepreneurs for setting up unit/park in private industrial parks and under Micro Small and Medium Enterprises Promotion Policy-2022.

IV. Gujarat Legislative Updates

A. Gujarat Government amends law to extend timeline for submission of application for regularisation of unauthorised development on payment of impact fees

On account of rapid growth and development in the state, various largescale unauthorised constructions and developments have been undertaken which do not have the requisite building use permissions and are otherwise liable to be removed and pulled down by the governmental authorities. However, recognising that it can cause economical constraints and hardships to large number of people if removed, , the Gujarat Legislature had passed the Gujarat Regularisation of Unauthorised Development Act, 2022 ("**GRUDA**") to deal with regularisation of the unauthorised development in

[27] Order No. RERA/Finance/CR-150/2022-23 dated January 31, 2023.

[28] Notification dated April 12, 2023, bearing Order No. 8/2023/486/94-S.R.-2-2023.

[29] Notification dated April 12, 2023, bearing Order No. 9/2023/319/94-R.-2-2023.

[30] Notification dated March 20, 2023, bearing Order No. No-/2023/09/18-02-2023/18-2099/116/2022(LU)/2022.

[31] Notification dated April 12, 2023, bearing Order No. 11/2023/320/94-R.-2-2023.

the Municipal Corporation areas, Nagarpalika areas and other development areas in Gujarat, subject to payment of certain impact fees. GRUDA enabled the Government of Gujarat to set up an Infrastructure Development Fund ("**Fund**"), into which all amounts received from payment of impact fees will be credited, and such Fund will be utilised for augmentation, improvement or creation of an infrastructure facilities in Gujarat. These include facilities for fire safety, parking and environmental improvements.

Previously, GRUDA enabled owners and/or occupiers to apply to concerned designated authorities to regularise their of unauthorised developments. However, such regularisation was only possible for applications submitted within a period 4 (four) months from commencement of GRUDA (i.e. October 17, 2022). Now, pursuant to passage of the Gujarat Regularisation of Unauthorised Development (Amendment) Act, 2023, the Government of Gujarat has been empowered to extend, by way of a notification, the period for making such application for regularisation of unauthorised developments, subject to conditions specified in such notification. With this amendment, the Government of Gujarat being empowered to extend the timelines for regularisation applications from time to time, aims to achieve more participation from owners and occupiers of such unauthorised developments upon payment of impact fees, which is anywhere between 20% to 100% of the prevailing *jantri*/ circle rates of area of unauthorised construction, depending upon the type of unauthorised construction.

B. Policy for allotment of Government Wastelands in Gujarat by Revenue Department for production of Green Hydrogen

To promote the production of green hydrogen from renewable energy sources, and for replacing blue, brown and grey hydrogen produced from fossil fuels, the Revenue Department of Gujarat Government has formulated a policy[32] for allotting government wasteland to solar, wind and solar-wind hybrid projects. These projects are required to be solely focused on production of green hydrogen and green ammonia from water using electrolysers ("**Policy**") in line with the Government of India's Green Hydrogen Mission Initiative. The Policy aims to promote setting up of green hydrogen manufacturing projects (using non-conventional energy sources) in Gujarat by allotment of government wasteland to eligible applicants. Applicants having requisite qualifications and experience in power generation in renewable energy sector and meeting net worth requirements are eligible to apply for allotment of land for green hydrogen production of at least 1,00,000 metric tonne per annum. A committee of experts constituted by the nodal agency Gujarat Power Corporation Limited will be responsible for verifying the applications.

Further, the lands will be allotted on a leasehold basis for a period of 40 years with an annual rent of INR 15,000 per hectare with escalations every three years and will deemed to be non-agricultural land eligible for use as per the Policy. The allottees of the approved projects are required to develop the land and install necessary infrastructure within two years of grant of lease. They are also required to achieve 50% of production capacity within the next three years and 100% production capacity in the following three years. If within the prescribed time, 100% of the production capacity is not achieved, the additional unutilised land will be forfeited.

Further, the allottees will also be responsible for financing, development, operation and maintenance of its project and establishing necessary infrastructure for integrating with the central transmission utility/ state transmission utility substations.

C. Gujarat government hikes jantri rates (circle/ ready reckoner rates)

The Government of Gujarat has published circle or ready reckoner rates, colloquially known as *jantri* rates, which were last revised and published by the Revenue Department, Government of Gujarat on April 18, 2011 *vide* Jantri (Annual Statement of Rates), 2011 ("**Jantri Rates**").

