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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2025

PRONOUNCED ON : 09.06.2025

CORAM:

THE HON'BLE DR. JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR. JUSTICE C. KUMARAPPAN

W.A.No. 1723 of 2023 & W.P. No. 32506 of 2023

&

C.M.P.No. 15235 of 2023 & W.M.P. Nos. 32112 & 32113 of 2023

W.A. No. 1723 of 2023

The Real Estate Regulatory Authority,
rep. by its Chairperson,
Thalaimuthu Natarajan Maligai,
No.1, Gandhi Irwin Bridge Road,
Egmore, Chennai – 600 008.

..Appellant

Vs.

1.S.M. Syed Abdul Khader Mutawalli,
S.M.M. Mohideen Wakf Alal Aulad,
55/24, Soorapamudali Street,
Triplicane,
Chennai – 600 005.

2.The Sub-Registrar,
Virugambakkam,
47/5, Arcot Road,
Udhayam Colony,
Lambert Nagar, Virugambakkam,
Chennai – 600 083.



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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3.The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.

..Respondents

Prayer in W.A.No. 1723 of 2023: Writ Appeal filed under Clause 15
of Letters Patent Act as against the order dated 22.11.2022 made in W.P.
No. 28488 of 2022.

For Appellant : Mr. Om Prakash
Senior Counsel for
Mrs.R.Varalakshmi

For Respondents : Mr. Mukundan for
M/s. Menon, Karthik
and Mukundan
for R1
Mr.K. Karthik Jagannath,
Govt. Advocate for R2 & R3

W.P. No. 32506 of 2023:

M/s. Radial IT Park Pvt. Ltd.,
Unit 7 & 8, First Floor,
Pinnacle Building,
International Tech Park,
CSIR Road, Tharamani,
Chennai – 600 113 rep. by its
Authorised Signatory

..Petitioner

Vs.

1.State of Tamil Nadu,
rep. by its Principal Secretary,
Housing and Urban Development,
Secretariat, Fort St. George,



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

Chennai – 600 023.

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2.The Tamil Nadu Real Estate Regulatory
Authority, rep. by its Chairman,
No.1A, 1st Floor,
Gandhi Irwin Bridge Road, Egmore,
Chennai – 600 008.

3.The Member Secretary,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

4.The Sub Registrar,
Pallavaram,
Chennai South Sub Registrar Office,
No.7, 2nd Main Road,
New Colony, Chrompet,
Chennai – 600 044.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records from the file of the 2nd respondent bearing Letter No. TNRER/A4/05688/2023 dated 11.07.2023 issued to the 4th respondent and quash the same as illegal and consequently direct the 4th respondent to register any document presented by the petitioner.

For Petitioner : Mr.A.R.Karunakaran

For Respondents : Mr.K.Karthik Jagannath
for R1 & R4

Mr.P. Kumaresan



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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

Addl. Advocate General
assisted by
Mr.V. Sudalai Selvan,
Standing Counsel for R3

Mr. Om Prakash,
Senior Counsel for
Mrs. R.Varalakshmi for R2

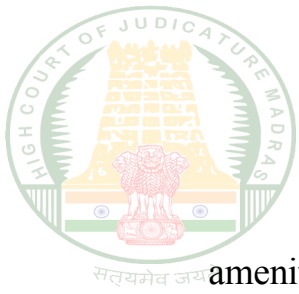
COMMON JUDGMENT

(Per :- DR. ANITA SUMANTH,J.)

This common order is passed disposing the writ appeal and connected writ petition since the questions that arise for resolution are one and the same, and they have thus been clubbed to be heard together. The facts involved also turn more or less on a similar factual matrix.

Facts in W.P.No.32506 of 2023 and submissions of Mr.Karunakaran:

2. First, the facts in W.P.No. 32506 of 2023 as set out by Mr.Karunakaran, appearing for the petitioner. The petitioner claims to be the owner of lands in several survey numbers in MMRD Road (Radial Road) in Zamin Pallavaram village (property / property in question). The Petitioner set about developing a commercial complex comprising triple basement floors, ground floor and ten floors comprising office space, food court, shops, waiting area space for GIS substation and other



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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amenities for the purposes of IT/ITES companies, in two blocks.

