

ADITYARJ BUILDERS V/S THE STATE OF MAHARASHTRA IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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INTRODUCTION

The case Adityarj Builders v/s The State of Maharashtra¹ and others is a turning point in the matters of stamp duty relating to the redevelopment of buildings/societies. The Honourable High Court of Judicature of Bombay has recently dealt with a common question of law under the Maharashtra Stamp Act, 1958 relating to Stamp Duty sought to be levied on “Permanent Alternate Accommodation Agreement” (“PAAA”). In this judgment, the Hon'ble Court has addressed itself to the general principle of law instead of restricting itself to the fact of each case. Therefore, this judgment will apply to all redevelopment projects across the State of Maharashtra.

Before dealing with the judgment it is necessary to understand the two basic and important documents that are executed for the redevelopment of societies which are discussed in the Judgment. Whenever a society goes for redevelopment, the society executes the agreement, often called a Development Agreement (“DA”) with a developer. In the redeveloped building, the members of the society get new homes. In some cases, only the society committee members sign and execute the DA with the Developer while in some cases individual members are also party to the DA. After execution and registration of the Development Agreement for the redevelopment of the Building, the Developer enters into separate Agreements with the members of the society, such agreements are known as “Permanent Alternate Accommodation Agreements” (“PAAA”). While all the terms and conditions of the entire scheme of redevelopment are incorporated in the DA, the PAAA is the secondary document concerning the main agreement which is the DA since it carves out a portion of the entire redevelopment concerning the single member and is therefore ancillary to the DA.

¹ Adityraj Builders Vs. State of Maharashtra [2023] SCC Online BOM 540

FACTS

Several writ petitions were filed in the Hon'ble High Court of Judicature at Bombay challenging the validity of the impugned circulars dated 23rd June 2015 and 30th March 2017 others were clubbed together and heard by the Honourable High Court of Judicature at Bombay. On 23rd June 2015, an impugned circular bearing number: No.15/Va.Mudat/Guidelines/ 621 Office of the Inspector General of Registration and Controller of Stamps, Government of Maharashtra,

Pune was issued by the Chief Controlling Revenue Authority. The impugned circular stated that any PAAA between the society members and the developer is different from the DA between the society and the developer. If the DA is executed between the society and the developer, the document to transfer the premises to the members will be treated as an independent agreement and stamp duty will be charged on the construction cost.

On 30th March 2017, impugned circular bearing number:-No.K.5/Stamp-17/Pra.Kr.10/13/303/17 Inspector General of Registration & Controller of Stamps (Maharashtra State), Gr.Floor, New Administrative Building, Opp. Vidhan Bhawan, Pune-1., the Chief Controlling Revenue Authority came out with a clarificatory circular which states that compulsorily individual society members must join in the execution of the original DA, i.e., that every single society member must countersign the DA and that the DA is thus not just bipartite or tripartite but if there is such a word, multipartite.

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Several writ petitions challenged the above-mentioned circulars which were filed by various societies against The State of Maharashtra, Inspector General of Registration and Superintendent of Stamps, and others.

ARGUMENT OF THE PETITIONERS

1. The Petitioners argued that the members of the society are provided new accommodation in place of their earlier accommodation hence so far as the existing area or the area to which the members are entitled is concerned, there is no purchase at all.
2. The DA has already been stamped and covers all tenements or units to be constructed for the individual members of the society. Therefore there can be no question of a levy of stamp duty twice for the same transaction.

3. For stamp duty, the PAAA is never independent of the DA.

ARGUMENTS OF THE RESPONDENTS

1. Treat every PAAA irrespective of the area as effectively an instrument of purchase of new premises.
2. Members should pay stamp duty on the acquisition of additional built-up areas or carpet areas derived from fungible FSI.
3. The stamp duty is to be reckoned for the additional purchase at market value and not at the cost of construction.
4. A member is entitled as of right to an additional area over and above the area that he or she presently occupies which should attract stamp duty.

ISSUE BEFORE THE COURT

Validity of two impugned circulars dated 23rd June 2015 and 30th March 2017 issued by the Inspector General of Registration and Controller of Stamps, Maharashtra State.

