



## **HARYANA STATE LAW COMMISSION**

### **THIRD REPORT**

#### **Compulsory Registration of Agreement to Transfer - Amendment of Section 17 of The Registration Act, 1908**

Government of Haryana

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**Compulsory Registration of Agreement to Transfer - Amendment of  
Section 17 of The Registration Act, 1908**

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### Third Report

#### Recommendation for Compulsory Registration of Agreement to Transfer - Amendment of Section 17 of The Registration Act, 1908

The Chairperson of the Haryana State Law Commission has suggested to make "Agreement to transfer immovable property" compulsorily registerable under The Registration Act, 1908.

2. This Law Commission is of the view that non-registration of agreement to transfer immovable property is likely to be exploited by unscrupulous persons by executing ante-dated agreements to sell the same property in favour of others. Reliance can be placed on observations of the Supreme Court in the judgment rendered in Civil Appeal No.10325/2010 **"T.G. Ashok Kumar vis Govindammal"** dated 8.12.2010 in support of this stand:
3. Transfer of immovable property of the value of one hundred rupees or more is compulsorily required to be registered under Section 17 (1) (b) of The Registration Act (hereinafter referred to as the Act). Section 49 of the Act provides that a document which is compulsorily required to be registered is not registered, then it will not have the effect of transfer and the document cannot be

received as evidence of any transaction effecting such property. The object of registration of document is to give notice/knowledge to rest of the world about the transactions relating to immoveable property, so registered.

4. The object and purpose of The Registration Act has been elucidated by the Orissa High Court in **AIR 1970 Orissa Page 22 Para 5 as follows:**

*"The object and purpose of The Registration Act, amongst other things, is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property, and to perpetuate documents which may afterwards be of legal importance, and also to prevent fraud. Registration lends inviolability and importance to certain classes of documents"*

5. The Rules under the Act provide for furnishing information in regard to all registered transfers in respect of an immoveable property of the value of one hundred rupees and upwards in a document called the 'Encumbrance Certificate'. Anyone who is interested in knowing about all transactions in regard to a particular immoveable property can apply to the concerned authorities constituted under the Act for an Encumbrance

Certificate which furnishes complete information in regard to all the alienations and acts in respect of that particular property.

6. Agreement to transfer immovable property is not a document which is required to be compulsorily registered under Section 17 of The Registration Act. Consequently, information about agreement to transfer is not entered in the "Encumbrance Certificate". Agreement to transfer not being required to be registered, it will not be entered in the Encumbrance Certificate which is meant to furnish information to any person about prior transactions relating to that property. Therefore, an intending transferee has no means of knowing if the transferor has already entered into an agreement with someone else to transfer the same property. An agreement to transfer earlier in point of time prevails over the agreement to transfer executed later in point of time as is clear from Section 48 of the Transfer of Property Act. Taking advantages of the lacunae in Law unscrupulous owners of the immovable properties after executing an agreement to transfer in favour of 'A' and receiving considerable amount of consideration would enter into an agreement to transfer the same property in favour of 'B' collecting part of the consideration by executing an agreement to transfer recording a date earlier than the date of agreement that he has already executed with 'A'. Thus 'A' gets defrauded as the agreement in favour of 'B' prevails as it bears a date earlier than the date of agreement executed in favour of 'A'. This is one kind of fraud.

Another kind of fraud that is often perpetrated is to cheat the Government in the matter of paying Stamp Duty. The transferor may mention the agreed amount of consideration in the agreement to transfer and the advance amount received. But at the time of Registration, he may show a much smaller amount of consideration and pay lesser stamp duty than he was liable to pay by suppressing or destroying the earlier executed agreement to transfer. Such types of fraud are increasing and the State is also losing considerable amount of stamp duty. Therefore, it has become necessary to amend the Act suitably to protect the interest of the innocent transferees and the State.

7. The first effort for comprehensive reform of The Registration Act, 1908, was taken up by Law Commission of India in the year 1957 and its recommendations are contained in the 6<sup>th</sup> Report. Unfortunately, no part of the 6<sup>th</sup> report resulted in amendment of The Registration Act, 1908. Part III of that report relates to compulsory Registration of documents in which the Law Commission of India has recommended that Section 17 (1) (b) of The Registration Act, 1908 may be retained for the present.
8. Section 17 enumerates the documents of which registration is compulsory. Among the documents of which registration is compulsory, Section 17 (1) (c) reads as follows:

**"Sec. 17(1)(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;"***

9. In regard to this provision the Law Commission of India has observed in Part-III para 29 & in para 30 of its 6<sup>th</sup> report as follows:

