

THE
BOMBAY CASES REPORTER
2023(1)
ARTICLE

COLLECTOR'S LAND - TRANSFER OF FLATS - PREMIUM TO COLLECT
AND NO OBJECTION CERTIFICATE FROM COLLECTOR

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(Q) In the City of Mumbai, there is freehold land and leasehold land available for the Citizens. In respect of Leasehold land, Government Lessors comprise of The Collector (Mumbai office and Suburban Office), Maharashtra Housing and Development Authority (MHADA), City and Industrial Development Corporation (CIDCO), Mumbai Municipal Corporation (MMC) and then there are private individual Lessors.

In all such Government Lessors, it is known that the State Government invites offers for lease of plot of land. Various builders make a bid for the lease of land and upon being allotted such land, the builders directly, as the case may be, construct buildings thereon and sell flats/commercial units on ownership basis to the public at large on the lease Land. Where the builders upon the requisite number of sale of the units/flats, then form a Co-Operative Society comprising of flat purchasers as stipulated under Maharashtra Ownership Flats Act, 1960 (MOFA) and is stipulated under Real Estate Regulatory Authority RERA (RERA) and the said units/flats in the building may thereafter subsequently be are sold and re-sold.

The Collector on the Government Resolutions dated 8th May, 1983 and 9th July, 1999, claimed a premium as a condition for grant of permission for transfer of flats in respect of those plots of land owned by the Collector. This reliance by the Collector on the Government Resolutions and the Collector's insistence to charge a premium for transfer of flats became a hot bed of litigation which ultimately came to be decided by the Division Bench of the Bombay High Court, who by its order of 29th September, 2009, quashed the Government Resolutions. The Division Bench of the Bombay High Court in the matter of *Aspi Chinoy and anr. Vs. The State of Maharashtra*, in detail considered the Government Resolutions both of the year 1983 and 1999 and held that the 1999 Resolution is merely a modification of the 1983 Resolution. The Division Bench on a fair reading of the Government Resolutions (GR's), held **Firstly** that a Co-operative Housing Society must seek grant of land and **Secondly** that grant of land must be sought at concessional rate. That in the instant case on hand, the Hon'ble Court observed that admittedly the allotment was not made at a concessional rate and was made after calling bids at a competitive rate and that the land was not allotted to a Co-operative Housing Society and therefore, it held that the Government Resolutions would not apply.

The Hon'ble Court concluded that both the Government Resolutions do not apply to the grant of the lease of land in the facts and circumstances of the case, and held that the State Government does not have a right to ask the petitioner to seek its previous approval before entering into the transaction and hence it does not have any power to demand any premium before transferring the flat.

The State challenged the decision before the Apex Court and a Judgment was recently delivered by their Lordships Hon'ble Mr. Justice B.R. Gavai and Hon'ble Mr. Justice V.V. Nagarathna. The appeal filed by the State against the order of the Division Bench of the Bombay High Court was dismissed by the Apex Court.

The Apex Court (a) upheld the contentions of the High Court and held that the 1983 Government Resolution provided for grant of land to Co-operative Societies of different categories on concessional rates, (b) held that the 9th July, 1999 Government Resolution was in continuation of the Government Resolution 12th May, 1983 and which is applicable to Co-operative Societies to whom the Government lands are sanctioned on concessional rates and (c) held that the land in question in the instant case before the Apex Court was allotted to the builder in response to a public notice and after the builder was successful in a bidding process and as per the terms of the bid, builder was required to construct building and to sell flats for purpose of private residence and therefore, Apex Court concluded that the case on hand was not a case, where land is allotted to a Co-operative Society by the Government.

This decision has finally laid to the rest the vexed question of whether the Collector has the right to seek a premium and grant his no objection whenever a flat in a co-operative society on Collector's land is put up for sale.

Nonetheless, the ground reality is that the Collector continues to collect the premium on sale/transfer of flat on land owned by the Collector, *inter alia*, citing section 37A of the Maharashtra Land Revenue Code, 1966.

In this regard, it may be noted that on March 3, 2015 the Maharashtra Land Revenue Code, 1966 was amended and section 37A was introduced as under:

Section 37A of the Maharashtra Land Revenue Code, 1966, provides for restriction on sale, transfer, redevelopment, change of use of any Government land and Nazul land. The section provides that -

- “(1) Every sale, transfer, redevelopment, use of additional Floor Space Index (FSI), transfer of transferable Development Rights (TDR) or change of use of any Government land in Amravati and Nagpur Revenue Divisions including the Mumbai City and Revenue Divisions in the State, which is granted for various purposes under the provisions of this Code or rules made thereunder or any law relating to land revenue, before the commencement of this Code, including the Nazul lands in Amravati and Nagpur Revenue Divisions shall be subject to taking the prior permission of the State Government.

