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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.NO.13001 OF 2016

AND

WMP.NOS.11355 & 11356 OF 2016

AND

WMP.NOS.29542 OF 2016, 27533 OF 2019 & 19040 OF 2021

M/s.Ceebros Hotels Pvt.Ltd.,
Rep. by its Authorized Signatory/GM,
R.V.Sundar, 'Sukriti',
No.19/1, 3rd Cross Street,
R.A.Puram, Chennai 600 028

... Petitioner

Vs

1. The State of Tamilnadu,
Rep. by its Secretary,
Commercial Taxes / Registration,
Fort St.George,
Chennai 600 009
2. The Inspector General of Registration,
Mylapore,
Chennai 600 028
3. The Sub Registrar,
Periamet,
Chennai 600 003
4. M/s.S.Chand & Company Ltd.,
Ravindra Mansion,
Ram Nagar,
New Delhi 110 055
5. M/s.Shaara Hospitalities Pvt.Ltd.,
No.7361, Ram Nagar Pahar Ganj,
New Delhi 110 055
(R4 & 5 impleaded as per Order dated
07.06.2016 in WMP.No.16395 of 2016
in WP.No.13001 of 2016)

... Respondents



Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records on the file of third respondent in Check Slip No.1/2016 dated 31.03.2016 and quash the same as unconstitutional, illegal, invalid, arbitrary and without jurisdiction and also being contrary to the provisions of the Indian Registration Act, 1908 and Stamp Act and consequently forbearing the Respondents from initiating any further proceedings thereof.

For Petitioner : Mr.Abdukumar Rajarathinam
for Mr.V.S.Senthil Kumar

For RR1 to 3 : Mr.J.Ravindran,
Additional Advocate General
Assisted by
Mr.Richardson Wilson,
Government Advocate

For R4 & 5 : Mr.V.Venkadasalam

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus calling for records on the file of the third respondent in Check Slip No.1/2016 dated 31.03.2016 and quash the same as unconstitutional, illegal, invalid, arbitrary and without jurisdiction and also being contrary to the provisions of the Indian Registration Act, 1908 and Stamp Act and consequently forbearing the Respondents 1 to 3 from initiating any further proceedings thereof.

2. The property comprised in RS.No.1619/1, Block No.50 bearing new No.3, old No.2 situated at Montieth Road, Egmore, Chennai admeasuring 30 grounds and 1800 sq.ft. (hereinafter called as 'subject property') was owned by S.R.Y. Sivarama Prasad Bahadur by the partition deed dated 08.08.1960. It was allotted to S.R.Y.Padmanaba Prasad Bahadur and sold out by registered sale deed dated 15.07.1972 vide document No.3913 of 1972 to M/s.Hotel Atlantic Private Limited. Subsequently, M/s.Hotel Atlantic Private Limited was changed to M/s.Atlantic Hotels Private Limited and amalgamated with S.Chand and Company Limited, S.Chand Hotels Private Limited and S.C.Hotels Tourist Deluxe Private Limited and Shaara Hospitalities Private Limited and S.Chand Properties Private Limited i.e. fourth and fifth respondents herein. The petitioner is being a property developer had



negotiations with fifth respondent to purchase the subject property for total sale consideration of Rs.142 crores. Accordingly, the petitioner purchased the subject property by the registered sale deed dated 19.09.2013 registered vide document No.2308 of 2013 on the file of the third respondent. After purchase, the petitioner was issued patta by the Tahsildar, Egmore.

2.1 The scheme of amalgamation was sought to be registered and the same was kept pending vide document No.P3 of 2013 on the file of the third respondent on the query raised by the third respondent as to whether the order of this Court CP.No.167 of 2011 dated 14.09.2012 would attract stamp duty. The second respondent had issued clarification to the third respondent dated 22.04.2013 and clarified that as per the order of the Delhi High Court, it is not liable to pay any stamp duty and only a registration fee of 1% around Rs.44.19 lakhs alone was paid and document was registered and released vide document No.914 of 2013 on the file of the third respondent. Thereafter, the petitioner has presented the sale deed on 19.09.2013 and the same was duly registered vide document No.2308 of 2013. In order to develop the said property, the petitioner has applied for planning permission and after approval constructed 168 residential flats. So far 124 persons have purchased their respective flats and registered their respective sale deeds and construction agreements. All the documents were released without any demur or protest. However, on 31.03.2016, the third respondent issued the impugned check slip alleging the under valuation in document No.914 of 2013 and citing Section 33A of the Indian Stamp Act and Section 80A of the Registration Act, thereby called upon the petitioner to pay deficit stamp duty and registration charges when the petitioner presented the sale deed and construction agreement for registration.

