IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8014 OF 2019

Navi Mumbai SEZ Pvt. Ltd. .. Petitioner

Vs

The State of Maharashtra & Ors. .. Respondents

…

Mr. Pramod Patil with Mr. Ajit Mon, Mr. Shyamsunder Solanke and Ms. Tanisha Arunan for PNG & Associates for the Petitioner.

Mr. A.A. Kumbhakoni, Advocate General with Mr. P.P. Kakade, Government Pleader with Ms. Nisha Mehra, A.G.P. for Respondent Nos.1 to7-State.

CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATED : 11TH SEPTEMBER, 2019.

<u>ORAL ORDER</u>:- [Per Chief Justice]

1. Heard learned counsel for the parties.

2. Challenge in the Writ Petition is to Circular No.Off. S/CGPL/No.5/238/2015/1147/15 dated 28th September, 2015

issued by the Office of the Inspector General of Registration and Controller of Stamps. The Circular reads as under:

> "To,
>
> *The Additional Controller of Stamps, Mumbai.*
> *The all Deputy General of Registration*
> *& Revenue Deputy Controller,*
> *The all Joint District Registrar,*
>
> *Sub:- In respect of payment of Stamp Duty for the Mortgage Deed executed by more than one bank by creating their consortium.*
>
> *Ref:- The Order dated 11.08.2015 passed by the Hon'ble Supreme Court, New Delhi in Civil Appeal No.6054/2015 (CCRA Vs. Costal Power Ltd.)*
>
> *With reference to the above subject, you are hereby informed that Hon'ble Supreme Court, New Delhi vide Order dated 11.08.2015 passed in Civil Appeal No.6054/2015 (CCRA Vs. Coastal Gujarat Power Ltd.) in respect of payment of Stamp Duty in case of Mortgage Deed executed by more than one banks by creating their consortium.*
>
> *The said order is enclosed herewith for your reference.*
>
> *Signed by the Inspector General of Registration."*

3. The Petitioner is a Company incorporated under the Companies Act, 1956 and is in the business of development and establishment of Special Economic Zones in Navi Mumbai areas comprised in Districts of Raigad and Thane. By and under a

registered Development Agreement dated 29th August, 2004, CIDCO has assigned the development rights in respect of 2140 Hectare of land to the Petitioner. To execute the development work the Petitioner required financial assistance. Various Banks were contacted and the Consortium of Banks and Financial Institutions agreed to finance the project on agreed terms and conditions. To secure the repayment of the loans advanced by the Banks and Financial Institutions, the Banks and Financial Institutions agreed to appoint a 'Security Trustee' or a 'Lead Trustee Bank' which was to act for the benefit of all Banks and Financial Institutions advancing loans.

4. On 05th September, 2014, the Petitioner, the Punjab & Sind Bank, the Bank of Maharashtra and Axis Trustees Services Limited executed a Security Trustee Agreement as per which Axis Trustees Services Limited became the 'Security Trustee'. It was agreed that to secure the loans and advances to the Consortium of Banks and Financial Institutions the Petitioner would mortgage its moveable and immoveable assets in favour of the Security Trustee and create first *pari pasu* charge over the said assets in favour of the Financial Institutions and Banks. The Security Trustee Agreement dated 05th December, 2014 was executed and has been annexed as Annexure 'A' to the Writ Petition. As recorded in the Agreement, the total financial exposure is in the sum of ₹ 4,362.79 crores under various Term Loan Agreements, Working Capital Term

Loan Facilities and Guarantee Assistance. It was followed by an Indenture of Mortgage dated 08th December, 2014 mortgaging the moveable and immoveable properties listed in the Schedule to the said Indenture of Mortgage in favour of the Security Trustee. Recording in Schedule II, the details of the Lenders being Punjab and Sind Bank and Bank of Maharashtra having first *pari pasu* charge and in Schedule IV, the details of the existing charge holders having first *pari pasu* charge pertaining to the Term Loans, Working Capital Term Loan Facilities and Guarantee Assistance, thereafter, the Petitioner under various Loan Agreements executed between 16th January, 2016 and 27th September, 2016 choose to avail financial assistance in the form of Term Loan and to secure the said Banks and Financial Institutions, along with Security Trustee executed Deed of Modification referred to as the First Deed of Modification in the Petition, dated 21st November, 2016. By virtue of the Deed of Modification, a pari pasu charge in favour of the said Banks and Financial Institutions, was created.

5. On the First Deed of Modification, the Petitioner paid Stamp Duty in the sum of ₹ 10 lakhs. The Sub-Registrar, Uran, District – Raigad before whom, the Deed was presented for registration informed the Petitioner that in view of the Circular dated 28th September, 2015, stamp duty payable had to be with reference to the financial transactions underlying between the Petitioner and five Banks and Financial Institutions; treating the

advancing of the finances as distinct transactions.

6. This propelled the Petitioner to approach this Court challenging the Circular dated 28th September, 2015 which had noted law declared by the Supreme Court in its judgment dated 11th August, 2015 in Civil Appeal No.6054 of 2015 interpreting Section 5 of the Gujarat Stamp Act, 1958.

