AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 18/07/2019
Order Delivered on 11/11/2019

WPC No. 2744 of 2017

- Century Textiles and Industries Limited, A Company within the meaning of Companies Act, 2013, having its Registered Office at Century Bhawan Dr. Annie Besant Road, Worli, Mumbai, Maharashtra - 400030, through its Authorised Signatory Mr. Yogesh Paranjape, Dy. Manager - Legal of the Petitioner, having office at Century Bhawan, Dr. Annie Besant Road, Worli, Mumbai, Maharashtra - 400030.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Collector of Stamps, Raipur (CG)
2. Board of Revenue, having Circuit Court at Raipur, Chhattisgarh
3. Registrar of Stamps, Office Of District Registrar, Raipur, Collectorate Campus, Raipur Chhattisgarh
4. State Bank of India, through its Manager State Bank Bhawan, Madam Cama Road Mumbai 400021 Corporate Accounts Group, BKC, The Capital, 16th Floor, Bandrakurla Complex, Bandra (East) Mumbai 400051.
5. ICICI Bank, through Its Manager, Branch Office, Landmark, Race Course Circle, Vadodara 390007 Head Office 215, Free Phase House, Nariman Point, Mumbai 400021.
6. Punjab National Bank, Through Its Manager, Head Office 7, Bhikaji Kama Place, Africa Avenue, New Delhi Branch Office Worli Naka, Mumbai 400018, District : Mumbai, Maharashtra
7. Union Bank Of India, through its Manager, Head Office 239, Vidhan Bhawan Marg, Mumbai 4000021. Prabhadevi Branch Office;- 263, Madhuhans, Dr. Annie Besant Road, Mumbai 400030.
8. City Bank, through its Manager Plot No.C-61, Bandra-Kurla Complex, Bandra East, Mumbai 400051.
9. I.D.B.I. Bank Ltd, through its Manager, Corporate Banking Group, I.D.B.I. Tower, W.T.C. Complex, Kuff Parade, Mumbai 4000005.
10. H.D.F.C. Bank Ltd, through its Manager, Sandoz House, Dr. Annie Besant Road, Worli, Mumbai 400018.

---- Respondents

WPC No. 2745 of 2017

1. Century Textiles and Industries Limited, A Company within the meaning of Companies Act, 2013, having its Registered Office at Century Bhawan Dr. Annie Besant Road, Worli, Mumbai, Maharashtra - 400030, through its Authorised Signatory Mr. Yogesh Paranjape, Dy. Manager - Legal of the Petitioner, having office at Century Bhawan, Dr. Annie Besant Road, Worli, Mumbai, Maharashtra - 400030.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Collector of Stamps, Raipur Chhattisgarh

2. Board of Revenue, having Circuit Court at Raipur, Chhattisgarh

3. Registrar of Stamps, Office Of District Registrar, Raipur, Collectorate Campus, Raipur Chhattisgarh

4. Axis Bank Limited, through its Manager, Trishul, 3rd Floor, In front of Samratateshwar Temple, Law Garden, Allies Bridge, Ahmadabad - 380006.

5. Kotak Mahindra Bank Limited, Through its Manager,27, B.K.C., C-27, G-Block, Bandra East, Mumbai - 400051.

---- Respondents

WPC No. 2746 of 2017

1. Century Textiles and Industries Limited, A Company within the meaning of Companies Act, 2013, having its Registered Office at Century Bhawan Dr. Annie Besant Road, Worli, Mumbai, Maharashtra - 400030, through its Authorised Signatory Mr. Yogesh Paranjape, Dy. Manager - Legal of the Petitioner, having office at Century Bhawan, Dr. Annie Besant Road, Worli, Mumbai, Maharashtra - 400030.

---- Petitioner

Versus

1. State of Chhattisgarh, through the Collector of Stamps, Raipur Chhattisgarh

2. Board of Revenue, having Circuit Court at Raipur, Chhattisgarh

3. Registrar of Stamps, Office Of District Registrar, Raipur, Collectorate Campus, Raipur Chhattisgarh

4. State Bank of India, through its Manager State Bank Bhawan, Madam Cama Road Mumbai 400021 Corporate Accounts Group, BKC, The Capital, 16th Floor, Bandrakurla Complex, Bandra (East) Mumbai 400051.

5. Bank of Baroda, through its Manager, House P.V. No. 506 Mandavi, Vadodra-396006 Corporate Financial Service Branch, First Floor-3, Vaalchand Hirachand Marg, Boiler Pear Mumbai-400001.

6. State Bank of Hyderabad, through its Manager, Gunfoundry Hyderabad, 500001, Corporate Financial Service Branch 11 C, Mittal Tower 210 Nariman Point, Mumbai- 400021

7. State Bank of Mysore, through its Manager, K.G. Raod, Bangalore-560009, Corporate Account Branch- 224C, Mittal Coat, C Wing, Fourth Floor, Nariman Point, Mumbai-400021.

---- Respondents

AND

<u>WPC No. 2753 of 2017</u>

1. Century Textiles and Industries Limited, A Company within the meaning of Companies Act, 2013, having its Registered Office at Century Bhawan Dr. Annie Besant Road, Worli, Mumbai, Maharashtra - 400030, through its Authorised Signatory Mr. Yogesh Paranjape, Dy. Manager - Legal of the Petitioner, having office at Century Bhawan, Dr. Annie Besant Road, Worli, Mumbai, Maharashtra - 400030.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Collector of Stamps, Raipur (CG)

2. Board of Revenue, having Circuit Court at Raipur, Chhattisgarh

3. Registrar of Stamps, Office Of District Registrar, Raipur, Collectorate Campus, Raipur Chhattisgarh

4. State Bank of India, through its Manager State Bank Bhawan, Madam Cama Road Mumbai 400021 Corporate Accounts Group, BKC, The Capital, 16th Floor, Bandrakurla Complex, Bandra (East) Mumbai 400051.

