

**LEX NEWSLETTER ZONE**

**Banking & Finance Bytes**

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**Personal right to property cannot be claimed for illegal structures<sup>1</sup>**

-Vaidya, Associate.

A recent judgement dated September 17, 2018 was pronounced by the Hon'ble Bombay High Court in Writ Petition No. 3334 of 2017 whereby illegal structures can be demolished and no question of right to property and compensation under Article 300-A of the Constitution can be attracted if due process of law is followed. The brief facts of the case before the High Court is that certain illegal structures were built over water pipelines which posed a threat towards the breaking of the

pipelines with a length of 160Km in total, supplying drinking water to the city of Mumbai. Counsel appearing for Petitioners in the present matter argued that right to property and compensation guaranteed under Article 300A is applicable to property owners regardless of falling within public or private property.

The division bench noted that even unauthorized structures needed to be dealt with by following due process of law and that after following of due process of law if the structures are demolished after following of due process of law, then no claim can be made under Article 300A of the Constitution of India and cannot claim compensation if not found to attract the provisions under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation Act, 2013. The Bombay High Court directed the state to offer compensation/rehabilitation to eligible persons and if the said offers were not to be accepted/complied, with then accordingly Bombay Municipal Corporation may demolish the said property.

**Suspension of HARERA notice by the Punjab and Haryana High Court<sup>2</sup>**

-Vaidya, Associate.

<sup>1</sup><https://www.livelaw.in/if-illegal-structures-are-demolished-following-due-process-of-law-there-cant-be-violation-of-rights-u-article-300-a-of-constitution-bombay-hc-read-judgment/>

<sup>2</sup><https://www.livelaw.in/ph-hc-stays-govt-notice-clubbing-sole-proprietorship-real-estate-concern-with-companies-read-order/>

The Haryana Real Estate Regulatory Authority ("HARERA") had issued notices from May 8, 2018 to August 3, 2018 to all the sole proprietorship real estate agents firm demanding for INR 2,25,000 as registration fees, categorizing them under "other than individuals" category in the Real Estate Regulatory Authority Rules. The "other than individuals" consists of both partnerships and companies. This notice was challenged by an individual who was operating under the name and style of proprietorship concern namely "M/s. Global Inspirations" stating that he falls under the "individual" category and not under "other than individuals". The Hon'ble High Court has now suspended the said notice until further orders.

#### **Compulsory registration of real estate projects in Telangana.**<sup>3</sup>

-Akshay Ramesh, Associate.

The Telangana state government has instructed all builders and developers who had obtained permission for their real estate projects on or after January 1, 2017 till August 31, 2018 shall have to mandatorily get their projects registered under the with Telangana State Real Estate Regulatory Authority within November 30, 2018, through online. The builders failing/delaying to do the same shall be penalized.

#### **Conversion of Primary (Urban) Co-operative Banks (UCBs) into Small Finance Banks (SFBs)**<sup>4</sup>

- Akshay Ramesh, Associate.

UCBs with a minimum net worth of Rs.500 million and maintaining Capital to Risk (Weighted) Assets Ratio of 9% and above shall identify promoters in the manner as set out in the scheme for making an application to Reserve

<sup>3</sup><http://rera.telangana.gov.in/Site/Upload/PDF/Scrolling-21-09-2018.pdf>

<sup>4</sup><https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11381&Mode=0>

Bank of India ("RBI") for transition to SFB under the scheme. After due diligence exercise, RBI will issue an in-principle approval for transitioning of the UCB into SFB, subject to, compliance with the requirements mentioned in the scheme and will allow a maximum period of 18 months for commencement of business as SFB. The promoters shall incorporate a public limited company under the Companies Act, 2013 having the word 'bank' in its name after receiving the in-principle approval from RBI. The board of directors of the company shall have required experience and shall meet RBI's 'fit and proper' criteria. The promoters shall then approach RBI for issuance of SFB license, with evidence of funds available for infusion as equity in any acceptable form, so as to ensure that the SFB commences operations with a minimum net worth of Rs.1 billion and minimum promoters' contribution of 26% of the paid-up equity capital.

RBI will issue SFB license at this stage followed by execution of the slump sale agreement to transfer the assets and liabilities of the UCB to the new company. On transition into a SFB, it will be subjected to all the norms as applicable to SFBs including maintenance of CRAR of 15% on a continuous basis.

Thereafter, the promoters will approach the RBI for banking license along with board resolution and general body resolution regarding the transition and firm commitments from the promoters. On completion of all the above steps, RBI will scrutinize the application and decide and the decision shall be final. Until the decision is made by the RBI, the UCB will continue to function in the depositors' interest.

#### **Powers of Debt Recovery Appellate Tribunal ("DRAT").**<sup>5</sup>

-Sudhaman, Associate.

<sup>5</sup><https://www.livelaw.in/drat-has-no-inherent-power-to-take-suo-motu-cognizance-in-public-interest-reiterates-delhi-hc-read-order/>

The Delhi High Court reinstated that decision of the Supreme Court of India which states that DRAT has no *suo motu* powers to take up cases in public interest in the case of Edelweiss Asset Reconstruction Company vs. SVIGL Oil Gas and Energy Ltd. The DRAT has exercised *suo motu* powers which it had become *functus officio*. The Hon'ble high Court further states that the power of the Tribunal / DRAT under Section 19(25) of the Debt Recovery Tribunal Act is limited to pass such other orders and give such directions to give effect to the orders or to prevent abuse of its process or to secure the ends of justice and are required to function within the statutory parameters.

✚ **No bar on inheritance of property, if acquitted<sup>6</sup>**

- Sudhaman, Associate.

Section 25 of the Hindu Succession Act a murderer cannot inherit the property of the one who has been murdered by him. In the present case the wife was accused of conspiring her husband's murder, however was acquitted by the Hon'ble Madras High Court as the prosecution failed to establish even prima facie, the involvement of the accused in the offence. The Hon'ble High Court observes that section 25 of the Hindu Succession Act applies only in the event the person is found guilty, however in this case, the wife has been acquitted from the criminal case and thus is eligible to husband's property like any other legal heirs.

✚ **Maintenance of complaint under section 138 of the Negotiable Instruments Act by an unregistered partnership firm<sup>7</sup>**

- Dhivya U.T., Associate.

In the matter of M/s. Uttam Traders Ranghri v.s. Tule alias Tula Ram, Hon'ble High Court of Himachal Pradesh while setting aside the order/judgment dated 12.03.2018 passed by Judicial Magistrate 1st Class Manali, District Kullu, H.P. in Cr. C. no 1630I/2015/31-III/2017 and remitting back case to the trial court held that criminal prosecution under section 138 of the Negotiable Instruments Act initiated by the complainant against the respondent is not hit by section 69 of the partnership act and that appellant shall be given opportunity to lead evidence with regard to the factum of partnership as also due authorisation. Therefore, even an unregistered Partnership firm can maintain a complaint under section 138 of the Negotiable Instruments Act.

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<sup>6</sup><https://www.livelaw.in/no-disqualification-to-inherit-property-when-there-is-clear-acquittal-by-hc-madras-hc-read-judgment/>

<sup>7</sup>[http://164.100.138.228/casest/cis/generatenew.php?path=../casest/orders/orders/2018/&fname=230400001402018\\_7.pdf&smflag=N](http://164.100.138.228/casest/cis/generatenew.php?path=../casest/orders/orders/2018/&fname=230400001402018_7.pdf&smflag=N)