

L. A. BILL No. XXVII OF 2023.

A BILL

*further to amend the Registration Act, 1908, in its application
to the State of Maharashtra.*

5 (**As passed by the Legislative Assembly on the 25th July, 2023.**)

XVI of 1908. WHEREAS it is expedient further to amend the Registration Act, 1908, in its application to the State of Maharashtra, for the purposes hereinafter appearing; it is hereby enacted in the Seventy-fourth Year of the Republic of India, as follows :—

10 1. This Act may be called the Registration (Maharashtra Amendment) Act, 2023. Short title.

XVI of 1908. 2. After section 18 of the Registration Act, 1908, in its application to the State of Maharashtra (hereinafter referred to as “the principal Act”), the following section shall be inserted, namely :— Insertion of new section 18A in XVI of 1908.

15 “ **18A.** (1) Notwithstanding anything contained in this Act, the following classes of documents shall be refused for registration, namely :— Refusal to register certain documents.

(a) the document relating to transaction, which is prohibited by any Central Act or State Act, for the time being in force ;

(b) the document relating to transfer of property by way of agreement for sale, sale, gift, exchange or lease or otherwise in respect of any immovable property owned by the Central Government or State Government or any Authority or undertaking of the Central Government or State Government or any authority 5 or undertaking constituted or established under any Central Act or State Act, for the time being in force, executed by any person other than those statutorily empowered to do so ;

(c) the document relating to transfer of property by way of agreement for sale, sale, gift, exchange or permanent alienation or 10 lease or otherwise pertaining to any immovable property which is attached permanently or provisionally by any competent authority under any Central Act or State Act, for the time being in force or any court or tribunal ;

(d) document of any description as may be prescribed by the 15 State Government by rules made under this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature. ”.

Amendment
of section 21
of XVI of
1908.

3. In section 21 of the principal Act,—

(1) in sub-section (1) for the words “unless it contains a description 20 of such property sufficient to identify the same.”, the following shall be substituted, namely :—

“unless it contains such description of the property, and accompanies with such papers and documents, as may be prescribed by the State Government by rules made under this Act, sufficient to 25 identify the same.” ;

(2) after sub-section (1), the following sub-section shall be inserted, namely :—

“(1A) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature.”. 30

Amendment
of section 22
of XVI of
1908.

4. In section 22 of the principal Act, in sub-section (2), after the words, brackets and figure “sub-section (1)”, the words, brackets and figures “and sub-section (1) of section 21” shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The Registration Act, 1908 (XVI of 1908) contains provisions for registration of documents, the effect of registration and non-registration of documents and matters related thereto.

2. Rule 44(1)(i) of the Maharashtra Registration Rules, 1961 provided that a registering officer shall ascertain that if the transaction which is intended by the document, is prohibited by any existing Act of Central or State Government, then requisite permission or no objection certificate from the competent authority is attached with the document, before accepting any document for registration.

Also, the Inspector General of Registration had issued a circular dated 12.07.2021 for ascertaining compliance of the provisions of section 8B of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (LXII of 1947) by the Registering Officers.

The Bombay High Court has, in its judgment passed in Writ Petition No. 2111 of 2022, quashed and set aside the said rule 44(1)(i) and the said circular being contrary to sections 34, 35 and 69 of the said Act. The Bombay High Court has held that the scope of inquiry under sections 34 and 35 is limited to fact of execution and identity of the person executing the document. The State Government has filed Special Leave Petition in the Supreme Court challenging the said order of the Bombay High Court, which is pending.

3. In view of the above referred judgment of the Bombay High Court, the Government considers it expedient to insert a new section 18A in the said Act, in its application to the State of Maharashtra to provide for refusal of registration of certain documents relating to transactions prohibited by any Central Act or State Act, Agreement for Sale, Sale Deed, Gift Deed, Exchange Deed or Lease Deed executed with intent to transfer the property belonging to any Central or State Government or any Authority or undertaking by person other than statutorily empowered, etc. on the lines of amendments made by other States.

An amendment to section 21 of the said Act is proposed with a view to empower the State Government to prescribe by rules description of property and papers and documents which shall be annexed to the document for sufficiently identifying the property, for accepting a document for registration. A consequential amendment to section 22 is also proposed.

4. The Bill seeks to achieve the above objectives.

Mumbai,
Dated 21st July, 2023.

RADHAKRISHNA VIKHE-PATIL,
Minister for Revenue.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative power, namely :—

Clause 2.—Under this clause, which seeks to insert section 18A in the Registration Act, 1908 (XVI of 1908), power is taken to the State Government to frame rules for prescribing the document of any description which shall be refused for registration under the said Act.

Clause 3.—Under this clause, which seeks to amend section 21 of the said Act, power is taken to the State Government to frame rules for prescribing description of property and papers and documents which shall be annexed to the document for sufficiently identifying the property for accepting a document for registration under the said Act.

2. The above-mentioned proposals for delegation of legislative power are of normal character.

*ANNEXURE TO THE L. A. BILL No. XXVII OF 2023—
THE REGISTRATION (MAHARASHTRA AMENDMENT) BILL, 2023.*

[*Extracts from the Registration (Maharashtra Amendment) Act, 1908*]

(Mah. XVI of 1908)

1. to 20. * * * *

21. (1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same. Description of property and maps or plans.

(2) to (4) * * * *

22. (1) * * * *

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property. Description of houses and land by reference to Government maps or surveys.

23. to 91. * * * *

**MAHARASHTRA LEGISLATURE
SECRETARIAT**

[L. A. BILL No. XXVII OF 2023.]

**[A Bill further to amend the Registration
Act, 1908, in its application to the
State of Maharashtra.]**

**[SHRI RADHAKRISHNA VIKHE-PATIL,
Minister for Revenue.]**

**[As passed by the Legislative Assembly
on the 25th July, 2023.]**

**JITENDRA BHOLE,
Secretary (1) (I/C),
Maharashtra Legislative Assembly.**