IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.125 OF 2016

Dharmendra P. Bhatt .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

…

Ms. Yogita Deshmukh for the Petitioner.

Mr. M.M. Pabale, A.G.P. for Respondent Nos.1 to 8.

CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATED : 26th AUGUST, 2019.

ORAL JUDGMENT:-

1. Heard learned counsel for the parties.

2. The case pleaded in the Public Interest Litigation is that since the Real Estate (Regulation and Development) Act, 2016 ("**RERA**") vide clause (k) of Section 2 defines 'carpet area' and the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("**MOFA**") mandates that a flat has to be sold with reference to carpet area, an instrument conveying title in a flat has to be charged stamp duty only with respect to the carpet area of

the flat and not in relation to the consideration mentioned in the instrument of transfer.

3. Clause (n) of Sub-Section(2) Section 3 of the MOFA reads -

> *"(n) sell flat on the basis of the carpet area only:*
>
> *Provided that, the promoter may separately charge for the common areas and facilities in proportion of the carpet area of the flat."*

4. Suffice it to state that as per the above clause, the obligation of the builder may be to sell the flats on the basis of the carpet area but the proviso clearly says that the promoter may separately charge for the common areas and facilities in proportion of the carpet area of the flat.

5. Except for defining carpet area and common area, RERA guides no further.

6. Under the Maharashtra Stamp Act, clause (na) of Section 2 defines 'market value' to mean as under:

> *"(na) 'market value' in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher"*

7. Article 25 of the Schedule I of the Maharashtra Stamp Act defines a conveyance to mean transfer not being a transfer charged or exempted under Article 59. Article 59 pertains to debentures, bonds, mortgage deeds, etc.

8. The three statutes operate in their own domain. For the purpose of levy of stamp duty, it is the Stamp Act alone which has to be seen. As noted above, MOFA permits charges to be levied as price of the sale pertaining to common areas while requiring the document of sale describing the exact carpet area.

9. The Maharashtra Stamp Act focuses on the money paid to acquire interest under a conveyance and thus we hold that concerning a flat, the conveyance deed would attract stamp duty as per the market value defined under the Maharashtra Stamp Act and at the rate as per Article 25 thereof.

10. The Public Interest Litigation is dismissed.

(SMT. BHARATI DANGRE, J.) **(CHIEF JUSTICE)**