5. State of Bank of Travancore, through its Manager, Head Office - Poojapura, Thiruvananthapuram, Kerala 695012 Branch Office - Corporate Finance, 112 - 115, Tulsiani Chambers, 212, Nariman Point , Mumbai - 400021.

---- Respondents

WPC No.2744 of 2017

For Petitioner	:	Shri Sunil Gupta, Sr. Advocate with Shri Punit Tyagi, Shri Manoj Paranjpe Shri Shishir Dixit & Shri Romir S. Goyal, Advocates
For Respondent No.1 & 3	:	Shri Siddharth Dubey, Dy. Govt. Adv.
For Respondent No.4.	:	Shri PR Patankar & Shri Vedant Bhelonde Advocate.

WPC No.2745 of 2017

For Petitioner	:	Shri Sunil Gupta, Sr. Advocate with Shri Punit Tyagi, Shri Manoj Paranjpe Shri Shishir Dixit & Shri Romir S. Goyal, Advocates
For Respondent No.1 & 3	:	Shri Siddharth Dubey, Dy. Govt. Adv.

WPC No.2746 of 2017

For Petitioner	:	Shri Sunil Gupta, Sr. Advocate with Shri Punit Tyagi, Shri Manoj Paranjpe Shri Shishir Dixit & Shri Romir S. Goyal, Advocates
For Respondent No.1 & 3	:	Shri Siddharth Dubey, Dy. Govt. Adv.:

WPC No. 2753 of 2017

For Petitioner	:	Shri Sunil Gupta, Sr. Advocate with Shri Punit Tyagi, Shri Manoj Paranjpe Shri Shishir Dixit & Shri Romir S. Goyal, Advocates
For Respondent No.1 & 3	:	Shri Siddharth Dubey, Dy. Govt. Adv.

Hon'ble Shri P. R. Ramchandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

CAV Order

Per Parth Prateem Sahu, J

1. WPC No.2745/2017 has been filed challenging the legality, validity and propriety of the order dated 29.8.2017 (Annexure P-1) passed by the Board of Revenue Chhattisgarh, Bilaspur in Case No.RN/14/R/B-103/44/2016 (M/s Century Textiles & Industries Limited v. State of CG & ors) dismissing revision preferred by petitioner against the order dated 15.12.2015 (Annexure P-7) passed by the Collector of Stamps, Raipur in Case No.457/B-103/2014-15 by which the Collector of Stamps, Raipur directed the petitioner company to deposit deficit stamp duty of

Rs.11,89,99,500/- on the 'Mortgage Deed' executed at Mumbai on 22.1.2015 in respect of property situated in District Raipur for obtaining loan of Rs.400 Crores approximately and received in Raipur (CG) on 29.6.2015 vide Memorandum No.278 dated 17.4.2015.

2. WPC No.2744/2017 has been filed challenging the legality, validity and propriety of the order dated 29.8.2017 (Annexure P-1) passed by the Board of Revenue Chhattisgarh, Bilaspur in Case No.RN/14/R/B-103/43/2016 (M/s Century Textiles & Industries Limited v. State of CG & ors) dismissing revision preferred by petitioner against the order dated 15.12.2015 (Annexure P-7) passed by the Collector of Stamps, Raipur in Case No.459/B-103/2014-15 by which the Collector of Stamps, Raipur directed the petitioner company to deposit deficit stamp duty of Rs.9,89,99,500/- on the 'Mortgage Deed' executed at Mumbai on 6.12.2013 in respect of property situated in District Raipur for obtaining loan of Rs.200 Crores approximate and received in Raipur (CG) on 29.6.2015 vide Memorandum Nos.290 dated 17.4.2015.

3. WPC No.2746/2017 has been filed challenging the legality, validity and propriety of the order dated 29.8.2017 (Annexure P-1) passed by the Board of Revenue Chhattisgarh, Bilaspur in Case No.RN/14/R/B-103/43/2016 (M/s Century Textiles & Industries Limited v. State of CG & ors) dismissing revision preferred by petitioner against the order dated 15.12.2015 (Annexure P-7) passed by the Collector of Stamps, Raipur in Case No.456/B-

103/2014-15 by which the Collector of Stamps, Raipur directed the petitioner company to deposit deficit stamp duty of Rs.17,09,99,500/- on the 'Mortgage Deed' executed & registered at Mumbai on 24.3.2014 in respect of property situated in District Raipur for obtaining loan of Rs.344 Crores approximate and received in Raipur (CG) on 29.6.2015 vide Memorandum No.263 dated 17.4.2015.

4. WPC No.2753/2017 has been filed challenging the legality, validity and propriety of the order dated 29.8.2017 (Annexure P-1) passed by the Board of Revenue Chhattisgarh, Bilaspur in Case No.RN/14/R/B-103/45/2016 (M/s Century Textiles & Industries Limited v. State of CG & ors) dismissing revision preferred by petitioner against the order dated 15.12.2015 (Annexure P-7) passed by the Collector of Stamps, Raipur in Case No.458/B-103/2014-15 by which the Collector of Stamps, Raipur directed the petitioner company to deposit deficit stamp duty of Rs.26,39,99,500/- on the 'Mortgage Deed' registered at Mumbai on 7.6.2013 in respect of property situated in District Raipur for obtaining loan of Rs.530 Crores and received in Raipur (CG) on 29.6.2015 vide Memorandum No.269 dated 17.4.2015.

