

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.8.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVAID G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.1742 of 2018
and
C.M.P.No.13925 of 2018

- 1 The Inspector General of Registration
No.100 Santhome High Road
Chennai-600 028.
- 2 The Sub-Registrar-Pallavaram
No.4 2nd Main Road New Colony
Opposite Railway Station
Pallavaram Chennai-600 043. ...Appellants/Respondent

Versus

VA Tech Wabag Ltd.
Rep.by its Chief Manager-Legal
Mr.Parag Chitnis
Having its Registered Office at
'Wabag House'
No.17 200 Feet
Thoraipakkam- Pallavaram Main Road
Sunnambu Kolathur
Chennai-600 117. ...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.6.2016 passed in W.P.No.19924 of 2016 on the file of this court.

PRAYER IN W.P.No.19924 of 2016:

Writ Petition filed Under Article 226 of the Constitution of India, seeking for a Writ of Mandamus Directing the Second respondent to register the Consortium Agreement, a copy of which is filed herewith, upon payment of the appropriate stamp duty of Rs.20/- under article 5(j) of schedule I of the Indian Stamp Act and the appropriate registration fees of Rs.100/- under item 1(g) of the Table of Fees prepared under Section 78 of the Registration Act.

For appellants : Mr.T.M.Papaiah,
Special Government Pleader

For respondent : Ms.Deepika Murali

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader appearing for the appellants and Ms.Deepika Murali, learned counsel, who takes notice on behalf of the respondent.

2. The writ appeal has been filed by the Registration Department challenging the order passed by the learned Single Judge in directing the appellants to register the Consortium Agreement presented by the respondent herein, after collecting a fee of Rs.100/- alone under clause 1(g) of the Table of Fees under Section 78 of the Registration Act.

3. It appears that the respondent herein had submitted its bid for the tender floated by CMWSSB to design, build, operate for 15 years a 45 MLD capacity Tertiary Treatment Reverse Osmosis Plant at Koyambedu, Chennai, as a consortium with IDE Technologies Limited, Israel and they became a successful bidder and as a consequence, they had to submit a consortium agreement. The refusal by the second appellant to register the Consortium Agreement submitted by the respondent herein and the check slip No.3/2016 dated 27.6.2016, as found at page 27 of the typed set of papers, issued by the second respondent in this regard, gave rise to the present issue.

4. The above said check slip reads thus:-

"The consortium agreement deed has been presented for registration on 27.6.2016 at 3.30 pm by M/s.VA Tech Wabag Ltd. & M/s.IDE Technologies Ltd., alongwith the copy of High Court order and without payable Registration fees for Rs.5.94 crores.

The prescribed fees of registration is 5.94 crores i.e., 1% of the contract amount of Rs.594.09 crores as per Registration Act should be accompanied alongwith the above document Under the above circumstances, the consortium agreement deed cannot be accepted for registration and returned herewith."

5. In the impugned order passed by the learned Single Judge, it is observed thus :-

" 6. A perusal of the materials placed before this court, in the form of typed set of documents, ore particularly, the consortium agreement would disclose that it is entirely different from the construction agreement and thus, this court is

prima facie of the view that the said agreement does not involve in any construction of the building or superstructure like flats, etc.

7. In the light of the facts and circumstances, this court directs the second respondent to register the consortium agreement under Article 5(j) of Schedule-I of the Indian Stamp Act, 1889, by accepting necessary stamp duty, so as to enable the petitioner to carry on the work in terms of the said agreement."

6. In the grounds of writ appeal, it is noted that though the learned Single Judge has rightly classified the said document as consortium agreement which is entirely different from construction agreement, yet, he has failed to appreciate that the same is chargeable to stamp duty of Rs.20/- as prescribed in Article 5(j) of the Indian Stamp Act, 1899 alongwith registration fees to the extent of 1% chargeable on the value of contract embodied in the said consortium agreement which works out to Rs.5,94,00,000/-. Further, it is contended that the learned Single Judge failed to note that registration fee leviable for all documents presented for registration is governed by the provisions prescribed in various Articles enumerated in the Table of Fees prepared by the State Government in exercise of the powers conferred by Section 78 of the Registration Act, 1908. It is also contended by the appellants that Article 1(b) specifically states as that unless it is specifically provided in various Articles mentioned therein, the consideration expressed in a document shall, generally, be taken to be its value for determining the registration fees and where no consideration is expressed, value of the property dealt with shall be taken. It is the further stand of the appellants that in the rest of the Articles which follow Article 1(b), separate registration fee has not been prescribed for consortium agreement and therefore, in view of the above provisions contained in Article 1(b) which is residuary in nature and also the fact that no consideration amount has been furnished in the consortium agreement relating to this case, the value of the contract agreed to be carried over is to be reckoned as the basis for computation of registration fee and upon such value, as per Article 1(a) of the Table of Fees, 1% ad valorem duty is to be levied. What is not in dispute is that the respondent herein was the successful bidder and CMWSSB had issued a letter of acceptance on 3.3.2016 in favour of the respondent's consortium accepting the offer of Rs.594.09 crores. Therefore, the appellants would contend that the learned Single Judge ought to have held that registration fee chargeable for the document is Rs.5,94,00,000/- as against which the respondent herein had paid only Rs.100, however, the learned Single Judge have failed

to take note that registration fee of Rs.100 prescribed under Article 1(g) of the Table of Fees prepared under Section 78 of the Registration Act, 1908 is not applicable to the document relating to the present issue as the same is applicable only in respect of an instrument constituting a transaction, which is not susceptible for money valuation. The appellants would bring to the notice of this court Article 1(g) which reads thus:-

