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Welcome to this issue of *Prop Digest*

We welcome you all to the highly-anticipated fourth 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 of the important Supreme Court rulings, including one regarding the evidentiary value of unregistered Lease Deed. Various High Court decisions have also been emphasised here, such as the Bombay High Court's rulings that: (i) demand of deficit stamp duty on calculation of market value cannot be made beyond 10 (ten) years of execution; and (ii) non-payment of consideration within stipulated time frustrates the contract, and (iii) the Allahabad High Court's ruling on non-requirement of prior notice if eviction application is for personal use of property.

This issue further dwells on updating its readers on some key state level legislations, such as the Maharashtra Government's notification/circulars that provides: (i) consolidated policy for calculating unearned income in relation to lands granted by the Government; (ii) priority allotment of MIDC land for additional thrust sectors (iii) stamp duty exemption under IT/ITES policy; (iv) increase in the defect liability period from 3 (three) years to 10 (ten) years for all rehabilitation buildings under slum rehabilitation scheme, Karnataka Government's initiative to streamline the land use conversion for non-agricultural use and Gujarat government's initiative to ease the leasehold land conversion process for renewable energy projects in the state of Gujarat.

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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India's leading law firm

JUDICIAL UPDATES

1. Supreme Court (SC)

A. Property ownership claim invalid when sale deed executed by titleless person: Supreme Court

The Supreme Court of India in *Savitri Bai and another v. Savitri Bai*[1], underscored the importance of complying with Section 63 of the Indian Succession Act, 1925, concerning the validity of "Wills". Additionally, it held that participation of a non-title holder in a sale deed does not confer ownership rights to the transferee (Plaintiff, in this case). The civil suit was filed by the Plaintiff seeking (i) ownership and possession of the subject property, and (ii) a declaration that the "Will" dated March 23, 1977, executed in favour of Defendant No. 2, was illegal. The said "Will" was executed by Late Babulal bequeathing the subject property in favour of his grandson, *i.e.,* Defendant No. 2. Certain sale deeds were executed by Defendant No. 1 (mother of Defendant No. 2) in favour of the Plaintiff in respect of various properties of Late Babulal, including in respect of the subject property (bequeathed in favour of Defendant No. 2 *vide* the aforesaid "Will"). The civil suit was dismissed by the Civil Judge, Mudwara Katni, which was thereafter confirmed by the Additional District Judge, Mudwara Katni. However, the High Court of Madhya Pradesh decided in favour of the Plaintiff and declared that the Plaintiff was the owner of property *vide* the sale deed dated January 18, 1979, and that the "Will" executed in favour of Defendant No. 2 was null and void.

The Supreme Court ruled in an appeal against the said High Court order that the transferee of the property cannot claim ownership over it if its sale deed was executed by a person who is not the rightful owner. Defendant No. 1 explained that she participated in execution of various sale deeds, and because she was uneducated, she was told that as Babulal's daughter, her signatures would be necessary on the sale deed. The Supreme Court held that no conscious knowledge can be attributed to Defendant No. 1 in relation to the abovementioned sale deed for the subject property, who presumed she was participating in the sale of her family's share in the properties by way of abundant caution. It was further held that the High Court had failed to appreciate the evidence adduced to prove the "Will" and once an evidence in terms of Section 68 of the Evidence Act, 1872, and mandatory requirements under Section 63 of the Indian Succession Act, 1925, were duly satisfied, the "Will" stood proved in the eye of law.[2] Since the "Will" is proved to be genuine, execution of the sale deed (in respect of the subject property) by Defendant No. 1 is of no significance. The owner of the subject property under the "Will" was Defendant No. 2, and he was neither a party to the sale deed (in respect of the subject property) nor did Defendant No. 1 affix her signature in her capacity as a guardian of Defendant No.2.

The appeal went through based on the above findings, and it was held that the title in subject property was bequeathed to Defendant No. 2 under the "Will" and vested in him, and that the Plaintiff cannot claim ownership over the property based on the sale deed dated January 18, 1979, wherein Defendant No. 2 was not even a party.

B. Evidentiary Value of Unregistered Lease Deed – What would amount to 'collateral' purpose? – Supreme Court

In the case of *Paul Rubber Industries Private Limited v. Amit Chand Mitra and Another*[1], a lease deed (**Lease Deed**) for a property situated in Kolkata (**Property**) was executed between Sabita Mitra (**Owner**) and Paul Rubber Industries Private Limited (**Tenant**) for a term of 5 (five) years, further extendable by mutual consent. The Property was let out to the Tenant for

[1] Civil Appeal No. 9035 of 2013.
[2] H. Venkatachala Iyengar vs. B.N.Thimmajamma, AIR 1959 SC 443
[1] 2023 SCC OnLine SC 1216.

manufacturing purposes. Further, the Lease Deed was not registered with the jurisdictional Sub-Registrar under the provisions of the Registration Act, 1908.

Following the expiry of the lease term, the Owner sent a notice to Tenant asking them to vacate the Property.. The reason for the said request was that *firstly,* the Tenant did not agree to pay the enhanced rent, and *secondly*, that the Owner required the Property for her personal use. The Tenant refused to give possession of the Property claiming they did not receive a valid notice. The Owner filed a suit against the Tenant for seeking possession of the Property along with the mesne profits. Both the Trial Court and the High Court allowed the Owner's applications. Aggrieved by the same, the Tenant filed an instant appeal before the Supreme Court.

The Tenant submitted that the Lease Deed was executed for *manufacturing* purposes and the same shall be governed by the provisions of Section 106 of the Transfer of Property Act, 1882. Therefore, the Owner was required to serve a 6 (six) months' notice for eviction of the Tenant from the Property.

The Supreme Court observed that while a Lease Deed executed for a term of 5 (five) years is a mandatorily registrable instrument, in the instant case, it remained unregistered. Therefore, the Lease Deed cannot be analysed or admitted into evidence to determine if it was executed for *manufacturing* purposes, as that would amount to determining the *'nature and character'* of the possession, which forms an integral part of the unregistered Lease Deed in question.

The Supreme Court further reiterated in accordance with Section 49 of the Registration Act, 1908, unregistered documents that need mandatory registration, can only serve as evidence for any *'collateral'* transaction. The Supreme Court held that *'Collateral'* transaction or purpose in this context refers to any purpose other than the one for which the unregistered document was executed. Therefore, in the present case, the purpose of leasing the Property for manufacturing is integral to agreement, and cannot be determined using the same unregistered deed. Consequently , the Tenant cannot take refuge of Section 106 and contest the notice served for vacating the Property within 15 days.