5. Since the issue involved and grounds raised in the above four writ petitions are common, the same are decided by this common order. For the facility and convenience, the records of WPC No.2745/2017 are being taken into consideration while deciding the issue raised in these writ petitions.

6. The petitioner is a company registered under the relevant provisions of the Companies Act, 1956, having its registered office at Mumbai (MS). The petitioner company is engaged in manufacturing of textiles, rayon, cement pulp & paper products and carries on its business at various places in the country including State of Maharashtra, West Bengal, Gujarat, Uttrakhand & Chhattisgarh. Petitioner also possess immovable properties in the aforesaid States. Petitioner company being in need of money had decided to obtain loan from different banks and for that purpose, the petitioner company executed mortgage deeds of immovable properties in favour of the lender banks. Petitioner company decided to execute mortgage deeds of immovable properties situated in the State of Maharashtra, West Bengal, Gujarat, Uttrakhand & Chhattisgarh in the office of Joint Sub Registrar at Mumbai itself.

7. A mortgage deed was executed on 22.1.2015 for obtaining loan amount of Rs.400 Crores (likewise for different amount in other connected cases as mentioned above) and registered with the office of Joint Sub-Registrar, Mumbai-2 (MS) involving immovable properties situated in District Raipur (Chhattisgarh). The Joint Sub-Registrar, Mumbai-2, in compliance of the provisions of Sections 64 to 67 of the Registration Act, 1908 (for short 'the Act of 1908') has forwarded memo related to transaction of the petitioner company to the office of the District Registrar / Collector of Stamps, Raipur (CG) vide covering letter dated 17.4.2015. On receipt of said memorandum, the District Registrar/Collector of Stamps, Raipur issued notice dated 7.7.2015 (Annexure P-4) to the petitioner

mentioning that the petitioner had obtained total loan of Rs.400 Crore by executing mortgaged deed dated 22.1.2015 in favor of Axis Bank & Kotak Mahindra Bank Ltd., including the immovable properties (land) situated in District Raipur (CG), but stamp duty as per rate prevailing in the State of Chhattisgarh has not been paid on it. Said notice was issued under the provisions of Section 6A, 19A & 48B of the Indian Stamp Act, 1899 (for short 'the Act of 1899') calling upon the petitioner to submit its reply and also to produce original instrument (mortgage deed) before the authority issued notice.

8. On 28.8.2015 petitioner submitted reply to notice dated 7.7.2015 issued by the District Registrar/Collector of Stamps, Raipur (CG) acknowledging receipt of notice and admitting the execution & registration of mortgage deed in the office of Joint Sub-Registrar, Mumbai-2 after determination and payment of stamp duty payable on the instrument in Maharashtra. It was also admitted that some of the immovable properties involved in the mortgage deed are situated in the State of Chhattisgarh. Issuance of letter of intimation dated 17.4.2015 along with memorandum of mortgage deed involving immovable properties situated within the jurisdiction of District Registrar, Raipur (CG) was also admitted. It has been stated in the reply that mortgage deed would only liable to be stamped in State of Chhattisgarh if executed in the State of Chhattisgarh. However, since the mortgage deed was neither executed nor received in State of Chhattisgarh, the provisions of Section 3 of the Act of 1899 do not attract. It was also stated in reply that provisions of Section 6A of the Act of 1899 are not applicable in the present

case for the reason that copy of instrument was not received by the office of the District Registrar / Collector of Stamps, Raipur (CG). In alternate, it was pleaded that even if a copy is received, then also it will not amount as act of receiving it in evidence in State of Chhattisgarh. None of the parties to mortgage deed has brought mortgage deed or copy thereof before the Collector of Stamps, Raipur. Sending of letter along with memorandum is only an act of conveying information by the Joint Sub-Registrar, Mumbai-2 to the Collector of Stamps / District Registrar, Raipur (CG), which is a ministerial function and it will not amount to act of receiving copy of mortgage deed in State of Chhattisgarh. Recovery of deficit stamp duty can only be initiated when it is found at the time of registration of any instrument that it is insufficiently stamped. It was also stated that provisions of Section 48B of the Act of 1899 are also not applicable to the facts and circumstances of present case, for which notice was issued.

9. After hearing the rival parties to the case, the Collector of Stamps / Raipur (CG) vide its order dated 15.12.2015 (Annexure P-7) held that along with memo sent by the Joint Sub Registrar, Mumbai-2 (MS), he has also received copy of registered mortgage deed. It has also been recorded in the order that on examination of original mortgage deed, which was executed & registered in Mumbai and received in Chhattisgarh, it is found that the same is not stamped as per rate prevailing in State of Chhattisgarh, therefore, the provisions of Sections 3, 6A, 19A & 48B of the Act of 1899 would be attracted and being so, deficit stamp duty is required to be paid on the

mortgage deed in accordance with the rate of duty prevailing in the State of Chhattisgarh. Consequently, the Collector of Stamps, Raipur ordered for payment of stamp charges @ 2% on the value of mortgage deed and 1% panchayat charges, as per provisions of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and assessed total Rs.12,00,00,000/- as stamp charges on the mortgage deed having value of Rs.400 Crore. Out of this amount, stamp duty already paid at Mumbai (MS) has been deducted and net demand has been made for a sum of Rs.11,89,99,500/- as stamp duty. (In other connected cases, the deficit stamp duty as mentioned above has been demanded).