JUDGMENT

This case was heard by the division bench of Justice G.S Patel and Justice Neela Gokhale. The court held that "Section 4(1) of the Stamp Act², itself makes no distinction between several instruments being used to complete the transaction". All instruments are treated as one. The Section may not use the words 'Master Agreement' but the statutory intent is plain and unmistakable". Thus the court has explained that whenever several instruments/agreements are used to make one entire document then the same are considered ancillary and incidental to the main instrument or the main agreement. Therefore, only the main agreement is chargeable with stamp duty while all the other ancillary documents can be executed on Rs.100/- stamp paper. The court rejected the argument that unless the member personally signs the DA, the provisions of section 41 are not attracted. The court held that while executing a DA, the society acts for all its members. The PAAA may provide for various provisions like - the amount of transit rent, individual flat numbers, distinct flat sizes, and so on. But a PAAA provides for the details or particulars in respect of the redevelopment concerning the entitlement of each member in

² Maharashtra Stamp Act, 1958 s 4

respect of the redevelopment contemplated by the DA itself. The court has held that there can be a DA without a PAAA, but there cannot be a society redevelopment only by the PAAAs. Therefore, the entirety of PAAA may be physically included in a DA. If that is done, then there is only one Agreement covering the whole of the DA. In *Mulchand Mehta &Anr v Mahesh S Mehta &Anr*³ the court held that if there is a development agreement with a society and separate agreements with members, where members had not signed the DA, members were nonetheless bound by the terms of the DA.

The court has further held that the Revenue Authority does not have jurisdiction to decide what form a particular instrument should take. And secondly, it is the Society that represents its members, and the members do not have separate existence of the society or vice versa. The court has further held that the developer is not selling homes to society members on redevelopment. The only sale is of any additional area that the member purchases. The rest is an obligation to be performed by the developer in consideration of the members, through their society.

The court further explained that "following scenarios may arise in redevelopment (a) a home in replacement of a home; (b) a larger home in replacement of a smaller home; and (c) the option of purchasing additional area for the replacement home. The Hon'ble court has held that the stamp duty applicable will be only on item (c). Items (a) and (b) are never liable to stamp duty because it is not a purchase or transfer to the members but it is the area given free to the members instead of their old premises." Given the above, the division bench of Justice G.S. Patel and Justice Neela Gokhale quashed the two impugned circulars dated 23rd June 2015 and the circular dated 30th March 2017 being not maintainable in law.

CASE ANALYSIS (CRITIQUE)

These petitions demonstrated how the Revenue Authority dictated the nature of a particular document. The revenue authorities gave applied the decisions given by the courts depending upon the facts of the case before them from time to time. The courts were therefore required to revisit the law which was been already decided earlier. The stamp authorities are not vested with power in law to issue such a circular or to insist on any such additional stamp duty. The impugned circulars have no basis in law. The Honourable division bench rightly upheld that

³ *Mulchand Mehta &Anr v Mahesh S Mehta &Anr* 4 [2009] SCC Online Bom 1986, [2010] 2 Mah LJ 657, [2010] 1 Bom CR.

since PAAA is an ancillary document concerning the main agreement which is DA, the stamp duty need not be separately paid on PAAA unless it is for the purchase of the additional area by the members over and above what is given free by the developer instead of the old premises. Thus, either party to the PAA is saved from paying stamp duty twice. In most cases, the stamp duty on the PAAAS was borne by the Developers. Hence, under the impugned circulars, the Developers were required to pay the stamp duty twice on the same transaction. However, after the above judgment, the savings on the Stamp duty on PAAAs can be used by the Developers for providing additional amenities or better amenities to the occupants in the society.

CONCLUSION

- (a) It is necessary to pay Stamp duty on a Development Agreement ⁴between a cooperative housing society and a developer for the development of the society's property.
- (b) Once appropriate stamp duty is paid on the Development Agreement, separate stamp duty need not be paid on the PAAA beyond Rs.100/- if it relates to the reconstructed premises made available instead of the old premises used/occupied by the member.
- (c) Additional stamp duty is payable on a PAAA between a developer and a society member only to the extent of additional area purchased by the member over and above any area that is offered to the member instead of the earlier premises

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⁴ Maharashtra Stamp Act, 1958 art 5 (g-a), art 25 (b) Schedule-I