7. The Petition also poses a challenge to the earlier Deeds being impounded and levying thereon stamp duty, applying the law declared by the Supreme Court and additionally levying a penalty.

8. In nutshell, contentions of the learned counsel for the Petitioner flow from the differences in the phraseology of Section 5 of the Stamp Act in Gujarat Stamp Act and the Stamp Act in the State of Maharashtra.

9. To appreciate the argument, the two provisions need to be noted:

10. Section 5 of the Stamp Act in the State of Maharashtra reads as under:-

> ***S.5 Instruments relating to several distinct matters.*** *- Any instrument comprising or relating to several distinct matters 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 this Act.*

11. Section 5 of the Gujarat Stamp Act reads as under:-

> ***S.5 Instruments relating to several distinct matters or distinct transactions.*** *- Any instrument comprising or relating to several distinct matters or distinct transactions shall be chargeable with the aggregated amount of the duties with which separate instruments, each comprising or relating to one of such matters or distinct transactions, would be chargeable under this Act.*

12. A perusal of the two statutes would evince that the difference between the two is that whereas in the Gujarat Act the phrase '*or distinct transactions*' follows the phrase '*several distinct matters*' at two places where the said phrase exists, in the Maharashtra Act the said phrase 'or distinct transactions' does not occur.

13. In the decision rendered by the Supreme Court which has formed the basis of the Circular dated 28th September, 2015, the facts were that Coastal Gujarat Power Limited needed financial assistance to set up an Ultra Mega Power Project in the area of Kutch-Bhuj. It secured financial assistance from 13 Financial Institutions which had formed a Consortium and had executed a Security Trustee Agreement appointing State Bank of India as a Lead Trustee; nominating it as a Security Trustee.

14. Separate Loan Agreements were entered into by the Coastal Gujarat Power Limited with the 13 financiers recording therein that a *pari pasu* charge would be created to secure the repayment of the loan or the financial advance benefit granted. An Indenture of Mortgage for Delayed After Assets Deed was executed with the State Bank of India acting as Security Trustee and the Executant was Coastal Gujarat Power Limited. Stamp duty paid on the Deed was ₹ 4,21,000/-. The stand taken by the Chief Controlling Revenue Authority for the State of Gujarat was that the instrument was chargeable to duty in the sum of ₹ 54,62,000/- and, hence, a demand in the sum of ₹ 50,41,000/- was raised by issuing a notice dated 5th November, 2009. Departmental view being as proposed in the show cause notice as also the revisional order was against the Company, it marched to the High Court at Gujarat and obtained a verdict in its favour. The Gujarat High Court held that the stamp duty was payable on the instrument and not on the transactions. The High Court opined that there being only one instrument creating a mortgage by borrower in favour of the Security Trustee and since the relationship between the borrower and the Security Trustee is independent of relationship between the borrower and the lending Banks, the High Court took the view that the instrument did not involve either distinct matters or distinct transactions.

15. The Supreme Court noted the aforenoted facts and the

arguments advanced. In para 21 of its opinion the Supreme Court extracted the Second Schedule to the Security Trustee Agreement and highlighted therefrom the credits advanced by different lender/Financial Institutions. The Supreme Court thereafter noted the terms of the Indenture of Mortgage executed by the borrower in favour of the State Bank of India in its capacity as a Security Trustee. In para 28 the Supreme Court held that from the facts it was manifest that the instrument of mortgage came into existence only after separate loan agreements were executed by the borrower with the lenders with regard to separate loan advanced by those lenders to the borrowers. The Supreme Court highlighted in the same paragraph that the Mortgage Deed recites at length as to how and under what circumstances property was mortgaged with the Security Trustee for the benefit of lender Banks. The Supreme Court thereafter noted the law laid down as per the treaties '*Halsbury's Law of England*' on the issue as to how should an instrument be chargeable to stamp duty in relation to several distinct matters being embodied in one instrument. The Supreme Court thereafter noted Sections 4, 5 and 6 of the Gujarat Stamp Act and upon a reading of the instrument of mortgage held that it was immaterial for the purpose whether the underlying transactions are of the same category or of different categories. In para 31 the Supreme Court held that from the Trust Deed it was apparent that 13 Banks lent monies to the borrower, details of which had been described in the Schedule, for the repayment of the money the borrower entered into separate loan agreements with 13 Financial Institutions. Thus, the Supreme Court held that it could safely be regarded to be a case of 13 distinct transactions which fell within Section 5 of the Stamp Act in Gujarat. The Supreme Court held that had the borrowers entered into separate Mortgage Deeds with the Financial Institutions in order to secure the loans, they would have to pay stamp duty on each separate document for each distinct transaction.

16. Meaning thereby, if 13 people advance loan to a single borrower and the document of mortgage mortgages the assets of the borrower with each lender having *pari pasu* charge, if the lenders execute a document or form a consortium of Trust with a Security Trustee the underlying transaction of the loan with the borrower would be determinative of the issue as to what would be the stamp duty paid.

