

కోర్టు తీర్పులు :
స్థిరాస్తి కొనుగోలును విక్రయదస్తావేజు ద్వారానే సమోదు చేసుకొవాలి

(2011 (6) ALT 1 (SC)

IN THE SUPREME COURT OF INDIA

R.V. RAVEENDRAN, A.K. PATNAIK and H.I., GOKHALE, JJ.

Special Level Petition (C) No. 13917 of 2009- Decided on 11-10-2011.

Suraj Lamp & Industries Pvt. Ltd.

Vs.

State of Haryana and another

TRANSFER OF PROPERTY ACT, 1882, Section 5,54, 53A and 55 - Stamp Act, 1899, Section 27 and Article 23-Registration Act, 1908, Section 17- Powers of Attorney Act, 1882, Sections 1A and 2-India Succession Act, 1925, Sections 69 and 70- (i) General Power of Attorney sales (GPA Sales) - (ii) Sale agreement / ('SA/GPA/WILL' transfers) - Both descriptions misnomers - There cannot be a sale by execution of power of attorney nor by execution of an agreement of sale and power of attorney and Will-Such kind of transactions lead to loss of revenue (stamp duty) and increase in litigation and to defective title - III-effects are generation of black money and land mafia-Validity and legality of 'SA/GPA/Will' transactions - Advantages of Registration - Registration of documents makes process of verification and certification of title easier and simple - Reduces disputes and ligitations to large extent - SA/GPA/ WILL transaction does not convey any title nor create interest in immovable property - Observations of Delhi High Court in Asha M.Jain's case (94 (2001) DLT 841) "Concept of power of attorney sales have been recognized as a mode of transaction" while dealing with SA/GPA/ WILL, transactions unwarranted and not justified- Transactions of "GPA Sales" or SA/GPA/ WILL transfers" do not valid mode of transfer of immovable property - Cannot be recognized as deeds of title, except to the limited extent of Section 53A of T.P.Act - Cannot from basis for mutation - All this applies not only to freehold property but to leashold property also - A lease registered assignment of Lease.

Note : Extensive reference made to Suraj Lamp & Industries Pvt. Ltd. V. State of Haryana (2009) 7 SCC 363.

Not good law-Observation of Delhi High Court in Asha M. Jain's case (94(2001) DLT 841) recognizing accepting SA/GPA/ WILL transaction as concluded transfers, as contrasted from an agreement transfer, are not good law.

Held : Registration of documents makes the process of verification and certification of title easier and simpler. It reduces disputes and litigations to a large extent. (Para 10)

Therefore, a SA/GPA/ WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. jain v. Canara bank (94 (2001) DLT 841), that the "concept of power of attorney sales have been recognized as a mode of transaction when dealing wih transaction by way of SA/GPA/ WILL are unwarranted and not justified, unintendedly misreading the general public into thinking that SA/GPA/ WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/ WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law. (Para 15)

We therefore reiterate that immovable property can be legally and lawfully transferred / conveyed only by a registered deed of conveyance. Transactions of the nature of ‘GPA sales’ or SA/ GPA/ WILL transfers’ do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. (Para 16)

TRANSFER OF PROPERTY ACT, 1882, Section 5, 54, 53A and 55- Stamp Act, 1899, section 27 and Article 23-Registration Act, 1908, Section 17- Powers of Attorney Act, 1882, Sections 1A and 2-Indian Succession Act, 1925, Sections 69 and 70- Non application of observations herein made - Clarification of - Not intended to affect validity of sale agreements and powers of attorney executed in genuine transactions - For example : (i) Giving power of attorney to relation like spouse, brother, sister, to manage affairs of property or execute conveyance deed (ii) Development of land to form plots or construct apartment buildings - May execute agreement of sale and grant power of attorney empowering developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in land relating to apartments in favour of prospective purchasers.

Held : We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding ‘SA/ GPA/WILL transactions’ are not intended to apply to such bonafide / genuine transactions. (Para 19)

JUDGMENT

Per R.V. Raveendran, J.

By an earlier order dated 15.5.2009 [reported in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana* and another (1) 2009 (7) SCJ 593 = (2009) 7 SCC 363], we had referred to the till - effects of what is known as General Power of Attorney Sales (for short ‘GPA Sales’) or Sale Agreement / General Power of Attorney/ Will transfers (for short ‘SA/GPA/ WILL’ transfers). Both the descriptions are misnomers as there cannot be a sale by execution of a power of attorney nor can there be a transfer by execution of an agreement of sale and a power of attorney and will. As noticed in the earlier order, these kinds of transactions were evolved to avoid prohibitions/ conditions regarding certain transfers, to avoid payment of stamp duty and registration charges on deeds of conveyance, to avoid payment of capital gains on transfers, to invest unaccounted money (‘black money’) and to avoid payment of ‘unearned increases’ due to Development Authorities on transfer.

