

Restriction of Sale of Property on Power of Attorney

Guidelines by SC to Minimize Landlord-Tenant Disputes

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The Supreme Court of India ("SC") in a landmark judgment delivered on Wednesday, October 12, 2011, held that the General Power of Attorney ("GPA") method for sale of immovable property is not a valid form of transfer of property. SC opined that (i) a Power of Attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property; and (ii) property can be lawfully transferred only by way of registered sale deeds.

Reportedly, SC has held that there shall be no mutation of property in revenue and civil records on the basis of Power of Attorney. It is believed that sale of property through GPA result in investment of unaccounted money in real estate business. Property transactions through GPA were evolved, inter alia, to avoid (i) payments of stamp duty and registration charges on sale/conveyance deeds; and (ii) payment of capital gain tax on transfer of capital asset.

It has categorically been clarified that this judgment will not affect the validity of sale deeds and Power of Attorney executed in genuine transactions. For instance, a person may give a Power of Attorney to any of his family members or relatives to manage the affairs of the property or to execute the sale/conveyance deed.

SC had sought views of the Central Government as well as the State Governments of Delhi, Haryana, Punjab and Uttar Pradesh and there was unanimity that such transactions of sale of property should be discouraged as such transactions result in loss of revenue and increased disputes/litigations due to defective titles.

This judgment is likely to impact sale/purchase transactions in localities across India in regard whereof sale deed cannot be registered, such as many unauthorized colonies or areas where the State Government suspects registrations for mass level violation of land use and other restrictions.

Guidelines by SC to Minimize Landlord-Tenant Disputes

SC has recently laid down the following illustrative guidelines and norms for model lease arrangements as a fair measure to reduce litigation between the landlords and the tenants:

- i. The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.
- ii. Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.

- iii. The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.
- iv. The major repairs shall be carried out only after obtaining permission from the landlord in writing. The modalities with regard to adjustment of the amount spent thereon should be worked out between the parties.
- v. If present and prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.
- vi. The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the subject.
- vii. The rent so fixed should be just, proper and adequate as per the location, type of construction, accessibility with the main road, parking space facilities available therein etc.

The impact of the judgment remains to be seen in cases where either the long term lease agreements do not specify the above aspects, or where they record an understanding of the parties contrary to the above guidelines. It would be interesting to see how the various courts of India apply this precedence to the eviction related cases being adjudicated by them.