2. Bombay High Court

A. The Date of Dispatch of Notice is relevant for the purpose of reckoning the outer time limit of 10 years prescribed under Section 32A(5) of the Maharashtra Stamp Act, 1958

In the case of *Axayraj Buildwell Pvt. Ltd. Vs State of Maharashtra and Another*[3], the petitioner filed a writ petition challenging (i) the notice dated September 3, 2015 (**Impugned Notice**) issued by the Sub-Registrar, and (ii)(a) an order dated May 31, 2022 (**Impugned Order**) and (b) a demand notice dated October 13, 2021 (**Impugned Demand Notice**) issued by the Collector of Stamps, wherein, *inter alia*, a demand to pay deficit stamp duty and penalty was made. The Petitioner had executed a Development Agreement on September 6, 2007 (**Development Agreement**). The Development Agreement was lodged for registration and the petitioner was called upon to pay stamp duty of INR 8,42,000/- thereon. The Petitioner paid the stamp duty accordingly and the Development Agreement was registered on October 7, 2005. The Petitioner received the Impugned Notice on October 26, 2015, for initiation of proceedings under Section 33A of the Maharashtra Stamp Act, 1958 (**Act**) wherein it was, *inter alia*, stated that the market value ought to INR 30,97,91,000/- (instead of INR 8,41,10,500/- which was considered as the market value at the time of registration of the Development Agreement) accordingly there was a deficit in the value of stamp duty that was paid, by INR 22,56,010/-. The petitioner was called upon to deposit the original document for the purpose of recovery of deficit stamp duty. The petitioner responded to the Impugned Notice stating that the stamp duty was correctly paid as per the adjudication and that no

[3] Writ Petition No. 772 of 2022.

claim can be made after expiry of 10 (ten) years from the date of execution of the document. Thereafter, in the year 2017, the Collector of Stamps issued a notice to the petitioner to remain present for the hearing in the proceedings initiated under Section 33A of the Act for recovery of deficit stamp duty. The petitioner filed its reply *inter alia* contending that the proceedings are barred by limitation as per the provisions of Section 32A (5) of the Act. The Collector of Stamps rejected this contention of the petitioner and observed that the proceedings were initiated under the provisions of Section 33A of the Act for which there is no period of limitation and passed the Impugned Order directing the petitioner to pay the aforesaid deficit stamp duty along with a penalty of INR.87, 08,200/-. Aggrieved by the same, the petitioner filed the present writ petition.

The Court *inter alia* observed that there are two separate sets of proceedings prescribed the Act i.e. under Section 32A of the Act and under Section 33A, 37 and 39 of the Act to deal with the instruments that are not properly stamped. While on initial reading, it may appear that the powers conferred to the Collector under both the sets of provisions are for the same purpose and can be parallelly exercised, a careful reading will make it clear that, while Section 32A of the Act becomes applicable when the true market value of the instrument has not been truly set forth in the document, Sections 33A, 37 and 39 of the Act come into play there is no dispute on the market value of the immovable property but in cases where the registering authority notices that proper stamp duty has not been affixed on the instrument. While there is an outer limit of 10 (ten) years for initiation of proceedings under Section 32A, no such outer limit is prescribed in proceedings under Section 33A, 37 and 39 of the Act., The Hon'ble Bombay High Court observed that in cases where the market value of the property is disputed and Collector desires to redetermine the same, the procedure under 33A, 37 and 39 of the Act cannot be adopted and the procedure under Section 32A of the Act shall be applicable. The Hon'ble Bombay High Court further observed that, in the present case, initiation of

proceedings under section 33A of the Act was erroneous and the registrar ought not to have initiated proceedings for impounding of the document under section 33A of the Act. The Hon'ble Bombay High Court also observed that the date of dispatch of Notice would be a relevant date for the purpose of reckoning the outer limit prescribed under Section 32A(5).

The Hon'ble Bombay High Court held that even if the proceedings initiated by the respondents were to be treated as the one under Section 32A, the same are clearly barred by the outer limit prescribed under sub-section (5).

B. Non-payment of consideration within stipulated time, frustrates the contract

In *Girish Vinodchandra Dhruva & ors.* (**Appellants** / **Original Defendants**) *vs Smt. Neena Paresh Shah & anr.*[4] (**Respondents** / **Original Plaintiffs**) filed before the Hon'ble Bombay High Court, the Appellants challenged a judgment and decree dated August 7, 2013 in Regular Civil Suit No. 5732 of 2006, whereunder the City Civil Court had decreed the suit for specific performance and directed the Appellants to execute a sale deed in respect of the suit property in favour of the Respondents, within two months. The Original Plaintiff, entered in an MOU (through her constituted

[4] (2023) 3 CCC 46

attorney i.e. her brother) on March 6, 2006 with the Original Defendant for purchasing the suit property (i.e. a flat) for a consideration of INR 41,75,000. An earnest amount of INR 2,51,000 was paid by the Original Plaintiff and the balance sale consideration was to be paid on or before May 31, 2005. The sale was supposed to be completed after (i) the payment of the balance sale consideration by the plaintiffs and (ii) the Original Defendant obtaining the NOC and No dues certificate from the society.

The date of execution of the sale deed was extended till October 31, 2005, by mutual consent. By a letter dated October 29, 2005, the Original Plaintiffs expressed their readiness and willingness for the payment of the balance consideration to the Original Defendant and calling upon the Original Defendant to hand over the possession of the flat to the Original Plaintiffs. By their reply dated October 31, 2005, the Original Defendants refused to perform the contract stating that the Original Plaintiffs failed to show their readiness and willingness to perform the contract and as time was the essence of the contract, the sale consideration was supposed to be paid before the stipulated time. The Trial Court decreed the suit and directed the Original Defendant to execute the sale deed within two months. Aggrieved by the judgment of the trial court, the Original Defendant filed an appeal before BHC.

To the question whether time is not of essence of the contract, the BHC reiterated its perspective elucidated in *K.S. Vidyanadam v. Vairavan*[5] that (i) while exercising discretion in suits for specific performance, the courts should bear in mind the significance of time/period, which the parties prescribe for taking certain steps or for completion of the transaction and therefore, cannot be ignored; (ii) the courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract; and (iii) every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time limits stipulated in the agreement; and a three-year limitation does not mean a purchaser can wait for one or two years to file a suit and obtain specific performance.

Whilst dealing with "readiness and willingness", the BHC considered the Hon'ble Supreme Court's view in *Shenbagam vs. K.K. Rathinavel*[6] that it is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with under Section 16(c) of the Specific Relief Act, 1963 and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but dismiss the suit. It was further observed by the Apex Court that "readiness" refers to the financial capacity and "willingness" refers to the conduct of the plaintiff wanting the performance.