17. Now, as noted above the statutes in the State of Gujarat uses the phrase '*or distinct transaction*' in Section 5. In the State of Maharashtra, the said phrase is missing.

18. Learned counsel for the Petitioner states that the rule against redundancy requires this Court to ascribe a meaning to the phrase '*several distinct matters*' and the phrase '*several distinct transactions*'.

19. The rule against redundancy only guides the Court that since it would be attributed to the legislature where different words or phrases are used, the intention that the legislatures intended to convey two different meanings. The rule is a starting point of construction. It only requires the Court to ascribe two different meanings where different words and phrases are used in a statute. But, it may happen that the Speaker may use two different words, phrases or expressions by way of abundant caution, ignorant of the fact that caution itself leads to unnecessary controversy.

20. Guided by precedent, and we are thankful to the precedents because they help the Court to navigate such situation as we are encountered today, we have at hand the illuminating decisions of our ancestors.

21. Hundred and nineteen years ago, on 21st September, 1900, the five Judges Bench of Madras High Court in the judgment reported as *ILR [Vol.XXIV] Mad. 176:* In *Re. Reference under Stamp Act, S. 57*, held that the principles to determine chargeability of an instrument to stamp duty under Section 5 of the Stamp Act has to be considered with reference to whether it comprises or relates to several distinct matters.

22. Section 5 of the Indian Stamp Act reads as under:-

> **S.5. Instruments relating to several distinct matters.** — Any instrument comprising or relating to several distinct matters 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 this Act.

23. It needs to be highlighted herein now that Section 5 of the Indian Stamp Act, 1899 is in *pari materia* with Section 5 of the Stamp Act in the State of Maharashtra.

24. The principles of law laid down by the Full Bench decision of the Madras High Court would therefore guide this Court.

25. The Full Bench decision held that where more than one of the matters or things i.e. indentures, leases, bonds or deeds, thereby charged with any stamp duty should be engrossed on one piece of vellum, the duties should be charged on every one of such matters. For example, if several landlords, each severally interested in the piece of land mentioned against his name in the Schedule were to act collectively, the instrument would be chargeable with stamp duty by treating each underlying transfer of interest and then aggregating the amount of duties as would be chargeable if separate instruments were executed.

26. The Full Bench decision of the Madras High Court reported as *74 LW 432*, *The Board of Revenue, Madras v. Narasimhan & Anr.*, pertaining to a document which was a multi purpose document or multifarious document, held that the expression '*distinct matters*' connotes '*distinct transactions*' and for the purposes of levy of stamp duty under the Indian Stamp Act requires the identity of the parties in respect of the underlying transaction was to be kept in mind. The importance of the said decision is that the expression '*distinct matters*' was treated to be the same as '*distinct transactions*'.

27. The Full Bench decision of the Allahabad High Court reported as *ILR 1933 [Vol. LV] 468*, *Ram Sarup v. Toti & Anr.* with reference to Section 5 of the Indian Stamp Act, 1899 also held that the expression '*distinct matters*' is equivalent to '*distinct transactions*'.

28. At home, in the judgment reported as *AIR 1971 Bom 237*, *Santdas Moolchand Jhangiani v. Sheodayal Gurudasmal Massand.* After noting the law declared by the Full Bench of the Madras High Court and Allahabad High Court it has been held that the expression '*distinct matters*' is equivalent to '*distinct transactions*'.

29. Thus, the argument that the decision of the Supreme Court in *Coastal Gujarat Power Limited's case (supra)* would not be

binding while interpreting Section 5 of the Stamp Act in Maharashtra is noted and rejected for the reason the phrase '*distinct matters*' is equivalent to the phrase '*distinct transactions*'. The difference between the two at best is the distinction between *tweedle dee* and *tweedle dum.* The names are different but the two are identical.

30. Under the circumstances, we hold that the Circular dated 28th September, 2015 cannot be quashed as prayed for in the Writ Petition, but would lodge a caveat. The caveat is that the Deed of Mortgage presented for registration would require a construction thereof and while construing the same, the law declared by the Supreme Court in *Coastal Gujarat Power Limited's case (supra)* would be applied. The language and the nature of the Mortgage Deed with reference to its recitals and its operative clauses would have to be considered. If, as found by the Supreme Court the Deed of Mortgage had the underlying financial documents of loan reflected therein and the document of loan required a mortgage, such document would be construed as was construed by the Supreme Court as embracing several distinct matters or several distinct transactions; for the reasons both expressions are the same.

31. The Appellate Authority before which the challenge to the order dated 01st June, 2017 is pending shall decide the appeal guided by the present decision and for construing the Security Trustee Agreement and the Indenture of Mortgage, guidance

would be taken from the decision of the Supreme Court in *Coastal Gujarat Power Limited's case (supra)*.

32. The Writ Petition is disposed of in the aforestated terms.

33. No costs.

(SMT. BHARATI DANGRE, J.) **(CHIEF JUSTICE)**

AJN