IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.663 & 664 of 2017

IndoSpace AS Industrial Park Pvt.Ltd.,
(Formerly, Anmol Logistics Part Pvt.Ltd.)
One Indiabulls Centre
4th Floor, Tower 2B
Elphinstone Road
Senapati Bapat Marg
Mumbai 400 013
represented by the
Manager-Liaisoning
& Authorized Signatory ..Petitioner in both the petitions

-Vs-

1. The State of Tamil Nadu
   Rep. by its Additional Chief Secretary
   Commercial Taxes and
   Registration Department
   Namakkal Kavignar Maaligai
   Fort St. George
   Chennai 600 009

2. Inspector General of Registration
   No.100, Santhome High Road
   Chennai 600 028

3. The Sub Registrar - Sriperumbudur
   Sriperambudur Taluk
   Kanchipuram District
   Tamil Nadu .. Respondents in both the petitions

W.P.No.663 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the entire proceedings culminating in the impugned letter of demand dated 29.06.2016 for Rs.25,00,000/- passed by the Respondent No.3 and quash the same and consequently direct removal of reference to any such amount in the encumbrance certificate, in regard to document no.7780/2013 on the file of Respondent No.3 as due and payable towards registration fee.

W.P.No.664 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the entire proceedings culminating in the impugned letter of demand dated 29.06.2016 for Rs.1,37,35,000/- passed by the Respondent No.3 and quash the same and consequently direct removal of reference to any such amount in the encumbrance certificate, in regard to document no.7780/2013 on the file of Respondent No.3 as due and payable towards registration fee.

For Petitioner :: Mr.A.L.Somayaji
Senior Counsel
for Mr.S.Arjun Suresh

For Respondents:: Mr.A.Kumar
Additional Advocate General
assisted by
Mr.P.P.Purushothaman
Government Advocate

ORDER

These writ petitions are directed against the impugned letters dated 29.6.2016 issued by the Sub Registrar, Sriperumbudur, the third respondent herein raising a demand for Rs.25,00,000/- and Rs.1,37,35,000/- respectively, from the petitioner, to quash the same with a consequential direction to remove the reference to any such amounts in the encumbrance certificate, in respect of document No.7780 of 2013 on the file of the Sub Registrar, Sriperumbudur.

2. Mr.A.L.Somayaji, learned Senior Counsel for the petitioner argued that the petitioner-IndoSpace AS Industrial Park Private Limited is a company registered under the Companies Act carrying on the business of real estate development, warehousing and logistics. The petitioner, during the course of their business, entered into an agreement of sale dated 28.3.2012 with one M/s A.S.Cargo Movers Private Limited (Vendor) for purchasing 35.285 acres comprised in various survey numbers located at No.124, Vallam 'A' Village, Sriperumbudur Taluk, Kanchipuram District. The agreement was to the effect (a) that an amount of Rs.30,00,000/- would be paid on the date of the sale agreement, which was duly paid, (b) that an amount of Rs.25,00,00,000/- would be paid within 15 days from the date of sale agreement and (c) that an amount of Rs.84,70,00,000/- would be paid subsequently subject to the vendor fulfilling certain conditions precedent set forth in the sale agreement. Thus, for a total consideration of Rs.110 Crore, an amount of Rs.30,00,000/- was agreed to be paid as advance on the date of the sale agreement on 28.3.2012 and accordingly, Rs.30,000/- was paid by the

