



WEB COPY



W.P. No.25805 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.07.2026

CORAM:

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.25805, 25809, 25830 and 25831 of 2025

Tsm Sadunnissa
Old No.2, New No.5, Rultland Gate, 4th Street,
Thousand Lights, Greams Road, Chennai-600 006.

..Petitioner(s) in
all W.P.s

Vs

1. Tamil Nadu Real Estate Regulatory Authority
1st Floor, No.1A, Gandhi Irwin Bridge Road,
Egmore, Chennai-600 008.
2. State of Tamil Nadu
Through The Secretary to the Government,
Housing & Urban Development Department,
Fort St. George, Chennai-600 009.

..Respondent(s)
in all W.P.s

For Petitioner : Mr.Karthik Sundaram

For Respondents : Ms.Amirta Porkodi for R1
Mr.S. Siddhartha Vishnu
for R2



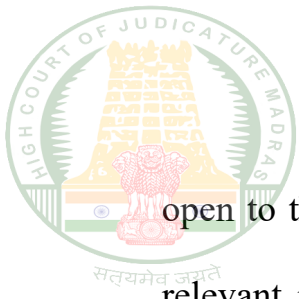
W.P. No.25805 of 2025

COMMON ORDER

WEB COPY

The short question that arises for consideration is as to whether the compulsion to register under RERA and also the provisions of tenancy on the premise that the petitioner is liable for registration, can be sustained, inasmuch as the petitioner has constructed the property on his own land and thereafter given it to lease to several parties. The lease periods range between five and twelve years, with a provision for renewal.

2. It is submitted by the learned counsel for the petitioner that since the petitioner is the Owner as well as the Builder, he would qualify neither as a Promoter nor would the construction qualify as a “Real estate project”. He further submits that the lease agreements executed by the petitioner do not fall within the purview of RERA Act. He would bring to the notice of this Court that Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 which defines the expression “allottee”, and submit that a Division Bench of this Court while considering the expression “leasehold” employed in Section 2(d) while defining “allottee” has held that the expression “lease-hold” would prima facie cover those leases where the tenure is for thirty years. After having held so, it had also proceeded to say that though the lease agreement is for a period less than thirty years, if however it is in substance a sale, it is



W.P. No.25805 of 2025

open to the appropriate authority to insist/direct registration under RERA. The

relevant portion of the decision of the Hon'ble Division Bench in ***The Real Estate Regulatory Authority vs. S.M. Syed Abdul Khader Mutawalli and 2 others (W.A. No.1723 of 2023 dated 09.06.2025)*** is extracted hereunder :

“Discussion and conclusion on the issue whether registration under the Act is mandatory in respect of projects involving lease of units/apartments.

44. We now apply the scheme of the Act as above, to the legal issue arising in this matter, being, whether registration under the Act is compulsory for all real estate projects irrespective of whether the units are for sale/lease.

45. In the present case, there is no doubt that both the petitioner and R1, are ‘real estate promoters’ as per the definition under the Act. There is also no dispute that the projects in question constitute ‘real estate projects’. Petitioner and R1 have argued that notwithstanding that they are promoters, and the projects are real estate projects for the purposes of the Act, such projects would not attract the rigour of the Act as the lessees are not ‘allottees’, as per the statutory definitions, and as there has been no transaction of sale in their favour.

46. In our view that would be an oversimplification of the matter. True, the definition of a ‘promoter’ is ‘a person who constructs or causes to be constructed an independent building or apartments for the purpose of selling to other persons all or some of the plots in the said project or a person who develops land into a project , for the purpose of selling to other persons all or some of the plots in the said project.’ (emphasis supplied)

47. Moreover, the definition of ‘allottee’ also specifically excludes those persons ‘to whom such plot, apartment or building, as the case may be, is given on rent’. However, the definition of allottee also states that an allottee is one ‘to whom a plot, apartment or buildings, as the case may, has been allotted, sold (whether as freehold or leasehold) or otherwise information that a real estate project is liable to be registered under Act but is designed deviously in any way whatsoever, including by using the nomenclature of ‘lease’



obfuscating the nature of the transaction merely to subvert such registration, it is bound to lift the veil and take prompt action to contain such an endeavour.

48. One has thus to reconcile the position that the definition of 'allottee' contains two conflicting positions, that the transaction not be one of 'sale' but may include the owner of leasehold rights as well. We find only two instances where the term 'lease'/'leasehold' has been used, the first in Section 2(d) defining 'allottee' and the second in Section 11(4)(c) touching upon duties of a promoter.

49. Section 11(4)(c) states that a promoter would be responsible for obtaining a lease certificate in cases where the project has been developed on leasehold land. The certificate must be handed over to the association of allottees and must stipulate that all dues and charges in relation to that land have been paid.

50. In our view, neither Section 2(d) nor Section 11(4)(c) further the position canvassed by the Authority that registration of all real estate projects is compulsory. The term 'freehold' indicates unrestricted ownership of both the land as well as super-structure thereupon and the term 'leasehold' indicates ownership of the right to use and enjoyment of the land and building albeit for a demarcated period only. The extent of regulation under the Act extends to projects developed on leasehold land alone and a combined reading of Section 11(4)(d) and 2(d) nowhere leads to the inference that transactions of lease of units in a project renders the project vulnerable to registration.