The BHC also considered the view taken by the Hon'ble Supreme Court in *Man Kaur (dead) by Lrs. vs. Hartar Singh Sangha*,[7] which held that a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract is barred from claiming specific performance. To decide whether the time was the essence of the contract in the present case, the BHC reiterated the position settled by the Hon'ble Apex Court in *Welspun Specialty Solution Ltd. vs. Oil and Natural Gas Corporation Limited* that it has to be carved out from the reading of the entire contract as well as surrounding circumstances. The BHC observed that terms of the contract in the present case do make time as the essence of the contract regarding the payment of the balance sale consideration and time does not cease to be the essence of the contract with a mere extension of the original time period in the contract. The BHC allowed the appeal and set aside the order passed by the trial court.

[5] (1997) 3 SCC 1
[6] 2022 SCC OnLine SC 71
[7] (2010) 10 SCC 512

3. Karnataka High Court

PTCL Amendment: Jayalakshmamma and ors. v. Deputy Commissioner, Tumkur and ors

The Government of Karnataka recently amended the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (**PTCL Act**) *vide* amendment dated July 27, 2023 (**Amendment**), removing the *'reasonable time period'* rule to initiate restoration proceeding by the original grantees under the PTCL Act. Even though there hasn't been any challenge to the constitutional validity of the Amendment yet, the Karnataka High Court *vide* its judgment in the case of *Jayalakshmamma and Ors. v. Deputy Commissioner, Tumkur and Ors.* rejected a request to restore land under the PTCL Act on the grounds that (i) the application under the PTCL Act had been filed after expiry of 25 years and (ii) the Supreme Court in *Nekkanti Rama Lakshmi v. State of Karnataka and Anr.* laid down the law requiring the initiation of the proceedings under the PTCL Act within a reasonable time. From a reading of the judgment, it may be observed that the Karnataka High Court has not taken the Amendment to the PTCL Act into consideration and has dismissed the writ appeal.

4. Allahabad High Court

A. The land's market value must be determined based on its potential use at the time of its execution of title deed or shortly thereafter

In the case of *Saurabh Srivastava and Ors. v. State of Uttar Pradesh and Ors.*[8], Saurabh Srivastava (**Petitioner**) purchased an agricultural land in Durgaganj, Pargana Nawabganj, Tehsil Tarabganj, District Gonda (**Property**). Thereafter, the jurisdictional Sub-Registrar (**Sub-Registrar**) inspected the Property and observed that it was being divided into plots when other developments *(such as roads, electricity poles, etc.)* were taking place. Following the Sub-Registrar's report, the collector (**Collector**) reassessed the Property's market value, determining it to be more than the consideration paid by the Petitioner in the sale deed. Therefore, the Collector initiated proceedings under Section 47-A of the Indian Stamp Act, 1899, as applicable to the state of Uttar Pradesh, for recovery of deficient stamp duty leviable on the sale deed.

The Petitioner challenged the aforesaid assessment, contending that the Sub-Registrar's inspection was undertaken after the execution of the sale deed, and the Collector evaluated the Property's the market value based on prospective rather than its current utilisation.

However, the Hon'ble High Court disagreed with the Petitioner's contentions, asserting that the market value of the Property must be determined based on the material's direct, circumstantial, or even intrinsic worth, enabling the Collector reasonably conclude whether market value indicated in the sale deed is accurate. In the instant case, the Sub-Registrar's inspection report indicated that the land was being used for development of a residential project instead of agriculture. Therefore, the Collector has not determined the market value based on the prospective utilisation on the Property but on its potential for advantageous use at the time of the sale deed's execution or a reasonably closer period thereafter.. The Property was purchased on February 4, 2021, and the Sub-Registrar undertook the inspection on March 15, 2021, i.e., within a period reasonable proximate to the purchase of the Property and therefore, it cannot be said that the Collector has considered future value of the Property for determining the market value of the Property.

Considering the aforesaid, the hon'ble High Court upheld the order passed by the competent authority calling upon the Petitioner to pay deficient stamp duty, the penalty, and the registration fee leviable on the transfer of Property.

[8] 2024:AHC-LKO:1995.

Furthermore, in *M/s Uttaranchal Automobiles Private Limited vs Chief Controlling Revenue Authority and Others*[9], where the additional stamp duty imposed by the revenue authority on the sale deed was challenged, the revenue authorities had imposed additional stamp duty taking into consideration the nature of land being sold. In doing so, the authorities had taken into account the sale deed executed for an adjacent non-agricultural land parcel and its potential non-agricultural use. Uttaranchal Automobiles Private Limited (**UAPL**) herein argued that the potential use of the land should be as per the spot verification carried out as per Rule 7(3)(c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 and not on the basis of sale deed executed for adjacent land parcel.

The Hon'ble High Court agreed with the contention of UAPL and held that the potential of the land can be assessed on the date of execution of the instrument for determination by the Collector of the true market value and the same has to be based on adequate material and cannot be a matter of hypothesis or surmise. The Hon'ble High Court further held that the burden of proof that deficient stamp duty has been paid under the transfer document is on the revenue authorities and valuation must be made on sufficient material on record. The Hon'ble High Court agreed with the UAPL's contentions that the valuation of land cannot be made on the basis of another sale deed for adjacent plot of land and an independent evaluation is to be conducted for valuation. Further, the orders for payment of deficient stamp duty were quashed and deficient stamp duty deposited by UAPL was ordered to be returned.

B. Uttar Pradesh Urban Premises Tenancy Act, 2021 | No requirement of prior notice if eviction application is for personal use of property

In the case of *Mahesh Chandra Agarwal v. Rent Tribunal and Ors.*[10], the owner (**Landlord**) of a shop (**Shop**) had leased out the Shop to Mr. Mahesh Chandra (**Tenant**). Later, a dispute arose between them whereby the Landlord sought to evict the Tenant from the Shop under the provisions of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (**Act**), citing the intention of using the Shop for establishing the business/office for his son.

The Landlord initiated eviction proceedings against the Tenant under Section 21(2)(b) of the Act *(which provides for eviction on ground of arrears of rent)* and Section 21(2)(m) *(which provides for eviction on ground of personal occupation by the landlord)*. The Rent

[9] WRIT-C NO.12727 OF 2012.
[10] Writ Petition No. 7791 of 2023.

Tribunal and the Additional District and Sessions Court allowed the eviction of the Tenant. Aggrieved by the same, the Tenant preferred the instant Writ Petition and opposed the eviction, *inter alia*, on the ground that no notice was served upon the Tenant prior to initiation of the eviction proceedings by the Landlord.

