

**CASE COMMENT ON SURAJ LAMP AND INDUSTRIES PVT. LTD. V.
STATE OF HARYANA AND ORS.**

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ABSTRACT

Non-registration of legal documents is used in multiple cases to circumvent the due process of law. This has the effect of creating greater black money circulation, corruption, tax evasion and mafia as well. Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors.¹ is one such case which deals with non-registration of the transfer of property and how the process of transfers by general power of attorney was created to sell properties without proper registration. The author in this article, delves into the social background and context of the case, examines the judgement, and critically analyses the effect that the verdict has created.

Keywords: *General power of attorney; registration; conveyance; transfer of property*

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¹ Suraj Lamps Pvt. Ltd. v. State of Haryana, MANU/SC/1222/2011.

CASE COMMENTARY ON SURAJ LAMP AND INDUSTRIES PVT. LTD. V. STATE OF HARYANA AND ORS.

Introduction and Facts:

It became a prevalent practice amongst many Indian states² to transfer property through a General Power of Attorney rather than registering the transfer through a deed of conveyance. This was done to avoid payment of stamp duty, registration charge and capital gains tax which is usually done at the time of registration. Particularly in the Delhi-National Capital Region, this allowed people to sell their tenements granted to them by the Delhi Development Authority (DDA).³ This had the larger impact of tax evasion and depriving the government of a source of revenue in addition to greater circulation of black money.

A power of attorney is a legal document is created wherein a specific person (in this case, the buyer) is empowered to have charge of managing the property and act in the capacity of an agent.⁴ The modus operandi to transfer the property through the said method is three-fold – 1. A sale agreement is created which includes the details of the transfer such as terms, delivery of possession and consideration; 2. An irrevocable Power of Attorney is created where the buyer is given absolute charge to manage the property (explained under Powers of Attorney Act, 1882⁵ and Indian Stamps Act, 1899⁶); 3. A will leaving the property to the buyer is created to safeguard against the possibility of death of the principal⁷. On the other hand, stamp duty is an *ad valorem* tax, which works to generate state revenue, and varies from state to state. It is levied on value of instruments used for transaction. The Registration Act, 1908⁸ explains the procedure of registering various documents. It is important to give legal evidence, provide information and prevent fraudulent transactions. Therefore, instruments of legal value need to be registered.

In this case, the petitioner company bought the land from Ramnath and his family using the three-fold procedure described above along with a consideration of Rs. 7,16, 695. Out of this

² S.C. Raghuram, *The legalities of sales through the power of attorney*, THE HINDU (Oct. 29, 2021), <https://www.thehindu.com/real-estate/the-legalities-of-sales-through-the-power-of-attorney/article37227648.ece>.

³ VARUN PANICKAR, TRANSFORMATIVE LAW AND PUBLIC POLICY 319, Routledge India (1st ed. 2019).

⁴ S.C. Raghuram, *The legalities of sales through the power of attorney*, THE HINDU (Oct. 29, 2021), <https://www.thehindu.com/real-estate/the-legalities-of-sales-through-the-power-of-attorney/article37227648.ece>.

⁵ Powers of Attorney Act, 1882.

⁶ Indian Stamps Act, 1899.

⁷ Suraj Lamps Pvt. Ltd. v. State of Haryana, MANU/SC/1222/2011.

⁸ The Registration Act, 1908.

two-and-a-half-acre land, the petitioner company verbally promised to sell one acre of that land to a third person, who was also an ex-MLA. Before the said transfer could take place, this person engaged with Ramnath who again sold the same 2.5 acres of land via a GPA to him. He revoked the GPA previously made in favour of the petitioner.⁹

The petitioner claimed that an FIR was filed under sections 406, 420, 467, 468, 471 and 120B of the IPC¹⁰, however, no action was taken by the SHO. Later, the petitioner filed an application under Right to Information Act, 2004¹¹ seeking information about the status but the SHO/IO gave contradictory answers. An appeal was filed before Chief Information Commissioner who disposed it off and passed an order for re-investigation and submission of proper reply. Aggrieved, a writ petition was presented before the High Court which dismissed it. An SLP was filed challenging order of the CIO and initiating proceedings under S. 20 of RTI with a penalty. The court also gave notice to Delhi, Haryana, Punjab, Uttar Pradesh and requested the Solicitor General of India to share their suggestions on the matter.¹²