*"29. Section 17 (1) (c) - We consider that it is not necessary to retain clause (c). Two views have been taken on the scope of this clause. The first is that even if the transaction is evidenced by a registered instrument, the receipt of payment of money under such document should be registered, if the payment is made on account of the creation, declaration etc., of any right, title or interest specified in sub-clause (b). The other view is that it applies only to transactions to which clause (b) will not apply as in the Punjab where the Transfer of Property Act is not in force and oral sales and mortgages are possible. If, in the receipt, a recital is made that the amount was the consideration on account of the creation etc., of a right, title, or interest in immovable property the document would according to the Punjab High Court, require registration even though the transaction itself was oral. The better view seems to be that taken by the Full Bench of the Patna High Court in Chamroo vis Stephen, viz., that where there is already a registered sale deed the subsequent receipt acknowledging*



*payment of consideration on account of the creation of the right does not require registration. If the Transfer of Property Act is extended to all the States including the Punjab, there will be no need to retain clause (c), even for cases where sales and mortgages are oral.*

*30. Our recommendation, therefore, is that the Transfer of Property Act should be extended throughout India, and that section 17(1) (c) of The Registration Act should be omitted. If our recommendation to so extend the Transfer of Property Act is not accepted, clause (c) of the sub-section should be redrafted so as to make it clear that it does not apply to receipts in respect of transactions already registered under clause (b). "*

10. Though the Law Commission of India in its 6<sup>th</sup> report made several recommendations for amendment of Section 17, they were not implemented even after Transfer of Property Act was extended to the whole of the territory of India.
11. However, the 6<sup>th</sup> Report of the Law Commission of India was circulated amongst various State Governments, Institutions /persons for their response. Government of India having received divergent views on the recommendations of the 6<sup>th</sup> Law Commission, the Government of India referred the matter once again to the Law Commission of India for a fresh examination of the provisions of The Registration Act, 1908 in the light of the

responses received. Accordingly, the Law Commission of India after an exhaustive study prepared a fresh report and presented its 34<sup>th</sup> report to the Government of India on 15<sup>th</sup> of December, 1967. The recommendations of the Law Commission of India in so far as they relate to Section 17 (1) (b) are concerned, they are as follows: (at pages 34.23 & 34.24 Vol. 4 of the Law Commission Report published by Universal Law Publishing Co.)

*“Clause 3 (1) (b):-*

*non-testamentary instrument generally. – Clause 3(1) (b), corresponds to existing section 17 (1) (b), and deals with non-testamentary instruments affecting immovable property of the value of one hundred rupees and upwards. The minimum limit of one hundred rupees has been retained, as in the existing section. Comments have been received to the effect, that in the present context of high prices this limit is ridiculously low, and to give practical relief it should be raised to five hundred rupees (One comment suggests it’s raising to two hundred rupees).*

*The existing provision was considered in the earlier Report, where (though there is no specific discussion as to increase of the limit), the view expressed was, that the time may come for removing the exemption in respect of instruments where the value is below one hundred rupees. If the exemption is removed, it would mean that even for a transaction of smaller value there should be documents requiring both stamp duty and registration fees. It was,*

*however, observed, that this could not be effected without amending the Transfer of Property Act, under which a sale or mortgage does not require even a writing if the value is under one hundred rupees. Since the question whether the limit should be removed from the Act was one of policy and required careful consideration, the provision in The Registration Act, it was stated, "may be retained for the present".*

*In this position, a change in the existing limit need not be considered for the present.*

*Another suggestion is, that transactions relating to immovable property like partition, release, sale, etc., for less than one hundred rupees, should be effected only by registered documents. This also cannot be considered for the present, for the reasons given above.*

*Clause 3 (1) (b). - Substitute the words "affect immovable property. This change has to be dropped. "*

12. In so far as the question of Registration referred to in existing Section 17(2)(v) and Explanation to Section 17(2), the Law Commission examined the arguments for and against the proposition and observed at pages 34.31 and 34.32 of 34<sup>th</sup> report as follows: -

*"Clause 3(2)(c) and Clause 3(1) - Explanation (ii) - A new*

*point has been made in one of the comments, suggesting the compulsory registration of documents referred to in existing section 17 (2) (v) and existing section 17 (2), Explanation, in certain cases. At present, a document which merely creates a right to obtain, another document affecting immovable property is not to be registered, and in particular, a document purporting or operating to effect a contract for the sale of immovable property does not require registration merely because it recites payment of earnest money or purchase-money, etc. Now, it is stated in one of the comments that transactions in the nature of agreements to sell, re-sell and repurchase are entered into in the following circumstances. An ante-dated agreement (it is stated) is used to avoid stamp duty on sales, by-*

