IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.02.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.9936 of 2014 &
M.P.Nos. 2 of 2014

S.Mahalakshmi .. Petitioner

Vs.

1.The State of Tamil Nadu
rep. By its Chief Secretary
Fort St.George, Chennai 600 009.

2.The Principal Secretary
The Commercial Taxes and
Registration Department
Fort St.George, Chennai 600 009.

3.Inspector General of Registration and
Chief Controlling Revenue Authority
120, Santhome High Road
Santhome, Chennai 600 004.

4.The Sub Registrar
Kodambakkam SRO
No.37/5, Alagiri Nagar
5th Street, 100 Feet Road
Vadapalani, Chennai 600 026. .. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorai to call for the records of the 3rd respondent culminating in the issuance of a Circular Pa.Mu.No.30196/P1/2011-1 dated 13.09.2011 and quash the same.

For Petitioner : Ms.S.Geetha

For Respondents : Mr.R.Vijayakumar
Additional Government Pleader

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Ms.S.Geetha, learned Counsel appearing for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for respondents.

3.The petitioner has filed this Writ Petition challenging the order passed by the third respondent dated 13.09.2011.

4.It is not in dispute that the very same circular which is impugned in this Writ Petition was put to challenge before this Court in case of PRATISHTA ASSOCIATES v. STATE OF TAMIL NADU [CDJ 2015 MHC 054], and the objections raised by the respondents were considered and this Court quashed the said Circular. The relevant portion of the order reads as follows:

> 7. The circular issued by the Inspector General of Registration, which is under challenge in these two writ petitions, requires to be extracted. Hence, it is extracted as follows :
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>> In the sale deeds, inclusion of the agreement holders as executants, while the earlier sale agreement is subsisting, is made only to release his right over the property in favour of the nominee/purchaser. Further, when nominee has no relationship with agreement holder, the recital to include such agreement holder in the sale deed is being done with the intention/motive to extinguish his right to obtain a sale deed in respect of the property, which is the subject matter of the sale deed, even though the same may not be explicitly stated in the sale deed. Otherwise, there would be no necessity to include agreement holder as an executant even as a matter of abundant caution or as a confirming party, when he has no title. Actually, if the vendor wants to execute sale deed in favour of the purchaser, he can simply cancel earlier sale in favour of the agreement holder on the grounds of default on the part of the sale agreement holder or by mutual consent. But, while doing so, the agreement holder would lose his right to nominate a person as purchaser, for execution of sale deed in favour of that person by the vendor. The power to nominate a person in whose favour sale has to be executed and who is not a principal/agent of the agreement

> holder itself is a right. In view of the above reasons, the sale deed executed by the agreement holder as one of the vendors or as confirming party has to be treated as an instrument which brings to the fore the deemed conveyance which happened in favour of the agreement holder by virtue of execution of sale agreement in his favour and hence, such instrument is to be treated as instrument, comprising two sales. The above order comes into effect from 14.9.2011 for all documents to be presented for registration as well as for all documents pending for registration, other than those for which final orders havenot been passed under Section 40 of the Indian Stamp Act, 1899."

8. A careful look at the above circular would show that whenever a prior agreement holder is joined as an executant along with the parties to the subsequent agreement, the Department has construed the sale to be a composition of two conveyances, one by the prior agreement holder and another by the subsequent agreement holder. But unfortunately, the circular has gone simply by logic and not by law. The circular does not refer to the provisions of the Indian Stamp Act. Therefore, it is necessary to have a look at the provisions of the Indian Stamp Act before testing the correctness of the above circular.

9. Indian Stamp Act, 1899 makes certain instruments, listed in Section 3, liable to be charged with duty of the amount indicated in Schedule I, subject to the provisions of the Act and the exemptions contained in the same Schedule. A careful look at the provisions of Section 3 would show that what is made chargeable to duty is the instrument and the transaction and not the persons. This is made clear by Section 4. Section 4(1) makes it clear that where several instruments are employed for

completing a transaction, the principal instrument alone shall be chargeable with duty prescribed in Schedule I. Each of the other instruments are chargeable with a fixed duty. Sub-Section (2) of Section 4 also gives an opportunity to the parties to determine for themselves, which of the instruments shall be deemed to be the principal instrument.

10. Section 5 deals with instruments relating to several distinct matters. If one instrument comprises or relates to several distinct matters, it shall be chargeable with the aggregate amount of the duties, with which, separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act. The instrument where the prior agreement holder merely joined as a confirming party in order to acquiesce himself to the subsequent agreement and the sale in the subsequent agreement, cannot be construed as an instrument relating to several distinct matters. At the most, such instruments can be construed as (i) the cancellation of the prior agreement of sale; and (ii) the conveyance by the vendor to the subsequent agreement holder. If it is so construed, these two transactions namely that of cancellation of the prior agreement and the conveyance in pursuance of the second agreement, would fall under Section 6. Section 6 covers instruments that come within two or more of the descriptions in Schedule I. In such an event, if the duties chargeable are different, the instruments should be charged only with the highest of the duties.

11. But unfortunately, without even any application of mind as to the provisions of Sections 3 to 6, the Inspector General of Registration has passed the impugned circular. Therefore, the same cannot be sustained.

12. Even if it is assumed for a minute that an instrument of sale, to which, the prior agreement holder joins as a confirming party, comprises of two transactions, the conclusion, to which, the Inspector General of Registration has come, is not possible. An agreement or memorandum of agreement is covered by Article 5 of Schedule I to the same Act. The cancellation of an agreement falls under Article 17. The conveyance comes under Article 23.

13. Suppose a person has entered into an agreement with another for the sale of an immovable property, such an instrument will come within the purview of Article 5. A sale deed will come within the purview of Article 23. If, in a sale deed, which comes under Article 23, a prior agreement holder is included as a

confirming party, it would at the most amount to a transaction canceling the first agreement. In other words, the instrument, in respect of which, the impugned circular has been issued, may at the most cover two transactions, one falling under Article 17 and another falling under Article 23. Even in such an event, Section 6 would go to the rescue of the parties, making them liable to pay the highest of the two duties. Therefore, the impugned circular issued wholly without any relevance or reference to any of the provisions of the Indian Stamp Act or the Schedule contained therein, is unlawful and liable to be set aside.

14. Accordingly, the writ petitions are allowed and the impugned circular is set aside. The respondents are directed to treat the documents presented by the petitioners as comprising of only one sale, charge stamp duty and registration fee and thereafter release the documents, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the above MPs are closed."

5.Following the above decision, this Writ Petition is also allowed and the circular issued by the third respondent is quashed and there will be a direction to the Sub Registrar concerned to treat the documents presented by the petitioner as comprising of only one sale, charge stamp duty and registration fee and thereafter release the documents, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rpa

To

1.The Chief Secretary
State of Tamil Nadu,
Fort St.George, Chennai 600 009.

2.The Principal Secretary
The Commercial Taxes and Registration Department
Fort St.George, Chennai 600 009.

3.Inspector General of Registration and
Chief Controlling Revenue Authority
120, Santhome High Road, Santhome, Chennai 600 004.

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Kodambakkam SRO, No.37/5, Alagiri Nagar
5th Street, 100 Feet Road
Vadapalani, Chennai 600 026.

1 cc to M/s. Geetha, Advocate, Sr. 9566
1 cc to Government Pleader, Sr. 9623

W.P. No.9936 of 2014

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