

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 10th OF JANUARY, 2024

WRIT PETITION No. 26515 of 2023

BETWEEN:-

**SKYE EARTH DEVELOPERS (P) LTD. THROUGH
AUTHORISED SIGNATORY SHRI NEERAJ
SACHDEV S/O SHRI ASHOK SACHDEV A
COMPANY INCORPORATED UNDER THE
COMPANIES ACT 1956 REGD OFFICE LG 4
RATNAMANI COMPLEX 7/1 NEW PALASIYA R/O
1301 SKYE LUXURIA NIPANIA INDORE
(MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI AMIT AGRAWAL - SENIOR ADVOCATE WITH SHRI SAVIL
PARASHAR- ADVOCATE)***

AND

**M.P. REAL ESTATE REGULATORY AUTHORITY
SECRETARY REAL ESTATE REGULATORY
AUTHORITY BHAWAN ARERA HILLS MAIN
ROAD NO. 1 BHOPAL (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI SUDHANSHU VYAS – ADVOCATE)

.....
*This petition coming on for admission this day, the court passed
the following:*

ORDER

1] Heard finally, with the consent of the parties.

2] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India assailing the order dated 03.10.2023, passed by the M.P. Real Estate Regulatory Authority, Bhopal whereby the petitioner's application for registration of project has been rejected on certain grounds including that the petitioner has not registered the decrees dated 23.11.1994, which is in violation of Section 4(2)(1)(m) of the Real Estate Regulation and Development Act, 2016 (in short 'the Act of 2016').

3] Shri Amit Agrawal, learned Senior counsel for the petitioner has drawn the attention of this Court to both the decrees dated 23.11.1994, which have been passed in favour of the owners of the land, namely, Hanif and Anwar respectively. Shri Agrawal has submitted that on the basis of the aforesaid decrees, which have already attained the finality, the owners of the land have entered into a development agreement with the petitioner-company vide development agreement dated 02.09.2021 (Annexure P/11). It is further submitted that the aforesaid agreement is also registered with stamp duty duly paid. Senior counsel has submitted that as per Section 17(2)(vi) of the Registration Act, 1908, a decree in itself is not compulsorily registrable, except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceedings. It is submitted that the decrees were not passed in a compromise and also does not involve any other immovable property other than the subject matter of the suit. Thus, it is

submitted that the petitioner was not required to get the aforesaid decrees registered, even as per Section 17(1)(e), the agreement between the parties, which can be termed to be a non-testamentary instruments transferring or assigning the decree, is already registered for which a stamp duty of Rs.38,15,900/- and registration fees of Rs.12,21,088/- have already been paid. Thus, it is submitted that the impugned order, so far as it relates to the condition imposed by the respondent (Real Estate Regulatory Authority) RERA to get the decrees registered, be set aside.

4] Senior counsel for the petitioner has relied upon certain decisions rendered by the Supreme Court in the case of **Gurcharan Singh and others Vs. Angrez Kaur and another** reported as **(2020) 10 SCC 250** and in the case of **Khushi Ram and others Vs. Nawal Singh and others** reported as **2021 SCC OnLine SC 128**.

5] Counsel appearing for the respondent has opposed the prayer and it is submitted that no case for interference is made out. In support of his submission, counsel for the respondent has also relied upon a decision rendered by the Supreme Court in the case of **Bhoop Singh Vs. Ram Singh Major & Ors.** reported as **1995 SCC (5) 709**. Relevant paras **16, 17 and 18** of the same read as under:-.

“16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest *in praesenti* in immovable property of the value of Rs 100 or upwards. Any other view would

find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest *in praesenti* in immovable property of the value of Rs 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create *for the first time* right, title or interest in immovable property of the value of Rs 100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in *Lahore case*, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

(emphasis supplied)

6] Heard counsel for the parties and perused the record.