Judgement and Reasoning:

Observing the modus operandi of SA/GPA/WILL transfers, the 3-judge bench comprising of Justice R.V. Raveendran, Justice A.K. Patnaik and Justice H.L. Gokhale¹³ noted various detriments posed by such transfers. First, it becomes possible for widespread income tax, wealth tax, stamp duty, and registration fee evasion, depriving the government and the public of the benefits of these tax revenues.¹⁴ Second, by allowing those with hidden wealth or income to invest it and make money in the process, these transactions promote the spread of black money and corruption.¹⁵ This also has dangerous “collateral effects”, such as reselling of property by the vendor after market value increases and providing opportunity to real estate mafia to coerce vendors to resell their properties.¹⁶

Furthermore, it was also advised that States should consider reduction in the stamp duty because of 2 reasons: first, that it will encourage parties to register their sale deeds/deeds of conveyance and second, that since more sale deeds will be registered, generation of black

⁹*Id.*

¹⁰ Indian Penal Code, 1860.

¹¹ Right to Information Act, 2004.

¹² *Id.*

¹³ Suraj Lamps Pvt. Ltd. v. State of Haryana, MANU/SC/1222/2011.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

money will reduce. The states responded by referring to various measures taken, such as amendments in Stamp and Registration laws. These measures mandate registration of immovable property & those which relate to part performance in Section 17 of Transfer of Property Act, 1882 (hereinafter referred to as ToPA) along with SA/GPA/WILL concerning delivery of possession and including non-family members to be subject to stamp duty.¹⁷

The court also deeply evaluated relevant provisions for this case, such as, Section 5,¹⁸ 54,¹⁹ 53 A of The Transfer of Property Act²⁰ and Section 17 of The Registration Act.²¹ Emphasizing the vitality of registration, it was said that this enables prevention of fraudulent transactions, ease of verification of property and transferring title.

Citing cases like *Narandas Karsondas v. S.A. Kamtam and Anr.*²², the court explicated section 54 by stating that no interest in the property by mere agreement to sell.²³ The court emphasised that section 54 says that “*sale of immovable property can be made only through a registered instrument and agreement of sale does not create any interest in the subject matter*”²⁴ and concluded that transfer of immovable property can be made only by a deed of conveyance.²⁵ It also said that no contract of sale will transfer an interest in immovable property unless it is registered and hence, meets the requirements of section 54 and 55²⁶ of ToPA.²⁷

Relying on *State of Rajasthan v. Basant Nehata*,²⁸ it was said that a power of attorney (including an irrevocable PoA) cannot be used as an instrument to transfer any interest or right pertaining to an immovable property. However, an attorney holder, on the behest of the grantor can execute a deed of conveyance.²⁹

Rectifying the observations made by the Delhi High Court in *Asha M. Jain v. Canara Bank*³⁰, the court said that transfers of immovable property by SA/GPA/WILL are “*unwarranted and not justified unintended and misleading the general public into thinking that they are some kind*

¹⁷ *Id.*

¹⁸ The Transfer of Property Act, 1882, §5. “Transfer of property defined”.

¹⁹ The Transfer of Property Act, 1882, §54. “Sale defined”.

²⁰ The Transfer of Property Act, 1882, §53A. “Part performance.”

²¹ The Registration Act, 1908, §17. “Documents of which registration is compulsory”.

²² *Narandas Karsondas v. S.A. Kamtam and Anr.*, MANU/SC/0363/1976.

²³ *Id.*

²⁴ *Suraj Lamps Pvt. Ltd. v. State of Haryana*, MANU/SC/1222/2011.

²⁵ *Narandas Karsondas v. S.A. Kamtam and Anr.*, MANU/SC/0363/1976.

²⁶ The Transfer of Property Act, 1882, §5. “Rights and liabilities of buyer and seller.”

²⁷ *Suraj Lamps Pvt. Ltd. v. State of Haryana*, MANU/SC/1222/2011.

²⁸ *State of Rajasthan v. Basant Nehata*, MANU/SC/0547/2005.