3. The Member Secretary to the Chennai Metropolitan Development Authority (CMDA), arrayed as 3rd Respondent in the writ petition, had issued a planning permit dated 03.10.2020 valid till 02.10.2025. Soon thereafter, the petitioner received a letter from the Tamil Nadu Real Estate Regulatory Authority (TNRERA/Authority) putting the petitioner to notice that every promoter / individual / developer should apply to it seeking registration of their real estate projects, prior to marketing or alienating the plots.

4. Reference was made to Section 3(1) and 4(1) of the Real Estate (Regulation and Development) Act, 2016 (Act) and Rule 4 of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (Rules). The petitioner was called upon to comply under threat of action under Section 59(1) and 59(2) of the Act.

5. The petitioner responded stating that no alienation of the building was intended, notwithstanding which, TNRERA insisted on the registration, cautioning the petitioner not to market the project or alienate plots until such time the project was registered. The petitioner yet again reiterated that the project was developed using its own funds and that it



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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did not intend to market or sell any part of the project.

6. It made clear its intention to only rent the built-up area to IT companies and that too after receipt of completion certification from CMDA. There was no response to the aforesaid communications leading the petitioner to believe that its stand had been accepted. By way of abundant caution, and having regard to the initial stand taken by the Authority, the petitioner approached the Authority for a No Objection Certificate (NOC) as CMDA insisted thereupon as a pre-condition for issuance of completion certificate (CC).

7. The Authority had issued a letter on 11.07.2023 acquiescing to the position that the project of the petitioner did not call for registration with it, as it had been informed that the building was not meant for sale or lease. Based on the same, CMDA issued a partial completion certificate on 31.08.2023.

8. While so and the petitioner was proceeding with the completion of the building, and raising monies using the same to fund its business activities, it came to know that the Authority had issued a direction to the Sub Registrar, Pallavaram (Sub Registrar) to desist from registering any documents relating to the petitioner's property.



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

WEB COPY

9. On an enquiry made under the Right to Information Act, 2005 (RTI Act), the petitioner came to know that the Sub-Registrar had been called upon under impugned order dated 11.07.2023 not to register any sale / lease deeds relating to the property in question.

10. The Sub Registrar has acted upon the impugned order refusing to register lease deed dated 16.10.2023 for a period of 12 months entered into by the petitioner with Capital Land Services (India Private Limited) issuing refusal cheque slip dated 17.10.2023 bearing No. RFL/Pallavaram/14/2023.

11. The petitioner states that it is seriously prejudiced by virtue of the aforesaid orders as being wholly contrary to the provisions of the Act. Having noted that the building was intended for the petitioner's own use, the Authority had erred in issuing the impugned directive to R4. Mr.Karunakaran confirms that the petitioner does not intend to either circumvent the provisions of the Act or to let out the units on a perpetual or a long lease.

12. In such circumstances, there is no requirement for registration under the Act, particularly since the Authority had itself accepted the position that the petitioner's project does not require registration under



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

WEB COPY

its letter dated 11.07.2023 as the units were not intended for sale / lease.

13. Our attention is drawn to Section 3 of the Act as per which prior registration with the Authority is required only in the case of those projects in respect of which completion certificates have not been issued. In the present case, CMDA had issued completion certificate on 31.08.2023 itself and hence there can be no further requirement for registration thereafter. He relies on the decision of the Bombay High Court in *Lavasa Corporation Limited v Jitendra Jagadish Tulsiani and another*¹.

Facts in W.A.No.1723 of 2023 and the submissions of Mr.Mukundan

14. Now, the facts in W.P.No. 28488 of 2022, the allowing of which had led to W.A.No. 1723 of 2023 filed by TNRERA, wherein that Writ Petitioner is arrayed as R1 (hereinafter referred to as R1). R1 had sought a quash of order dated 24.06.2021 passed by the TNRERA, and a consequential direction to the Sub Registrar, Virugambakkam to register lease deed entered into by it with one Infinity Retail Limited. The writ petition came to be allowed as against which the Authority is in appeal.