The High Court while deciding upon the question of sufficiency of notice under Section 21 of the Act held that the scheme of Section 21 explicitly lays down instances wherein the service of notice upon a tenant is mandatory. The High Court opined that only when an application made under Section 21(2)(b) *(on ground of non-payment of rent)*, section 21(2)(d) *(in case of the misuse of the premises by the tenant), and section 21(2)(g) (in case the landlord requires the premises for sale of the same or else their own interest shall suffer)*, a prior notice is required to be given to a tenant by the landlord.

In the case at hand, while the Landlord had submitted the application for eviction under Sections 21(2)(b) and 21(2)(m), the eviction order was passed only under Section 21(2)(m). Therefore, the eviction order passed by the Rent Tribunal was based only on the acceptance of the application made by the Landlord under Section 21(2)(m), *i.e.,* eviction on grounds of the landlord's personal occupation and therefore, in this scenario, the Act does not contemplate serving of a prior notice of eviction upon the Tenant.

5. Kerala High Court

Land acquired lawfully cannot be released due to delay in using it for the public purpose for which it was acquired: High Court of Kerala

The High Court of Kerala in *Sivaprakashan v State of Kerala*,[11] re-affirmed that once a land has been acquired lawfully by paying compensation, it cannot be released on the basis that there was a delay in utilising the same. The High Court of Kerala cited and relied upon a catena of judgments before coming to this conclusion.[12] The Petitioner's property was acquired under the Land Acquisition Act, 1894, for constructing a post office and staff quarters. The possession of the property was taken in the year 1987. The case of the Petitioner was that the possession of the property was taken around 40 years back, but the construction of post office or staff quarters had not started. The Petitioner filed a writ petition seeking quashing of the land acquisition proceedings and reconveyance of the property. The Petitioner contended that: (i) there is a substantial delay in using the property for the acquired purpose, and the Petitioner becomes entitled to seek reconveyance of the property; and (ii) there has been an unnecessary delay in utilising the property for the acquired purpose and this is also violative of Article 300A of the Indian Constitution.

The Court held that there cannot be a time limit within which the authorities are expected to utilise the acquired land given that such land should be utilised for public purposes only. Upon perusal of the evidence adduced by the Respondents (Superintendent of Post Offices, Irinjalakuda, Kerala and Others), the Court noted that the construction had already started. Once the land was acquired and the compensation paid, the Petitioner had no right to get back the property for the sole reason that there was a delay in utilising the land for the public purpose. The Court further held that the acquisition proceedings can only be quashed when the land obtained for a public purpose was transferred to a private or corporate entity for some other purpose.

Based on the above findings, the writ petition was dismissed, and it was held by the Court that once a land had been acquired lawfully by paying compensation, it cannot be ordered to be reconveyed to the petitioner merely because there was a delay in utilising the land for the acquired purpose.

[11] W.P. (C) No. 14680 of 2019.
[12] Nandkishor Babulal Agrawal v. State of Maharashtra & Ors., Civil Appeal no.7634 of 2023; Commissioner, Corporation of Chennai v. R. Sivasankara Mehta and Anr., (2011) 13 SCC 285.

6. Gujarat RERA

Bank cannot sell or take possession of commercial premises allotted to a buyer over promoter dues: Gujarat Real Estate Regulatory Authority

In *Shri Dharmesh Jethanand Lohana vs. State Bank of India and Ors.*, an allottee (**Allottee**) of commercial shops in a real estate project (**Shops**) filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (**RERA Act**) against the promoter of the real estate project (**Promoter**) and the bank (**Bank**), pursuant to the Bank obtaining "symbolic possession" of the project site (**Project**) including the Shops under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**), upon default of the Promoter under the project loan obtained from the Bank for the Project.

The Allottee pursued compliant before the Gujarat Real Estate Regulatory Authority (**Authority**) under the RERA Act to prevent the Bank from selling or assigning the Shops pursuant to auction proceedings under the SARFAESI Act. Admittedly, the Allottee was allotted the Shops by the Promoter pursuant to an allotment letter and a registered agreement for sale, however, the Promoter had failed to disclose to the Allottee that the Project was mortgaged in favour of the Bank.

The Gujarat Real Estate Regulatory Authority stated that as held in the judgment of the Hon'ble Supreme Court in *Union Bank of India Vs. Rajasthan Real Estate Regulatory Authority*, the RERA Act would prevail over the SARFAESI Act in case of a conflict between the two and the secured creditors such as financial institutions and banks fall within the jurisdiction of the Real Estate Regulatory Authority (**RERA**) and buyers can approach the RERA against such secured creditors once they take recourse under Section 13(4) of the SARFAESI Act to enforce their security interest.

The Gujarat Real Estate Regulatory Authority held that the right of an Allottee to obtain a registered conveyance deed for the Shops and physical possession thereof under Section 17(1) of the RERA Act from the Promoter is protected from proceedings under the SARFAESI Act and directed the Bank to refrain from sale, transfer or auction of the Shops in the Project.

LEGISLATIVE UPDATES

1. Maharashtra Legislative Updates

A. Amendment Maharashtra Land Revenue Rules, 2024: Conversion of Occupancy Class-II and Leasehold lands into Occupancy Class-I under Self-redevelopment Amnesty Scheme

The Government of Maharashtra *vide* its notification dated March 16, 2024 published the Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold lands into Occupancy Class-I lands Self-redevelopment Amnesty Scheme) (Second Amendment) Rules, 2024 (**Rules**). The definitions of terms such as "Co-operative Housing Society", "Annual Statement of Rates", "Regional Plan", "initiating process of self-redevelopment", etc., have been provided under the Rules. Further, the Rules provide the following process for converting occupancy class-II or leasehold lands granted to a Co-operative Housing Society (**CHS**) into class-I lands:

a. The CHS holding land granted on Occupancy Class-II or leasehold basis may make an application to the concerned District Collector for conversion of such land into Occupancy Class-I land as per the provisions of the Rules.

b. Upon receipt of any application under sub rule (1), the Collector shall verify (i) the particulars of such land, and (ii) whether there is any violation or breach of any of the terms or conditions of grant of such land.

c. Upon such verification, if it is noticed that there is violation of any of the terms or conditions of grant of the land which has not been regularised, then the Collector may reject the application, by an order, after recording the reasons therefor.

d. Upon such verification, if it is noticed that there is no violation of any of the terms or conditions of grant of the land, or such violation, if any, has been regularised by the competent authority, then the Collector shall by an order, convert the Occupancy

Class-II land or leasehold land into Occupancy Class-I land on payment of conversion premium as specified in below:

Sr. No.	Type of Society	Premium to be charged up to commencing from the date of publication of rules in Official Gazette
1.	CHS opting for self-redevelopment	5% of value of such land calculated as per rate of such land specified in the current Annual Statement of Rates
2.	CHS not opting for self-redevelopment	10% of value of such land calculated as per rate of such land specified in the current Annual Statement of Rates

The Rules further provide that the above rates of premium shall be applicable for applications received up to September 30, 2024 only. Thereafter, premium as per the provisions of the notifications dated March 8, 2019 and March 27, 2023 shall be payable. The other terms and conditions stated in above dated notifications shall be applicable in addition to the provisions of the Rules.