²⁹ *Suraj Lamps Pvt. Ltd. v. State of Haryana*, MANU/SC/1222/2011.

³⁰ *Asha M. Jain v. Canara Bank*, 94 (2001) DLT 841.

of a recognition or accepted mode of transfer.”³¹ Only a registered deed of conveyance can lead to a lawful transfer of immovable property and SA/GPA/WILL are illegitimate ways to transfer immovable property.³² The only exception to the latter is in the case of genuine transactions where a person may give a power of attorney to any of his family member or relative to manage the property. Other possible scenarios can be in cases of developmental projects, where land developers may execute agreements for selling individual plots of land in favour of purchasers. However, these must be regulated (several states already have special provisions and specific stamp duties for such transactions). Furthermore, if these are accepted by the DDA or other development authorities, then they won't be subjected to make changes according to the aforementioned decision. Lastly, this ruling was to be applied prospectively to avoid hardship.³³

Analysis:

In the discourse of transfer of property, this judgement proved to be landmark as it elucidated the illegitimacy of SA/GPA/WILL transfers in many cases, and further played a crucial role in dispelling doubts pertaining to such transfers. The Delhi High Court in *Asha M. Jain v. Canara Bank*³⁴, recognized the SA/GPA/WILL sales as a means of transferring property. People started instrumentalising GPA transfers, perceiving it to be a valid means.³⁵ This incentivized more people to use it whilst not paying multiple taxes and duties. In *Suraj Lamps v. State of Haryana*, this position was clarified as the Supreme Court overruled this case to the extent that it considered such transfers as concluded.³⁶

When this decision was passed, use of SA/GPA/WILL as a means of transfer was already rampant in Delhi NCR. Consequently, the High Court was burdened with a plethora of applications, where applicants who had already transferred their property through GPA, sought relief. The city's property transactions significantly dropped³⁷ and the Supreme Court's stance was clarified by the Delhi High Court where Justice Rajiv Shakdher opined in *Pace Developers and Promoters v. Govt. Of NCT* that genuine transactions, such as one where family members

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Asha M. Jain v. Canara Bank*, 94 (2001) DLT 841.

³⁵ VARUN PANICKAR, *TRANSFORMATIVE LAW AND PUBLIC POLICY* 319, Routledge India (1st ed. 2019).

³⁶ Kirat Singh Nagra and Tanuj Bhushan, *Supreme Court clarifies rules on transfer of immovable property*, LEXOLOGY. Shardul Amarchand Mangaldas & Co. (Accessed: April 23, 2023).

³⁷ *Delhi government lifts ban on property transaction through GPA*, THE ECONOMIC TIMES (July 22, 2013), <https://economictimes.indiatimes.com/>.

or friends are given PoA because the principal cannot manage or sell property, will remain valid.³⁸

The court correctly expresses that registration of documents pertaining to transfer of immovable property, such as sale deed and deed of conveyance is essential because as a document which should necessarily be registered under Section 17, it is important for the instrument to be lawful. Additionally, registration enables record of properties to exist in public domain so that there is access to right information. Hence, corruption, black marketing, fraudulent transactions are prevented.

However, the Supreme Court failed to provide any guidelines or regulations to curb such practices.³⁹ It did not distinguish between genuine and deceiving transactions, nor did it lay down any metrics to differentiate between them. Declaring SA/GPA/WILL transfers as invalid means to transfer property did not suffice and they still have a ‘perceived legality’ and extensive use in leasehold conversions.⁴⁰ The judgement is a step in the right direction, however, we need more state regulations and clarity of law on the said matter to materialize the envisaged goals. The Supreme Court has mentioned the steps taken by the Government of Haryana, of reduction in stamp duty from 12.5% to 5%, as positive measure. It stated,

*“A high rate of stamp duty acts as a damper for execution of deeds of conveyance for full value, and encourages SA/GPA/WILL transfers....Reducing the stamp duty on conveyance to realistic levels will encourage public to disclose the maximum sale value and have the sale deeds registered.”*⁴¹

Post this judgement, multiple states lowered their stamp duty. The current rates in UP, Punjab and Delhi lie between 5-6%.⁴² Since imposition of stamp duty comes within the ambit of State government, it is important for such measures like revision of taxes and duties to be done in multiple states regularly. Registration of properties sold through this means was banned by the States and a blanket ban was imposed in 2012 after the apex court’s order.⁴³ This has not

³⁸ Pace Developers and Promoters v. Govt. of NCT, 2013, W.P.(C) 4585/2012 & CM No. 9515/2012.