15. Mr.Mukundan, who appears on behalf of R1 submits that R1

¹ 2018 SCC OnLine Bom 2074



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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had obtained planning permission from CMDA on 15.06.2016 for constructing a building comprising stilt plus three floors plus part fourth floor in Door No. 175/1L and 2L, Arcot Road, Survey No. 15/1, Block No.8, Saligramam Village, Chennai – 600 026 (property 1 / property in question 1)

16. According to R1, property 1 comprises Waqf property as per Waqf deed dated 20.06.1957. R1 confirms that Waqf property cannot be sold under any circumstances under the Waqf Alal Aulad as the property is only for the benefit of his children and their descendants. This position was conveyed to the Authority on 03.10.2017 and reiterated on 16.06.2021 wherein R1 confirms that the property was being retained for their own use and was not intended to be sold or leased.

17. It is true that despite such confirmation R1 has proceeded to execute lease deed for a period of 18 years with Infinity Private Limited on 27.08.2022. To this extent, the statements of R1 under letters dated 03.10.2017 and 16.06.2021 are incorrect. Be that as it may, Mr.Mukundan, submits that there is no prohibition under the Act for lease of the units and R1 confirms categorically that he does not intend to sell the property.



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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18. Since the arrangement with Infinity Private Limited was only a lease for 18 years, the impugned communication dated 24.06.2021 to the CMDA and Sub-Registrar, Virugambakkam, is unwarranted, contrary to the provisions of the Act and the learned Judge had rightly quashed the same allowing the writ petition and directing the Sub Registrar to register the lease deed on payment of necessary stamp duty and registration charges. He also places reliance on the decision of the Bombay High Court in *Lavasa Corporation Limited*².

Submissions by Mr.Om Prakash for Mrs. Varalaxmi on record for the Tamil Nadu Real Estate Regulatory Authority

19. Mr.Om Prakash, learned Senior Counsel, appearing for the Authority, arrayed as respondent in writ petition and appellant in W.A.No. 1723 of 2023 would take us through the scheme of the Act highlighting that the Act was intended to regulate and promote the real estate sector. It is an aid to efficiency and transparency. Importantly, it is intended to protect the interest of consumers in the real estate sector. Thus the grievances portrayed by the project developers are unwarranted.

20. The Act, according to him, enables the monitoring and overseeing of all real estate projects in the larger interest of the citizenry as

² Foot note supra 1



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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well as potential purchasers. It provides for a mechanism to ensure that the investment by purchasers are protected and the role of the Authority extends to ensuring that the quality of construction is sound, in the general interests of society. He points out that, if really the statements of the Petitioner and R1 to the effect that the properties will not be sold is correct, there can have no grievance in registering the projects in terms of the Act.

21. Our attention is drawn to the provisions of the Act, including the definitions, indicating the role of the Authority, the purpose that it is intended to serve and the ample power that has been vested in the Authority to check non-compliance with the provisions of the Act, including non-registration and imposition of penalties in this regard.

22. Learned Senior Counsel draws attention to the observations of the writ court under impugned order dated 22.11.2022 where the Court has interpreted the provisions of the Act literally, to conclude that the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 is intended to apply only in those cases where the property concerned has been sold.

23. Various nuances in the interpretation of the statutory provisions



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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and the fact that the enactment is itself intended as a measure of protection against unscrupulous real estate developers has not been taken note of by the writ court. He cites the following cases in support of his submissions (i) *Bar Council of Maharashtra v M.V.Dabholkar and others*³, (ii) *Regional Transport Authority, Meerut Region, Meerut, through its Secretary, Regional Transport Officer, Meerut and another v Sri Ram*⁴ and (iii) *Gujarat Real Estate Regulatory Authority v Satyam Infracon*⁵.

24. We have heard all learned counsel and have perused the material papers.

Outline and scheme of the Act

25. The object of the Act is to regulate the real estate sector and as a consequence, to ensure professionalism in the sector, standardisation in quality of real estate projects and to afford adequate consumer protection. In the statement of objects and reasons, it is said that though remedies under the Consumer Protection Act are available to buyers in the real estate market, such recourse is only curative and has not been seen to be adequate or effective in addressing the concerns of buyers. It is for that

³ Foot Note supra 3

⁴ 1973 SCC OnLine All 12

⁵ R/RERA Appeal No.1 of 2020 dated 09.03.2021 (Guj HC)



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

WEB COPY

purpose that the legislation has been enacted, also providing for an Appellate Tribunal to hear appeals from the orders of the Real Estate Regulatory Authority.