3. Mr.Abdukumar Rajarathinam, the learned counsel for the petitioner would submit that though the first respondent passed a Bill dated 31.05.2012 in LA.No.20/2012 as that at present there is no provision in the Indian Stamp Act, 1894(Central Act II of 1899), for levy of stamp duty on transfer of properties made to facilitate amalgamation or reconstruction of companies by the orders of the High Court under Section 394 of the Companies Act, 1956 or under the order of the Reserve Bank of India under Section 44A of the Banking Regulation Act, 1949 in respect of Banking Companies, the Government have therefore decided to amend the Indian Stamp Act, 1899 so as to provide for levy of stamp duty on the above mentioned transfer of properties to augment the State Exchequer. However, the said Bill has not received



Presidential assent and thus it has not come into effect or operation. Therefore, the impugned check slip is null and void, arbitrary, unconstitutional without any proper statutory backing whatsoever.

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3.1 He further submitted that the assets of the transferor company vested with the transferee company by operation of law alone and it cannot amount to a conveyance as defined under Article 23 of Stamp Act. In fact, the second respondent issued clarification to the third respondent by communication dated 22.04.2013 that no stamp duty is payable. Without even considering the same, the third respondent issued the impugned check slip, that too for transaction between the petitioner's vendors i.e. respondents 4 and 5 herein. The third respondent after registering the sale deed in favour of the petitioner and also subsequent sale deeds executed by the petitioner in favour of the third party purchasers inasmuch as 124 plots purchasers, without any protest or demur cannot turn around and insist on payment of alleged stamp duty and deficit registration fee which is not payable in the eye of law. Therefore, the third respondent has no authority to refuse registration of sale deeds in respect of undivided shares and the construction agreement which is purely a contract between the flat purchasers and the builder, where applicable stamp duty and registration fee on the said documents have been duly offered to be paid. The third respondent has no jurisdiction or authority to invoke Section 33A of the Stamp Act in the absence of original instrument being available with the first respondent.

3.2 He further submitted that insofar as the petitioner is concerned, it is a bonafide purchaser for valuable sale consideration and after its purchase for no fault of them, they cannot be mulcted with any liability or any Act or omission or otherwise of their predecessors in interest especially when they can be proceeded against if at all there is any liability on their part. The petitioner is not a party to the proceedings before this Court in company petition CP.No.167 of 2011 and if at all any objection would have been taken, it should have been before the execution of sale deed dated 19.09.2013 in favour of the petitioner Company and demand if any, should have been raised before 19.09.2013, when the sale deed in favour of the petitioner company was registered by its vendor, and having allowed the documents to be registered and also released without any protest, now it is not open to the third respondent to claim any deficit stamp duty and registration fee from the petitioner.



3.3 He further submitted that so far 124 documents have also been duly registered by the third respondent and only in respect of balance 44 undivided share sale deeds and construction agreements, the petitioner company cannot be saddled with any liability by way of deficit stamp duty and registration fees, which is not payable in the first instance since the Amendment Act has not received Presidential assent. The petitioner has completed entire project and necessary completion certificate was obtained from authorities. Therefore, in the present process of sale of flats, the petitioner cannot be put to such kind of harassment and prejudice whatsoever, when the petitioner company admittedly was not a party to any of the proceedings before this Court and the amalgamation proceedings. When the third respondent registered and released the sale deed in favour of the petitioner and also when the second respondent categorically clarified that no stamp duty is chargeable for such an order of this Court pertaining to the transfer of property by operation of law, the third respondent has no authority to refuse the registration of documents.