The Rules provide that when CHS redevelop land granted on lease/ occupancy rights, and if there is any

additional FSI area (excluding the original FSI area of the building), the CHS must allocate 25 percent of such additional FSI area to the beneficiaries under the Pradhan Mantri Awas Yojna at Government rates. In the event the CHS fails to comply with the aforementioned provision, the premium amount paid by the CHS shall be forfeited and the land shall be restored back to class-II tenure.

The Rules provide that CHS opting for self-redevelopment shall initiate the process of self-redevelopment within two years from the date of the order converting the land to class-I and in case the CHS fails to initiate the process of self-redevelopment within the aforesaid period, the State Government shall be competent to grant a further extension of two years. Further, in the CHS fails to initiate the redevelopment process in the aforementioned prescribed periods or in case there is breach of any other conditions stated in the Rules, the premium amount paid by the CHS shall be forfeited and the subject land of the CHS shall be restored to class-II tenure.

B. Consolidated Revised Policy for Calculating unearned Fees on Government-granted land/plot transfers

The Government of Maharashtra *vide* its Government Resolution dated July 5, 2023[13] bearing No. Land-2022/Pra.Kra.106/J-1 issued by the Revenue and Forest Department, Government of Maharashtra (**Resolution**) has consolidated the policy for calculation of the unearned income to be levied on the transfer of land/plot granted by the Government. It has been observed that due to various government decisions/circulars/rules, unearned income is being calculated differently at the regional level, hence the government has issued the Resolution to consolidate various policies and streamline the process of calculating the unearned amount to be levied for transfer or sale of any government land given for aforementioned purposes.

As per the provisions of Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 or erstwhile similar rules (as per terms/conditions of the prevailing policy), following proceedings should be followed in relation to the unearned income/nazrana pertaining to the cases granting permission for the sale of land granted with occupancy rights or regularising illegal/irregular transfer of such land are:

Sr. No.	Details of transfer of plot/ change in use (A)	Transfer of plot/change in use with prior permission (B)	Transfer of Plot change in use without prior permission (C)
1	Agriculture to Agriculture	50%	50 + 10 = 60%
2	Agriculture to Non- Agriculture	60%	60 + 15 = 75%
3	Transfer of Non-Agricultural land / plot for previous use	50%	50 + 10 = 60%
4	Permission for change in use of Non-Agricultural land / plot	60%	60 + 15 = 75%

The Resolution also mentions previous instructions / guidelines issued under Government Resolutions dated November 21, 1957, September 11, 1968 and September 8, 1983 or any other similar guidelines regarding computation of unearned income should not be considered.

The Resolution also clarifies that the provisions under the Resolution would not apply to lands of charitable institutions and to lands provided for creating public amenities / facilities.

C. Priority MIDC Land Allotment for Additional Thrust Sectors as per NIP, 2019

As per Government Resolution dated March 7, 2019 issued by Industries Energy and Labour Department,

[13] Government Resolution bearing no. Sashan Nirman No: Jameen/ 2022/ Pra. Kra.106/ J-1

Government of Maharashtra, new thrust sectors were included in the Maharashtra Government's New Industrial Policy, 2019 , which would be eligible for priority allotment of land by MIDC. Basis thereof, it was proposed to amend the policy for priority allotment of land as provided in the MIDC circulars dated December 19, 2012 and December 31, 2018.

Accordingly, Maharashtra Industrial Development Corporation *vide* its circular dated September 4, 2023[14] bearing No. MIDC/Mukhya(Bhumi)/B23375 provided list of the following thrust sectors (in addition to the sectors enlisted in the MIDC circulars dated December 19, 2012 and December 31, 2018) as enlisted in the New Industrial Policy, 2019 prescribed under the Government Resolution dated March 7, 2019, for which MIDC plots should be allotted in priority:

a. Aerospace and Defence Manufacturing;

b. Industry 4.0 (Artificial Intelligence, 3D Printing, WebRobotics, Nanotechnology, etc.);

c. Integrated Data Centre Parks (IDCP);

d. Textile Machinery Manufacturing;

e. Biotechnology and medical diagnostic devices;

f. Agro and Food Processing (Secondary and Tertiary Food Processing Units);

g. Information Technology (IT) and IT enabled services (ITeS);

h. Electronic system design and Manufacturing (ESDM) and Semiconductor Fabrication (FAB);

i. Green Energy/ biofuels manufacturing;

j. Sports and Gym Equipment Manufacturing;

k. Manufacturing of devices for Nuclear energy project; and

l. Mineral / forest-based industries.

However, the policies for priority allotment of land for the sectors of Logistics and Electric Vehicles (Manufacturing, Infrastructure and maintenance)

prescribed *vide* the earlier (i) MIDC circular dated August 20, 2019 bearing no. MIDC / Bhuvibhag/ mukhya(bhumi) / C-74996 and (ii) MIDC circular dated March 21, 2022 bearing no. MIDC / Bhuvibhag / mukhya(bhumi) / A-97771 shall continue to be applicable henceforth.

D. Promoters to Submit Declaration-cum-undertaking to Avoid Duplicate RERA Project Registrations

To prevent promoters from applying for registration of real estate projects on a plot of land where registration applications are already pending or where there is an existing registration, the Maharashtra Real Estate Regulatory Authority (MahaRERA) has issued an order no. 50 of 2024 dated January 10, 2024[15] bearing No. MahaRERA / Secy / File No. 27/21/2024 (**Order**). The Order aims to mitigate the potential risk of multiple registrations of a real estate project on the same plot. Promoters seeking registration of their real estate project/s must provide a declaration-cum-undertaking on their official letter head *inter-alia* stating that there are no pending real estate project/s registration applications (by whatever name called) to be undertaken on the very same plot of land/part thereof or there is no real estate project by whatever name called, registered with MahaRERA being executed on the plot of land/part thereof. Additionally, the Order provides for strict action to be taken by the MahaRERA

[14] MIDC Circular bearing no. Maubim/Mukhya(bhumi)/B23375.
[15] MahaRERA circular bearing order No. 50/2024 No. MahaRERA/ Secy /File No. 27/21/2024

authority against the promoters who provide wrong/false/misleading statements.