26. Under the definition clause, an allottee is defined as follows:

2. Definitions.- In this Act, unless the context otherwise requires,

.

(d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or buildings, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

27. An apartment is defined under Section 2(e) as follows:

(e) “apartment” whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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28. The Act seeks to regulate all types of units, be it commercial, residential or a unit of any other nature, including a flat, office, showroom, shop, godown or called by any other name. The activity in such a unit may be business, professional, commercial or residential, irrespective of which, the overseeing of such a project would come under the sweep of the Act.

29. Likewise, a 'building', defined under clause (j) of Section 2, includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes.

30. The promoter of a real estate project is defined under 2 (z)(k) as follows:

(zk) "promoter" means,-

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or.....

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in



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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

31. A real estate project is defined under 2(z)(n) thus:-

(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and



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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

structures thereon, and all easement, rights and appurtenance belonging thereto;

32. Section 3 places an embargo on a promoter from advertising, marketing, booking, selling or offering for sale, or inviting persons to purchase a plot or apartment or a building in a real estate project without registration of that project with the Real Estate Regulatory Authority. The first proviso to Section 3 states that projects that were on-going on the date of commencement of the Act, for which completion certificate had not been issued, shall be registered within a period of three months from date of commencement of the Act.

33. The Act applies to all real estate projects, barring those exclusions set out under Section 3(2), meaning that no registration is required in the case of a project where the area of land proposed to be developed does not exceed five hundred square meters or where the number of apartments proposed to be developed does not exceed eight, inclusive of all blocks/phases.

34. In a case where the real estate project satisfies the parameters set out under the Act, an application is to be made to the Authority under Section 4 of the Act for registration, which is to be considered by the



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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Authority within 30 days of receipt thereof, in terms of Section 5, dealing with the grant of registration.

35. The Application is to contain the details stipulated under Section 4(2), being:

...

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;

(e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire- fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;

(f) the location details of the project, with clear demarcation



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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;

(g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas appurtenant with the apartment, if any;

(i) the number and area of garage for sale in the project;

(j) the names and addresses of his real estate agents, if any, for the proposed project;

(k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a

scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

36. In the event the Authority believes that the application is not

liable to be considered positively, a speaking order setting out the reasons



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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for refusal shall be passed after hearing the promoter. If the application is accepted, or in the event, no order has been passed on the application within 30 days from receipt thereof, in which case it shall be deemed to have been accepted, the Authority shall register the project and grant access to promoter to the website to take the project online in the official portal of the Authority.

37. Section 7 provides for the revocation of registration of the project if the Authority believes that there are defaults or violations by the promoter or is the promoter was engaging in malpractices or irregularities. The obligations of the Authority in the event of lapse of, or revocation of registration are provided under Section 8. We are not concerned with this scenario in the present case and hence do not elaborate.

38. Under Chapter III, Sections 11 to 18 touch upon the functions and duties of a promoter. In the context of lease hold land, clause (c), sub-section 4 of Section 11 is relevant and states thus:

11. Functions and duties of Promoter

...

(4) The Promoter shall-

...

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land,



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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees.

39. Section 19 under Chapter IV deals with the rights and duties of an allottee and sets out in detail such entitlements. Section 19 proceeds on the basis that an allottee is a purchaser of a unit in the real estate project.

40. Section 20 to 40 coming under Chapter V touch upon the establishment and incorporation, composition, constitution, functions and powers of the Real Estate Regulatory Authority. Suffice it to say that the powers are wide and comprehensive and are intended to ensure that the Authority oversees and manages all aspects of functioning of the real estate sector. Section 32 provides for its functions, and clause (c) thereof extends the functions to encompass the creation of a transparent and robust grievance redressal mechanism against acts of omission and commission by competent authorities and their officials.

41. Competent authority is defined under Section 2(p) to say '*the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises*



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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authority over land under its jurisdiction, and has powers to give permission for development of such immovable property’.

42. Section 35 endows powers on the Authority to call for information and conduct investigations, including in situations where enquiry is necessary into the affairs of a promoter, allottee or real estate agent. Chapter deals with the establishment and functions of the Central Advisory Council and Chapter VII with the establishment and other details of the Appellate Authority, culminating with Section 58 providing for an appeal to the High Court.