3.4 He further submitted that while admitting the writ petition, this Court granted interim stay subject to the condition that the petitioner shall pay 2% of stamp duty on document No.914 of 2013 to the third respondent. On making of such payment, the third respondent was directed to register sale deeds and construction agreements pertaining to the subject property. Accordingly, the petitioner paid a sum of Rs.2,71,50,000/- by way of demand draft in favour of the third respondent being 2% deficit stamp duty in respect of document No.914 of 2013. In support of his contention, he relied upon the following judgments:

- (i) State of Jharkhand and others Vs. Brahmaputra Metallics Ltd and another reported in 2020 SCC Online SC 968
- (ii) Order passed in WP.No.39939 of 2005 dated 28.02.2020 by this Court
- (iii) Order passed in WP.No.5986 of 2017 dated 18.03.2021 by this Court

4. The learned counsel Mr.V.Venkadasalam appearing for the fourth and fifth respondents submitted that the third respondent initiated proceedings as against the fourth the fifth respondents and the same is challenged before this Court in WP.No.8511 of 2019 and it is pending. It is referred before the Hon'ble Division Bench of this Court to be heard with similarly

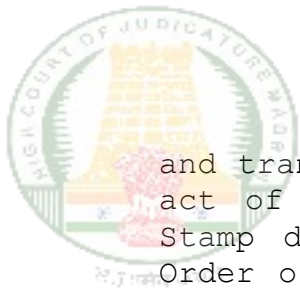


placed writ petitions. He also supported the case of the petitioner and prayed to set aside the impugned order.

5. Per contra, the third respondent filed counter and Mr. J. Ravindran, Additional Advocate General submitted that the subject lands are transferred to the fourth respondent and it included the lands and hotel building. Therefore, it has been clarified by the Delhi High Court that the order was not for exemption of stamp duty in their company petition filed as CP.No.167 of 2011 on the file of this Court. The amalgamation of their companies have to be treated as transfer of property and so stamp duty and registration fees have to be collected. The aggregated value of both assets and liabilities as per Accountant General audit, work out to Rs.135.73 crores and is liable for stamp duty at the rate of 7% and registration fees of 1% for the registration of document No.914 of 2013. It has been made understood in the Accountant General audit remarks under Part-II A with regards to payment of above stamp duty under the conveyance of Article 23 of the Indian Stamp Act, 1899. Subsequent to that, to make a solution on this issue, the District Registrar(Admin), Chennai Central has issued notice under Section 33A of the Indian Stamp Act, 1899 vide letter dated 23.03.2016 with reference to Additional Inspector General of Registration letter dated 23.03.2016 and the third respondent notice under Section 80A of the Registration Act dated 23.03.2016, show cause notice demanding why the deficit registration fees and stamp duty should not be paid by the petitioner and its merged companies. Based on the same, the third respondent issued the check slip dated 31.03.2016 for the document No.914 of 2013.

5.1 He further submitted that the petitioner relied upon the inter communication between the second and third respondent herein dated 22.04.2013 and as such it cannot be relied upon in the present case. When the demand made under Section 80-A of the Registration Act, there is an appeal remedy provided under Section 80-A(3) of the said Act and as such the petitioner cannot maintain the writ petition under Article 226 of the Constitution of India.

5.2 The learned Additional Advocate General relied upon the judgment in the case of Hindustan Lever & Another Vs. State of Maharashtra and another reported in (2004) 9 SCC 438, in which the Hon'ble Supreme Court of India held that an order of amalgamation under Section 394 is not an order simplicitor of transfer of property by an act of parties with imprimatur of the Court. It is an order made by the Court after judicial scrutiny



and transfer of the property under such an order would not be an act of parties to which the Court puts its seal of approval. Stamp duty can be levied on "documents" or "instruments". The Order of the Court in exercise of its judicial functions is not "a document" or an "instrument". Once the Court passes an order or a decree, it is required to be implemented or executed as such. The same cannot be subjected to stamp duty otherwise the orders passed by the Courts would become subject to interference by the revenue authorities and would not be admissible in evidence unless the stamp duty is paid. Further held that Section 394 (2) of the Companies Act, 1956 provides that the properties and liabilities of the transferor company stand transferred to the transferee company by virtue of an order of court. The statutory form of an order under Section 394 (2) of the Companies Act provides for three different Schedules in order to incorporate therein the properties transferred.

5.3 The learned Additional Advocate General further submitted that during audit, the Comptroller and Auditor General of India reported that the Registering Officer collected registration fee of Rs.44.19 lakhs on the value of shares allotted. Thus, the failure of the Registering Officer to treat the transfer of land involved in the scheme of amalgamation as conveyance resulted in non levy of stamp duty and short levy of registration fee aggregating Rs.5.47 crores. Accordingly, show cause notice was issued and issued check slip on 31.03.2016.