10. The order passed by Collector of Stamps, Raipur was assailed by the petitioner before the Board of Revenue Chhattisgarh, Bilaspur by filing a revision under Section 56 (4) of the Act of 1899. The Board of Revenue, after considering arguments advanced by learned counsel for respective parties, has held that the petitioner was well aware about the receipt of copy of mortgage deed by State of Chhattisgarh and initiation of proceedings by the Collector of Stamps, Raipur under Section 19-A read with Section 3, 6A & 48B of the Act of 1899 for making good the deficit of stamp duty has passed the order. If the rate of stamp duty in State of Maharashtra is less than the rate prevailing in State of Chhattisgarh, then proceeding for recovery of balance stamp duty/charges can be initiated and under Section 6A, 19A & 48B of the Act of 1899, the Collector of Stamps, Raipur is having jurisdiction and authority to do so and provisions of Section 65 (2) of the Act of 1908 do not curtail

the powers of District Registrar or Sub-Registrar. The Board of Revenue also held that there should be harmonious construction and application of the provisions of the Act of 1899. The Board of Revenue also recorded that receipt of copy has not been denied by petitioner (respondent therein) and therefore proceeding under Section 19A r/w 3 (bb) of the Act of 1899 is not barred. Section 48B of the Act of 1899 grants power to the Collector of Stamps to assume that payment of stamp duty on an instrument is not proper and to take appropriate action. Since the copy of mortgage deed was available before the Collector of Stamps, Raipur, he has rightly initiated proceedings and passed the order for recovery of deficit stamp duty. Hence, the Board of Revenue while affirming the order of Collector of Stamps, Raipur, dismissed revision and at the same time also enhanced the duty against which the petitioner has filed this writ petition seeking following reliefs:-

> "a. Issue a writ of certiorari or any other appropriate writ, order or direction quashing the order dated 29.08.2017 passed by the Board of Revenue in Case No.RN/14/R/B-103/44/2016 and the Order dated 15.12.2015 passed by the Collector of Stamps, Raipur in Revenue Case No.457/B-103/2014-15; and
>
> b. Issue a writ of certiorari or any other appropriate writ, order or direction quashing the Recovery Notice dated 13.09.2017 issued by the Collector of Stamps, Raipur in Revenue Case No.457/B-103/2014-15; and
>
> c. Declare that sections 19-A and 6-A of the Act need to be read with the requirement of the 'receipt' of the instrument or its certified copy, as the case may be, as provided in section 3 proviso (bb) by way of voluntary production thereof in the State of Chhattisgarh as required under section 33 of the Act; and
>
> d (i) Declare that to remain constitutional and valid, section 48-B of the Act needs to be read with and interpreted in the light of section 33 and can become operative only when the requirement of voluntary

production of the instrument or its certified copy as required under section 33 is satisfied;

(ii) In the alternative, declare that section 48B is *ultra vires* Entry 44 List III, 7th Schedule of the Constitution of India as also the fundamental rights under Art. 14, 19 (1) (a) and 19 (1) (g) and 21 and, therefore, is unconstitutional and void; (Annexure- P/12)

e. Pass any other Writ, Order or direction relief that the petitioner may be found entitled to may also be granted to the petitioner, including the costs throughout."

11. Learned Senior Counsel representing the petitioner submits that the order passed by the Collector of Stamps, Raipur directing payment of deficit stamp duty is without jurisdiction because the provisions of the Act of 1899 can only be made applicable upon voluntarily production of a counter part / duplicate / certified copy of an original instrument when it is used for adducing in evidence before the Public Officer or in the normal course of performance of function by such authority. Sending of memo as per provisions of Section 64 to 67 of the Act of 1908 is only an intimation/ information to the Collector of Stamps / District Registrar, Raipur (CG) with respect to execution of mortgage deed dated 22.1.2015 at Mumbai (MS) involving certain properties situated in the State of Chhattisgarh. He submits that function of the Joint Sub-Registrar, Mumbai (MS) and the District Registrar, Raipur (CG) under Section 64 to 67 of the Act of 1908 is ministerial in nature. Stamp fee is to be charged only on the mortgage deed at the place where it is executed & registered. In alternative, he argued that even if it is presumed that stamp duty is payable on a copy of instrument then also in the present case, since copy of mortgage deed dated 22.1.2015 has not been received from the office of Joint Sub-Registrar, Mumbai-2 (MS) where it was

