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W.P.Nos.13150/2015 & 9657/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 14.07.2022

PRONOUNCING ORDERS ON : 18.07.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.13150 of 2015 and 9657 of 2016

Akshaya Private Ltd.,
Rep. by its Authorized Signatory Mr. J.Ravi
G Square No.46, Rajiv Gandhi Salai
Kandhanchavadi Chennai-96.

..Petitioner
in Both WPs

.Vs.

1. The Inspector General of Registration
Tamil Nadu
No.100 Santhome High Road
Foreshore Estate,
Chennai-600 028.
2. The District Registrar
(Assistant Inspector General Cadre)
No.182, Bharathi Road
Royapettah, Chennai-600014.
3. The Joint-II Sub-Registrar
Thousand Lights
No.182 Bharathi Road
Royapettah, Chennai-14.

... Respondents
in Both WPs



W.P.Nos.13150/2015 & 9657/2016

Prayer in W.P.No.13150 of 2015: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the order of the First Respondent dated 06.11.2014 in proceedings MM No. 21344/T1/2014 and another order dated 15.04.2015 in proceeding No. 49131/C1/2014 confirming the order of the Second Respondent dated 26.09.2014 in proceeding No. 7806/B1/2013 which confirms the order of the Second Respondent dated 12.05.2014 in Certificate No.99 of 2014 and quash the same.

Prayer in W.P.No.9657 of 2016: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the proceedings in the Check Slip No.1/2015 dated 06.11.2015 from the file of the 3rd respondent quash the same and further direct the 3rd respondent to register (i) the receipt for discharge of mortgage between the petitioner and ICICI Bank, Ambattur Industrial Estate, Ambattur, Chennai-600 058 and (ii) the Debenture Trust Deed between the petitioner and other promoters and the consequential mortgage deed by the petitioner in respect of the subject property on the same conditions as imposed by this Honble Court on 29.04.2015 in M.P.No.2 of 2015 in W.P.No.13150 of 2015 on the file of this Honble Court.

For Petitioner : Mr.D.Shivakumaran
(in Both WPs)

For Respondents : Mr.R.Kumaravel
(in Both WPs) Additional Government Pleader



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COMMON ORDER

The issue involved in both the Writ Petitions are interconnected and hence they are taken up together, heard and disposed of through this Common Order.

2. The petitioner entered into an agreement for sale dated 06.02.2013 with IIDL and this document was registered on the file of the 3rd respondent in Document No.156/2013. As per the agreement for sale, the total sale consideration was fixed at Rs.86.75 Crores and the petitioner paid an advance amount of Rs.23 Crores. The balance sale consideration of Rs.63.75 Crores was agreed to be paid on or before 28.02.2013 and on such payment, the Vendor agreed to execute the sale deed and convey the subject property in favour of the petitioner. The agreement also contemplated forfeiture of the EMD amount paid by the petitioner if he fails to make the balance sale consideration within the time stipulated. The agreement also contemplated payment of interest, if there is any delay in paying the balance sale consideration. The agreement also provided that the physical possession of the subject property will be delivered to the petitioner on the date of the execution of the sale deed in their favour after receiving the entire sale consideration. Similar condition was stipulated even for handing over of the original title deeds pertaining to the property.

3. The petitioner paid the balance sale consideration as per the terms of the agreement and a sale deed dated 02.04.2013, came to be executed in favour of the petitioner. This document was registered on the file of the 3rd respondent as Document No. 390/2013. The possession of the subject property was also handed over to the petitioner on the same day.



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4. The 3rd respondent raised a demand by way of a notice dated 07.01.2014, which was purportedly issued under Section 80A of the registration Act, 1908 (hereinafter referred to as '**the Act**'). By virtue of this notice, the petitioner was informed that there was an audit objection and it was found that there was a loss of revenue of the registration fee to the tune of Rs.63,75,000/-. Hence, the petitioner was called upon to pay the deficit registration fee or if there are any objections, to submit their objections.