43. Chapter VIII enumerates the provisions relating to offences, penalties and adjudication, the last, in the context of compensation under various provisions under the Act. Chapters IX and X deal with finance and other miscellaneous matters.

Discussion and conclusion on the issue whether registration under the Act is mandatory in respect of projects involving lease of units/apartments.

44. We now apply the scheme of the Act as above, to the legal issue arising in this matter, being, whether registration under the Act is compulsory for all real estate projects irrespective of whether the units are for sale/lease.

45. In the present case, there is no doubt that both the petitioner and



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

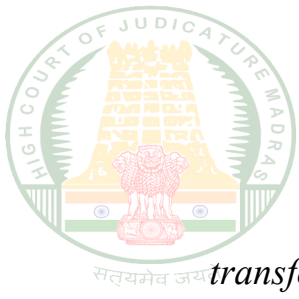
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R1, are 'real estate promoters' as per the definition under the Act. There is also no dispute that the projects in question constitute 'real estate projects'.

Petitioner and R1 have argued that notwithstanding that they are promoters, and the projects are real estate projects for the purposes of the Act, such projects would not attract the rigour of the Act as the lessees are not 'allottees', as per the statutory definitions, and as there has been no transaction of sale in their favour.

46. In our view that would be an oversimplification of the matter. True, the definition of a 'promoter' is '*a person who constructs or causes to be constructed an independent building or apartments for the purpose of selling to other persons all or some of the plots in the said project or a person who develops land into a project , for the purpose of selling to other persons all or some of the plots in the said project*'. (emphasis supplied)

47. Moreover, the definition of 'allottee' also specifically excludes those persons '*to whom such plot, apartment or building, as the case may be, is given on rent*'. However, the definition of allottee also states that an allottee is one '*to whom a plot, apartment or buildings, as the case may, has been allotted, sold (whether as freehold or leasehold) or otherwise*



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

transferred by the promoter..’.

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48. One has thus to reconcile the position that the definition of ‘allottee’ contains two conflicting positions, that the transaction not be one of ‘sale’ but may include the owner of leasehold rights as well. We find only two instances where the term ‘lease’/’leasehold’ has been used, the first in Section 2(d) defining ‘allottee’ and the second in Section 11(4)(c) touching upon duties of a promoter.

49. Section 11(4)(c) states that a promoter would be responsible for obtaining a lease certificate in cases where the project has been developed on leasehold land. The certificate must be handed over to the association of allottees and must stipulate that all dues and charges in relation to that land have been paid.

50. In our view, neither Section 2(d) nor Section 11(4)(c) further the position canvassed by the Authority that registration of all real estate projects is compulsory. The term ‘freehold’ indicates unrestricted ownership of both the land as well as super-structure thereupon and the term ‘leasehold’ indicates ownership of the right to use and enjoyment of the land and building albeit for a demarcated period only. The extent of regulation under the Act extends to projects developed on leasehold land



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

WEB COPY

alone and a combined reading of Section 11(4)(d) and 2(d) nowhere leads to the inference that transactions of lease of units in a project renders the project vulnerable to registration.

51. Section 5(3) is relevant in that it states that the registration so granted or deemed to have been granted under the Act shall be valid for the period stipulated under Section 4(2)(C), which is the time period within which the promoter had undertaken to complete the project or phase thereof. Thus, the overseeing of a project by the Authority is only till such time the project is completed and the units handed over to the purchasers. The role of the Authority ends with this.

52. One of the arguments by Mr.Om Prakash is that the responsibility of the Authority extends to overseeing the structural stability of the building as well as the compliance of the promoter with planning and building permits. While that is correct, such an exercise can be carried out by the Authority only for the life/validity of the registration granted under the Act and not beyond.

53. While seeking registration, the promoter is expected to furnish an undertaking as to when the project/phase of the project, will be completed. Such an exercise is rendered impossible in the context of lease of property



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

WEB COPY

as the transaction between the promoter and the lessee is a continuing one till the parties so desire. The question of the promoter furnishing a declaration that the project has been completed and the unit handed over to the purchaser does not arise in such circumstances.

54. The only reasonable and practicable conclusion is that the Act, and the provisions thereunder, are not expected to apply in the case of a lease and will apply only in the case of a sale of unit where there will also be a finality to the role of the promoter with such sale.