7] So far as the provisions of the decision in the case of **Gurcharan Singh (supra)**, is concerned, relevant paras 13 and 22

of the same read as under:-

“13. Section 17 of the Registration Act provides for registration of documents, which is to the following effect:

“17. *Documents of which registration is compulsory.*—(1)

The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii)-(v) ***

(vi) any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or”

xxxxxxxxx

22. Reverting back to the facts of the present case, it is clear that Suit No. 556 of 21-9-1994 filed by the appellants against Bhajan Singh relates to the suit property described in plaint and decree was passed only with regard to suit properties A to D. The decree dated 9-1-1995 was, thus, expressly covered by the expression “any decree or order of a court”. When the legislature has specifically excluded applicability of clauses (b) and (c) with regard to any decree or order of a court, applicability of Section 17(1)(b) cannot be imported in Section 17(2)(vi) by any indirect method. We, thus, are of the considered opinion that decree and order dated 9-1-1995 did not require registration and were fully covered by Section 17(2)(vi), which contains exclusion from registration as required in Section 17(1). The High Court as well as the first appellate court erred in coming to the conclusion that decree dated 19-1-1995 required registration and due to it being not registered, is null and void.”

(emphasis supplied)

8] So far as the decision in the case of **Khushi Ram (supra)**, is concerned, the relevant paras 14 and 20 of the same read as under:-

“14. The decree passed in Bhoop Singh’s case (supra) has been quoted in paragraph 2 of the judgment, which clearly proved that declaration was granted that plaintiff will be the owner in possession from today. In the above case, the suit was decreed on the basis of compromise though the decree is on the ground that defendant admitted the claim of the plaintiff in written statement.

20. This Court held that since the decree which was sought to be exhibited was with regard to the property which was subject-matter of suit, hence, was not covered by exclusionary clause of Section 17(2)(vi) and decree did not require registration. The issue in the present case is squarely covered by the above judgment. We, thus, conclude that in view of the fact that the consent decree dated 19-8-

1991 relates to the subject-matter of the suit, hence it was not required to be registered under Section 17(2)(vi) and was covered by exclusionary clause. Thus, we, answer Question 1 that the consent decree dated 19-8-1991 was not registrable and the courts below have rightly held that the decree did not require registration.”

(emphasis supplied)

9] From the record, it is also apparent that the decrees which have been passed in favour of owners of the land, were declaratory in nature. Para 10 of one such decree reads as under:-

“10. इस प्रकार अपीलार्थी सफल रहता है। अपील अंततः स्वीकार की जाकर अपीलार्थी को ग्राम निपानिया, तहसील एवं जिला इंदौर स्थित भूमि सर्वे क्रमांक 218/1 रकबा 1.267, 218/2 रकबा 1.267 एकड़ का भूमिस्वावामी घोषित किया जाता है। साथ ही प्रत्यर्थीगण के विरुद्ध निषेधाज्ञा जारी की जाती है कि वे उक्त भूमि में अपीलार्थी को आधिपत्यक में हस्तक्षेप नहीं करें।”

10] It is apparent that the owners had claimed their pre-existing rights in the aforesaid suit land, regarding which decrees have been passed in their favour and these decrees do not involve any other land, other than the suit land, they are not required to be registered. Thus, when the development agreement which has been entered into between the petitioner and the owners of the land, has already been registered and due stamp duty having already been paid, they are not required to get the original decrees also registered on the basis of which the aforesaid development agreement has been entered into between the parties. So far as the decision relied upon by Shri Vyas in the case of **Bhoop Singh (supra)** is concerned, the same is distinguishable and is of no avail to the respondent.

11] In view of the same, the **impugned order dated 03.10.2023**, so far as it relates to the condition mandating the petitioner to

get the decrees registered, is hereby set aside and the respondent is directed to consider the application of the petitioner for registration, afresh, within a period of four weeks from the date of receipt of certified copy of this order.

12] With the aforesaid, the petition stands *allowed* and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Pankaj