Conclusion

Therefore, a SA/GPA/ WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank* (5) 94 (2001) DLT 841, that the “concept of power of attorney sales have been recognized as a mode of transaction” when dealing with transactions by way of SA/GPA/ WILL are unwarranted and not justified, unintentionally misleading the general public into thinking that SA/GPA/ WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/ WILL transactions as concluded transfers, as contrasted from as agreement to transfer, are not good law.

We therefore reiterate that immovable property can be legally and lawfully transferred / conveyed only by a registered deed of conveyance. Transactions of the nature of ‘GPA sales’ or ‘SA/GPA/ WILL transfers’ do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/ WILL transactions known as GPA sales.

We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding ‘SA/GPA/ WILL transactions’ are not intended to apply to such bonafide / genuine transactions.

As the issue relating to validity of SA/GPA/ WILL has been dealt with by this order, what remains is the consideration of the special leave petition on its merits. List the special leave petition for final disposal.

సెక్షను 22-ఏ అమలుపై ప్రభుత్వ స్పష్టికరణ ఉత్తర్వులు

GOVERNMENT OF ANDHRA PRADESH
REVENUE (REGN-I) DEPARTMENT

Memo No. 50834/Regn.1/A1/2010-6

Dated: 22.10.2011

Sub: Revenue (Registration and Stamps) Department - Lands notified under Section 22-A of the Registration Act, 1908 - Review of cases - Certain instructions issued.

Ref: 1. Govt. Memo No. 50834/Regn-I/A1/2010, dated: 29.12.2010.
2. From the District Collector, Ranga Reddy district Lr. No. E5/141/2011, dated: 21.07 2011

1. In the reference 1st cited, the District collector, Ranga Reddy District was requested to do a re-verification of all the notifications made by the Government under section 22-A of the Registration Act, 1908 and send report to the Government indicating the mistakes and the grounds thereof to enable the Government to rectify them by issuing appropriate orders.

2. In the reference 2nd cited, the District Collector, Ranga Reddy District has reported that notifications under section 22-A of the Registration Act, 1908 were issued in the year 2005-06 and the above provision was amended by the Registration (Andhra Pradesh Amendment) Act, 2007 and therefore requested to clarify whether fresh proposals need to be furnished to re-notify these properties under the new provision or whether the previous notifications holds good even now.

3. The Government have examined the matter and observe that. as per Section 3 of the Registration (Andhra Pradesh Amendment) Act, 2007 (Andhra Pradesh Act No. 19 of 2007), the notifications issued under pre-amended section 22-A of the Registration / Act are valid from 01.04.1999 to the date of commencement of the Registration (Andhra Pradesh Amendment) Act, 2007, i.e. 08.06.2007. In view of the above legal position obtaining now, all the previous notifications issued prior to 08.06.2007 ceased to exist and therefore de-notification of any land covered under old notification is not required.

4. However, thereafter a new provision has come into effect and under the amended section of 22-A of the Registration Act effective from 08/06/2007 and the following categories of documents are prohibited from registration under the said provision.

- (a) Documents relating to the transfer of immovable property prohibited under any State or Central Act.
- (b) Documents relating to immovable property owned by the State and Central Government. unless executed by the lawful authority,
- (c) Documents relating to the immovable property owned by religious and charitable endowments or Wakfs, unless executed by the lawful authority,
- (d) Agricultural or urban ceiling surplus lands,
- (e) Any documents or class of documents pertaining to the properties in which avowed or accrued interests of Central and State Governments, local bodies, educational, cultural, Religious and Charitable institutions, those attached by Civil, Criminal, Revenue Courts and Direct and Indirect Tax laws and others which are likely to adversely affect these interests.

5. The documents mentioned in Clauses (a) to (d) para 4 above are automatically prohibited from registration as and when such properties are brought to the notice of the Registration Authority by the concerned Department / Authority. In respect of properties covered under amended section 22-A (1)(e) of the above Act only, it is necessary to issue a specific notification by the Government under sub-section (2), prohibiting registration of such documents.