executed and registered, but only memorandum of documents registered has been forwarded in compliance of the provisions of the Act of 1908, therefore, provisions of Section 3 (bb), 6A/9A of the Act of 1899 are not attracted. Even if a copy is received from the office of Joint Sub-Registrar, Mumbai-2 (MS) by the District Registrar, Raipur under the provision of Section 65 of the Act of 1908 then also Clause (1) of Section 65 grants exemption from payment of stamp duty. He further submits that under the constitutional concept of stamp duty, provisions of Section 48B read with Section 33 of the Act of 1899 could have its legal effect when the instrument or certified copy thereof is voluntarily produced before a judicial authority as evidence. Requirement of voluntary production under Section 33 is integral to Section 48B. He further submitted that the provisions of Section 48B of the Act of 1899 are liable to be declared ultra vires to the Constitution of India. Jurisdiction of any authority in Chhattisgarh to impound an instrument and to demand deficit stamp duty could be attracted only when an instrument came to be produced as evidence or upon voluntarily production of same by concerned person. He submits that mortgage deed was registered in accordance with provisions of Section 28 of the Act of 1908 and requisite stamp duty, as assessed by the authority concerned, has been paid on it and therefore the Collector of Stamps, Raipur could not have passed the order for recovery of deficit stamp duty on mortgage deed executed and registered in Mumbai unless & until it is voluntarily produced in terms of Section 33 of the Act of 1899 or its certified copy was received in the State of Chhattisgarh. Purpose of sending information / communication / memorandum under the provisions of Section 65 of the Act of 1908 is very limited i.e. for sending intimation regarding registration of a document with the concerned Sub-Registrar to file it in Book No.1 and receipt of such information/ copy of instrument under Section 65 of the Act of 1908 cannot be construed as 'voluntarily production' of an instrument or liable to be charged. Since there is no voluntary production of instrument or copy thereof before the Collector of Stamps, Raipur, the same is not chargeable. It is also submitted that as per Article 24 of the Schedule 1A, the copy forwarded by one public office to other public office as required under the law, is exempted.

Reliance is placed on the judgements in the matters of State of Bihar v. KC Thapar reported in AIR 1962 SC 110; Jupudi K Rao v. PV Subbarao (1971) 1 SCC 545; New Central Jute Mills Co. Ltd. v. State of West Bengal AIR 1963 SC 1307; Chief Controlling Revenue Authority v. Nutan Mills Ltd. 1976 SCC Online Gujarat 31; Narendra Dharamshbhai Mapara v. Chief Controlling Revenue Authority 1994 SCC Online Gujarat 403; Antrification Bearings Corp. Ltd. v. State of Maharashtra 1988 SCC Online Bombay 409; Hariom Agrawal v. Prakash Chandra (2007) 8 SCC 514; Indian Hume Pipe Co. Ltd. v. State of Maharashtra 2018 SCC Online Bombay 452; S.K. Samanta v. State of Chhattisgarh WPC No.147/20418.

12. Per contra, learned counsel representing the State vehemently argued that proceeding initiated by the Collector of Stamps, Raipur is strictly in accordance with law. Provisions of Section 6A of the Act

of 1899 provides for payment of duty on copies, counter-parts or duplicates when that duty has not been paid on the principal or original instrument. Section 19A provides for payment of duty on certain instruments liable to be increased duty in Chhattisgarh under clause (bb) of Section 3. Memorandum sent to the Collector of Stamps, Raipur informing about execution & registration of mortgage deed involving properties situated in State of Chhattisgarh and giving particulars thereof, is akin to a copy of mortgage deed and therefore the Collector of Stamps, Raipur has rightly taken into consideration the deficient stamp duty paid on the mortgage deed and assessed the duty to be paid in the State of Chhattisgarh as per rates prevailing. He also submits that intimation forwarded by the Sub Registrar, Mumbai-2 to the Collector of Stamps/District Collector, Raipur under the provisions of Section 64 to 67 of the Act of 1908 is in discharge of his official duty and therefore the Collector of Stamps can very well take into consideration duty paid on the document at the place of its registration, which is part of intimation and memorandum of documents. He also submits that there is no provision for mortgaging the property situated in one State by executing a mortgage deed in another State. He also tried to controvert the argument advanced by learned Senior Counsel for the petitioner that Section 48B of the Act of 1889 is not in any manner arbitrary, discriminatory or contrary to any other statute and therefore it is not *ultra vires* to the provisions of the Constitution of India.

13. We have heard learned counsel for the parties and perused the

available record.

14. So far as the issue with respect to payment of difference of duty chargeable on an instrument when it is registered in any other State and property lies in the State of Chhattisgarh due to higher rate of duty to be chargeable in the State of Chhattisgarh on the said instrument is concerned, it will be beneficial to have an eye on the relevant charging provisions under the Act of 1899. Section 3 of the Act of 1899 deals with the instruments chargeable with duty. Relevant portion of Section 3 is extracted herein below for ready reference;-

> "3.Instruments chargeable with duty.—Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say—
>
> (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in [20] [India] on or after the first day of July, 1899;
>
> (b) every bill of exchange [payable otherwise than on demand] or promissory note drawn or made out of [20] [India] on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in [20] [India]; and.
>
> (c) every instrument (other than a bill exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of [India] on or after that day relates to any property situate, or to any matter or thing done or to be done, in [20] [India] and is received in [India]
>
> (aa) xxxxxxxxxxxxxx
>
> (bb) every instrument mentioned in schedule I-A as chargerable with duty under that schedule, which not having been previously executed by any person, is

executed, out of Chhattisgarh on or after the commencement of the Central Province and Berar Indian Stamp (Amendment) Act, 1939, and relates to any property situated, or to any matter or thing done or to be done, in Chhattisgarh and is received in Chhattisgarh.

Provided that no duty shall be chargeable in respect of —

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;......"

15. Section 6A of the Act of 1899 is also relevant and the same is reproduced herein below;-

"6-A. **Payment of duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument**- (1) Notwithstanding anything contained in section 4 or section 6 or in any other enactment for the time being in force the duty chargerable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in Chhattisgarh have been chargeable under this Act, as amended by the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939, with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19-A, unless it is proved that the duty chargeable under this Act, as amended by the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939, has been paid-

(a) on the principal or original instrument, as the case may be, or

(b) in accordance with the provisions of this section.