[32] Order dated May 8, 2023 bearing reference No. Jaman/3923/197/A.1 issued by Revenue Department, Government of Gujarat.

However, to curtail the growing difference between the *Jantri* Rates and the actual market value of immovable properties in Gujarat, the Government of Gujarat has revised and published new *jantri* rates[33] with effect from April 15, 2023, whereby all instruments executed on or after April 15, 2023 will be liable to payment of stamp duty and registration fees and will be calculated according to the revised *Jantri* Rates. The revised *Jantri* Rates for agricultural land and non-agricultural land & construction have been increased 2x and 1.5x of the existing *Jantri* Rates, respectively. Similarly, composite Jantri Rates (applied jointly on land and construction) for residential and office properties have been increased 1.8x and 1.5x of the existing *Jantri* Rates, respectively. The composite Jantri Rates for shops have remained unchanged. The state witnessed a surge in property transactions by people rushing to take advantage of the lower stamp duty and registration charges under the old *Jantri* rates, before its expiry on April 15, 2023, However, it has been duly clarified that all instruments stamped and executed on or before April 15, 2023 pending registration thereof can, in line with Section 23 of the Registration Act, 1908, be presented for registration at the concerned sub-registrar's office within a period of four months from the date of execution thereof[34].

D. Physical searches eliminated at sub-registrar office for obtaining Encumbrance Certificate

The Government of Gujarat has from May 1, 2023 introduced a hassle-free process of obtaining encumbrance certificate online, without physically visiting the sub-registrar office.

Earlier, to obtain an encumbrance certificate, an application for undertaking encumbrance certificate, along with the details of the properties, was to be made physically before the concerned office of the sub-registrar. Traditionally, the sub-registrar offices were burdened with mainly two types of work streams *viz*. (i) recording and registering the documents which have been presented before them for the purposes of registration under the Indian Registration Act, 1908;

and (ii) providing encumbrance certificates with respect to various properties, basis the applications filed before them. This caused delay and placed various other obstacles including corruption at the sub-registrar offices.

However, such physical applications at the sub-registrar office are no longer required since the records are now available online with the sub-registrar offices. The Government of Gujarat has, *vide* its circular dated April 20, 2023 bearing No. Ijar/ Vahat/ 181/ 2020/ 17847 – 53 passed by the Inspector General of Registration and Superintendent of Stamps, Gandhinagar, eased the process of obtaining encumbrance certificates through its digital portal "IORA Portal". It can be accessed through https://iora.gujarat.gov.in/ by paying the requisite fees.

It is pertinent to note that the state of Gujarat started digitalising the revenue records and other land/ property records between 2005 and 2007 and therefore, the encumbrance certificates procured/ available online are limited from the year of such digitalisation and the searches/ encumbrance certificates procured online may not reflect all the transactions/ documents recorded for the prior years.

[33] Order dated April 13, 2023 bearing reference No. STP-122023-20-Ha.1 issued by Revenue Department, Government of Gujarat.

[34] Circular dated March 29, 2023 bearing reference No. Stamp/ ayad/40/2023/84163.

E. Land utilised for renewable energy projects will be considered as deemed non-agricultural land

The Government of Gujarat, *vide* its circular dated April 13, 2023, passed by the Revenue Department, Government of Gujarat ("**Circular**") had declared that any land parcel (being a private land) which is being utilised for the *bonafide* generation of renewable energy (such as solar energy projects, wind energy projects, wind-solar hybrid energy projects, solar projects or solar power plants established under the PM-KUSUM yojana), will automatically be considered to be lands utilised for '*bonafide* industrial use' in accordance of Section 48 and Section 65B of the Gujarat Land Revenue Code, 1879. Therefore, an appropriate order for deemed non-agricultural use is to be passed by the concerned collector along with levy of the revenue assessment charges (as per non-agricultural land) for such land parcels.

This circular granting the deemed non-agricultural use is applicable to (i) any person who owns a land and utilises it for generating renewable energy; and (ii) any person who is acquiring land to utilise it for setting up a renewable energy project.

Accordingly, *vide* the Circular, any land parcel (being private land) which is being used (or proposed to be used) for renewable energy project will be considered to be a '*bonafide* industrial use' in accordance to Sections 48 and 65B of the Gujarat Land Revenue Code, 1879 and will be granted an appropriate permission for utilising such land for non-agricultural use (i.e. deemed non-agricultural use) thereupon.

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