5. The petitioner submitted their objections on 18.01.2014. On receipt of the same, the 3rd respondent issued a certificate of recovery dated 12.05.2014, for recovery of the deficit registration fees. Aggrieved by the same, the petitioner preferred an appeal before the 2nd respondent and the 2nd respondent dismissed the appeal through an Order dated 26.09.2014 and , the Order passed by the 3rd respondent was confirmed. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent and the 1st respondent also dismissed the appeal filed by the petitioner as not maintainable through Order dated 15.04.2015. In the meantime, the 1st respondent also confirmed the audit objection and the proceedings initiated by the 3rd respondent, through an Order dated 06.11.2014. Aggrieved by the same, the petitioner has filed W.P.No.13150 of 2015.

6. The petitioner had raised a mortgage loan with ICICI Bank and he wanted to close this loan and instead, raise funds through debentures. Accordingly, a debenture trust deed



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was entered into. The document pertaining to the discharge of the loan from ICICI Bank and the debenture trust deed were submitted for registration before the 3rd respondent. The 3rd respondent through the impugned check slip dated 06.11.2015 refused to register these documents on the ground that there is already a dispute pending with regard to the recovery of the deficit registration fee and there is a charge over the property and hence, the documents were returned back to the petitioner. Aggrieved by the same, the petitioner filed W.P.No.9657 of 2016.

7. Heard Mr. D. Shivakumaran, learned counsel for the petitioner and Mr. R. Kumaravel, learned Additional Government pleader for the respondents.

8. The short issue that is involved in the present case centres around the interpretation and understanding of the Clauses contained in the agreement for sale dated 06.02.2013 qua the provisions of the Act. Before considering the relevant Clauses, it will be more relevant to extract the provisions relied upon under the Act:

➤ **“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:*



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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.”

- Clause 1 (l) of the Table of Fees Prepared Under Section 78 of the Registration Act, 1908:

“1.(l) The registration fee leviable on an agreement to sell or resell shall be on the advance or earnest money. If no advance or earnest money is mentioned, the fee leviable shall be on the intended sale or the resale amount, as the case may be :

Provided that in the case of an agreement to sell where possession is handed over or is to be handed over, the fee leviable shall be on the intended sale consideration.”

9. The relevant Clauses in the agreement for sale dated 06.02.2013 are extracted hereunder:

“1. (a) The sale consideration for the Schedule Property had been mutually agreed and fixed at **Rs. 86, 75, 00,000/-** (Rupees Eighty Six Crores Seventy Five Lakhs only), (hereinafter referred to as "Consideration"). The Purchaser has already paid a sum of **Rs.1,00,00,000/-** (Rupees One Crore only) as EMD/advance through the successful bidders namely the said Mr. S. Durai and others, to the Vendor vide



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two Demand Drafts bearing No.011562, dated 19.12.2012 for sum of **Rs.75,00,000/-** (Rupees Seventy Five Lakhs Only) and Demand Draft bearing No.011564 dated 24.12.2012 for a sum of **Rs.25,00,000/-** (Rupees Twenty Five Lakhs Only), both drawn on Axis Bank, Nanganallur Branch, Chennai, the receipt of which the Vendor doth hereby accept and acknowledge.

(b) The Purchaser has paid a sum of **Rs.22,00,00,000/-** (Rupees Twenty Two Crores only) in the following manner:

To IIDL from Akshaya Pvt.Ltd.					
<i>S.No.</i>	<i>Date</i>	<i>Ref No.</i>	<i>From Bank</i>	<i>To Bank</i>	<i>Amount</i>
1	21.1.13	ICICH 13021099344	ICICI Bank	IDBI Bank	100,000,000.00
2	21.1.13	ICICH 13021099343	ICICI Bank	IDBI Bank	10,000,000.00
3	22.1.13	ICICH 13022017681	ICICI Bank	IDBI Bank	60,000,000.00
4	22.1.13	ICICH 13022017996	ICICI Bank	IDBI Bank	25,000,000.00
5	22.1.13	ANDBN13022874494	Andra Bank	IDBI Bank	5,000,000.00
6	23.1.13	UTIBH 13023078346	Axis Bank	IDBI Bank	10,000,000.00
7	23.1.13	ICICH 13023038246	ICICI Bank	IDBI Bank	5,000,000.00
8	24.1.13	ICICH 13024042494	ICICI Bank	IDBI Bank	5,000,000.00

(c) The balance of the Consideration of **Rs.63,75,00,000/-** (Rupees Sixty Three Crores and Seventy Five Lakhs Only) (Balance Consideration) shall be paid by the Purchaser to the Vendor on or before 28.02.2013, (Purchase Date), with interest @ 18% per annum from the date of 21 01 2013, and on such payment the Vendor shall execute sale deed conveying the Schedule Property in favour of the Purchaser.

