

**Case : 1 - CAN UNDIVIDED SHARE OF LAND, BE THE BASIS  
TO DETERMINE THE VALUE OF A PROPERTY ?**

Recently, a petition was filed by the lessee under section (9) of The Tamilnadu City Tenants Protection Act praying for an order that the lessor for the land occupied by the lessee be directed to sell the land to the lessee for a price to be fixed by the Court. The trial court appointed a commissioner for fixing the market value of the property and on the basis of the evidence fixed the market value.

The total extent of the scheduled property is 16.87 cents. The sale deeds submitted as comparative sale instances for valuation purpose were not for the vacant land. They included buildings and the land extent mentioned was the undivided share. No other sale deeds were available nor filed during the relevant period. In such circumstances the trial court decided the market value of the suit scheduled property on the basis of the guideline value and on the basis of prime business locality Coimbatore. **(Hindustan Petroleum Corporation Ltd vs Tayammal and others 2006 MLJ 249).**

When the market value was fixed, the aggrieved party filed an appeal before the principal District Judge who confirmed the order of the trial court. Challenging the above order the lessee approached the High Court. The High Court took a stand that fraction of share of the property cannot be enjoyed fully and cannot used as the basis for deciding the market value of the larger extent of the property which can be enjoyed more freely and conveniently without any impediments.

**Case : 2 - WILL LOSS OF ORIGINAL TITLE DEEDS DIMINISH  
THE VALUE OF THE PROPERTY?**

In the case 289 ITR 61 (Mad) Asohk Leyland Finance Ltd Vs Appropriate Authority, IT Department (W.A.No 495 of 1997) Judgment dated 12-12-2006 the Authority of IT. Department acquired the property at Gandhi Nagar, Adayar, when the agreement for sale relating to the property was submitted for getting the No Objection Certificate under chapter XXC of the IT Act (since abolished from 1st July 2002) on the ground the apparent consideration was less than the market value. The difference is more than 15 %. On an appeal made by the parties, the single judge dismissed the appeal. The parties appealed against the order of the single judge. The division bench set aside the order of the single judge and pre-emptive purchase purchased passed by the AA of the IT department was quashed. In the claim of the appellants it was mentioned that the loss of the original title deeds of the property was not properly considered by the department and the single judge.

The following observations were made in the judgment delivered by the division bench.

“ Loss of title deeds of the property in question was one of the relevant factors. Undoubtedly it would diminish the value of the property”.

### **Case : 3 - UNDIVIDED SHARE OF LAND MISPROPORTION OF UDS APPORTIONED TO APARTMENTS**

In some of the building complexes, the undivided share of land to be apportioned to the apartments are not transferred proportionate to built up area and being retained the developer.

For example in a complex with 8 flats of 1200 sq.ft. each in 4 storey situated in an extent of 6400 sq.ft. of land, the undivided share of land apportioned to each flats should be  $6400 \text{ sq.ft.} \div 8 = 800 \text{ sq.ft.}$

Instead, the developer transfers only 640 sq.ft. for each flat retaining  $6400 \text{ sq.ft.} - (8 \times 640 \text{ sq.ft.}) = 6400 \text{ sq.ft.} - 5120 \text{ sq.ft.} = 1280 \text{ sq.ft.}$  for himself. There may be many reasons for the developer to retain a portion of UDS of land. It may be that he had proposed to construct one more floor with 2 flats of 1200 sq.ft. each, with or without permission from the concerned authorities or the developer may possess an apartment for him for his use as office or residence with more UDS of land than he can have legally and logically

In one case after the project was completed, the developer used the set back spaces for keeping his mixer machine and provided a thatched roof in the top floor and let out to some people with very low income After negotiation with help of a consumer forum some settlement was made. Some buyers are normally tempted to accept the lower UDS as the stamp duty for registration can be saved. In one case when a company operating safe deposit vaults wanted to know the implication if the UDS of land was not offered to him.

The effect will be after a period of about 40 or 50 years when the buildings are to be demolished either out of compulsion or redevelopment, the owners will have fewer shares than what should have been due to them and losers in this respect. Again in case the property is acquired for widening the road, the compensation they receive may be on the basis of extent of UDS they hold.

If the developer had not purchased the property and the development made under the power executed by the owner is in his favour the UDS land retained by him will belong to the original owner or his heirs if the owner is dead and the power executed by him is no longer valid. The legal heirs of the deceased will acquire right over the retained UDS of land. The person who purchased the basement without any land will lose his rights on the land and will be left with nothing.