

सेवा में,

प्रमुख सचिव
आवास एवं शहरी नियोजन विभाग
उ०प्र० शासन, लखनऊ

विषय :- उ०प्र० नगर योजना और विकास (नामांकन शुल्क का निर्धारण, उदग्रहण एवं संग्रहण) नियमावली 2020 (प्रारूप) में संशोधन करने हेतु सुझाव।

श्रीमन,

सादर अभिनन्दन

उपर्युक्त विषय के सम्बन्ध में सविनय निम्नवत निवेदन है:-

- 1- उ०प्र० नगर नियोजन एवं विकास अधिनियम, 1973 के अन्तर्गत शासन द्वारा उ०प्र० नगर योजना और विकास (नामांकन शुल्क का निर्धारण, उदग्रहण एवं संग्रहण) नियमावली, 2020 (प्रारूप) बनायी गयी है।
- 2- उक्त नियमावली 2020 (प्रारूप) में संशोधन की आवश्यकता है।
- 3- उक्त नियमावली के प्रस्तावित प्राविधान मा० सर्वोच्च न्यायालय द्वारा दिये गये निर्णय-कलकत्ता मुनीसिपल कारपोरेशन आदि बनाम श्रेय मरकेन्टाइल (प्रा) लि० आदि, (2005) 4 SCC 245 (संलग्न) के विपरीत है।
- 4- संलग्नक में अपेक्षित संशोधन एवं उसके आधारों का सविनय उल्लेख है।

अतः सविनय प्रार्थना है कि मा० सर्वोच्च न्यायालय के उपर्युक्त निर्णय के आलोक में नियमावली में संशोधन करने की अति कृपा करें।

आपसे यह भी सविनय अनुरोध है कि उक्त सुझावों को व्यक्तिगत रूप से आपके समक्ष रखने हेतु कोई समय व दिनांक भी नियत कर अवगत कराने का कष्ट करें ताकि हम लखनऊ आकर आपके समक्ष समस्त तथ्यों को रख सकें।

शुभकामनाओं सहित

कृते - आगरा सिटी रेडिको



दिनांक :- 12.02.2020

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Suggested Changes in the Draft UP Urban Planning & Development (Assessment, Levy and Collection of Mutation Charges) Rules, 2020			
Provision	Existing Provisions	Proposed Provisions	Justification for Change
Rule 4	Mutation charges shall be assessed on the basis of total amount or value of consideration with reference to which the stamp duty for the concerned property was calculated.	In place of the existing draft Rule 4, the following may be substituted:- “Mutation charges shall be as per Rule 5.”	Since draft Rule 5 elaborates the levy of mutation charges, it may not be mentioned in Rule 4.
Rule 5	(1) The rate of mutation charges shall be 1.0 percent on the amount or value of the consideration with reference to which the stamp duty was calculated. Provided that in case there are one or more intermediary sales and the concerned property has not been mutated in the names of intermediary purchasers, an additional mutation charge of 1.0 percent shall be levied in accordance with these rules on every intermediary sale deed.	In place of the existing draft Rule 5, the following may be substituted:- “(1) The mutation charges shall be Rs. 5,000/-” Provided that in case there are one or more intermediary sales and the concerned property has not been mutated in the names of intermediary purchasers, an additional mutation charge of Rs. 5,000/-shall be levied in accordance with these rules on every intermediary sale deed.”	(i) The proposed <i>ad valorem</i> mutation charges are against the principle of law, laid down by the Hon’ble Supreme Court in <u>Calcutta Municipal Corpn. and Ors. vs. Shrey Mercantile (P) Ltd. and Ors., reported in (2005) 4 SCC at pg. 245.</u> (ii) In the above judgment, the Hon’ble Supreme Court held the levy of mutation charges on ad valorem basis to be a tax and arbitrary, which was found to be bad in law. (iii) In view of the above law, the mutation charges should be a fixed nominal amount and not on ad valorem basis. (iv) Notably, the ‘mutation charges’, as mentioned in above S 15(2A), is a ‘fee’ chargeable to reimburse the Authority its expenses in connection with mutation and it is not a tax.

(3)

			<p>(v) The proposed ad valorem rate of 1.0% on the amount of value or consideration cannot be termed as fee, but <u>it is intended to make the levy a source of revenue, which is much against the letter and spirit of S. 15(2A) of the Act and Supreme Court judgment (supra).</u></p> <p>(vi) The mutation charges should be nominal, irrespective of the amount of value or consideration.</p> <p>(vii) <u>The suggested mutation charge is of Rs. 5,000/- instead of it being ad valorem @ 1% of the amount of value or consideration with no upper cap.</u></p> <p>(viii) Further, <u>any ad valorem levy in the name of mutation charges on freehold land would be contrary to law.</u></p>
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A Presentation by K.C. Jain, President, Agra City Redeco Agra (Dated 12.02.2020)