55. Mr.Om Prakash has argued that the apprehension of the Authority, centers around the possibility of a transaction of sale being disguised as one of lease, to evade statutory registration under the Act. The statement of objects and reasons to the Act, the relevant portion of which is extracted below, indicates that it seeks to balance the interests between the industry and consumers and this approach will therefore aid the interpretation of its provisions as well.

56. This aspect has also been noted by the division bench of the Bombay High Court in the case of *Neelkamal Realtors Suburban Pvt. Ltd. and another V. Union of India and others* (AIR 2018 (NOC) 398 (Bom).

‘ . . .



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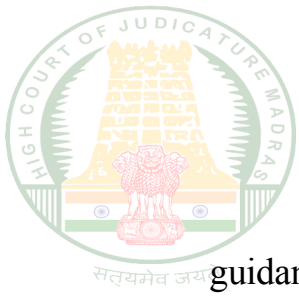


W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

3. The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run.'

57. We agree that the provisions of the Act cannot be interpreted so as to entitle a promoter/agent to draw an unfair and unintended benefit. The anxiety and apprehension of the Authority is a legitimate one though it remains to be seen as to whether it has been properly applied in the present cases.

58. The definition of 'allottee', that includes the owner of leasehold rights, cannot thus be literally interpreted or understood to conclude that the Act would apply only in situations of a sale simplicitor. As a general proposition therefore, we conclude that the Act would apply to promoters of real estate projects involving sale of properties as well as perpetual leases or leases in excess of a particular tenure. As of now, it is moot as to what would be the threshold to determine such tenure and no



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

guidance has been provided in this regard.

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59. In fact, the State has notified the Tamil Nadu Real Estate (Regulation and Development), Rules 2017 in order to implement the Central Act, making it mandatory for the promoter to produce the TNRERA Registration Certificate as a pre-condition for issuance of completion certificate by the CMDA and the Directorate of Town and Country Planning as well as Local Planning Authorities and local bodies in case of all projects without there being any verification of whether at all the project concerned required registration under the Act.

60. The Authority had, on 02.11.2018, requested the State to issue necessary orders making project registration mandatory, and vide G.O.Ms. No. 166 dated 29.11.2018, the request of the Authority has been accepted in the following terms:-

...
5. The Government carefully examined the request of the Chairperson, TNRERA in para 4 above and direct the Member Secretary, Chennai Metropolitan Development Authority and Commissioner of Town and Country Planning to include the registration of projects with TNRERA as one of the conditions in the planning permission and its compliance is a pre-requisite for issue of Completion Certificate, where the area of land proposed to be developed exceeds 500 sq.m. or the number of apartments proposed to be developed



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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

exceeds 8 inclusive of all phases. Compliance of this condition shall also be checked and ensured before issue of Completion Certificate. This condition is also to be incorporated in the Tamil Nadu Combined Development Regulations and Building Rules, 2018.

61. The above Government Order is unconditional and does not take into account the position that the Act does not apply to transactions of lease simpliciter, and can be called upon to address only transactions of sale or perpetual/unusually long leases where the authority is of the view that the substance of the transaction is really one of sale and not one of lease. This aspect of the matter has escaped the attention of both the State and the Authority.

62. Now coming to the applicable period, the Articles under the Schedule to the Indian Stamp Act 1899 (Stamp Act) provides some guidance. Article 35 of Schedule I to the Stamp Act deals with lease and provides as follows:

35. LEASE, including an under lease or sub-lease and any agreement to let or sub-let-

(a) Where the period of lease is below thirty years - One rupee for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable;

(b) Where the period of lease is thirty years and above and upto ninety-nine years - Four rupees for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable;



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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

(c) Where the period of lease is above ninety-nine years- Eight rupees for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable.

63. Article 23 of Schedule I to the Stamp Act 1899 dealing with ‘conveyance’ provides as follows:

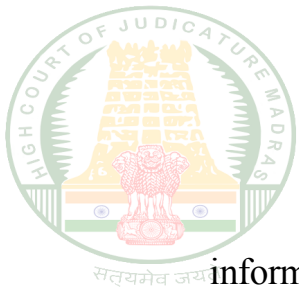
23. Conveyance (as defined by section 2(10), not being a Transfer charged or exempted under No.62-

(a) of immovable property situated within the Chennai Metropolitan planning Area and the Urban Agglomeration of Madurai, Salem and Tiruchirapalli and the City of Tirunelveli – Eight rupees for every Rs.100 or part thereof of the market value of the property which is the subject matter of conveyance

(b) of any other property – Seven for every Rs.100 or part thereof of the market value of the property which is the subject matter of conveyance.