- (i) first having a sale deed drawn up for a nominal amount;*
- (ii) then executing an unregistered agreement to re-purchase or sell; and*
- (iii) then executing a final release of the agreement to repurchase for a substantial consideration. The real consideration for the transaction (it is stated) is the sum total of the consideration expressed in the various deeds (sale and release) but payment of stamp duty is evaded by stamping the final document as a "release" and by making use of the unregistered document as a ground for the release. Such documents should, it is said, be made (compulsorily) registerable so that three beneficial results would ensue: -*

- a. *frauds on the public, who may enter into a contract for the purchase of property in respect of which an agreement to sell already exists, maybe prevented;*
- b. *suits for specific relief would be brought down;*
- c. *the revenue will benefit.*

*These benefits, it is stated, will more than compensate for the additional expenditure to the registering public. It has, therefore, been suggested, that clause 3 (2) (e) and clause 3 (1), Explanation (ii), may accordingly be deleted.*

*The earlier Report did consider the matter, briefly. It proposed no change, because the view taken was that there was no need to have two registered documents in receipt of the same transaction. The matter, however, bears closer examination at length, and the following points should be noted: -*

- a) *As would appear from the history of the provision, the object of the present provision is to save a person from having to register two deeds in relation to the same subject-matter. This was the reason for the general provision in existing section 17 (2) (v). But, since doubts arose as regards agreements to sell immovable property in view of decisions holding that such agreement created an interest in land and would not fall within the general exemption, a specific provision exempting contracts for the sale of immovable property was*

*made, which is existing section 17 (2), Explanation.*

- b) Since an agreement to sell merely gives a right to obtain another document relating to immovable property, creates no interest and cannot be enforced against a person who has no notice thereof, the question of a fraud on the public has no importance for legal purposes.*
- c) Moreover, the malpractice in question cannot justify an extreme provision removing the general exemption. Such a course would cause unnecessary hardship.*
- d) It is a moot point whether the last-mentioned release of the rights flowing under the agreement for repurchase does not itself require registration,*
- e) In any case, the question of fraud on the Stamp Act cannot be conclusive in a consideration of the Registration Law.*
- f) We are not concerned here, it may be noted, with the question that very often arises, namely, whether a sale coupled with agreement to repurchase can constitute a mortgage.*

*For these reasons, no change in the law is recommended on this point. "*

13. Though, in the 34<sup>th</sup> report, the Law Commission of India noticed that unscrupulous property owners can defraud innocent persons who have entered into bonafide transactions for transfer

of immovable property earlier in point of time, the Law Commission did not regard the matter so serious as to require proper amendment of the law to protect genuine transactions relating to transfer of immovable property. Therefore, the Law Commission of India did not make any recommendation for amendment of Section 17 of The Registration Act.

14. if the owner of the immovable property executes several agreements to transfer in respect of the same property on different dates the latter transfer is subject to the earlier transfer as provided in Section 48 of the Transfer of Property Act which reads as follows:

**Section 48 - Registered documents relating to property when to take effect against oral agreements-**

All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession [and the same constitutes a valid transfer under any law for the time being in force.

Provided that a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage deed

subsequently executed and registered which relates to the same property.]

15. An unscrupulous person after executing an agreement to transfer his immovable property would execute another agreement to transfer in favour of another person by recording a date earlier than that of the document he has already executed. By the operation of Section 48, the rights of the person who in fact obtained the agreement to transfer earlier in point of time would be defeated by the operation of Section 48 of Transfer of Property Act. Law should protect innocent persons from being cheated. The consequences which innocent persons would suffer are serious and would expose them to long drawn costly litigation. The market price of the land and other immovable properties having risen enormously, tendency to defraud is growing. The State cannot be indifferent to innocent citizens being cheated. Cost involved for Registration not being high, it is not a big burden.
16. That there would not be more than one registered document in respect of the same property is not a valid reason as possibility of several registered documents in respect of the same property is not excluded. The Registrar is bound to register any number of documents such as several sale deeds in respect of the same property in view of the limited grounds for refusal of registration



prescribed by Section 34 & 35 of the Act.

