IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 22357 of 2015 (T)

PETITIONER:

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED AGED 44 YEARS
'THE RUBY', 10TH FLOOR, 29
SENAPATI BAPAT MARG, DADAR(WEST), MUMBAI-400 028
REPRESENTED BY ITS AUTHORIZED OFFICER G.JAYACHANDRAN.

BY ADVS.SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.NELSON JOSEPH
SRI.M.D.JOSEPH

RESPONDENTS:

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1. STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. PRINCIPAL SECRETARY (TAXES)
STATE OF KERALA, THIRUVANANTHAPURAM.

3. INSPECTOR GENERAL OF REGISTRATION
DEPARTMENT OF REGISTRATION, VANCHIYOOR
THIRUVANANTHAPURAM.

4. DISTRICT REGISTRAR
ERNAKULAM DISTRICT REGISTRAR'S OFFICE
OPPOSITE MAHARAJAS GROUND, NEAR KPCC JUNCTION
ERNAKULAM.

R BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 22357 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE RESERVE BANK OF INDIA IN FAVOUR OF ARCIL DTD.29.8.2003.

P2 : COPY OF THE REPRESENTATION DTD.6.6.2007 SENT BY THE PETITIONER TO FORMER FINANCE MINISTER AND FORMER MINISTER FOR REGISTRATION FOR CAPPING TEH STAMP DUTY AND REGISTRATION.

P3 : COPY OF THE REPRESENTATION DTD.17.9.2008 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.

P4 : COPY OF THE ORDER GO(MS)NO.9/2010/TD DTD.13.1.2010.

P5 : COPY OF COVERING LETTER DTD.18.7.2011 ISSUED BY THE PETITIONER TO 3RD RESPONDENT.

P6 : COPY OF THE LETTER DTD.15.11.2012 ISSUED BY THE PETITIONER TO THE PRINCIPAL SECRETARY TO CHIEF MINISTER.

P7 : COPY OF THE GO(MS)NO.110/2013/TD DTD.21.5.2013.

P8 : COPY OF LETTER DTD.13.6.2013 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

P9 : COPY OF THE LETTER DTD.18.7.2013 BEARIG NO.15325/E2/2013/TD ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

P10 : COPY OF LETTER DTD.14.8.2013 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

P11 : COPY OF LETTER DTD.11.9.2013 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

P12 : COPY OF THE FORWARDING LETTER DTD.23.10.2013 ISSUED BY THE 2ND RESPONDENT TO 3RD RESPONDENT.

P13 : COPY OF LETTER DTD.26.11.2013 ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT.

P14 : COPY OF ASSIGNMENT AGREEMENT DTD.5.8.2014 ENTERED INTO BY THE PETITIONER WITH M/S. CENTRAL BANK OF INDIA.

P15 : COPY OF REPRESENTATION DTD.17.12.2014 ALONG WITH RELEVANT DOCUMENTS SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.

P16 : COPY OF REPRESENTATION DTD.6.2.2015 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A. MUHAMED MUSTAQUE, J.

W.P.(C) No.22357 of 2015

Dated this the 16th day of September, 2015.

JUDGMENT

The petitioner is an Asset Reconstruction Company referable under the SARFAESI Act.

2. The issue pertains to the stamp duty payable by the company when financial asset is taken over in terms of the provisions of the SARFAESI Act from the bank or other financial institutions. It appears that the registering authority insisted payment of stamp duty for the conveyance for such transfer.

3. Thereafter, Asset Reconstruction Company approached the government by Ext.P3. The government deliberated the matter and issued an order dated 13.1.2010. This order is produced as Ext.P4. In the order, the Government's decision has been referred, which reads as follows:

"Government have examined the matter in detail and are pleased to accept the proposal for capping the stamp duty and registration fee, to an amount not exercising Rs.One Lakh only and Rupees Twenty Five Thousand only respectively, payable on securities/assignment of debt whether secure or insecure by a charge over movable or immovable properties, limiting the benefit to Asset Reconstruction Company (India) Limited (ARCIL). Sanction is also accorded to constitute an empowered committee with the Principal Secretary (Taxes) as convener, Additional Chief Secretary (Finance), Principal Secretary (Industries) as members to consider the cases of ARCIL and make recommendation/suggestion thereof to Government."

4. Based on the aforesaid Government Order, a High Power Committee was constituted. It is seen that the High Power Committee also deliberated the issue. However, nothing has been transpired thereafter to conclude the deliberations as initiated by the Government as per Ext.P4.

5. The petitioner has approached this Court to register the assignment agreement and other similar assignment deeds

executed by the petitioner in the light of stamp duty payable as suggested in Ext.P4 order.

6. It is obvious that there is no stamp duty separately fixed for an assignment in favour of the reconstruction company in terms of SARFAESI Act. It is for that reason, the Government has also decided to constitute a High Power Committee to come out with the suggestion for fixing stamp duty payable.

The Government also need necessary amendment under the Stamp Act to cover the transaction of assignment of the assets under the SARFAESI Act. It is to be noted that the petitioner's right to register the document cannot be deferred till the steps initiated by the government are materialised.

In such circumstances, this Court is of the view that as a tentative measures, the petitioner's assignment deed for the transaction relating to the assignment of assets under the SARFAESI Act executed by the banking company or other financial institutions, shall be registered at the rate suggested in Ext.P4. This will be subject to any final determination of stamp duty based on the amendment to the Stamp Act.

The writ petition is disposed of.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

Scl.