

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.03.2015

CORAM

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.25556 of 2014

Hindustan Infrastructure Projects and
Engineers (P) Ltd.,

(Previously known as RAG Construction
and Real Estate Pvt. Ltd.)

rep. By its Director and authorised signatory
Mr.Kirit Babulal Manek

... Petitioner

Vs

1. The Inspector General (Registration)
Government of Tamil Nadu
120, Santhome High Road,
Chennai.

2. The District Registrar (Registration Department)
Coimbatore District.

3. The Joint-I Sub-Registrar
Sub Registrar Office
Coimbatore.

4. M/s Vodafone Cellular Limited
A Company incorporated under
Companies Act, rep. By its
Deputy General Manager (Legal)
A.Athmanandha Perumal.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the respondent No.3 relating to the impugned Check Slip, dated 02.07.2014 and quash the same as illegal, arbitrary and ultra vires the provisions of the Registration Act, 1908 or the rules framed thereunder and consequently direct the respondent NO.3 to register the Lease Deed dated 02.07.2014 executed between the petitioner and the respondent No.4 with respect to the property, upon presented and payment of applicable stamp duty and registration fee.

For petitioner : Mr.G.Balasubramanian

For Respondents : Mr.S.Gunasekaran - R1 to R3
Government Advocate

No appearance -R4

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 Mr.G.Balasubramanian, learned Counsel appearing for the petitioner and Mr.S.Gunasekaran, learned Government Advocate, appearing for the respondents 1 to 3.

3.The petitioner has filed this Writ Petition seeking for issuance of a writ of certiorarified mandamus to quash the order passed by the third respondent in the impugned Check Slip, dated 02.07.2014, as being illegal, arbitrary and ultra vires under the provisions of the Registration Act, 1908 and the rules framed thereunder and to direct the third respondent to register the Lease Deed dated 02.07.2014 executed between the petitioner and the fourth respondent in respect of the property in question.

4.The only reason assigned in the impugned proceedings for refusing to register the sale deed is on the ground that in respect of the title or document of the petitioner, the matter is now pending for determination of the appropriate stamp duty to be paid.

5.The learned counsel for the petitioner submitted that though such a reason has been assigned in the impugned order, the actual reason for issuing the Check Slip is because of the circular issued by the Inspector General of Registration. In this regard the learned counsel invited the attention of this Court to the Circular No.251/C1/2012 dated 24.5.2012 and the Circular No.654/C1/2013 dated 18.02.2013, issued by the first respondent.

6.It is submitted that both the Circulars have absolutely no reference to the nature of document executed between the petitioner and the fourth respondent and mechanically the impugned Check Slip has been issued. It is further submitted that regarding the deficit stamp duty and the registration charges payable by the petitioner in respect of Document No.987/02 dated 26.3.2002, the

petitioner as well as the fourth respondent (formerly BPL US West Cellular Limited) have preferred an Appeal in C.M.A.No.1836 of 2005, challenging the order passed by the Inspector General of Registration dated 27.04.2005. Therefore, it is submitted that additional amount towards stamp duty which has to be paid on the said sale which is the subject matter of challenge before this Court and same cannot have any bearing on the the lease deed now in question, which is now presented for registration.

7.In the counter affidavit filed by the respondents, it is stated that the lease of immovable property is with a view to transferring of the right in consideration of a price paid or promised or in consideration of money. It is further submitted that the existence of debt or liability in case of lease deed and the words "fld; bghWg;g[" in circular No.54/C1/2013 dated 18.02.2013, denotes a charge, a debt or a liability and therefore, it is submitted that the contention of the petitioner is unsustainable.

8.In reply, the learned counsel for the petitioner submitted that the interpretation given by the third respondent in the counter affidavit is absolutely perverse and such a transaction can at no point of time be treated as a charge for a debt or liability and the interpretation given is wholly without any justification and deserved to be out-rightly rejected.

9.After hearing the learned counsels appearing on either side and perusing the materials placed on record, it has to be pointed that though both the Circulars have been issued by the Head of the Department, the third respondent being the Registering Authority, is bound to exercise its power in a proper and a reasoned manner. If the third respondent does not exercise its statutory powers in terms of the provisions of the Act and Rules, it would amount to abdicating the exercise of its statutory powers. Therefore, exercise of statutory power of a registering authority cannot be thwarted by Circulars issued by the Inspector General of Registration and the Registering Authority is bound to consider each document on its own merits.

10.Admittedly, in the impugned order, the only reason assigned is with regard to the further amount towards stamp duty payable in respect of an anterior document bearing document No.987/2002. The said claim for additional stamp duty on the said document is the subject matter of challenge in C.M.A.No.1836 of 2005, which is pending before this Court. Therefore, mere pendency of the appeal before this Court cannot be a ground to refuse to register a lease deed especially when the petitioner has taken the demand draft

for Rs.13,19,260/-, towards stamp duty and for Rs.20,100/- towards registration fees. Therefore, the reason assigned in the impugned Check Slip is wholly unsustainable and furthermore, a lease transaction cannot be treated to be a charge on the property.

11.In the result, the Writ Petition is allowed, the impugned order is set aside and the third respondent is directed to accept the lease deed for registration after taking note of the stamp duty and registration fees paid and if everything is in order, accept the lease deed for registration, register and release the document subject to the condition that the release of the document is subject to the outcome of C.M.A.No.1836/2005, by making necessary endorsement in the document. The above direction shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpa

To

- 1.The Inspector General (Registration)
Government of Tamil Nadu
120, Santhome High Road,
Chennai.
- 2.The District Registrar (Registration Department)
Coimbatore District.
- 3.The Joint-I Sub-Registrar
Sub Registrar Office
Coimbatore.

+1cc to M/s.Poovayya, Advocate, S.R.No.17912
+1cc to the Government Pleader, S.R.No.17914

W.P. No.25556 of 2014

SKV(CO)
CA(10/04/2015)