



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष ७, अंक २]

मंगळवार, फेब्रुवारी ९, २०२१/माघ २०, शके १९४२

[पृष्ठे ५, किंमत : रुपये २७.००

असाधारण क्रमांक २

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Stamp (Amendment and Validation) Ordinance, 2021 (Mah. Ord. I of 2021), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

BHUPENDRA M. GURAO,
I/C. Secretary (Legislation) to Government,
Law and Judiciary Department.

(Translation in English of the Maharashtra Stamp (Amendment and Validation) Ordinance, 2021 (Mah. Ord. I of 2021), published under the authority of the Governor).

REVENUE AND FORESTS DEPARTMENT

Mantralaya, Madam Cama Marg, Hutatma Rajguru Chowk,
Mumbai 400 032, dated the 9th February 2021.

MAHARASHTRA ORDINANCE No. I OF 2021.

AN ORDINANCE

further to amend the Maharashtra Stamp Act.

WHEREAS both Houses of the State Legislature are not in session;

AND WHEREAS the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Maharashtra Stamp Act, for the purposes hereinafter appearing;

LX of
1958.

(१)

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely:—

Short title and commencement.

1. This Ordinance may be called the Maharashtra Stamp (Amendment and Validation) Ordinance, 2021.

(2) It shall come into force at once.

Substitution of section 5 of LX of 1958.

2. For section 5 of the Maharashtra Stamp Act (hereinafter referred to as “the principal Act”), the following section shall be substituted and shall be deemed to have been substituted with effect from the 11th August 2015, namely:—

Instruments relating to several distinct matters or transactions.

“5. Any instrument comprising or relating to several distinct matters or transactions shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters or transactions, would be chargeable under this Act.”.

Amendment of SCHEDULE I of LX of 1958.

3. In SCHEDULE I appended to the principal Act,—

(a) in article 6,—

(i) in clause (1), in sub-clause (b), in column (2), for the figures and words “0.2 per cent. of” the figures and words “0.3 per cent. of” shall be substituted;

(ii) in clause (2), in sub-clause (b), in column (2), for the figures and words “0.2 per cent. of” the figures and words “0.3 per cent. of” shall be substituted;

(iii) after clause (2), the following clause shall be added, namely:—

“(3) The instrument falling under this article when executed as a collateral or auxiliary or additional security and where the proper duty has been paid on the Principal or Primary security under this article. Five hundred rupees.”;

(b) in article 40, for clause (b), the following clause shall be substituted, namely:—

“(b) when possession is not given or agreed to be given as aforesaid,—

(i) if the amount secured by such deed does not exceed rupees five lakhs, 0.1 per cent. of the amount secured by such deed, subject to minimum of one hundred rupees;

(ii) in any other cases, 0.3 per cent. of the amount secured by such deed, subject to maximum of ten lakh rupees;”.

4. (1) Notwithstanding anything contained in any judgement, decree or order of any court to the contrary or in the principal Act, stamp duty assessed, levied and collected, including any action taken in pursuance of such assessment, levy and collection by the authorities under the said Act, acting or purporting to act under the provisions of section 5 and articles 6 and 40 in the Schedule I to the principal Act shall be deemed to have been validly levied and collected in accordance with law as if the provisions of the said section 5 and articles 6 and 40, as amended by the Maharashtra Stamp (Amendment and Validation) Ordinance, 2021 (hereinafter in this section referred to as "the Amendment Ordinance") had been continuously in force at all material time and accordingly,—

(a) all actions, proceedings or things done or taken by the authorities under the principal Act in connection with the levy and collection of the stamp duty shall for all purposes, be deemed to have been done or taken in accordance with the provisions of the principal Act;

(b) no suit or other proceedings shall be maintainable or continued in any court, against the said authorities for the refund of the stamp duty so levied and collected;

(c) no court or any other authority shall enforce any decree or order directing the refund of the stamp duty so levied or collected.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing a person,—

(a) from questioning in accordance with the provisions of the principal Act as amended by the Amendment Ordinance, any assessment, reassessment, levy or collection of stamp duty referred to in sub-section (1), or

(b) from claiming refund of any stamp duty paid by him under the principal Act, in excess of the amount due from him by way of stamp duty under the principal Act, as amended by the Amendment Ordinance.

STATEMENT

Section 5 of the Maharashtra Stamp Act (LX of 1958) (hereinafter referred to as “the said Act”) provides that any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under that Act. Section 5 of the Gujarat Stamp Act, 1958, as amended in the year 2007, covers instrument comprising of or relating to distinct transactions also, which has been upheld by the Hon'ble Supreme Court in its judgement dated the 11th August 2015 in Civil Appeal No. 6054 of 2015. The Bombay High Court has, while interpreting section 5 of the said Act, in Writ Petition No. 8014 of 2019, *vide* its order dated the 11th September 2019, held that the phrase ‘distinct matters’ appearing therein is equivalent to the phrase ‘distinct transactions’.

In order to bring clarity in the provisions of said section 5 about charging stamp duty in respect of any instrument comprising or relating to several distinct transactions, the section 5 of the said Act is proposed to be amended, suitably, to specifically include “distinct transactions” therein, on the lines of the amendment made in the Gujarat Stamp Act, 1958.

2. The stamp duty in respect of an instrument evidencing mortgage by deposit of the title deeds and simple mortgage deed is chargeable as per articles 6(1) and 40 in Schedule I of the said Act, respectively. The stamp duty chargeable on the instruments under said article 6(1) is less than that chargeable under said article 40.

From the documents registered during the period from the year 2013 to 2019, it is noticed that number of documents evidencing mortgage by deposit of title deeds are increasing.

Due to the difference in charging stamp duty, sometimes documents are drafted in such a way that, even though the nomenclature of the document indicates mortgage by deposit of title deed, it attempts to cover simple mortgage. Such documents creates difficulties in adjudication of amount of proper stamp duty chargeable for them under the said Act.

With a view to enable execution of agreement relating to mortgage by deposit of title deeds, certain towns are notified by the State of Maharashtra, in exercise of the powers conferred by clause (f) of section 58 of the Transfer of Property Act, 1882 (4 of 1882), from time to time. However, due to increase in transactions, a need is felt to notify new towns for the purposes of clause (f) of the said section 58. Where a town is not notified under the said clause (f), the citizens are burdened to opt for execution of simple mortgage deed instead of mortgage by deposit of title deeds for which the stamp duty chargeable under the said Act is more.

In view of the above, it is considered expedient to bring uniformity in stamp duty chargeable on the instruments of mortgage by deposit of title deeds and simple mortgage deed under the said articles 6 and 40, respectively. For that purpose, the said articles 6 and 40 in Schedule I appended to the said Act are proposed to be amended, suitably.

3. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Maharashtra Stamp Act (LX of 1958), for the purposes aforesaid, this Ordinance is promulgated.

Mumbai,

Dated the 5th February 2021.

BHAGAT SINGH KOSHYARI,

Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

DR. NITIN KAREER,

Additional Chief Secretary to Government.