

Power of Attorney for sale of Immovable Property requires Compulsory Registration

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Power of Attorney to transfer immovable property:

For the last decade, laws relating to Power of Attorney have undergone substantial changes whereby the Government has brought in several restrictions on the use thereof so far as it relates to sale of immovable properties.

Registration (Maharashtra Amendment) Act, 2010:

The Registration (Maharashtra Amendment) Act, 2010 effective from 1 April 2013 has resulted in amendment of Section 17 of Registration Act, 1908 I (Act) in sub-section 1 in its application to the State of Maharashtra. As per the said amendment, an Irrevocable Power Attorney relating to transfer of immovable property in any way executed on and after the commencement of Registration (Maharashtra Amendment) Act, 2010 shall be compulsorily registered. Thus, any power granted to a person for sale of immovable property shall necessarily have to be registered with the Sub-Registrar of Assurances, failing which the same cannot be put to use.

The registration of Power of Attorney so far was optional under the Registration Act, 1908. It was only required to be notarized before the Notary Public. However, lately it had become a practice in case of sale transactions to seek an unregistered Power of Attorney from the owner of an immovable property instead of executing a Deed of Conveyance and to use the same for transfer of immovable property. This led to avoiding the payment of stamp duty that is chargeable on a deed of transfer of an immovable property leading to huge loss of revenue to the State Government. The amendment seeks to address the loopholes and curb such wrongful practices of transferring property without registering and avoiding payment of requisite stamp duty. It would be pertinent to note that though a Power of Attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property an Attorney Holder may however execute a Deed of Conveyance in exercise of the power granted under the Power of Attorney and convey title on behalf of the Grantor.

Stamp Act provisions amended from time to time:

- Under the provisions of the Maharashtra Stamp Act, 1958 (formerly Bombay Stamp Act, 1958) ("the Stamp Act") Article 48, inter alia, states:
A Power of Attorney, not being a Proxy when given for consideration and authorizing to sell an immovable Property, will be chargeable with the same

stamp duty as is leviable on a Conveyance under Article 25 Clauses (a), (b) or (c) as the case may be on the market value of the Property.

However, any other POA with powers to sell immovable property, (other than one given to a developer of Property) attracted a stamp duty of Rs.100/-.

- In order to curb abuse and to generate additional revenue, with effect from 5 June 2008, a Clause is added in Article 48 of the Stamp Act by which the stamp duty on a Power of Attorney, not being a Proxy when authorizing to sell or transfer immovable property without consideration or without showing any consideration as the case may be, if given to the father, mother, brother, sister, wife, husband, grandson, grand-daughter or such other relative shall be Rs.500/-.

In case the same is given to any other person, the same duty will be levied as in Article 25 Clauses (a), (b) or (c) as the case may be on the market value of the Property.

- In the aforesaid cases, where stamp duty has been paid on the Power of Attorney and a Conveyance relating to an immovable property is executed in pursuance thereof between the same parties, the duty on Conveyance shall be duty calculated on the market value of the property reduced by duty paid on the Power of Attorney. Thus, stamp duty is not deducted if the attorney sells the property to another person.
- The biggest loophole, of which wrongful benefit was taken in the aforesaid cases, was that the Power of Attorney so far did not require compulsory registration under the Registration Act, 1908.

Present provisions of Stamp Act and Registration Act:

Therefore, in light of the aforesaid amendment to the Registration Act, 1908 with effect from 1 April 2013, read together with the Stamp Act, it is abundantly clear that:

1. Power of Attorney when given for consideration and authorizing to sell an immovable Property has to be stamped as in a Conveyance under Clauses (a), (b) or (c) as the case may be of Article 25 of the Stamp Act viz., at the rate of 4% or 5% as the case may be on the market value of the subject property and shall be required to be mandatorily registered with the Sub-Registrar of Assurances before the same can be used.
2. Power of Attorney for sale of property without consideration or without showing any consideration:
 - i. when given to father, mother, brother, sister, wife, husband, grandson, grand-daughter or such other close relative has to be stamped with Rs.500/- and shall be required to be mandatorily registered with the Sub-Registrar of Assurances before the same can be used;
 - ii. when given to any other person has to be stamped as in a Conveyance under Clauses (a), (b) or (c) as the case may be of Article 25 viz., at the rate of 4% or 5% as the case may be on the market value of the subject Property and shall be required to be mandatorily registered with the Sub-Registrar of Assurances before the same can be used.

The Act further provides that in the event the Grantor is out of India, the Power of Attorney duly granted can be executed before the Indian embassy who shall put proper endorsements on the Power of Attorney before the same being sent to India to be used.

Effects of the Amendment and Conclusion:

1. This Amendment relates only to a Power of Attorney for sale of immovable properties. The Power of Attorney granted for any other purpose can be duly stamped with Rs.100/- and shall not be required to be duly registered.
2. Unregistered Power of Attorney for sale of immovable property shall not be capable of being put into use and shall not affect any immovable property comprised therein. It shall not be received in evidence of any transaction affecting such property. However, it may be received as evidence of a contract in a suit for specific performance under Chapter II of Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.
3. Legally, there need not be bar on using a Power of Attorney executed prior to 1 April 2013 not registered for all purpose other than sale of Immoveable Property, although it shall be advisable to probe in the document and to understand the validity thereof and to give effect thereto.

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