5.4 He further relied upon the circular issued by the second respondent dated 20.11.2018 and it revealed that the scheme of arrangements submitted by companies and sanctioned by High Court / registered by competent authorities evidencing transfer of property are classifiable under Article 23 of the Indian Stamp Act, 1899. Consequently, such instruments / copy of instrument when presented for registration shall not be registered unless it is unequivocally evident that original instrument is duly stamped. If such instrument is found to be not duly stamped, the instrument presented shall be returned to the Presentant, by clearly explaining the aforesaid legal position through a check slip, and also requiring the presentant to produce evidence as to the duly stamping of the original instrument. In this regard, the Government issued order in GO. (Ms)No.47 Commercial Taxes and Registration (J1) Department dated 19.02.2020 that the stamp duty reduction granted through the Notification-I of the Government order No.29 dated 01.03.2019 shall be given retrospective effect with effect from 01.04.1956, so that all the schemes relating to amalgamation or reconstruction of companies by the High Court or the National



Company Law Tribunal, as the case may be, sanctioned hitherto shall also become eligible for the stamp duty reduction granted in the said notification. Therefore the petitioner is liable to pay deficit stamp duty and deficit registration fees as demanded by the third respondent.

6. Heard, Mr. Abdukumar Rajarathinam, the learned counsel for the petitioner, Mr. J. Ravindran, Additional Advocate General appearing for the respondents 1 to 3, and Mr. V. Venkadasalam, the learned counsel for the respondents 4 & 5.

7. The petitioner company purchased the subject property from the fourth and fifth respondents herein by the registered sale deed dated 19.09.2013 vide document No. 2308 of 2013 on the file of the third respondent. Originally the subject property was purchased by M/s. Hotel Atlantic Private Limited from S.R.Y. Padmanaba Prasad Bahadur along with his wife and two sons by the registered sale deed dated 15.07.1972 vide document No. 3913 of 1972. Thereafter the said M/s. Hotel Atlantic Private Limited was changed to M/s. Atlantic Hotels Private Limited vide Certificate of Incorporation in letter No. 18-06167/S-21/2006 dated 01.05.2006 issued by Registrar of Companies, Chennai. Thereafter it sought for a scheme of amalgamation with fourth respondent and its allied companies. In pursuance of the scheme of amalgamation, M/s. Atlantic Hotel Limited dissolved with effect from 01.04.2011 in pursuance of the order dated 14.09.2012 in CP.No.167 of 2011 on the file of this Court. It was approved and by operation of law, all the properties owned and possessed by M/s. Atlantic Hotels Private Limited stood vested with the fifth respondent and the amalgamation was duly registered vide document No. 914 of 2013 on the file of the third respondent. The petitioner purchased the subject property for the sale consideration of Rs. 142 crores and paid requisite stamp duty and registration fees. Sale deed was presented for registration and the same was duly registered vide document No. 2308 of 2013 on the file of the third respondent and it was released in favour of the petitioner. After purchase of the subject property, the petitioner after obtaining planning permission from CMDA, constructed 168 residential apartments. The petitioner have already sold out 124 flats and all the sale deeds in respect of undivided share of the land and the respective construction agreements duly registered and released the documents in favour of the purchasers. However, when the purchasers of remaining flats presented the undivided share sale deeds and construction agreements for registration before the third respondent, the third respondent refused to register the same and issued the impugned check slip to the petitioner.



8. The point for consideration is that whether the petitioner company is liable to pay deficit stamp duty and registration fees with regards to the scheme of amalgamation registered vide document No.914 of 2013 between the fourth and fifth respondents and M/s.Atlantic Hotels Private Limited.

9. Admittedly, the petitioner is not the party to the scheme of amalgamation held between M/s.Atlantic Hotels Private Limited, S.Chand and Company Limited, S.Chand Hotels Private Limited, S.C.Hotels Tourist Deluxe Private Limited and Shaara Hospitals Private Limited and S.Chand Properties Private Limited. After purchasing the subject property by M/s.Atlantic Hotels Private limited, sought for scheme of amalgamation with above said companies and by order dated 14.09.2012 in CP.No.167 of 2011 dissolved M/s.Atlantic Hotels Private Limited and ordered for amalgamation. The said scheme of amalgamation was registered by them vide document No.914 of 2013. Therefore the petitioner is not a party to the said scheme of amalgamation which was registered vide document No.914 of 2013. Now, the third respondent issued the impugned check slip in pursuance of the document No.914 of 2013 for the reason that there is a deficit stamp duty and deficit registration fees and as such the document presented for registration cannot be registered. In fact, out of 168 purchasers, 124 purchasers' undivided share sale deeds and construction agreements were duly registered and released in favour of the respective purchasers. Insofar as the remaining 44 undivided share sale deeds and construction agreements, were denied for registration by the third respondent for the above said reason. It is relevant to extract the provisions under Section 80-A(1) of the Registration Act, 1908 hereunder:

"80-A(1) Recovery of deficit registration fees:

(1) Notwithstanding anything contained in section 80, if after the registration of 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 in the fee paid, 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 an arrear of a land revenue."

Accordingly, after registration of a document, if it is found that the fees payable under the Act has not been paid or has been insufficiently paid, such fee or the deficit fee be recovered from the person who presented such document for registration.



10. In the case on hand, the petitioner is not the party to the scheme of amalgamation which was presented by M/s. Atlantic Hotels Private Limited, Chennai along with fourth and fifth respondents and other companies for registration before the third respondent and the same was registered vide document No.914 of 2013. The petitioner never presented any document of scheme of amalgamation for registration. Therefore, the third respondent without application of mind mechanically issued the impugned check slip to the petitioner who was not the party to the said document and who never presented the said document for registration. In fact, the petitioner while purchasing the subject property, he paid requisite stamp duty and the registration fees as required under the said Act and the sale deed was duly registered as document No.2308 of 2013 and released in favour of the petitioner. The impugned check slip was issued with regards to the document of scheme of amalgamation registered vide document No.914 of 2013 wherein the petitioner was not the party to the said document. Subsequent to the purchase of the subject property, the petitioner developed the same and sold out to various persons by undivided share and also registered construction agreements in favour of the respective purchasers. That apart, admittedly no charge created over the subject property on the deficit stamp duty and the deficit registration fees payable by the parties to the document No.914 of 2013. In this regard, it is relevant to extract the provisions under Section 100 of the Transfer of Property Act, hereunder:

"Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained [which apply to a simple mortgage shall, so far as may be, apply to such charge.]

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, [and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.]



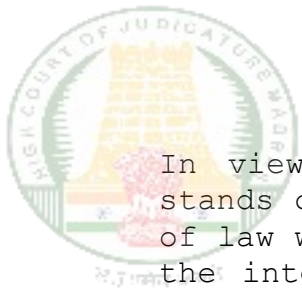
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10.1 It is dealt with by this Court in the case of Tvl.K.Senthamil Selvan Vs. The Deputy Commercial Tax Officer, Tiruchengode in WP.Nos.39939 of 2005, etc arising out of Tamilnadu General Sales Tax Act, 1959 and Tamilnadu Value Added Tax Act, 2006, wherein this Court held as follows:

16. Thus, the ratio of the presumption that a person who purchases a property situated in a Municipality is acquainted with the Local laws, which creates charges on the property of the defaulter for non payment of taxes, as held by the Hon'ble Full Bench in Nawal Kishore's case, was disagreed. Accordingly, the reasoning adopted by the Division Bench of the Allahabad High Court in Roop Chand Jain's case was agreed upon in preference to the reasoning of the Full Bench of the Allahabad High Court in Nawal Kishore's case and the Division Bench of Oudh Chief Court in Ramji Lal's case.

17. In other words, the Hon'ble Apex Court, on analysing the ratio laid down in Nawal Kishore's case, was of the view that there cannot be any principle or firm rule of law imputing to all intending purchasers of properties in Municipal areas, where municipal taxes are a charge on the property, with constructive knowledge of the existence of municipal taxes or possibility of such taxes being in arrears. While holding so, the Hon'ble Apex Court held that the question of constructive notice requires to be approached from equitable considerations and thereby, found that the charge of the Municipal Corporation for arrears of Municipal taxes is not enforceable against the property of the plaintiff.

18. To overcome the proposition in the Ahmedabad Municipal Corporation's case and as an alternate submission, the learned Special Government Pleader would stress on the observations made therein that the question of constructive notice, as well as the question as to whether the purchasers had made due enquiries, failure of which would amount to willful abstention or gross negligence, are questions of fact and law, that requires to be dealt independently, on case to case basis.