51. Section 5(3) is relevant in that it states that the registration so granted or deemed to have been granted under the Act shall be valid for the period stipulated under Section 4(2) (C), which is the time period within which the promoter had undertaken to complete the project or phase thereof. Thus, the overseeing of a project by the Authority is only till such time the project is completed and the units handed over to the purchasers. The role of the Authority ends with this.

52. One of the arguments by Mr.Om Prakash is that the responsibility of the Authority extends to overseeing the structural stability of the building as well as the compliance of the promoter with planning and building permits. While that is correct, such an exercise can be carried out by the Authority only for the life/validity of the registration granted under the Act and not beyond.

53. While seeking registration, the promoter is expected to furnish an undertaking as to when the project/phase of the project, will be completed. Such an exercise is rendered



W.P. No.25805 of 2025

impossible in the context of lease of property as the transaction between the promoter and the lessee is a continuing one till the parties so desire. The question of the promoter furnishing a declaration that the project has been completed and the unit handed over to the purchaser does not arise in such circumstances.

54. The only reasonable and practicable conclusion is that the Act, and the provisions thereunder, are not expected to apply in the case of a lease and will apply only in the case of a sale of unit where there will also be a finality to the role of the promoter with such sale.

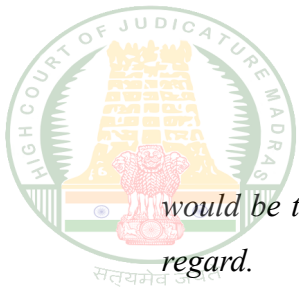
55. Mr.Om Prakash has argued that the apprehension of the Authority, centers around the possibility of a transaction of sale being disguised as one of lease, to evade statutory registration under the Act. The statement of objects and reasons to the Act, the relevant portion of which is extracted below, indicates that it seeks to balance the interests between the industry and consumers and this approach will therefore aid the interpretation of its provisions as well.

56. This aspect has also been noted by the division bench of the Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. and another V. Union of India and others (AIR 2018 (NOC) 398 (Bom). ‘ . .

3. The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run.’

57. We agree that the provisions of the Act cannot be interpreted so as to entitle a promoter/agent to draw an unfair and unintended benefit. The anxiety and apprehension of the Authority is a legitimate one though it remains to be seen as to whether it has been properly applied in the present cases.

58. The definition of ‘allottee’, that includes the owner of leasehold rights, cannot thus be literally interpreted or understood to conclude that the Act would apply only in situations of a sale simplicitor. As a general proposition therefore, we conclude that the Act would apply to promoters of real estate projects involving sale of properties as well as perpetual leases or leases in excess of a particular tenure. As of now, it is moot as to what



W.P. No.25805 of 2025

would be the threshold to determine such tenure and no guidance has been provided in this regard.

WEB COPY

59. In fact, the State has notified the Tamil Nadu Real Estate (Regulation and Development), Rules 2017 in order to implement the Central Act, making it mandatory for the promoter to produce the TNRERA Registration Certificate as a pre-condition for issuance of completion certificate by the CMDA and the Directorate of Town and Country Planning as well as Local Planning Authorities and local bodies in case of all projects without there being any verification of whether at all the project concerned required registration under the Act.

60. The Authority had, on 02.11.2018, requested the State to issue necessary orders making project registration mandatory, and vide G.O.Ms. No. 166 dated 29.11.2018, the request of the Authority has been accepted in the following terms:-

...

5. The Government carefully examined the request of the Chairperson, TNRERA in para 4 above and direct the Member Secretary, Chennai Metropolitan Development Authority and Commissioner of Town and Country Planning to include the registration of projects with TNRERA as one of the conditions in the planning permission and its compliance is a pre-requisite for issue of Completion Certificate, where the area of land proposed to be developed exceeds 500 sq.m. or the number of apartments proposed to be developed exceeds 8 inclusive of all phases. Compliance of this condition shall also be checked and ensured before issue of Completion Certificate. This condition is also to be incorporated in the Tamil Nadu Combined Development Regulations and Building Rules, 2018.

61. The above Government Order is unconditional and does not take into account the position that the Act does not apply to transactions of lease simpliciter, and can be called upon to address only transactions of sale or perpetual/unusually long leases where the authority is of the view that the substance of the transaction is really one of sale and not one of lease. This aspect of the matter has escaped the attention of both the State and the Authority.

62. Now coming to the applicable period, the Articles under the Schedule to the Indian Stamp Act 1899 (Stamp Act) provides some guidance. Article 35 of Schedule I to the Stamp Act deals with lease and provides as follows:



W.P. No.25805 of 2025

WEB COPY

35. LEASE, including an under lease or sub-lease and any agreement to let or sub-let-

(a) Where the period of lease is below thirty years – One rupee for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable;

(b) Where the period of lease is thirty years and above and upto ninety-nine years - Four rupees for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable;

(c) Where the period of lease is above ninety-nine years- Eight rupees for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable.

