

# Bombay High Court: Sanctioned layout not mandatory for registering sale deeds of fragmented land

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## Introduction

The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (**Act**) was enacted to prevent fragmentation of agricultural holdings into smaller land parcels and provide for their consolidation for the purpose of better cultivation. Section 8B of the Act was introduced by the Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2015 (**2015 Amendment Act**). The proviso to Section 8B prescribes that no person shall transfer any parcel of land in specified areas (as set out in the Section, including areas within the limits of a municipal corporation) which has an area less than the standard area notified before the date of coming into force of the 2015 Amendment Act, unless such land parcel is created as a result of sub-division or the layout is approved by the planning authority or by the Collector under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force.

The Bombay High Court has struck down a circular mandating that a sanctioned layout is compulsory to register sale documents for land parcels below the standard area prescribed in the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

Further, Rule 44(1)(i) of the Maharashtra Registration Rules, 1961 (**Rules**) prescribes certain requirements to be verified before accepting a document for registration.

Subsequently, the Inspector General of Registration and Stamps, State of Maharashtra, Pune, issued a circular on 12 July 2021 (**Circular**) directing the Sub-Registrar not to register any sale/transfer deed related to land parcels falling within the scope of Section 8B of the Act unless the sanctioned layout is also enclosed with the documents.

In this backdrop, the case of *Govind Ramling Solpure & Ors. v The State of Maharashtra & Ors.* came up before the Bombay High Court since the Petitioners' request to register sale deeds in respect of certain land parcels was refused by the concerned Sub-Registrar on the ground that the sale deeds were in violation of the Circular. Aggrieved by this decision, the Petitioners approached the Bombay High Court praying that Rule 44(1)(i) be declared contrary to Sections 34, 35 and 69 of the Registration Act, 1908 (**Registration Act**) and hence be struck down and the Circular issued exercising the power under the said Rule be quashed and set aside.

## Issues

The High Court considered the following issues to reach its conclusions –

- (i) Whether Rule 44(1)(i) is consistent with Sections 34 and 35 of the Registration Act?
- (ii) Whether the Circular is valid and binding upon the registering authorities and people of the State?
- (iii) Whether the Inspector General of Registration and Controller of Stamps, Maharashtra had the legislative competence to issue the Circular, if the Circular is contrary to Sections 34 and 35 of the Registration Act?

## Judgement

The High Court opined that the provisions of the Registration Act (particularly Sections 34, 35 and 69) do not empower the State Government to issue directions to the Sub-Registrar, who is the statutory authority under the Registration Act, to desist the registration of a document on account of breach of any terms and conditions under the provisions of the Act or under any other law. Even obtaining a prior No Objection Certificate/sanctioned layout from the concerned authority is not a precondition for the registration of any document. The High Court further observed that the scope of enquiry by the registering authority under Sections 34 and 35 of the Registration Act is limited to few aspects only. Under Section 34, it is limited to the factum of execution of the document, identity of persons appearing before the registering authorities and if a person appears through a representative or agent, then the right of such person to appear. Under Section 35, it is limited to the procedure for admission or denial of execution of the said document.

The High Court further relied on the Supreme Court's decision in *State of Rajasthan and Ors. v Basant Nahata* to reiterate that any subordinate legislation cannot be inconsistent with the provisions of the parent Act. That is, subordinate legislation not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right would not be valid. As such, the Inspector General of Registration and Stamps was not empowered to issue any subordinate legislation inconsistent with the parent Act, i.e., the Registration Act. Even Section 69 of the Registration Act, which confers the State Government with the power to frame rules, emphasises that such rules cannot be inconsistent with the provisions of the Registration Act.

The Court in this case also referred to its previous decisions in *Laxmi Ishwar More v State of Maharashtra and Ors.* and *Gopal s/o. Dwarkaprasad Pande v District Collector, Bhandara and Anr.* It was held in the former that Section 34 of the Registration Act clearly prescribes the scope of enquiry to be made by the registering authority before registering a document and such enquiry is limited to the verification of execution of the document, identity of persons/representatives/agents appearing before the registering authority and not to ascertain the facts and contents of the document or to demand and authenticate sanction plans. Further, the latter decision iterated that refusal to register a document either on the ground of absence of title to such property or on account of any defect in the title would be an illegal act on part of the registering authority.

The Court also relied on its previous decision in *M/s. Sundarsons v State of Maharashtra* in which it interpreted Sections 34 and 35 of the Registration Act and held that under the said provisions there is no power given to the Collector to give directions to the Sub-Registrar to refuse the registration of a document. It further held that the provisions regarding registration of documents are enumerated in the Registration Act and the executive instructions which are given by the State by exercising its powers under Article 162 of the Constitution of India cannot circumvent a statutory provision.

## UPDATES

Thus, the High Court in the present case concluded that the Sub-Registrar is not an adjudicating authority and has no power to decide whether the transaction, which is the subject matter of the document lodged for registration, is validly executed or whether it is prohibited by any law. It held that Rule 44(1)(i) directing the registering authority to ascertain as to (i) whether the transaction which is intended by the document, is prohibited by any existing Act of Central or State Government, (ii) whether true copy of requisite permission or No Objection Certificate from the competent authority under the said Act has been attached along with the document, (iii) whether the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate, is contrary to section 34 and expressly beyond the powers conferred under section 69 of the Registration Act.

- (i) Accordingly, the High Court held that:
- (ii) Rule 44(1)(i) be read down and would not be applicable.
- (iii) The registering authority is not required to insist on the compliance of conditions imposed under Rule 44(1)(i) while registering documents under Section 34 read with Section 35 of the Registration Act.
- (iv) The registering authority cannot reject any document on the ground of non-compliance of the conditions set out in the Circular or for non-compliance of Rule 44(1)(i).

## Conclusion

This judgement of the Bombay High Court brings clarity to the limited scope of enquiry purely at the stage of registration of documents. Other State Governments are likely to be prompted into ensuring that the rules and circulars issued by them are in keeping with the spirit of the parent legislations. Further, High Courts of other States can also take their cue from this judgement in order to address circulars issued by authorities in excess of the powers granted to them under the parent Act.

Having said that, this decision would not validate an otherwise invalid act. It only reinforces that registration authorities cannot deny registration if the requirements of the Registration Act are met.

Although this judgement paves the way for registration of documents without the requirement of complying with the Circular, the requirements under the Act (including changes brought about by the 2015 Amendment Act) are independent of registration and the parties will have to comply with them.

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