64. The rates of stamp duty are graded and increase along with the tenure of leases. The duty payable in respect of conveyance in excess of 30 and 99 years is more than the rates for a lease below 30 years. In fact, lease of a property for a period in excess of 99 years is equated to a sale in terms of clause (2) of Article 23, and the rate of stamp duty is 8% in both cases. For the purposes of the Act, where one is to exclude leases simplicitor from the purview of registration, we thus adopt the tenure of lease under clause (a) of Article 38 of the Stamp Act, being 30 years.

65. Needless to say, in the event the Authority is in possession of



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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information that a real estate project is liable to be registered under Act but is designed deviously in any way whatsoever, including by using the nomenclature of 'lease' obfuscating the nature of the transaction merely to subvert such registration, it is bound to lift the veil and take prompt action to contain such an endeavour.

66. This liberty is available to the Authority even in cases where the lease is for a period of less than 30 years if it believes that the transaction is, in substance a sale, and the Authority certainly can, in appropriate cases, and for reasons to be recorded in writing, lift the veil, directing registration of the project concerned.

67. In *Lavassa Corporation*, the agreement of lease executed by the promoter was for a period of 999 years. The Authority had thus taken the stand, and legitimately, in our view, that the transaction was, in essence, one of sale and not lease as projected.

68. The Adjudicating Authority in that case, had preferred to focus on the nomenclature used by the parties, rather than the substance of the documentation. The Tribunal had rightly held that the interpretation of the Authority that since the agreements were styled as lease agreements no



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

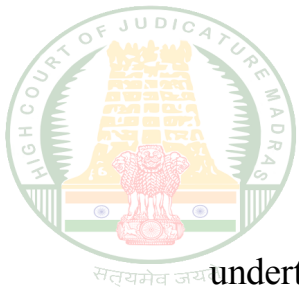
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registration under the Act was necessary, was clearly erroneous. The orders of the Adjudicating Authority had been reversed by the Tribunal which order stood confirmed by the High Court.

69. Our answer to the question as to whether the Authority can insist that a promoter register a project under the Act where (i) the lease is for a period less than 30 years (ii) the promoter has confirmed that the property is for own use or that it/he does not intend to alienate the property by sale or perpetual lease (iii) the authority has no information in its possession to the effect that the promoter intends to circumvent the provisions of the Act, is thus, in the negative.

70. We conclude this issue reiterating that balance must be achieved between all the stakeholders in the sector in interpreting the provisions of the Act, cautioning abstinence by the Authority in cases where there is no indication that the promoters intend to circumvent the provisions of the Act.

71. This position will be verified on the basis of an undertaking to be furnished by the promoter/agent of a project to the CMDA that the project is for own use and not for sale/long perpetual lease in excess of 30 years, at the time of seeking planning permission. The format of the



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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undertaking will be finalised by the Authority in conjunction with the State, within six weeks of receipt of this order. An application unaccompanied by such undertaking such be treated to be invalid.

72. A copy of the undertaking shall parallelly be furnished to the Authority to enable it to carry out a verification, if it believes it so necessary, as to the legitimacy of the claim of the promoter/real estate agent. While we agree with the procedure contemplated under G.O.Ms. No. 166 dated 29.11.2018, we clarify that the requirement of registration will only be of such projects as stipulated under this Order and not all leases.

73. We have also protected the power of the Authority to intervene, and mandate registration, in cases of leases less than 30 years, for reasons to be recorded in writing. The Authority may also, in such cases, consider issuing a fiat to the concerned sub-registrar that documents shall not be registered. The question that now remains is as to whether such action is justified in the present case.

Whether in the present cases, registration of the real estate projects is required

74. The Authority has not denied the position that the petitioner and R1 have executed only lease agreements with the proposed lessees, in the



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

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case of the petitioner, the tenure of lease being one year, and in the case of R1, the tenure of lease proposed to be executed being 18 years.

