

C I R C U L A R

Sub:- Loss of revenue caused by registration of
so called undivided interest in Land/buildings-
Apartments/Flats...regarding..

1. It is brought to the notice of the undersigned that there is huge leakage of Government revenue by the registration of sale of so called undivided interest either in vacant land or in an existing old building. Some of the unscrupulous intelligent owners of land/builders/developers have adopted the dubious method of defrauding the Government by evasion of payment of proper stamp duty and registration fee in the following manner.
2. After scrutiny of the some of the documents on file, I have noticed that the above registering public though titled their documents as a sale deed of undivided interest have not brought the property within the perview of either under the Karnataka Apartment ownership Act, 1972 and Rules of 1974 or under the Karnataka Apartment Ownership Flats (Regulation of the promotion of construction, Sale Management and Transfers) Act, 1972 and Rules. At the same time they are making use of all the provisions and thereby getting benefits as per the provisions of the above Acts and Rules without following the provisions which are not beneficial to them. Seperate action is contemplated by this authority moving the Government by suggesting certain amendments to the parent Acts and Rules wherever there is lacuna and discrepencies.
3. It is unfortunate to note that both the Sub Registrars and the District Registrars (DUS) have not applied their mind in proper scrutiny of the above sale deeds of undivided interest. After thorough scrutiny of some of the registered documents, I have come to the conclusion firstly that the above documents violates Section 21 of the Registration Act, 1908 which clearly gives a mandate that 'No non-testamatory document relating to immoveable property shall be accepted for

registration unless it contains a description of such property sufficient to identify the same". In almost all sale deeds of this nature, it is clear that the description of property is not sufficient to identify the same by metes and bounds. Individual Apartment or flat which is described to be built in future are not properly described. Secondly these documents violate Section 28 of the Karnataka Stamp Act, wherein facts effecting stamp duty are not fully and truly setforth. Here mention may be made of Rule 19 of the Karnataka Stamp Rules, where the area, boundary, the nature or structure, the plinth area, roofed area, material of construction, amenities and year construction shall be truly setforth. If we closely look at the documents in question, it can be clearly ascertained that at the time of sale there will be an existence of a multistoreyed building already completed and fit for occupation.

4. I am unable to understand how both the registering officers and District Registrars have totally ignored the above provisions of law both at the time of registration and at the time of taking a decision under Section 45-A. Apart from this, special powers have been conferred on the above authorities under Rule 3 & 5 of the Prevention of undervaluation of Rules. The Sub Registrar in the first instance is empowered to call for and examine any records maintained in any office before a reference is made to the District Registrar. If they had exercised this power, they could have certainly come to the conclusion regarding the existence of the building, after looking into the date of sanction of plan by the local bodies, the assessment made and occupancy certificate given apart from connections like water supply sewerage and electricity. It is unfortunate to note even at the level of District Registrar who actually take up spot inspection could have made physical verification of the existence of the building have totally ignored the interest of revenue of the Government by their negligence and im-proper understanding of stamp law.

5. It is reported by some of the District Registrars that they are taking lame excuse under the pretext of the decision given by the Hon'ble High Court of Tamilnadu in W.P.No.16147 and 16148 of 1988 in M/s Park View Enterprises Vs State of Ta-

not a precedent. That judgement was delivered on Indian Stamp Act and Registration Act, 1908 and in the absence of Legislation regarding Apartments and Flats in the State of Tamilnadu. Further more Karnataka is having its own enactment on Stamps. Mention may also be made that even Tamilnadu High Court has upheld the amendments brought by the Tamilnadu State to the Indian Stamp Act and Registration Act. As a passing remark the Court has observed that the State can bring in a comprehensive Legislation to plug the leakage of revenue as done in Union Territory of Delhi and Maharashtra States. So far as Karnataka is concerned, State has passed comprehensive legislation regarding both the Apartments and flats. I direct the officers of this department to closely read and understand the provisions of the above Acts and Rules regarding the flats and Apartments. If they do so they will come to know how owners/builders/developers were trying to defrauding the Government revenue.

6. If they closely analyse the provisions of above two Acts and Rules, they will come to know that the Apartment and flats are transferable and hereditible though common areas and facilities are for common enjoyment. Here special mention may be made regarding penal provisions under both Acts with special reference to Section 4 of flats Act where a non obstante clause which over ride the other provisions of laws including Registration law. Therefore I firstly insist upon all the registering officers to thoroughly scrutinise the documents of this nature and satisfy themselves whether the description of the property is identifiable if not refuse to accept the document for registration.

7. Secondly if the property is identifiable they should ascertain from other authorities (if they fail to get information from the instruments and enclosures and from executant and purchaser) like local bodies as to the date of construction etc. If they have reason to believe that it is undervalued, make out a case and refer it under Section 45-A(1) giving all the details as required under Section 28 and 45-A of Karnataka Stamp Act, 1957 and Rule 19 of Stamp Rules mentioning action taken under Rule 3 of Prevention of Undervaluation Rules. The District Registrar soon after receipt of such cases, shall invariably make spot inspection and properly value as mentioned above. The cases pending

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before the District Registrar (DUS) have to be disposed off in future keeping in view the above instructions. The cases already decided by the District Registrar (DUS) will be scrutinised by this authority under Section 53 of the Karnataka Stamp Act, 1957 because all orders passed under this Act are subject to control of the Chief Controlling Revenue Authority. Any slackness in not following these instructions will be viewed seriously and any violation will be followed with action under C.S (CC&A) Rules.

8. The receipt of this Circular should invariably acknowledged by all the concerned in writing.

DRAFT APPROVED BY
THE I.G.R. AND CS

AS 21 (MS) 23
(A.B. NUDRAPPA)
ASST. INSPECTOR GENERAL OF REGISTRATION
(Admn.,)
16/

Copy to:-

All the District Registrars/District Registrars (DUS) for information and strict guidance.

All the Sub Registrars in the State for information and strict guidance

Circular file / Audit Section of Head office / Spare copy