

RIGHTS AND OBLIGATIONS OF THE BUYERS AND THE PROMOTERS TOWARDS EACH OTHER WHERE A REAL ESTATE PROJECT IS EXEMPTED FROM REGISTRATION OF UNDER SECTION 3(2) OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

Introduction: Statutory Interpretation

Statutory interpretation is the process by which courts interpret and apply legislation. Construction and Interpretation of a statute is an age-old process and as old as language. Interpretation of statute is the process of ascertaining the true meaning of the words used in a statute. Some amount of interpretation is often necessary when a case involves a statute. Sometimes the words of a statute have a plain and straightforward meaning. But in many cases, there is some ambiguity or vagueness in the words of the statute that must be resolved by the judge. To find the meanings of statutes, judges use various tools and methods of statutory interpretation, including traditional canons of statutory interpretation, legislative history, and purpose. The concept of interpretation of a Statute cannot be static one. Interpretation of statutes becomes an ongoing exercise as newer facts and conditions continue to arise.

In **Tate v. Ogg**¹, the court observed that “legislatures often omit terms from a statute because

(a) the lawmakers do not have sufficient time to consider every specific application of a bill during the rush to pass legislation, or

(b) legislatures expect the courts to “fill in the gaps” and to adapt the statute to new and unforeseen situations.

In such cases, you might look to other statutory interpretation tools to extend the statute to cover terms not explicitly provided for in the statute.”

Present case:

The Real Estate (Regulation and Development) Act, 2016 (for short “Act”) divides a real estate project into two categories i.e.

- one that requires registration and
- the other that does not require registration.

The Act also enlists certain functions and duties of the Promoter in Chapter III. But it doesn’t demarcate the same into the above two categories and provides them in general. Some of the duties arise after the Promoter receives a login id and password which is possible only after registration.

To ascertain whether Chapter III of the Act applies in case of non-registration also some of the principles of statutory interpretation that are important are as follows:

➤ **Intention of the Legislature**

A statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to see the ‘intention’ of the maker.² A statute is to be construed according to the intent of them that make it³ and the duty of judicature is to act upon the true intention of the legislature.⁴

The intention of the Legislature assimilates two aspects: In one aspect it carries the concept of meaning i.e. what words mean and in another aspect it conveys the concept of purpose and object or the reason and spirit pervading through the statute. The process of construction therefore combines both literal and purposive approaches. This formulation later received the approval of the Supreme Court in **Union of India v Elphinstone Spinning and Weaving Co. Ltd**⁵ and was called the cardinal principle of construction which has also been reiterated in subsequent cases.⁶

¹195 S.E. 496, 499-500 (Va. 1938)

² Vishnu Pratap Sugar Works (Private) Ltd v Chief Inspector of Stamp, UP, AIR 1968 SC 102

³ RMD Chamarbaugwala v UOI, AIR 1957 SC 628

⁴Salmond: ‘Jurisprudence’, 11th Edition, p.152. “The object of interpreting a statute is to ascertain the intention of the Legislature enacting it.

⁵ JT 2000 (1) SC 536

⁶ AIR 2001 SC 3134

The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" Normally, such intent is gathered from the language of the provision. If the language, or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light, on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

Precedents:

- In **District Mining Officer v Tata Iron and Steel Co**⁷ the court observed that if a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the Legislature.
- In **Mohm. Alikban v Commissioner of Wealth Tax**,⁸ the court stated that "Intention of the legislature" is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication.
- In **Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr**⁹ it was observed by the court that the words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided.
- In **Kehar Singh v. State (Delhi Admn.)**¹⁰ the Court held that *"...But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force, behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences."*
- In the words of Justice K. Iyer, in the case of **KantaGoel v B. D. Pathak**¹¹ the interpretative effort must be illumined by the goal though guided by the word. For ascertaining the purpose of a statute one is not restricted to the internal aid furnished by the statute itself, external aids are brought in by widening the concept of context and the mischief which the statute was intended to remedy.