(2) *The State Government shall, while granting such permission as required under sub-section (1), recover such premium or charge and share of unearned income subject to such terms and conditions as may be specified, by general or special order, issued by the Government, from time to time:*

Provided that, if the provisions of this section or of any such orders issued thereunder are inconsistent with the terms and conditions of the order of land grant or the lease deed executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment), 2012, the terms and conditions of such order of land grant or lease deed shall prevail:

Provided further that, in case of the nazul lands in Amravati and Nagpur Revenue Divisions, the provisions of sub-section (1) shall not be applicable with retrospective effect.

The explanation to the section further provides that -

- (a) "Government land" includes the Government land or part of such land or building erected on such land or part thereof or any right or any benefit arising out of or share in relation to such land or building or part of such land building;
- (b) "nazul land" means the type of Government land used for non-agricultural purpose such as building, road, market, playground or any other public purpose or the nazul land which has potential for such use in future including such lands granted on long or short term lease or on no compensation agreement"

The above provision of section 37A of the Maharashtra Land Revenue Code 1966 has been considered by the Bombay High Court in the matter of *Hindustan Uniliver Ltd. Vs. State of Maharashtra*, (2018)4 Bom.C.R. 204 decided on 3rd May, 2018. The Division Bench has held that the State Government has the power to recover the unearned income and the power to recover premium of transfer fees and clarify that whether all of this can be recovered would depend on facts and circumstances of each case. The Division Bench held that only if the terms and conditions of the lease permits the State Government on recover such premium or charge or share of unearned income. The Division Bench went on to hold that the provisions of section 37A and section 295 of the Maharashtra Land Revenue Code, 1966 are constitutional legal and valid subject to the construction placed thereon by the Division Bench as provided for in the judgment.

In the matter of *Geecy Developers Vs. State of Maharashtra*, decided on 15th April, 2019, His Lordship Mr. Justice S.C. Gupte (Retd.) observed and held that the subject Sanads held by the petitioners therein did not contain any condition of payment of unearned income to the State as a condition for transfer of the properties being part of the Sanads. Section 37A(2) clarifies the grant of permission by the State Government to recover premium or charge and share of unearned income shall be subject to such terms and conditions as may be specified by general or special order issued by the Government from time to time. The Bombay High Court

relying on the decision in the matter of *Vinod Harikishan Gupta Vs. Minister of Revenue, State Government*, 2006 B.C.I. (soft) 368 : 2006(6) All.M.R. 217, held that the provisions of section 37A are consistent with the law as stated in *Vinod Harikishan Gupta's* case and further held that the terms and conditions of order of land grant or lease deed shall prevail in the matter of the State's right to recover any premium or charge or share and unearned income from the grantee of a land and as there was no such condition specified in the Sanad, the Hon'ble Court allowed the petition and directed the City Survey Officer to transfer the land without insisting on either an NOC or of any payment of any share of unearned income.

In view of the decisions of the Supreme Court of India as well as the Bombay High Court, the public at large can heave a sigh of relief and can proceed for transfer of their flats on the land owned by the Collector without the burden of making payment of premium to the Collector.

Various flat purchasers thus will be entitled to avail the benefit of the verdict of the Apex Court as well as the Bombay High Court. However, as laid down by Supreme Court, the relief would be available to such flat purchasers who would come within the four corners of the facts of the case in the matter of *Aspi Chinoy and another*. In other words, where the land was not allotted to the Society, but to a builder on lease, who has constructed flats for private individuals who have subsequently formed a Co-operative Society, in those cases, the Government Resolutions would not be applicable to members of Society. Similarly, as the Bombay High Court has held that provisions of section 37A and section 295 of the Maharashtra Land Revenue Code are constitutionally legal and valid, it will be within the power of the Collector to levy premium in cases which do not fall within the facts of the case in the above cited judgments. However, in reality despite the judicial pronouncement from both the Bombay High Court and the Apex Court, the Collector continues to levy premium for transfer upon all lands owned by the Collector in the City of Mumbai.