63. Article 23 of Schedule I to the Stamp Act 1899 dealing with 'conveyance' provides as follows:

23. Conveyance (as defined by section 2(10), not being a Transfer charged or exempted under No.62-

(a) of immovable property situated within the Chennai Metropolitan planning Area and the Urban Agglomeration of Madurai, Salem and Tiruchirapalli and the City of Tirunelveli – Eight rupees for every Rs.100 or part thereof of the market value of the property which is the subject matter of conveyance

(b) of any other property – Seven for every Rs.100 or part thereof of the market value of the property which is the subject matter of conveyance.

64. The rates of stamp duty are graded and increase along with the tenure of leases. The duty payable in respect of conveyance in excess of 30 and 99 years is more than the rates for a lease below 30 years. In fact, lease of a property for a period in excess of 99 years is equated to a sale in terms of clause (2) of Article 23, and the rate of stamp duty is 8% in both cases. For the purposes of the Act, where one is to exclude leases simplicitor from the purview of registration, we thus adopt the tenure of lease under clause (a) of Article 38 of the Stamp Act, being 30 years.



65. Needless to say, in the event the Authority is in possession of information that a real estate project is liable to be registered under Act but is designed deviously in any way whatsoever, including by using the nomenclature of 'lease' obfuscating the nature of the transaction merely to subvert such registration, it is bound to lift the veil and take prompt action to contain such an endeavour.

66. This liberty is available to the Authority even in cases where the lease is for a period of less than 30 years if it believes that the transaction is, in substance a sale, and the Authority certainly can, in appropriate cases, and for reasons to be recorded in writing, lift the veil, directing registration of the project concerned.

67. In Lavassa Corporation, the agreement of lease executed by the promoter was for a period of 999 years. The Authority had thus taken the stand, and legitimately, in our view, that the transaction was, in essence, one of sale and not lease as projected.

68. The Adjudicating Authority in that case, had preferred to focus on the nomenclature used by the parties, rather than the substance of the documentation. The Tribunal had rightly held that the interpretation of the Authority that since the agreements were styled as lease agreements no registration under the Act was necessary, was clearly erroneous. The orders of the Adjudicating Authority had been reversed by the Tribunal which order stood confirmed by the High Court.

69. Our answer to the question as to whether the Authority can insist that a promoter register a project under the Act where (i) the lease is for a period less than 30 years (ii) the promoter has confirmed that the property is for own use or that it/he does not intend to alienate the property by sale or perpetual lease (iii) the authority has no information in its possession to the effect that the promoter intends to circumvent the provisions of the Act, is thus, in the negative.

70. We conclude this issue reiterating that balance must be achieved between all the stakeholders in the sector in interpreting the provisions of the Act, cautioning abstinence by the Authority in cases where there is no indication that the promoters intend to circumvent the provisions of the Act.

71. This position will be verified on the basis of an undertaking to be furnished by the promoter/agent of a project to the CMDA that the project is for own use and not for sale/long perpetual lease in excess of 30 years, at the time of seeking planning permission. The format of the undertaking will be finalised by the Authority in conjunction with the State, within six



W.P. No.25805 of 2025

weeks of receipt of this order. An application unaccompanied by such undertaking such be treated to be invalid.

WEB COPY

72. A copy of the undertaking shall parallelly be furnished to the Authority to enable it to carry out a verification, if it believes it so necessary, as to the legitimacy of the claim of the promoter/real estate agent. While we agree with the procedure contemplated under G.O.Ms. No. 166 dated 29.11.2018, we clarify that the requirement of registration will only be of such projects as stipulated under this Order and not all leases.

73. We have also protected the power of the Authority to intervene, and mandate registration, in cases of leases less than 30 years, for reasons to be recorded in writing. The Authority may also, in such cases, consider issuing a fiat to the concerned sub-registrar that documents shall not be registered. The question that now remains is as to whether such action is justified in the present case.”

3. Learned counsel for the petitioner wants to take instructions.

4. Post the matter on 28.07.2026, immediately after admission.

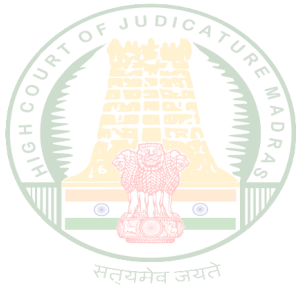
22.07.2026

vsi2

To :

1. Tamil Nadu Real Estate Regulatory Authority
1st Floor, No.1A, Gandhi Irwin Bridge Road, Egmore,
Chennai-600 008.

2. State Of Tamil Nadu
Through The Secretary To The Government, Housing And Urban
Development Department, Fort St. George, Chennai-600 009.



WEB COPY



W.P. No.25805 of 2025

MOHAMMED SHAFFIQ, J.

vsi2

W.P. Nos.25805, 25809, 25830 and 25831 of 2025

22.07.2026