(2) Notwithstanding anything contained in any enactment for the time being in force, no instrument, counter-part, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon:

Provided that a court before which any such instrument, counter-part, duplicate or copy is produced may permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence."

16. Section 19A of the Act of 1899 also reproduced herein below;-

> "19.A-**Payment of duty on certain instruments liable to increased duty in Chhattisgarh under clause (bb) of section 3**- Where any instrument has become chargeable in any part of India other than Chhattisgarh with duty under this Act or under any other enactment for the time being in force in any part of India and thereafter becomes chargeable with a higher rate of duty in Chhattisgarh under clause (bb) of the first proviso to section 3-
>
> (i) the amount of the duty chargeable on such instrument shall, notwithstanding anything contained in the first proviso to section 3, be the amount chargeable on it under Schedule I-A, less the amount of duty, if any, already paid on it in India.
>
> (ii) such instrument shall, in addition to the stamps, if any, already affixed thereto, be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by same person as though such instrument were an instrument received in India for the first time at the time when it becomes chargeable with the higher duty."

17. Facts of the case at hand are that the petitioner executed a mortgaged deed at Mumbai (Maharashtra) involving some properties situated in District Raipur (Chhattisgarh). After registration of mortgage deed, the Sub-Registrar at Mumbai-2 (Maharashtra) sent a memorandum containing details of mortgage deed and properties situated in District Raipur (Chhattisgarh), in compliance of the provisions of Section 65 of the Act of 1908, which reads as under;-

> "65. **Procedure where document relates to land in several districts.**—(1) Every Sub-Registrar on registering a non-testamentary document relating to immovable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together

> with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.
>
> (2) The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file in his Book No. 1."

18. Indisputably, the petitioner company had executed mortgage deed in favour of various banks mortgaging their ownership lands situated in different States of the country including State of Chhattisgarh. This mortgage deed was executed on 22.1.2015 at Mumbai-2 (MS). Section 28 of the Act of 1908 relates to place for registering documents relating to land, which reads as under:-

> "**28**. **Place for registering documents relating to land**.- Save as in this Part otherwise provided every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), (d) and (e), section 17, sub-section (2), in so far as such documents affect immovable property, and section 18, clauses (a), (b), (c) and (cc), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate."

A bare reading of above quoted provision makes it clear that mortgage deed in question i.e. dated 22.1.2015, has been validly executed before the Joint Sub Registrar, Mumbai-2 as some of the properties mentioned in the mortgage deed are situated in the State of Maharashtra and further that Head Office/ Corporate Office of petitioner company is also situated in Mumbai.

19. The information with respect to execution of mortgage deed by the

petitioner including properties situated in District Raipur was received by the Registrar/Collector of Stamps, Raipur only by virtue of provisions of Section 65 of the Act of 1908. Provisions with respect to charging with duty an instrument has been provided under Section 3 of the Act of 1899 which starts with “Subject to the provisions of this Act and the exemptions contained in Schedule I”. Thus, it is clear that instruments are chargeable in accordance with Schedule-I and provisions of the Act of 1899. Section 3 (bb) of the Act of 1899 deals with the situation where instrument was registered out of the State on or after the commencement of the Central Provinces and Berar Indian Stamp (Amendment) Act, 1939. Section 3 of the Act of 1899 makes the provision for levying upon a duty on instrument and making it chargeable. Instruments which are to be made chargeable under the Act of 1899 have been provided under Schedule-I.

20. Section 19A of the Act of 1908 provides for duty to be chargeable on an instrument in any part of India other than State of Chhattisgarh but subsequently becomes chargeable with higher rate of duty in Chhattisgarh under Clause (bb) of first proviso to Section 3, the amount of duty chargeable on such instrument is less the amount of duty already paid on that instrument. The word 'instrument' has been used in Section 3, 3(bb) & 19A of the Act of 1899.

21. The Collector of Stamps, Raipur initiated proceedings on the basis of information received under Section 65 of the Act of 1908 wherein

the Sub-Registrar at Mumbai-2 (Maharashtra) sent letter dated 17.4.2015 along with memorandum for mortgage deeds and passed the order Annexure P-7. From perusal of order Annexure P-7 passed by the Collector of Stamps, Raipur, it is clear that the Collector has received copy of mortgage deed and therefore, taking into consideration the provisions of Section 19A r/w Section 3(bb) of the Act of 1899, it has been held that copy of instrument is liable to be charged with difference of duty payable at higher rate in Chhattisgarh. The Board of Revenue while dealing with revision preferred by petitioner, has held in its order that petitioner herein was having knowledge that mortgage deed was received by the Registrar, Raipur; the Sub-Registrar is empowered under Section 6A, 19A & 48B to initiate recovery proceeding against the petitioner; and Section 65 (2) of the Act of 1908 does not make that powers of the Sub-Registrar ineffective. The Board of Revenue also arrived at a conclusion that even on receipt of copy of instrument, the proceedings can be initiated for charging of difference of duty on instrument. On the basis of argument raised by learned counsel representing petitioner therein that no duty is chargeable on a photocopy and it can be chargeable only on original instrument, it has been held by the Board of Revenue that the petitioner was having knowledge that the copy of instrument was available with the Collector of Stamps, Raipur and therefore the proceedings drawn by the Collector of Stamps are valid.

