IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

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THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.22019 of 2017
& W.M.P.No.23074 of 2017

Gestione consulting India Private Limited,
represented by its director
Mr.A.P.Ramachandran .. Petitioner

vs.

1. The State of Tamil Nadu
represented by its Secretary,
Commercial Taxes/Registration,
Fort St. George,
Chennai - 600 009.

2. The Joint Sub Registrar-I,
Office of the Sub Registrar,
Collectorate Campus,
State Bank Road,
Coimbatore 641 018.

3. Inspector General of Registration and
Chief Controlling Revenue Authority,
No.100, Santhome High Road,
Mylapore, Chennai - 600 028. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the third respondent in Pa.Mu No.55663/P1/2016 dated 19 April 2017 and quash the same and direct the respondents not to demand any stamp duty on the certified copy of this Hon'ble Court dated 22 June 2015 in CP215 and CP216 of 2015 and to register the sale deed dated 13 November 2015 (Document No.P94/2015) and the sale deed dated 23 November 2015 (Document No.99/2015) without payment of any additional stamp duty or additional registration fees.

For Petitioner : Mr.Ramakrishnan Viraraghavan, Senior Counsel for Mr.G.Sivashankaran

For Respondents : Mr.T.M.Pappaiah, Special Government Pleader

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O R D E R

The petitioner is the Transferee in the Scheme of Amalgamation ('Scheme') sanctioned by this Court in CP. Nos.215 & 216 of 2015 dated 22.06.2015. As part of the Scheme, the assets and liabilities of the Transferor Company stood vested in the petitioner with effect from 01.04.2013.

2. Pursuant to the amalgamation, the petitioner, in the regular course of business had executed two sale deeds viz., (i) sale deed dated 13.11.2015 in favour of one Mr.Chandramouli for the sale of 7 Cents and 20 Sq.ft. of vacant land comprised in S.F.No.604/4A, Kurichi Village and (ii) sale deed 23.11.2015 in favour of one Mr.P.Kannappan for the sale of 10 Cents and 394 Sq.ft. of vacant land comprised in S.F. No.605/1A1 in Kurichi Village. The sale deeds were presented for registration with the office of the Joint Registrar-I, Coimbatore, arrayed as the 2nd respondent. The property sought to be conveyed under the sale deeds vested in the petitioner pursuant to the Scheme sanctioned on 22.06.2015. The purchasers have discharged liability to stamp duty as well as registration charges in respect of the sale deeds and there is no dispute in regard to this position.

3. However, the Registering Authority adopted the view that insofar as the Deeds of Sale refer to the order of amalgamation passed by this Court on 22.06.2015 under which the assets in question have been transferred to the petitioner, the said order itself amounted to a conveyance rendering the transactions compulsorily registrable and payment of stamp duty in regard to the same, mandatory.

4. Thus and taking the aforesaid view of the matter, the 2nd respondent did not proceed to complete the registration process and register the documents, but rather kept them pending.

5. The petitioner filed Company Application No.295 of 2016 seeking a direction to the 2nd respondent not to demand stamp duty or registration fee in regard to the sale deeds. Pending

registration when the matters had been heard and kept reserved for orders, the 2nd respondent informed the Company Court that the notices for payment of additional Court fee on the order of amalgamation would be withdrawn if liberty to issue fresh notices be granted. Recording the same and granting such liberty, the Company Application was closed on 15.09.2016.

6. Thereafter, the 2nd respondent passed two orders impounding the sale deeds on 28.10.2016, as against which an appeal was filed before the 3rd respondent. The 3rd respondent dismissed the appeal on 19.04.2017 holding that stamp duty would be payable on the order dated 22.06.2015 sanctioning the Scheme of Amalgamation. The second conclusion of the Appellate Authority was to the effect that Section 33 of the Indian Stamp Act would be applicable as per which the Authority was entitled to examine and impound the documents if it was found that the stamp duty paid was inadequate. It is as against the aforesaid order that the present writ petition is filed.

7. Heard Mr.Ramakrishnan Viraraghavan, learned senior counsel for Mr.G.Sivashankaran, learned counsel for the petitioner and Mr.T.M.Pappaiah, learned Special Government Pleader for the Official respondents.