E. Maharashtra Issues Circular on Stamp Duty Exemption under Maharashtra IT/ITES Policy, 2023

Pursuant to the Information Technology and Information Technology Enabled Services Policy of Maharashtra State-2023 (**IT/ITES Policy**) issued by the Industries, Energy and Labour Department, Government of Maharashtra, the Government of Maharashtra recently issued a notification dated February 1, 2024 (**Notification**) regarding full or partial waiver of stamp duty available to eligible new and expansion diversification units or projects, relating to Information Technology (IT), Information Technology Enable Services (ITES), Animation, Visual Effects, Gaming and Comics (AVGC) units, Data centres and Emerging Technology Units, (collectively "**IT/ITES Unit**") . The Notification is valid from June 27, 2023 to June 26, 2028, (both days inclusive) or for the currency of the IT/ITES Policy. Depending on, (**i**) the location of the IT/ITES Unit (i.e. whether it is located in public/ private IT park, in Zone I area/ outside zone I area, Special Economic Zone) or (**ii**) the nature of transaction (i.e. whether it is for merger, demerger, reconstruction of registered IT/ITES Units or for acquisition of land/premise in order to set up/ expand a data centre), the stamp duty exemption ranging from 50 percent to 100 percent is available on the applicable instruments (viz. Hypothecation; Paw, Pledge, Deposit of Title Deeds, Conveyance, Charge on Mortgage Property, Lease, Mortgage Deed, Security Bond on Mortgage Deed, Assignment of Lease, leave and license agreement, merger, demerger, reconstruction etc.), as provided in the Notification.

The Notification *inter-alia* provides for certain terms and conditions in relation to the stamp duty exemption such as:

a. The IT/ITES units failing to start activities for which reduction or remission is granted or, fulfil the objective of the IT/ITES Policy or committing breach of any conditions under the IT/ITES Policy shall be liable to pay stamp duty and penalty, as if, there was no reduction or remission from the beginning;

b. Under the Notification, if an existing unit makes minimum 25 percent additional fixed capital investment in IT & ITES/ AVGC activity on or after commencement of the IT/ITES Policy, then such a project will be considered as expansion/ diversification project and will be eligible for stamp duty exemption, as provided in the Notification;

c. IT/ITES units seeking stamp duty exemption will have to submit a NOC from the competent authority of Industries Department to confirm that they have not availed any stamp duty exemption under any other policies of the Government of Maharashtra issued in this behalf;

d. Any IT/ ITES Unit shall be eligible to avail stamp duty exemption under the Notification only for premises with valid Commencement Certificate or RERA Approval from the concerned Planning Authority or Competent Authority;

e. Any IT/ ITES Unit in production or operation, shifting from one location to another and if it has already availed stamp duty exemption earlier will not be eligible for stamp duty exemption under the Notification;

f. No refunds shall be granted to such IT/ITES units who have already paid full or proper stamp duty prior to the publication of the Notification and stamp duty remission or reduction applies only to specified zones listed in the schedule of the Notification; and

g. The stamp duty benefit under the Notification shall not apply to the instrument or documents of transfer of acquired land or any type of movable or immovable property by way of lease or conveyance or assignment of lease rights or sale certificate executed between eligible IT/ ITES unit and the subsequent unit under the IT/ITES Policy.

F. Insertion of Apartment Owners Eviction Provisions under Maharashtra Apartment Ownership Act, 1970

The Government of Maharashtra passed the Maharashtra Apartment Ownership (Amendment) Act,

2023[16], replacing the Maharashtra Apartment Ownership (Amendment) Ordinance, 2023 issued on October 23, 2023. This includes insertion of Section 6B in the Maharashtra Apartment Ownership Act, 1970 (**the Act**), which provides for the procedure for evicting apartment owners in the event the proposal for redevelopment of the building as per Section 6A of the Act has been approved by the Planning Authority. The newly-inserted Section 6B of the Act states that where the Planning Authority has approved the proposal of redevelopment of the building submitted by the Association of Apartment Owners (having obtained the approval of the majority of the apartment owners as per Section 6A of the Act), it shall be binding on all the apartment owners to vacate the apartment. The proviso of this section also states that it shall be binding on such association or the developer of such redevelopment to provide alternate temporary accommodation or rent in lieu of such temporary accommodation to all apartment owners. If the apartment owners refuse to vacate the apartment, then the Association of Apartment Owners or developer may request in writing to the Planning Authority to evict such apartment owner.

The section also outlines the powers of the Planning Authority to evict any apartment owner as follows:

a. The Planning Authority may after receiving a written request from the Association of Apartment Owners, by a written notice, order any apartment owner to vacate the apartment forthwith or within the time specified in such notice. The Planning Authority shall specify reasons for requiring such apartment owner to vacate the apartment in every such notice;

b. Upon issuance of the aforesaid written notice (mentioned in (a) above), every person in occupation of the apartment shall vacate such apartment as directed in the notice and no person shall (so long as the notice is not withdrawn) enter the apartment; and

c. The Planning Authority may direct that any person who acts in contravention of Section 6B shall be evicted from such apartment or building by any police officer and may also use such force as is reasonably necessary to effect entry in the apartment or building.

G. SRA extends Defect Liability Period of All Rehabilitation Buildings to 10 years

The Slum Rehabilitation Authority (**SRA**) *vide* its Circular No. 216 dated February 21[17], 2024 bearing no.

[16] Maharashtra Act No. III of 2024.
[17] SRA Circular No. 216 dated February 21, 2024 bearing no. No. SRA/ENG/CEO/2024/9524.

No. SRA/ENG/CEO/2024/9524 has enhanced the defect liability period from 3 (three) years to 10 (ten) years for the rehabilitation buildings constructed under the slum rehabilitation schemes. Earlier, the SRA had established a 3 (three) year defect liability period *vide* its Circular No.108 dated January 22, 2010, to ensure the quality control of such proposed rehabilitation buildings. This decision has been taken after considering (i) the suggestions/recommendations of the inquiry committee constituted for the fire incident at Jai Bhavani Mata SRA CHS and also the (ii) Government Resolution dated January 14, 2019 of the Public Works Department, which prescribes the defect liability period for RCC frame as 10 (ten) years.

The directive outlined in the said Circular is to take effect immediately. The Engineering Staff under the SRA scheme has been instructed to incorporate the necessary conditions in the LOI/revised LOI or IOA/amended IOA for all Rehab Buildings including Project Affected Person (PAP) and Permanent Transit Camp (PTC). Additionally, these conditions must be included in the Occupation Certificate (OC) letters for already constructed Rehab Buildings awaiting OC.