➤ **The Statute must be read as whole in its context**

⁷ AIR 2001 SC 3134

⁸ AIR 1997 SC 1165

⁹ AIR 1998 SC 74

¹⁰ 1988 AIR 1883

¹¹ AIR 1977 SC 1599

When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes, the general scope of the statute and the mischief that it was intended to remedy.¹² The intention of the Legislature must be found by reading the statute as a whole.¹³ This rule is referred to as elementary rule.

Precedents:

- In **Punjab Beverages Pvt. Ltd. v Suresh Chand**¹⁴ the court used the elementary rule and observed that it is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresses the meaning of the makers.
- To further enunciate the rule and widen its scope, the court in **National Insurance Co. Ltd v Anjana Shyam**,¹⁵ stated that to ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and succeeds it and not merely at the clause itself.
- In **Union of India v Sankalchand**¹⁶, the court observed that the key to the opening of every law is the reason and the spirit of the law. It is animus imponentis, the intention of the law maker, expressed in the law itself, is taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from the context.
- In **Mohm. Alikban v Commissioner of Wealth Tax**,¹⁷ the court stated that "Intention of the legislature" is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication.

➤ **Purposeful Construction**

It is well known that an interpretation of the statute which harmonizes with its avowed object is always to be accepted than the one which dilutes it. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.

In coming to the aforesaid conclusion the learned Judges relied on the famous dictum of Lord Denning in **Seaford Court Estates Ltd. v. Asher**¹⁸ - wherein the learned Judge stated the position to be that "...A Judge should ask himself the question how, if the makers of the Act had themselves come across this rock in the texture of it, they would have straightened it out? He must then do so as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

Precedents:

- In **Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court, Chandigarh**¹⁹ the Hon'ble Supreme Court of India referred to the following passage from Hans Kelsen's Pure Theory Law:

"The legal act applying a legal norm may be performed in such a way that it conforms:

¹² R. S. Raghunath v State of Karnataka, AR 1992 SC 81

¹³ Union of India v ELphinstone Spinning and Weaving Co. Ltd, AIR 2001 SC 724; Central Bank of India v State of Kerala (2009) 4 SCC 139

¹⁴ 1978 AIR 995

¹⁵ AIR 2007 SC 2870

¹⁶ AIR 1977 SC 2328

¹⁷ AIR 1997 SC 1165

¹⁸ (1949) 2 All ER 155

¹⁹ 1999 SCC (3) 682

- a) *with the one or the other of the different meanings of the legal norm;*
- b) *with the will of the norm-creating authority that is to be determined somehow;*
- c) *with the expression which the norm-creating authority has chosen;*
- d) *with the one or the other of the contradictory norms, or;*
- e) *the concrete case to which the two contradictory norms refer may be decided under the assumption that the two contradictory norms annul each other.*

In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame."

So, while interpreting the definition of the term retrenchment as given in Industrial Disputes Act, 1947 it was observed that when the statute excluded the situation of voluntary retirement and retirement on reaching a particular age from the circumstance of termination of an employee, their express exclusion implies that they would otherwise have been included.

- In **Utkal Contractors and Joinery Pvt Ltd v. State of Orissa**²⁰ the court tried to bring in clarity in law and stated that sometimes words used by the Legislature do not bear a clear meaning. In case of doubt, it is always safe to have an eye on the object and purpose of the statute, or reason and spirit behind it.

➤ **The Language of the Statute should be read as it is:**

Precedents:

- In **ShyamKishori Devi v Patna Municipal Corporation**,²¹ the court observed that the intention of the Legislature is primarily gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.
- In **Super Cassettes Industries v Mr ChintamaniRao&Ors.**²², the Delhi High Court has observed that where, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here.
- [In Collector of Customs, Baroda v DigvijaySinghji Spinning & Weaving Mills Ltd., Jamnagar](#),²³ the Supreme Court, held that one of the well-established rules of construction is that if the words of a statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declare the intention of the Legislature. It is equally well settled principle of construction that where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.
- In **Gwalior Rayon Silk Mfg. (Wvg.) Co. v Custodian Of Vested Forests**²⁴ the court observed that in seeking legislative intention, judges not only listen to the voice of the legislature but also listen attentively to what the legislature does not say.
- In **State Of Jharkhand And AnrvGovind Singh**²⁵ the court observed that the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.