17. The States of Andhra Pradesh, Gujarat, Rajasthan, Tamil Nadu and Uttar Pradesh have amended Section 17 of the Act and made agreement to transfer immovable property of the value of Rupees one hundred and upward compulsorily Registerable between 1981 and 1999. The fact that several States have amended the law-making compulsory registration of agreement to transfer immovable property is reiteration of the recognition of and the need to avoid the menace of illegal and fraudulent transfer of immovable property.
18. In fact, several cases have come before the Courts throughout India where such frauds have been noticed in several reported cases. Being disturbed by the growing menace, the Supreme Court of India has made the following observations at Para 15 of the judgment in the case between **T.G. Ashok Kumar v/s Govindammal** decided on **8.12.2010 [SCJ 2011 (Vol.I Page1)]**:

*"15. We may also refer to another related area where registration should be made compulsory to reduce property litigation. At present in most of the states, agreements to sell are not compulsorily registerable as they do not involve transfer of any right, title or interest in an immovable property. Unscrupulous property owners enter into agreements of sale and take huge earnest money deposits/advances, and then sell the property to others thereby plunging the original agreement holder*

*and the subsequent purchaser into litigation. Registration of agreements of sale will reduce such litigation. It will also assist in putting an end to the prevalent practice of entering into agreements of sale showing the real consideration and then registering the sale deed for only a part of the real consideration. If all agreements of sale are compulsorily registered, that will go a long way to discourage generation and circulation of black money in real estate matters, as also undervaluation of documents for purposes of stamp duty. It will also discourage the growth of land mafia and muscleman who dominate the real estate scene in various parts of the country. Prevention of a malaise, is always better than allowing a malaise to develop and then trying to cure it."*

19. The Hon'ble Supreme Court took cognizance of instances of unscrupulous owners entering into agreements for sale of immovable property, who having received huge earnest money deposits/advances and then selling the same properties to others by exposing the original innocent agreement holders and the subsequent agreement holder/purchaser into otherwise eminently avoidable litigation. The Hon'ble Supreme Court being concerned by the growing fraudulent practices and under valuation of properties expressed itself in favour of amending the law to compulsorily register agreements for transfer of immovable property to avoid/discourage generation and circulation of black money in real estate business. Such a course

of action would also have the effect of discouraging the growth of land mafia and prevent evasion of stamp duty and at the same time discourage musclemen who dominate the real estate scene in various parts of the country. The above expression of opinion by the Supreme Court of India cannot be taken lightly and steps have to be taken to curb the menace. We have, therefore, no hesitation in recommending that agreement to transfer immovable property of the value of Rs. 100/- and upwards should be made compulsorily registerable by suitably amending Section 17 (1) of the Act.

20. Section 17(1) of the Act enumerates the documents of which registration is compulsory. Sub-section (1-A) which was added by Act 48 of 2001 reads as follows:

***"(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, 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 of the purposes of the said Section 53-A".***

21. It is clear that registration of contract to transfer for

consideration was made compulsory for the limited purpose of protecting possession or the party in whose favour the agreement to transfer has been executed. Other kind of contracts for transfer would not be required to be registered. If instead registrations of all agreements to transfer immovable property are made compulsory it would protect the interests of all intending transferees. It is therefore necessary to delete sub-section (1-A) and by adding the following as clause (f) in Section 17(1) of The Registration Act:

***"17(1) (f): The documents containing contracts to transfer for consideration, any immovable property of the value of one hundred rupees and upwards executed on or after the commencement of this clause".***

22. Consequentially, clause (v) of sub-section (2) of Section 17 and the explanation which read as follows shall be deleted.

***"17(2)(v) - [any document other than the documents specified in sub-section (1-A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create,***

***declare, assign, limit or extinguish any such right, title or interest;***

***17 (2) - [Explanation. - A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]"***

### **RECOMMENDATIONS**

23. For the reasons stated above, the Commission recommends the following amendments:

**The Registration Act, 1908 shall be amended as follows:**

- i. "Sub-section (1-A) of Section 17, clause (v) of Sub-section (2) to Section 17 and explanation to sub-section (2) of Section 17 of The Registration Act shall be deleted.***
- ii. Section 17(1) shall be amended by adding the following as clause (f)***

***"The documents containing contracts to transfer for consideration any immoveable property of the***

***value of one hundred rupees and upwards executed on or after the coming into operation of this amendment".***

**NOTE:**

Though The Registration Act, 1908 is a Central enactment, as the subject of Registration falls in entry Item No. 6 of concurrent list (List-III) of Seventh Schedule to the Constitution of India, the Legislature of the State is competent to amend the same, subject to securing the assent of the President as required by Article 254 (2) of the Constitution. The States of Andhra Pradesh, Gujarat, Rajasthan and Uttar Pradesh have made suitable amendments to Section 17 of The Registration Act after obtaining the assent of the President as required by Article 254 (2) of the Constitution to provide for compulsory registrations of agreements to transfer immovable property of the value of more than Rs. 100/-.

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