2. Karnataka Legislative Updates

A. RERA Revolution: Securing the Lender's Money for Progress

The Real Estate Regulation and Development Act, 2016 (**RERA**) is widely recognised as a pivotal reform in the real estate sector. Under RERA, the Real Estate Authorities have issued significant directives and orders over time. One such directive from the Karnataka Real Estate and Regulatory Authority (**KRERA**) stipulates that promoters of real estate projects must deposit the entire amount borrowed from lenders and financial institutions into a specified account dedicated to the respective project. Furthermore, there is a restriction on the use of these funds, requiring that they are solely utilised for the development of the project or its relevant phase. Lenders, bankers, and financial institutions are obligated to disburse loan amounts exclusively to the designated RERA account of the project. This measure serves to safeguard the interests of lenders and ensure the timely completion of the project.

B. Karnataka Streamlines Land Use Conversion for Non-Agricultural Use

Under Section 95(2) of the Karnataka Land Revenue Act, 1964 (**KLRA**), the conversion of agricultural land for non-agricultural use is now contingent upon the Master Plan of the relevant Town Planning Authority. If the land falls within designated residential, commercial, or industrial zones as per the Master Plan published under the Karnataka Town and Country Planning Act, 1961, conversion approval is automatic. Furthermore, the Karnataka Land Revenue (Amendment) Act, 2023 to the KLRA has abolished the requirement for Deputy Commissioner approval in such cases. Additionally, the payment of land usage fees in such instances is now required to be made at the time of seeking permission from the relevant Town Planning Authority.

Any land falling outside a non-Master Plan area would need prior approval of the Deputy Commissioner for conversion of such agricultural land for non-agricultural use. In this case, the approval process has been expedited to one month, down from four months, with failure to respond within this timeframe resulting in an automatic approval.

C. Karnataka's Next Move: Apartment Associations Get Ready for Change

On February 13, 2024, the Deputy Chief Minister of Karnataka unveiled plans in the Legislative Assembly to introduce a comprehensive law aimed at regulating apartment owners and homebuyers.[18] The proposed legislation, set to repeal the existing Karnataka Apartment Ownership Act, 1972, and integrate Karnataka Real Estate Regulation and Development Rules, 2017, will establish a standardised regulatory regime applicable across all towns and cities.

[18] N B Hombal, "*New law for apartment ownership in Karnataka in the works: D K Shivakumar*", Deccan Herald, February 13, 2024, available at <Proposed New Law for Apartment Ownership in Karnataka | D.K. Shivakumar Announcement (deccanherald.com)>

Currently, the governance of apartment ownership comes under the purview of both Karnataka Apartment Ownership Act, 1972 (**KAOA Act**) and Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 (**KOFA Act**). The KAOA Act mandates the registration of apartment owners' associations as co-operative societies, while the KOFA Act allows for registration as either a company or co-operative society. This conflicting framework has resulted in ambiguity and confusion amongst homebuyers regarding the appropriate mode of association registration. Moreover, the Real Estate (Regulation and Development) Act, 2016 (**RERA Act**) has not addressed the concerns of apartment owners' associations in this regard. These legal loopholes have caused conflicting initiatives resulting in delay of transferring ownership of the land to resident associations.

In light of the rapid growth of the real estate industry in Karnataka, and apartments being the prevalent preference of ownership amongst homebuyers, there is a need for robust legal frameworks governing maintenance and ownership of apartments. The proposed legislation aims to rectify the lacunae and streamline regulatory processes by bringing them in accordance with the RERA Act and its accompanying rules. By consolidating the laws into a single cohesive statute, the proposed law seeks to bring about a uniform framework for apartment owners' associations across Karnataka.

D. Kannada Script dominates Karnataka's Trade Signage

The Kannada Language Comprehensive Development Act, 2022 mandates that the upper half portion of boards displaying the names of commercial, industrial, and business undertakings in Karnataka shall be in the Kannada language, while the lower half can be in any other language. To further the objective of implementation and visibility of the official language

in the State of Karnataka, Karnataka's Cabinet in February 2024, passed the Kannada Language Comprehensive Development (Amendment) Act (**Amendment Act**) which proposes the requirement to use 60% (sixty percent) Kannada on signboards and nameplates. In light of the same, all commercial establishments were asked to comply with the signage requirement by February 28, 2024, which has now been extended by 2 (two) weeks till March 13, 2024 by the Bruhat Bengaluru Mahanagara Palike (**BBMP**) also known as the Bengaluru City Corporation. Further, BBMP has been very dynamic with implementation of the signage requirement and have been taking all necessary steps to ensure that all commercial establishments in the city erect and/or modify signages complying with the usage of 60% (sixty percent) Kannada. Through an Order dated February 28, 2024, BBMP announced that, in the event that the name board rules/requirements are violated, all business licences issued by the relevant department would be suspended and that such commercial establishments would be sealed. The Government however is in the process of framing rules to enforce this Amendment Act, which would include cancellation of trade licenses and fines as penalties.

E. Comparative analysis of the Karnataka Stamp Act 1957 and its 2023 Amendment

The Government of Karnataka on February 03, 2024, brought the provisions under the Karnataka Stamp (Amendment) Act 2023 (**Amendment Act**) into force. Cumulatively, there is an upward revision of stamp duty across various articles specified in the schedule to the Karnataka Stamp Act, 1957. Some of the key articles amended are Article 20(4)(ii) i.e., stamp duty payable on reconstruction or demerger of a company, is now increased from (a) 3% to 5% of the market value of the property of the transferor company located in Karnataka (this revision has been brought on par with the stamp duty for conveyance as contemplated under Article 20(1)), or (b) 1 percent to 5 percent of the aggregate value of shares allotted, whichever is higher subject to maximum cap of Rs.25,00,00,000. Companies formulating amalgamations within the state would require reassessing their financial planning. Thereafter, under Article 6(1)(i), stamp duty for agreements in relation to depositing title deeds or instruments evidencing the title to any property (other than a marketable security), as security for loans has increased to 0.5 percent capped at INR 500 for loans under INR 10,00,000 and for loans exceeding INR 10,00,000, the erstwhile cap of INR 10,00,000 is removed and replaced with a flat 0.5 percent rate (Article 6(1)(ii)), leading to higher stamp duty costs for larger loan or debt amounts, impacting both borrowers and lenders. It may be observed that the increased stamp duty will help the government leverage funds into public initiatives and infrastructural projects.