"In the case of document in which transaction is not susceptible of money valuation, the fee leviable shall be Rs.100/-"

7. It is further contended by the appellants that the learned Single Judge failed to give due regard to the recitals of the Consortium agreement which explicitly indicates that in pursuance of the award of contract granted by CMWSSB, the respondent company alongwith another company viz., M/s.IDE Technologies Ltd., entered into the said consortium agreement and both the companies have agreed to complete the said contract on some terms and conditions therein.

8. Having heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the respondent on the issue on hand, we are of the view that the learned Single Judge has failed to take into consideration that the consortium agreement was required to be presented by the respondent herein as a consequence that they were the successful bidder and a letter of acceptance dated 3.3.2016 was issued by CMWSSB in favour of the respondent herein accepting their total officer of Rs.594.09 crores. It is also not in dispute that for all practical purposes, any transaction involving value of more than Rs.100/-, requires compulsory registration, otherwise, the document would not have any sanctity. Therefore, we find no illegality in the action of the appellants in levying the registration fee of 1% of the contract amount for registering the consortium agreement.

9. In such view of the matter, we find that the stand taken by the appellant Inspector General of Registration that unless payment of 1% of the contract amount as registration fee, the consortium agreement deed cannot be accepted for registration holds good. The order passed by the learned Single Judge is modified to the above extent. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssk.

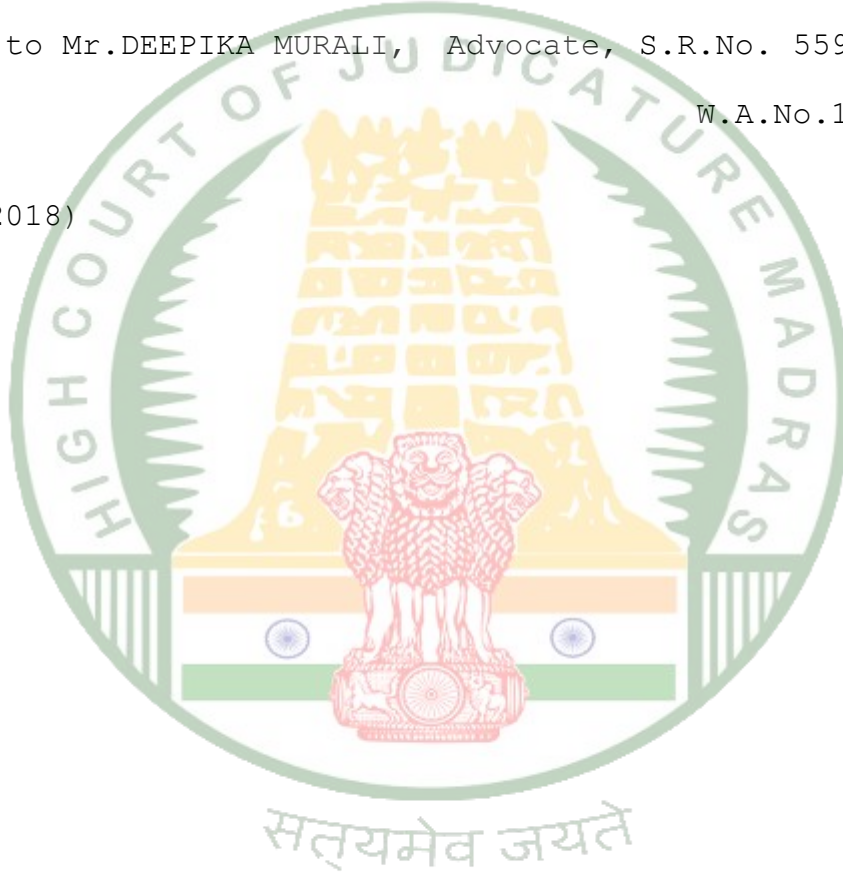
To:

- 1 The Inspector General of Registration
No.100 Santhome High Road
Chennai-600 028.
- 2 The Sub-Registrar-Pallavaram
No.4 2nd Main Road New Colony
Opposite Railway Station
Pallavaram Chennai-600 043.

+1cc to Mr.DEEPIKA MURALI, Advocate, S.R.No. 55920

W.A.No.1742 of 2018

RSK (CO)
TR(29/08/2018)



WEB COPY