²⁰ 1987 SCC 279

²¹ 1966 SCR (3) 466

²² Order dated 11-11-2011 by the Delhi High Court, in CS(OS) 2282/2006 along with I.A. No. 13743/2006

²³ AIR 1961 SC 1549

²⁴ 1990 AIR 1747

²⁵ (2005) 10 SCC 437

- In **CIT v S. Teja Singh**²⁶ the court emphasised that a statute or an enacting provision therein must be so construed as to make it effective and operative on the principle *ut res magnis valeat quam pereat* which means that the courts while pronouncing upon the constitutionality of a statute start with the presumption in favour of constitutionality and prefer a construction which keeps the statute within the competence of the Legislature. A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.
- In **State of Gujarat and Ors. v Dilipbhai Nathjibhai Patel and Anr.**²⁷ the court observed that it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

Present Case:

To ascertain the intention of the legislature and object behind the Act, it is necessary to look at the introductory statements of the legislation highlighting its purpose and the underlying philosophy which are as follows:

- The **Preamble** to the Act states that:

"it is an Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority and for matters connected therewith or incidental thereto."

- **Statement of Objects and Reasons** of the Act states that:

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums."

In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

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 standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

Analysis & Conclusion:

From the above precedents and rules of interpretation it can be concluded that:

²⁶ AIR 1959 SC 352

²⁷(JT 1998 (2) SC 253)).

- To analyse the applicability of chapter III the intention of the legislature in drafting the Act is to be kept in mind.
- It can be seen from above that the main purpose of the legislation is to:
 - ✓ bring transparency in the real estate sector;
 - ✓ regulating the sector;
 - ✓ protect the interest of consumers in the sector;
 - ✓ set standards of business practices and transactions;
 - ✓ ensure transparency;
 - ✓ ensure accountability towards consumers;
 - ✓ balance the interests of consumers and promoters;
 - ✓ impose responsibilities on promoters and consumers
- These objects of the Act can be achieved by ensuring compliances, providing speedy justice, holding both the promoters and consumers equally responsible for ensuring their respective interests, making the promoters responsible for keeping the allottees well informed and performing their duties in a well-defined manner, keeping the promoters accountable for their acts towards the consumers etc.
- So, if the duties and obligations of the promoters have been laid down in a separate chapter i.e. Chapter III of the Act without providing whether it applies to the cases on non-registration or not, by interpreting the true intention of the legislature as stated in its preamble and statement of objects and rules of interpretation as highlighted in the above precedents, it can be safely be read to mean that those very duties and obligations are meant for non-registered projects too.
- The object of the Act will be partly defeated if the promoters are not made to perform certain duties in case of projects that do not require registration. Such a construction will make the end purported to be achieved by the Act, unattainable. Non-registration is merely a procedural aspect and that must not vindicate the allottees of their rights.
- Except in cases where duties have been expressly mentioned to be for a registered real estate project e.g. - Section 11, sub-section 1 and 2 of the Act where the promoter is required to create a webpage and enter all the details of the project for public viewing and also mention in the advertisement issued the website address of the authority wherein all details of the registered project have been entered, they shall be deemed to be meant, by applying necessary implication to the provisions of the Act, for unregistered real estate projects too.
- If such a scenario of whether the duties apply to a promoter in cases of non-registered real estate projects has not been expressly excluded by the legislature from the Act, it would mean that it is included. Had the legislature had the intention of excluding the cases of non-registration specifically, they would have provided for the same. In consonance with the object of the Act, the only reasonable inference that can be drawn is that cases of non-registration are also included.