petitioner towards registration charges, namely, 1% on the amount of Rs.30,00,000/- towards advance paid on the date of the sale agreement. The sale agreement was also registered with the third respondent on 28.3.2012 as document No.3036 of 2012. After the sale agreement, the petitioner also paid a further sum of Rs.25 Crore to the vendor, leaving the balance of Rs.84,70,00,000/- out of the total sale consideration of Rs.110 Crore. Mr.Somayaji also further argued that the amount of Rs.25 Crores was paid along with other sums of money and thereupon the sale deed was also executed on 16.5.2012 in favour of the petitioner and the subject property was also conveyed to the petitioner. The learned Senior Counsel also submitted that the remaining amount of Rs.84,70,00,000/- was also paid and thereafter, the sale deed was also presented for registration on 16.8.2012 on payment of the requisite stamp duty and the sale deed was also registered as document No.7780 of 2013. Long after the registration of sale deed, the third respondent herein issued a demand notice dated 24.10.2013 without even conducting any enquiry calling upon the petitioner to pay a huge amount towards the deficit of registration fee. The third respondent also raised two inconsistent demands both dated 29.6.2016 alleging deficit registration fee pertaining to the sale. One of the letters of demand dated 29.6.2016 issued by the third respondent was for an amount of Rs.25,00,000/-, which is the first demand impugned in W.P.No.663 of 2017, on an erroneous presumption that the advance paid under the sale agreement was for a total amount of Rs.25,30,00,000/- notwithstanding the fact that the actual amount paid as advance on the date of sale agreement was Rs.30,00,000/-. It was also indicated in the first impugned demand that no further documents would be registered by the third respondent with regard to the subject property until the alleged deficit registration fee of Rs.25,00,000/- was paid. Such a demand made by the third respondent on the basis of an audit observation is wholly unjustified. Therefore, a reply dated 22.7.2016 was sent by the petitioner to the third respondent denying the allegation. However, yet another letter of demand dated 29.6.2016 claiming a sum of Rs.1,37,35,000/-, which is impugned in W.P.No.664 of 2017 was issued to the petitioner towards the deficit registration fee on the basis of the sale agreement, without calling upon the petitioner for an enquiry under Section 80-A of the Registration Act, 1908. Referring to the first and second provisos of Section 80-A, Mr.Somayaji pleaded that when the sale agreement was registered by the third respondent on 28.3.2012 and consequently the sale deed was also registered on 16.5.2012, without giving any opportunity of hearing to the petitioner, the impugned demands by the third respondent against the petitioner are bad in law, therefore, they are liable to be set aside.

3. Continuing his arguments, the learned Senior Counsel for the petitioner also asserted that the impugned demands are barred by limitation under the second proviso to Section 80-A of the Registration Act, which states that no such inquiry shall be commenced after the expiry of three years from the date of registration of the document. The learned Senior Counsel explaining further as to how the third respondent was inconsistent, contended that when the third respondent has demanded a sum of Rs.25,00,000/- under the first impugned demand towards deficit registration fee with regard to the sale agreement, again a further sum of Rs.1,37,35,000/- has been demanded under the second impugned demand for the very same sale agreement, which clearly shows that the demands raised by the third respondent are inconsistent with each other. When there is no basis for the collection of deficit registration fee with regard to the sale agreement, in view of the threat imposed against the petitioner that the third respondent will not register any more document, the petitioner is incurring enormous loss. When both the impugned demands are barred by limitation under Section 80-A of the Registration Act read with Rule 2 of the Tamil Nadu Registration Rules 1983, the writ petitions deserved to be allowed by quashing the same. In support of his submissions, the learned Senior Counsel has referred to the judgment of this Court in the case of O.N.S.Hyder Ali v. The Sub Registrar District Registrar Cadre, Office of the Sub Registrar of Assurances, Madras, 2003-2-L.W.160 for the proposition that under Section 80-A of the Registration Act, a maximum period of three years for recovery of deficit registration fee has been prescribed. Even for recovery of deficit registration fee, an inquiry must be held and no certificate shall be issued unless an inquiry is made and the person aggrieved is given an opportunity of being heard. Continuing his arguments, the learned Senior Counsel submitted that a combined reading of Section 80-A of the Registration Act read with Rule 2 of the Tamil Nadu Registration Rules would make the position clear that in the event the respondents are of the opinion that there was a deficit collection of either the stamp duty or the registration fee, an inquiry should be made within a period of three years. Since in the present cases there was no such inquiry at all initiated and only the impugned letters directing the petitioner to pay the deficit registration fee has been made without the mandatory inquiry as per Section 80A of the Registration Act and beyond the period of three years as per Rule 2 of the Tamil Nadu Registration Rules, the respondents have no authority to initiate either the inquiry or the impugned demands of deficit registration fee beyond a period of three years after the registration. For the said proposition, he has also referred to the judgment of this Court in the case of R.Venkatesan v. The District Registrar, 2010 SCC Online Mad 2956.