³⁹ Kirat Singh Nagra and Tanuj Bhushan, *Supreme Court clarifies rules on transfer of immovable property*, LEXOLOGY. Shardul Amarchand Mangaldas & Co. (Accessed: April 23, 2023).

⁴⁰ VARUN PANICKAR, *TRANSFORMATIVE LAW AND PUBLIC POLICY* 319, Routledge India (1st ed. 2019).

⁴¹ Suraj Lamps Pvt. Ltd. v. State of Haryana, MANU/SC/1222/2011.

⁴² “Document wise detail of Stamp Duty, Registration Fee and Facilitation Charges” , 2023, Government of Punjab, Available at: <https://revenue.punjab.gov.in/?q=stamp-dutymutationregistration-other-fees> (Accessed: April 23, 2023); Stamp and Registration Department, Uttar Pradesh, 2023, <https://igrsup.gov.in/igrsup/defaultAction.action>; Rates of Stamp Duty in Delhi, 2023, Delhi.

⁴³ “Delhi government lifts ban on property transaction through GPA”, THE ECONOMIC TIMES (July 22, 2013), <https://economictimes.indiatimes.com/>.

completely curbed the practice of SA/GPA/WILL transfers, as can be seen through multiple cases that still come before the court. However, it is a right measure for the way forward.

This judgement has been cited and used by courts in almost every case related to SA/GPA/WILL transfers, emphasising their illegitimacy and pointing towards vitality of registration. The case of *Shiv Kumar v. UOI*⁴⁴ held that a purchase made through this means won't grant the right to transfer it to the purchasers because no interest is created in immovable property and hence, no right may be claimed.⁴⁵ The Punjab & Haryana High Court commented adversely on the use of GPA sales and their existence using it in *Amritpal Singh v. Chandigarh Administration, 2012*.⁴⁶ In *Smt. Shashi Bala Nagpal v. Sh. Rama Kant Shah*,⁴⁷ Delhi High Court used this judgement along with *Shri Ramesh Chand v. Suresh Chand and Anr.*⁴⁸ and affirmed that documents in the nature of agreement to sell encompassing the doctrine of part performance under Section 53A of the Transfer of Property Act⁴⁹ need not be registered.⁵⁰ SA/GPA/WILL transfers are largely considered illegitimate in most of the states with the exception of specific scenarios as laid by the judgement.

Conclusion:

While the judgement takes the right course by illegitimising fraudulent sales, it leaves several loopholes and does not take adequate measures to efficiently curb them. It makes an exception for 'genuine' transactions but does not give enough metrics to differentiate genuine and fraudulent ones. In addition, many state governments have taken such actions that promote registration of sale deeds. From the multiple cases that have come after the judgement, it is seen that there is scope for courts to evaluate multiple aspects such as what sort of sales can be considered valid when they are not registered. Largely, the final position remains that SA/GPA/WILL sales have been banned apart from the exceptions, but several cases that still come before the court show that they are still instrumentalised unlawfully.

⁴⁴ *Shiv Kumar v. Union of India & Anr.*, MANU/SC/1407/2019.

⁴⁵ Ashok Kini, *Execution of power of attorney cannot transfer title to the grantee, reiterates SC [read judgment]*, LIVE LAW. (Accessed: April 23, 2023).

⁴⁶ *Amritpal Singh v. Chandigarh Administration*, MANU/PH/2337/2012.

⁴⁷ *Shashi Bala Nagpal v. Rama Kant Shah*, 2016 SCC OnLine Del 4404.

⁴⁸ *Ramesh Chand v. Suresh Chand*, 2011 SCC OnLine Del 1049.

⁴⁹ The Transfer of Property Act, 1882, §53 A.

⁵⁰ *Shashi Bala Nagpal v. Rama Kant Shah*, 2016 SCC OnLine Del 4404.