IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P. VELMURUGAN

W.A.No.1053 of 2015
AND M.P.No.1 of 2015

1. The Government of Tamilnadu,
   rep by the Secretary,
   Commercial Taxes and Registration Department,
   Secretariate, Chennai - 600 009

2. The Sub-Registrar of Thiruvottiyur,
   21/8, Market Street,
   Kaladipet, Thiruvottiyur,
   Chennai - 600 019

3. Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai - 600 028 .... Appellants/Respondents

-vs-

ITC Limited,
Registered Office at Virginia House,
No.37, Jawaharlal Nehru Road,
Kolkatta-700 071
Regional Office at
No.119, St.Mary's Road,
Abhiramapuram,
Chennai - 600 018
represented by its Head of Finance,
SBU-packaging & printing

.... Respondent/Petitioners

सत्यमेव जयते
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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No. 29689 of 2013 dated 05.12.2013.

W.P. No 29689 of 2013:

Petition under Article 226 of the constitution of India praying this court to issue a Certiorarified Mandamus to quash the impugned demand notice dated 22.08.2013 issued by the 2nd Respondent and consequently direct the 2nd Respondent to register in accordance with Sections 60 and 61 of the Registration Act

1908, the lease deed dated 10.02.2012 executed between the Petitioner and Wimco Ltd, which was presented for registration on 10.02.2012 and numbered as P46/2012 Book 1, dated 10.02.2012.

For Appellant : Ms.A. Srijayanthi
Spl.G.P

For respondent : No appearance

JUDGMENT

[Judgment of the Court was delivered by
K.K. SASIDHARAN,J.]

The respondent in this Writ Appeal filed a Writ Petition in W.P.No.29689 of 2013 for issuance of a Writ of Certiorarified Mandamus to quash the impugned demand notice dated 22.08.2013, issued by the Sub-Registrar, Thiruvottiyur. The Sub-Registrar was of the view that proper stamp duty was not paid. The Sub-Registrar, therefore, issued a Demand Notice dated 22.08.2013, calling upon the respondent to pay a sum of Rs.50,51,920/- towards deficit stamp duty for the purpose of considering the document for registration. The said Order was challenged before the Writ Court in W.P No.29689 of 2013 . The learned Single Judge quashed the impugned demand notice and directed the Sub Registrar to register the document and release it to the respondent. The said order is under challenge in this intra court Writ Appeal at the instance of the State.

2. Heard the learned Special Government Pleader for the appellant. None appears for the respondent.

3. The respondent presented the document before the Sub Registrar, Thiruvottiyur for registration. The Sub Registrar, without registering the document, called upon the respondent to pay a sum of Rs.50,51,920/- towards deficit stamp duty within ten days for the purpose of considering the document for registration. The Sub-Registrar, was expected to consider the document for registration. It is not legally permissible to issue a Demand Notice even before registration of the document. In case, the Sub Registrar was of the view that proper stamp duty has not been paid, he should have either refused to register the document or sent it for initiating under-valuation proceedings after registration. These options were available to the Sub-Registrar. However, the Sub Registrar, without registering the document, called upon the respondent to pay the deficit stamp duty as a condition precedent for registering the document.

4. We are in agreement with the order passed by the learned Single Judge, quashing demand notice. However, we are

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not in a position to confirm the direction given by the learned Single Judge to the Sub Registrar to register the document. It is for the Sub Registrar to decide as to whether the document, presented by the respondent, should be registered in accordance with the Registration Act. It would be possible for the Sub Registrar to reject registration of the document by giving various reasons. In case, the Sub Registrar is not in a position to register the document, he is supposed to record the reasons. It is possible for the respondent to file an appeal before the competent authority. Such being the legal position, the learned Single Judge was not correct in directing the Sub Registrar to register the document, release the document and thereafter refer the issue to the Collector.

5. While confirming the order passed by the learned Single Judge, quashing the Demand Notice dated 22.08.2013 issued by the Sub-Registrar, Thiruvottiyur, we set aside the order insofar as the direction to the Sub Registrar, Thiruvottiyur, with regard to the registration of the document is concerned.

6. We direct the Sub Registrar, Thiruvottiyur to consider the document, presented by the respondent, and take a decision on merits and as per law. In case, the Sub Registrar is of the view that the document cannot be registered on account of certain reasons, those reasons should be recorded by him.

6. The intracourt appeal is disposed of with the above modification. No costs. Consequently, connected MP is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

sr

To

1. The Secretary,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariate, Chennai - 600 009

2. The Sub-Registrar of Thiruvottiyur,
21/8, Market Street,
Kaladipet, Thiruvottiyur,
Chennai - 600 019

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3. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028

+1 CC to Govt. Pleader sr 4093.

W.A.No.1053 of 2015

VGI(CO)
SP(06/02/2018)

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