4. Detailed counter affidavits have been filed by the respondents through vacate stay petitions. Mr.A.Kumar, learned Additional Advocate General for the respondents, opposing the prayer of the petitioner, urged this Court to dismiss the writ petitions on the ground that the petitioner neither challenged the notice of demand dated 24.10.2013 nor the certificate issued under Section 80A(2) of the Act, but the petitioner had challenged only the consequential order. Again he contended that when the petitioner entered into a sale agreement on 28.3.2012 with M/s Cargo Movers Private Limited as intended vendor, only a sum of Rs.30,000/- was collected since an advance amount of Rs.30,00,000/- was stated to have been paid on the date of execution of the sale agreement. Subsequently, in the Accountant General audit, based on the subsequent sale deed registered as Document No.7780 of 2013, it was observed that as per the money payment clause in the sale deed apart from the sale advance of Rs.30,00,000/-, it is covenanted that a further sum of Rs.25,00,00,000/- should be made by the petitioner within 15 days from the sale agreement. Again it has been agreed that the petitioner/purchaser should retain the liability of security deposits payable to the tenants being a sum of Rs.13,36,12,709/- and also undertook to discharge the Indian Bank loan amount of Rs.14,69,19,176.80 and another outstanding loan amount with Allahabad Bank being Rs.56,64,68,114.20, aggregating to Rs.137.65 Crore to be paid before the execution of the sale deed by the intended purchaser. While so, instead of levying a fee of Rs.1,37,65,000/-, only a sum of Rs.30,000/- was collected resulting in the short levy of Rs.1,37,35,000/-. Therefore, the third respondent issued the notice dated 24.10.2013 with regard to the sale agreement dated 28.3.2012 calling upon the petitioner to pay the deficit registration fee of Rs.1,37,35,000/-, but the petitioner did not respond to the said notice. Later on the third respondent issued a certificate under Section 80-A(2) which is appealable under Section 80-A(3) of the Act. When the petitioner has failed to respond to the notice of demand dated 24.10.2013 and again failed to challenge the certificate issued under Section 80-A(3), they cannot question the consequential order dated 29.6.2016 demanding the payment of deficit registration fee of Rs.25,00,000/- and Rs.1,37,35,000/-. Aggrieved thereby, the petitioner has filed the present writ petitions on the false ground that there was no notice or inquiry conducted. When the sale agreement was registered on 28.3.2012 and a notice was issued by the third respondent on 24.10.2013 well within three years time, the petitioner did not care to respond to the notice issued within three years time as contemplated under Section 80-A of the Registration Act. Finding no response, a certificate of the registering officer under sub-section (1) towards the deficit registration fee was

issued, which is appealable under sub-section (3) to the Registrar if it is a certificate of the Sub Registrar or to the Inspector General of Registration if it is a certificate of the Registrar and all such appeal shall be preferred within such time and shall be heard and disposed of. But without resorting to the appeal remedy, the writ petitions have been filed wrongly invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, the writ petitions are not maintainable when the statutory remedy of appeal is available to the petitioner. Adding further, the learned Additional Advocate General submitted that even for the sake of arguments, if it is presumed that the notice dated 24.10.2013 has made a demand for payment of Rs.1,37,35,000/- towards deficit registration fee, nothing prevented the petitioner from giving their objection or challenging the same. The petitioner had neither chosen to reply nor objected or questioned the same. Without questioning the notice of demand before the appropriate authority, the consequential orders alone have been challenged before this Court. Hence, the writ petitions are not legally maintainable.

5. I also find some merit on the submissions made by the learned Additional Advocate General for the respondents. When the petitioner has registered both the sale agreement dated 28.3.2012 entered into with M/s A.S.Cargo Movers Private Limited (intended vendor) and also the sale deed dated 16.8.2012 for purchase of the property in question, the third respondent has issued the notice of demand on 24.10.2013. Admittedly, the said notice was issued within three years time as contemplated under Section 80-A of the Registration Act. In this context, it is pertinent to refer to Section 80-A of the Registration Act, which reads as follows:-

> "80-A. Recovery of deficit registration fee.--(1) Notwithstanding anything contained in section 80, if after the registration of a document, it is found that the fee payable under this Act in relation to that document has not been paid or has been insufficiently paid, such fee or the deficit, as the case may be, may, on a certificate of the registering officer, be recovered from the person who presented such document for registration under section 32, as arrears of land revenue:
>
> Provided that no such certificate shall be granted unless inquiry is made and such person is given an opportunity of being heard:
>
> Provided further that no such inquiry

shall be commenced after the expiry of such period, after the date of the registration of the document, as may be prescribed.