22. Case of the petitioner since beginning is that the Registrar has not received any copy of instrument from the Sub-Registrar, Mumbai-2

(Maharashtra) and therefore no proceeding for charging difference of stamp duty can be initiated. A specific argument was advanced by learned Senior Counsel for the petitioner that copy of instrument was not available with the Collector of Stamps, Raipur to initiate proceeding for charging of difference duty. Even learned counsel representing the State has not produced any copy of instrument i.e. mortgage deed, executed by the petitioner in Mumbai. Learned Senior Counsel for the petitioner submits that the duty can be charged only on the instrument brought before the territorial jurisdiction of Chhattisgarh State or on voluntary production of copy or instrument before the authority concerned by either party to the instrument. Argument of learned Senior Counsel that sending of an information under Section 65 of the Act of 1908 cannot be said to be a voluntary production of a copy of instrument or instrument before an authority authorizing him to invoke jurisdiction under Section 19A read with Section 3 (bb) of the Act of 1899. He placed his reliance in the matter of **KC Thapar (supra)** wherein Hon'ble Supreme Court considering the judgement passed in Rajah of Bbili v. Inuganti China Sitaramasami Garu[1] has held that the copy of an instrument cannot be validated.

Another judgment which learned Senior Counsel for the petitioner has relied upon is delivered in **Jupudi Keshav Rao's** case (supra) to support his contention that copy of instrument cannot be treated on the same footing as unstamped or insufficiently stamped original document.

23. Hon'ble Supreme Court in the matter of New Central Jute Mills Co. Ltd. (supra) while considering higher duty to be payable in any State than the State where the instrument was executed and registered, held that liability to pay stamp duty arises in the first State where instrument was executed and second liability arises under the law of second State where instrument has been received or acted upon by parties. In the case at hand, execution of instrument took place in the State of Maharashtra, but said document cannot be said to have been received by the State of Chhattisgarh, as admittedly the instrument i.e. mortgage deed, has not been received by the State of Chhattisgarh nor even a copy of instrument has been received, as reflected from the documents placed on record by respective parties as well as argument raised by learned State Counsel wherein he submitted that memorandum is akin to the mortgage deed. He did not submit that copy of mortgage deed was available with the Collector of Stamps for initiating proceeding.

In support of his arguments that copy of mortgage deed was never received by the Collector of Stamps, Raipur, learned Senior Counsel referred to Annexure P-10, which is an application filed on behalf of the petitioner to the State Public Information Officer, Sub-Registrar & Administrative Officer City-2, Mumbai wherein in the information sought under Clause (2), it has been very specifically asked whether copy of mortgage deed was ever sent or given to the Collector of Stamps, Raipur with four memorandums bearing No.278, 281, 283 & 290, all dated 17.4.2015. Pursuant to said application, the State Public Information Officer, Sub-Registrar & Administrative Officer City-2, Mumbai informed the petitioner vide letter dated 31.12.2016 that '....no copy of Mortgage Deed was ever sent by us to District Registrar Officer, Raipur and/or Collector of Stamp, Raipur together with our memos nos.263, 278, 281 & 290...”

The above document annexed along with writ petition i.e. Annexure P-10 fortifies the argument raised by learned Senior Counsel for the petitioner that a copy of 'mortgage deed' was never received by the Collector of Stamps or the District Registrar Officer, Raipur.

24. The word 'instrument' has been defined in Section 2 (14) of the Act of 1899, which reads as under:-

> “(14) “Instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or record;”

25. Definition of 'instrument' makes it clear that every document by which any right or liability is created/transferred, extinguished/ record etc. but it does not refer the word 'copy of document'. Definition of the word 'instrument' as provided under the Act of 1899 has been interpreted by Hon'ble Supreme Court in the matter of Jupudi (supra) and Nutan Mills (supra) and it was held that copy of document cannot be termed and treated as an instrument for the purpose of the Act of 1899. Section 6A of the Act of 1899 provides for payment of duties on copies, counterparts or duplicates when

that duty has not been paid on the principal or original document, but it refers and limits that provisions of Sections 6 & 4 of the Act of 1899. Section 19A deals with the situation of payment of duties on certain instruments which becomes chargeable with a higher rate of duty in the Chhattisgarh State. Clause (bb) specifically mentions the word 'instrument' and it does not mention the word 'copy of document'.

26. From the above it is clear that it is only an instrument which becomes chargeable with higher rate of duty in the State of Chhattisgarh under clause (bb) of the first proviso to Section 3 of the Act of 1899 and not copy of any document. In the case at hand, the authorities have wrongly arrived at a finding that copy of document/ instrument can also be made chargeable with higher rate of duty in the State of Chhattisgarh, particularly when copy of instrument has not been received by the Registrar, Raipur and placed on record before initiating proceeding by the Collector of Stamps, Raipur, as discussed above.

27. Another aspect of the case is that the Board of Revenue and the Collector of Stamps, Raipur failed to take note of Article 24 of Schedule 1A in which exception has been carved out with respect to copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose. Article 24 of Schedule 1A, as applicable in the State of Chhattisgarh, is reproduced herein below for ready reference:-

"24. Copy or extract, certified copy to be a true copy Ten rupees

> or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to court fees
>
> **Exemption**
>
> (a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.
>
> (b) Copy of or extract from any register relating to births, baptism, namings, dedications, marriages, divorces, deaths or burials."