6. This is issued by way of a clarification only.

M.SAHOO
PRINCIPAL SECRETARY TO GOVERNMENT

మోసపూరితమైన జి.పి.ఎ.ల ద్వారా జరిగే తప్పుడు రిజిస్ట్రేషన్ల నివారణ చర్యలు

**OFFICE OF THE COMMISSIONER & INSPECTOR GENERAL OF
REGISTRATION AND STAMPS, A.P., HYDERABAD**

Circular.No.G1/7326/2012

Dated : 22.03.2012

Sub: Registration Act - Measures to curb the menace of fraudulent registration due to Registration due to false GPA's - Certain instructions - Issued.

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Many cases of multiple and fraudulent registrations of properties due to false GPAs or by false personation of original owner are reported. It is causing irreparable loss to genuine owners and the claimants who purchase such properties and such cases lead to protracted litigation. Considering the seriousness of the problem, legal aspects and in the light of judgments delivered by the Honorable Courts in such cases, in order to safeguard interests of the registering public, the following instructions are issued order to safeguard interests of the registering public, the following instructions are issued for strict compliance w.e.f. 02.04.2012.

1. The Registering Officers shall insist for filing of the latest E.C for the said property along with the document at the time of presentation of GPAs for sale / development / constructions of immovable property, Sale deeds executed by the GPA holder.
2. After presentation of the documents for the registration, the registering Officer shall examine the E.C so produced and verify whether the name of the stated owner / Principal of the property in the document presented is tallied with the name of the claimant of the previous registered transaction, if such name is tallied the Registering Officer shall proceed with the registration of the said document.
3. When the name of owner / principal of the property in the document presented for registration is not reflected in the E.C. submitted at the time of registration, the Registering Officer shall advise the executant / G.P.A. holder for filing a declaration Stating the mode of acquisition of the scheduled property by the owner in the document and the same fact shall be brought to public notice by posting the information about registration of such GPAs and Sale deeds on the Website of the department. The Sub-Registrar shall inform all such cases to District Registrar, who in turn will take necessary steps to post the information in website.
4. If such declaration or any statement filed/given by the parties before the registering officer is subsequently proved to be false, the Registering Officer shall launch prosecution U/s. 82&83 of Registration Act.
5. It is emphasized that these instructions are issued only in public interest to safeguard the interests of the genuine owners and the innocent buyers of the properties and by no means it shall result in harassment of the parties in genuine cases.
6. The progress of the prosecution cases will be monitored by the special cell headed by the Joint Inspector General dealing with the subject in the office of Commissioner & Inspector General of Registration and Stamps, A.P., Hyderabad.

The receipt of the circular shall be acknowledged forthwith.

**Commissioner & Inspector General of
Registration and Stamps, A.P., Hyderabad.**

జూనియర్ అసిస్టెంట్లను ఇన్‌చార్జ్ సబ్ రిజిస్ట్రార్లుగా నియమించవద్దు

CIRCULAR

No. G1/5363/2012Dated.09.03.2012

Sub:- Registration and Stamps Department –Registration of Documents by in charge Sub-Registrars –Further instructions – Issued- regarding .

Ref:- 1. This office Circular Memo No.G1/13450/2007, Dt. 31.07.2007.
2. This office Circular Memo No. G1/13450/2007, Dt. 29.08.2007.
3. This Office Circular Memo No.G1/13450/2007, Dt.09.10.2007.

The attention of all the Deputy Inspectors General and District Registrars is invited to the references cited. It has come to the notice of the Commissioner and Inspector General that in most of the sub- Registrar offices unqualified Junior Assistants are placed in charge of the office during the Casual/Earned leave period of the regular Sub Registrar as they are registering high Market Value and miscellaneous documents in which loss of Revenue is being detected by the Audit officers. To plug the loss of Revenue to the State Exchequer it is felt necessary to reiterate instructions issued in the matter through the reference 3rd cited and in addition to that, to follow the following procedure scrupulously in future.

In case the Regular Sub- Registrar is absent on Casual Leave or other duty or earned leave, the incharge arrangements for the post of Sub-Registrar shall be made by the District Registrar by appointing a senior Assistant either from the same Sub Registrar's office or from another Sub Registrar Office. No person working as Junior Assistant shall be made incharge Sub Registrar due to any other exigency.

These instructions should be followed scrupulously.

Sd/-K.MadhusudhanaRao
Commissioner and Inspector General of
Registration and Stamps, A.P., Hyderabad