(2) The certificate of the registering officer under sub-section (1) shall, subject only to appeal under sub-section (3), be final and shall not be called in question in any Court or before any authority.

(3) Any person aggrieved by a certificate of the registering officer under sub-section (1), may appeal to the Registrar if it is a certificate of the Sub Registrar or to the Inspector General of Registration if it is a certificate of the Registrar. All such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed."

6. A careful reading of the first proviso to Section 80-A(1) clearly shows that, after the registration of a document, if it is found that the fee payable in relation to that document has not been paid or has been insufficiently paid, such fee or deficit, as the case may be, may be recovered from the person who presented such document for registration under section 32 as arrears of land revenue, only after holding an inquiry and giving such person an opportunity of being heard. The second proviso to Section 80-A(1) also makes it clear that no such inquiry shall be commenced after the expiry of such period as contemplated under Rule 2 of the Tamil Nadu Registration Rules. In the present cases, on 24.10.2013, a notice of demand has been issued. As rightly canvassed by the learned Additional Advocate General, it is not known why the petitioner has not even questioned or objected to the said notice. Therefore, finding no response, the third respondent has issued the certificate on 15.4.2014 for payment of the deficit registration fee of Rs.25,00,000/-, for which the petitioner has also replied on 12.6.2014, but had chosen not to challenge the same. Further, in the judgments referred to by the learned Senior Counsel for the petitioner in Hyder Ali's case and in R.Venkatesan's case, only a sum of Rs.45,000/- and odd towards registration charges and stamp duty were involved. Besides, the distinguishing factor in the judgment in Hyder Ali's case is very clear that the impugned order was passed after the expiry of three years period, whereas in the case on hand, when the demand notice and the certificate were issued within three years time from the date of registration of both documents, the petitioner failed to challenge the same, therefore, the judgments relied upon by the

petitioner cannot be of any use to the petitioner. In the present cases, when a huge sum of more than one crore rupees is sought to be levied towards deficit registration fee, no prejudice would be caused to any one if the respondents are directed to hold proper inquiry as per law.

7. As highlighted above, since the petitioner has not even challenged the original demand notice dated 24.10.2013 and the consequential certificate issued under Section 80-A (2) of the Act, the plea of limitation raised by the petitioner cannot be entertained. In these circumstances, this Court, finding that the notice of demand has been issued on 24.10.2013 well within three years time, but without giving an opportunity of hearing to the petitioner as contemplated under the first proviso to Section 80-A(1) of the Registration Act and subsequently the certificate dated 15.4.2014 has been issued within three years period as contemplated under the second proviso to Section 80-A (1), which also has not been challenged, nonetheless, taking note of the error committed by the Officer in sending the notice of demand, instead of notice of hearing, claiming a sum of more than one crore rupees towards deficit registration fee, to meet the ends of justice, directs that the notice of demand shall be treated as notice calling for explanation from the petitioner and accordingly, two weeks time is granted to the petitioner therefor and thereafter the respondents, after holding an inquiry and giving an opportunity of hearing to the petitioner as per the second proviso to Section 80-A(1), shall pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter. With the above direction, setting aside the impugned order to this extent, the writ petitions are partly allowed. Consequently, W.M.P.Nos.713, 714, 716, 717 of 2017, 2119, 2120 of 2018 are closed. No costs.

ss

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Chief Secretary
Commercial Taxes and
Registration Department
Namakkal Kavignar Maaligai
Fort St. George, Chennai 600 009

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

3. The Sub Registrar - Sriperumbudur
Sriperambudur Taluk
Kanchipuram District

+1cc to the Govt.Pleader, Vide Sr.No.81163
+1cc to Mr.S.Arjun Suresh, Advocate, SR.No.80150

W.P.Nos.663 & 664 of 2017

Kak(20/09/2019)