28. Schedule 1A has been formulated under Section 3 of the Act of 1899. Section 3 specifically provides that instrument shall be chargeable under the provisions of this Act and the exceptions contained in Schedule 1A. Provisions of Section 65 of the Act of 1908 cast a duty upon the Registrar, where any instrument is registered, to send a copy of instrument along with map and other description of properties to the Registrar of every district in which any part of any property is situated and on receipt of such information, the Registrar shall enter the same in Book No.1. Requirement under Section 65 of the Act of 1908 casts upon a duty expressly upon the Registrar and therefore copy of instrument even if received by the Registrar at Raipur comes within the exemption carved out in Schedule 1A. Stamp Act is fiscal Act and it has to be applied strictly. Hon'ble Supreme Court in the matter of District Registrar & Collector v. Canara Bank & others reported in (2005) SCC 496 has held thus:-

> '10.The Stamp Act is a piece of fiscal legislation. Remedial statutes and statutes which have come to be enacted on demand of the permanent public policy generally receive a liberal interpretation.

> However, fiscal statutes cannot be classed as such, operating as they do to impose burdens upon the public and are, therefore, construed strictly. A few principles are well settled while interpreting a fiscal law. There is no scope for equity or judiciousness if the letter of law is clear and unambiguous. The benefit of any ambiguity or conflict in different provisions of statute shall go to the subject. In Dowlatram Harji & Anr. Vs. Vitho Radhoti & Anr., (1881) 5 ILR (Bom) 188, the Full Bench indicated the need for balancing the harshness which would be inflicted on the subjects by implementation of the stamp law as against the advantage which would result in the form of revenue to the State; the latter may not be able to compensate the discontent which would be occasioned amongst the subjects."

29. Provisions of Section 3 of the Act of 1899 in a very specific term provide that instruments are chargeable subject to exemptions contained in Schedule-I. Section 19A provides for higher duty on instrument received in the State of Chhattisgarh. At first instance, it is clear that Schedule 1A provides for an exemption when copy is received under the express requirement of law, mandating the authority to furnish a copy for record in any public office. Memorandum was received by the office of Registrar under the provisions of Section 65 of the Act of 1908 for its use in any manner in the State of Chhattisgarh and therefore in view of exception carved out under Clause 24 of the Schedule-1, even if the copy is sent by public authority and received by the State of Chhattisgarh, it cannot be made chargeable of duty on higher rate. So far as other provisions of Act of 1899 are concerned, they specifically provide for instrument and not copy of document or instrument.

30. In view of the above specific provisions available under the Act of 1899, the Collector of Stamps as well as Board of Revenue have

committed illegality firstly in holding that instrument has been received by the Registrar, Raipur; secondly, even a copy of instrument can be made chargeable with higher rate of duty under the provisions of Section 19A read with Section 48B of the Act of 1899 and thirdly, in not considering the exemption carved out in Clause (24) of the Schedule-I.

31. So far as the submission of learned Senior Counsel for the petitioner that provisions of Section 48B be declared ultra vires on the ground of lack of legislative competence in the State Legislature, inconsistency as well as breach of fundamental rights under Articles 14, 19 (1) (a), 19 (1) (g) & 21 of the Constitution of India is concerned, Section 48B has been enacted under the Act of 1899 because the subject 'stamp duty' has been provided under Entry No.44 of List III in the Seventh Schedule of the Constitution of India. Entry 91 in List I i.e. Union List, provides for rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of leading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. Whereas, Entry No.63 of List II provides for rates of stamp duty in respect of documents other than those in the provisions of List I. In the List-I 'mortgage deed' is not included for fixing of rates but it finds place only in the Entry 63 of List-II of Seventh Schedule. The Entry-44 of the Concurrent List contains an entry to the effect that stamp duties other than duties or fees collected by means of judicial stamps. In view of Entries made in the List provided under the Seventh Schedule, the State Legislature has legislative competence to enact the law with respect

to the collection of stamp duty. Section 48B has been incorporated only to meet certain contingencies like after registration of document, it was detected that instrument is not sufficiently stamped and the Sub-Registrar forwards the copy etc. When the authorities come to the conclusion on the basis of copy received by it that the instrument is not properly stamped and the order of production of original instrument issued by the Collector is flouted, the person in possession or custody of original instrument then only it gives power to the Collector of Stamps to invoke provisions of Section 48B of the Act of 1899 and to proceed on the basis of presumption that the instrument/original document is not properly stamped. Provision of Section 48B comes into play only when deficit stamp duty comes to the notice of the Collector of Stamps from a copy of instrument produced before him. It does not talk about the power of Collector to direct for production of all or any original instrument or document possessed by any person. Section 33 and Section 48B operate in different fields.

32. Hence, the provisions of Section 48B cannot be said to be discriminatory and violative to Articles 14, 19 (1) (a) & 19 (1) (g) of the Constitution of India. The ground raised by the petitioner that the provisions of Section 48B of the Act of 1899 are ultra vires is not sustainable and is repelled.

33. For the foregoing reasons, the orders dated 29.8.2017 (Annexure P-1A) passed by the Board of Revenue affirming the order dated 15.12.2015 (Annexure P-7) passed by the Collector of Stamps,

Raipur are hereby set aside and in pursuance of the above, recovery notice dated13.9.2017 (Annexure P1B) issued by the Collector of Stamps, Raipur is also set aside. No order as to costs.

Sd/-	Sd/-
(P.R. Ramchandra Menon) Chief Justice	(Parth Prateem Sahu) Judge

roshan/-