75. As far as R1 is concerned, it is true that he has stated in some communications that he does not intend to even lease the building. This is clearly a mis-statement, in light of the lease deed proposed to be executed with Infinity Retail Limited. However, we draw no adverse conclusion therefrom, as the error would have no bearing on the legal issue being decided.

76. The CMDA, arrayed as the 3rd respondent in the writ petition, has confirmed the position that planning and building permissions had been sought and issued by the CMDA and the Commissioner, Pallavaram Municipality respectively on 03.10.2020 and 27.10.202 respectively. A partial Completion Certificate had also been issued by the CMDA on 31.08.2023.

77. As far as registration of the project with the RERA is concerned, the CMDA has referred to the letter issued by the Authority confirming that planning permission had been obtained by the Petitioner stating that the building was intended only for their own use and not for sale or lease and confirming that no registration was required under the



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

Act for their project.

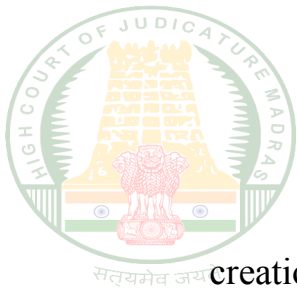
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78. On the same date, the Authority has issued the impugned communication to R4. The above communication refers to letter dated 19.06.2023 from the writ petitioner confirming that *'the building is for their use only and not for sale'*.

79. It is not the case of the Authority in either of the matters before us, that the nomenclature of lease is a disguise, and that the transactions are of sale. It is also not their case that there is any other information in their possession to lead to the suspicion that the parties intended to circumvent the provisions of the Act.

80. In fact, in the cases of both the petitioner and R1, the Authority has itself, on 11.07.2020 and 24.06.2021 written to the CMDA that no prior registration under the Act is required as the project is intended for its own use and not meant for sale/lease. On the same dates, the Authority issues the impugned orders to the concerned sub-registrars to the effect that no sale/lease deed shall be registered.

81. In doing so, the Authority has lost sight of the tenures of lease which is 12 months in the case of the petitioner and 18 years in the case of R1. In the case of the petitioner, the Authority also makes reference to



W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

WEB COPY

creation of a charge upon the property by way of encumbrance. We find no statutory backing for such creation of charge.

82. In light of the detailed discussion in the paragraphs supra, we are of the considered and categoric view that the impugned orders have no force in law. We quash order dated 11.07.2020 impugned in the writ petition and confirm order passed on 22.11.2022 challenged in the writ appeal though with the caveats and directions contained in this order.

83. In the writ petition, it has been argued that a completion certificate has been obtained and hence the Act is thus, inapplicable. We however find that the certificate relied upon is only one of partial completion and hence, while this might be a valid argument in a case where final completion certificate has been issued, it will not come to the aid of the petitioner before us.

84. The Writ Petition is allowed and the Writ Appeal is disposed in terms of this order. Miscellaneous petitions are closed. No order as to costs.

[A.S.M., J] [C.K., J]
09.06.2025

Index:Yes



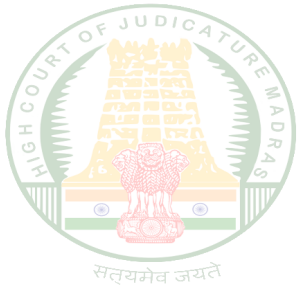
W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

Neutral Citation: Yes

ssm

To

1. The Sub-Registrar,
Virugambakkam,
47/5, Arcot Road,
Udhayam Colony,
Lambert Nagar,
Virugambakkam,
Chennai – 600 083.
2. The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.
3. The Principal Secretary,
Housing and Urban Development,
Secretariat, Fort St. George, Chennai – 600 023.
4. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore, Chennai – 600 008.
5. The Sub Registrar, Pallavaram,
Chennai South Sub Registrar Office,
No.7, 2nd Main Road,
New Colony, Chrompet,
Chennai – 600 044.



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W.A. No.1723 of 2023 & W.P. No. 32506 of 2023

DR. ANITA SUMANTH,J.
and
C. KUMARAPPAN,J.

ssm

W.A.No. 1723 of 2023 &
W.P. No. 32506 of 2023

09.06.2025