3. Gujarat Legislative Updates

A. Gujarat Eases Lease Land Conversion for Renewable Energy Projects

a. Introduction of Gujarat Renewable Energy Policy:

The Government of Gujarat has introduced the Gujarat Renewable Energy Policy on October 4, 2023 (**Renewable Energy Policy**) - a significant step in promoting the renewable energy projects in the state and to effectively reduce carbon footprint.

This Renewable Energy Policy supersedes the erstwhile renewable energy policies/ framework *viz.* (a) the Gujarat Wind Power Policy 2016 issued on August 2, 2016; (b) the Gujarat Wind Solar Hybrid Power Policy 2018 issued on June 20, 2018; and (c) the Gujarat Solar Power Policy 2021 issued on December 29, 2020.

The Renewable Energy Policy is applicable to all ground mounted solar, roof top solar, floating solar, canal top solar, wind, rooftop/ small scale wind and wind-solar hybrid projects. The Renewable Energy Policy is not applicable to renewable energy projects set up for supplying power to units producing green hydrogen and green ammonia.

The Renewable Energy Policy permits AC integration of wind and solar components of a wind-solar hybrid project at the plant end or at the pooling/ sending station end, whereas DC integration of wind and solar components of a wind-solar hybrid project is contingent on the availability of DC metering standards, which will evolve or are made available over time.

The Renewable Energy Policy mandates re-powering (i.e. replacing old wind turbines with new wind turbines) of wind turbines. However, failure to comply with this mandate will have a significant impact on developers as the wind power project will be decommissioned and the connectivity will stand surrendered.

b. Temporary Grant of Non-Agricultural Use Permission to Leasehold Land for Setting Up Renewable Energy Projects

In furtherance of the Gujarat Renewable Energy Policy, the Revenue Department, Government of Gujarat has *vide* circular dated October 16, 2023 bearing reference No. Ba.Kha.Pa./ 102022/OMR-24/Ka (Lease) (**Circular**), enabled issuance of a temporary permission of utilising any privately owned agricultural land for bonafide non-agricultural use of renewable energy

project, for a period of 30 (thirty) years on and from the date of the Circular. The Circular provides for a fast-track process, (with approval expected within 30 (thirty) days from the receipt of the relevant application) for obtaining such temporary non-agricultural use permission for the leased land. Pursuant to this Circular, if any person acquires any private agricultural land from certain landowner(s) on leasehold basis for the purposes of developing renewable energy project thereon, then such person can apply to the competent authority and obtain a temporary non-agricultural usage permission to utilise such land for renewable energy projects.

Prior to this Circular, the renewable energy entities had to either acquire ownership of an agricultural land under the aegis of *bonafide* industrial use for the purposes of utilising the same for renewable energy projects or get the land converted into non-agricultural land first and then acquire the same on freehold or leasehold basis for the purposes of utilising the same for renewable energy projects.

With introduction of the Circular, the renewable energy players can now directly acquire an agricultural land on leasehold basis even under the aegis of '*bonafide* industrial use' for utilising the same for renewable energy projects and then apply for a temporary non-agricultural use permission.

The Circular further provides following conditions in relation to temporary grant of non-agricultural use permission (some of which are safeguards for the lessee i.e. the renewable energy project developers): (i) no mutation entries to be recorded during the subsistence of temporary non-agricultural permission including any transfer of the land, except for inheritance, creation of mortgage and release of mortgage; (ii) no change in the title chain can be done and the lessors i.e., the owners of the land will continue to remain owners till the subsistence of such temporary non-agricultural permission; (iii) pursuant to the expiry of term of temporary non-agricultural permission, the land will be required to be restored to its original condition i.e. agricultural land; (iv) any new

tenure land having been granted such temporary non-agricultural permission will at the end of the lease continue to be new tenure land with applicable restrictions; and (v) pursuant to the expiry of term of temporary non-agricultural permission, a fresh temporary non-agricultural permission for the renewal period of the lease will have to be obtained.

B. Introduction of Gujarat Co. Operative Societies (Amendment) Bill, 2024

The Government of Gujarat has attempted to bring in more clarity in the housing sector and the service societies and other maintenance societies which are formed for the real estate projects and by virtue thereof has proposed an amendment in the current structure and framework of the co-operative societies in the State of Gujarat by introducing the Gujarat Co-operative Societies (Amendment) Bill, 2024 (**Bill**) to amend the Gujarat Co. Operative Societies Act, 1961. While this Bill is yet to be published in the official gazette, it has been unanimously passed in the Gujarat State Legislative Assembly.

The Bill defines both "'co-operative housing society" and "co-operative housing service society", clearly distinguishing them by clarifying their functions and roles. It aims to avoid any interchangeability between the two concepts, which are commonly

misunderstood., Further, the Bill not only defines "flat" as commonly-understood residential units , but also showroom, shop and any other type of premises used for commercial or residential purposes. The Bill also provides for registration process and requirement of minimum number of members to form such type of societies.

Presently, the co-operative societies operate without any regulated or guided principles on levy of the transfer fees resulting into varying and often exorbitant transfer fees causing concerns among purchasers/ transferees and necessitating legal intervention.

The Bill further attempts to provide solution to the issue commonly faced by the members of the society and the proposed transferee members (who are intending to procure interests in the society) by providing a cap on the transfer fees which a "co-operative housing society" and "co-operative housing service society" can levy. In this regard, the newly introduced Section 159C in the Gujarat Co-operative Societies Act, 1961 provides that co-operative housing society and/or co-operative housing service society cannot charge/ collect any fees more than the transfer fees prescribed by the state government. This will also result into certain form of standardization/ uniformity, transparency and fairness in levy of transfer fees.

C. Gujarat Legislature Amends Tenancy Laws to Extend Timeline for Conversion of Agricultural Lands Purchased by Charitable Trusts or Entities for Non-Agricultural Use for Charitable Purposes

Reportedly, various charitable institutions made representations to the Gujarat Government, citing delays in initiating charitable works due to their inability to convert agricultural lands into non-agricultural lands for charitable use. They noted that this difficult situation is the result of expiry of the time limit on August 28, 2020, provided under the tenancy laws in Gujarat. In this regard, the Gujarat Legislature has amended the 3 (three) tenancy laws applicable in different regions of Gujarat *viz*. Gujarat Tenancy and Agricultural Lands Act, 1948, the Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 and the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, to remove the previous time limit specified thereunder and enable the Gujarat Government to periodically specify the time frame within which such charitable institutions can convert their agricultural lands into non-agricultural land for charitable purposes, subject to it having been purchased before June 30, 2015. This amendment is aimed at providing an opportunity to the charitable institutions in the state who have missed or failed to undertake conversion of their agricultural lands under the previously prescribed time limits.

prop digest

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