In view of the aforesaid ratio decidendi, the legal position stands clarified to the effect that a charge created by operation of law will not automatically infer a presumption of knowledge on the intending purchasers about the tax arrears, as well as the consequent charge on the property, which they intend to purchase. Further, when the prospective purchasers are not expected to have constructive knowledge of the charge and when the property is purchased for a valid consideration and without notice of the charge, they would be entitled to the saving clause provided under Section 100 of the Transfer of Property Act.

11. In the case on hand, admittedly even at the time of issuance of the impugned check slip by the third respondent, the scheme of amalgamation presented for registration by the vendors of the petitioner was duly registered vide document No.914 of 2013 and the same was duly released in their favour. On verification of the encumbrance certificate, the petitioner purchased the subject property on payment of requisite stamp duty and registration fees. It was duly registered and released in favour of the petitioner on 19.09.2013. After period of nearly three years i.e. on 31.03.2016, the impugned check slip was issued to the petitioner when the sale deeds for the undivided share and the construction agreements were presented for registration by the third parties who purchased the same from the petitioner after developing the property. Therefore, even assuming that there is a charge over the property, the petitioner had no knowledge about the charge when the subject property was purchased by the petitioner for valid sale consideration. Hence, the petitioner is no way liable to pay any deficit stamp duty for the document which was presented by its vendors for registration and registered vide document No.914 of 2013 on the file of the third respondent. That apart, the petitioner is not the party to the said document and it is no way connected with the said document. However, now the third respondent proceeded as against the vendors of the petitioner with regards to the scheme of amalgamation document registered vide document No.914 of 2013 and the same is also challenged before this Court in WP.No.8511 of 2019. So, the issue of payment of stamp duty and registration fees with regards to the amalgamation and reconstruction of companies against the petitioner does not arise.

12. The learned Additional Advocate General submitted that if aggrieved by the impugned check slip issued under Section 80-A of the Registration Act, 1908, there is a statutory appeal remedy under Section 80-A(3) of the said Act. It is seen from the first proviso to Section 80-A (1) that no certificate of the registering officer shall be granted unless due enquiry is made



and such person is given an opportunity of hearing. The next proviso says that no such enquiry shall be commenced after expiry of such period after date of registration of document as may be prescribed. Being aggrieved by the said certificate issued by the registering officer, 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.

13. Admittedly, there is no records to show that before issuance of the impugned check slip, the third respondent issued notice and conducted enquiry and issued certificate with regards to the deficit stamp duty and deficit registration fees. When no such certificate was issued by the third respondent and without even conducting any enquiry, simply issued the check slip. That apart, as stated supra, the petitioner is not the party to the said document and it was never served any notice before passing the impugned check slip by the third respondent. It was never called for any enquiry by the third respondent. Even assuming that there was show cause notice and enquiry, no certificate was issued with regards to the deficit stamp duty and deficit registration fees to the petitioner. If any certificate is issued by the registering officer or District Registrar, it is appealable under Section 80-A(3) of the Registration Act, 1908. Therefore, appeal remedy does not arise in the present case and the writ is very much maintainable under Article 226 of the Constitution of India. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of Hari Krishna Mandir Trust Vs. State of Maharashtra and others reported in (2020) 9 SCC 356, wherein it is held as follows:

100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion malafide, or on irrelevant consideration.

101. In all such cases, the High Court must issue a Writ of Mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.



One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, Mandamus means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.

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has exercised such discretion malafide, or on irrelevant consideration.

14. In fine, the impugned check slip dated 31.03.2016 is quashed and the writ petition is allowed. By order dated 06.04.2016, the petitioner have paid 2% of the deficit stamp duty i.e. a sum of Rs.2,71,50,000/- to the third respondent by way of demand drafts. Hence, the third respondent is directed to refund the amount of Rs.2,71,50,000/- deposited by the petitioner forthwith. The third respondent is further directed to register undivided share sale deeds and construction agreements which were presented by the purchasers from the petitioner company for registration and release the same forthwith, if they are otherwise in order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamilnadu,
Commercial Taxes / Registration,
Fort St.George, Chennai 600 009
2. The Inspector General of Registration,
Mylapore, Chennai 600 028
3. The Sub Registrar,
Periamet, Chennai 600 003

+lcc to Mr.V.S.Senthil Kumar, Advocate, S.R.No.53699

+lcc to Mr.V.Venkadasalam, Advocate, S.R.No.53694

WP.No.13001 of 2016

PA(CO)
CS/30/11/2021