8. Mr.T.M.Pappiah, learned Special Government Pleader circulates a Government order bearing No.29/19 dated 01.03.2019 issued by the Commercial Tax and Registration (J1) Department to the effect that 'The stamp duty on property transfer in respect of amalgamation or reconstruction of companies will be fixed at 2 percent of the market value of the immovable property or 0.6 per cent of the aggregate of the market value of the shares, whichever is higher. Similarly, the registration fees payable on such transactions will be fixed at a maximum of Rs.30,000. This will clear all the ambiguities related to payment of stamp duty and registration fees on such transactions'. He confirms that the Government Order is prospective and would be applicable only from the date of the order. However, this results in a position where, prior to the date of the Government Order, conveyances under Orders of the Court sanctioning Schemes of Amalgamation, would be compulsorily registrable upon payment of stamp duty at the rate of 5%.

9. As regards this issue, learned senior counsel does not pursue the same in this writ petition and requests that the issue be left open for decision in some other appropriate matter. The petitioner was directed to pay 2% of the stamp duty

without prejudice to its contention by order dated 18.08.2017 and upon compliance, the sale deeds have been released to the petitioner. I thus leave the question of payment of stamp duty on conveyances effected pursuant to the Court Orders sanctioning amalgamation, open. He restricts the scope of and the challenge in this writ petition to the impounding of the documents invoking Section 33 of the Act.

10. A perusal of Section 33 of the Indian Stamp Act, 1899, is extracted below:

> '33. Examination and impounding of instruments
>
> (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance in his functions shall, if it appears to him that such instrument is not duly stamped, impound the same'.

11. A plain reading of the provision reveals that the power to impound would be available only in respect of the specific instrument which is produced for registration before the authority and cannot be made to apply to any other instruments referred to as part of the instrument itself. Thus, where a sale deed as in the present case, is presented before the registering authority, he is confined to a verification and decision on the chargeability to duty as regards that instrument only and he cannot extend such scope to such other instruments as may be mentioned in the instrument before him.

12. I am supported in the view by a decision of a learned Single Judge of this Court in the case of D.B.Prakashchand Jain and Another Vs. Inspector General of Registration, Santhome High Road, Chennai 600 028 [(2014) 4 MLJ 594] wherein at Paragraph 14, the learned Judge states as follows:

> 'In my considered view, the above decisions relied on by the learned counsel for the petitioners are squarely applicable to the case on hand. Moreover, the sale certificate is only apparent document in so far as the documents which are sought to be registered before the third respondent. Admittedly, the said Sale Certificate was not sought to be registered by the petitioners. I wonder as to

whether the respondents are entitled to insist upon the production of parent document in respect of the documents sought to be registered and impound the same for payment of deficit stamp duty, even assuming such parent documents require Registration. In my considered view, the Registering Authorities are not entitled to go into the validity of the title to the property conveyed and sought to be registered. At any event, in this case, the sale certificate was issued by the Mumbai Debts Recovery Tribunal and consequent upon such purchase, the Settlement Deeds and Sale Deeds were executed by the purchaser of the property through the said Sale Certificate.

13. The conclusion of the registering authority to the effect that Section 33 of the Act will be applicable in regard to the order sanctioning amalgamation is thus set aside.

14. The Writ Petition is disposed of in the above terms. Liberty is granted to official respondents to take such action as they may deem necessary in regard to the registration/leviability/recovery of stamp duty on the conveyances of property pursuant to the Court Order sanctioning the scheme of amalgamation, dated 22.06.2016, in accordance with law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The Secretary,
The State of Tamil Nadu
Commercial Taxes/Registration,
Fort St. George,
Chennai - 600 009.

2. The Joint Sub Registrar-I,
Office of the Sub Registrar,
Collectorate Campus,
State Bank Road,
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3. Inspector General of Registration and
   Chief Controlling Revenue Authority,
   No.100, Santhome High Road,
   Mylapore, Chennai - 600 028.

+1 cc to Mr.G.Sivashankaran, Advocate, S.R.No.31119

+1 cc to the Government Pleader, S.R.No.31105

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VBA(CO)
SSM(29/04/2019)