4. That the Vendor herein undertakes to deliver vacant, peaceful and physical possession of the Schedule Property to the Purchaser at the time of registration of the Sale Deed or Power of Attorney in favour of the Purchaser.

7. That the Vendor hereby agrees to execute, sign and get the



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Sale Deed or Power of Attorney registered in respect of the Schedule Property either in the name of the Purchaser or its nominee or nominees or its Authorized representative upon the receipt of the entire Consideration amount from the Purchaser.

8. The Vendor agrees execute necessary Sale Deed and hand over vacant min Registration sale deed possession of the Schedule Property at the time of Registration sale deed in favour of the Purchaser and the Vendor further agrees to come over to the concerned registration office, through its authorized representative, for completing the registration formalities subject to having received the Balance Consideration amount by the Purchase Date.

10. The Vendor hereby confirms that it shall handover the original title deeds pertaining to the Schedule Property in its possession to the Purchaser upon registration of the sale deed as contemplated in respect of the Scheduled Property in favour of the Purchaser."

10. The audit objection that was raised, which resulted in the initiation of the proceedings by the 3rd respondent, is extracted hereunder:

4. திரும்ப பெறப்படாத ஆவணங்களின் பட்டியல் :-

கையிருப்பில் உள்ள ஆவணங்களின் பட்டியல் சரிபார்க்கப்பட்டது. அதில் ஆவண எண்.156/13 Agreement for sale என்று குறிப்பிடப்பட்டு IFCI Infrastructure Dev.Lit (IIDL) 'Vendor ஆகவும் M/s.Akshaya Pvt. Ltd 'Purchase' ஆகவும் இருந்து எழுதிக் கொண்ட கிரைய ஒப்பந்தம்

மொத்த தொகை ரூ.86,75,00,000/-.



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முன்பணம் ரூ.22,00,00,000/- + 1,00,000/- மீதி தொகை ரூ.63,75,000/-ஐ

28.02.2013-க்குள் செலுத்தி விடவேண்டும் என்றும் மேலும் 21.01.13 லிருந்து மேற்படி தொகைக்கு 18% Annum வட்டியும் கூடதலாக செலுத்த வேண்டும் என்று குறிப்பிடப்பட்டுள்ளது, மேலும் இந்த ஆவணச்சொத்து Vendor ஆல் 28.09.12-ல் Public notice மூலம் bids பெறப்பட்டு திரு.எஸ்.துரை என்பவர் Highest bidder ஆக முடிவு செய்து மேற்படி எஸ்.துரையால் 27.12.12 தேயிட்ட ஒப்பந்தலும் பெறப்பட்டுள்ளது. 28.02.2013ஐ Purchase Date ஆக ஒப்புக் கொண்டு அதற்கு மேலும் மற்றவர்களும் சேர்ந்து அவர்களுடைய உரிமையை 03.01.2013 அன்று ஏற்படுத்தப்பட்ட Memorandum of understands -ன்படி Purchaser nominate செய்யப்பட்டுள்ளார். எஸ்.துரை ரூ.1,00,00,000/- முன் பணம் பெற்றுக் கொண்டுள்ளார். எனவே இதற்கு வசூலிக்க வேண்டிய பதிவுக்கட்டணம்.

வரம்	பதிவுக் கட்டணம்
தேவையானது	86,75,000
ஆவணப்படி	23,00,000
குறைவு	63,75,000

11. The respondents have proceeded to levy the deficit registration fee mainly on the following grounds:

- The sale agreement itself stipulated the payment of the balance sale consideration of Rs.63,75,000/- on or before 28.02.2013 and it further provided for the payment of 18% interest on the balance sale consideration.



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b) The sale agreement further provided payment of interest at the rate of 18% per annum if there is a delay in payment of the balance sale consideration on or before 28.02.2013 and ;

c) There is a clear mention about the Vendor agreeing to execute the sale deed and handing over of the vacant possession of the property at the time of registration of the sale deed.

12. According to the respondents, Clause 1 (I) which deals with the levy of registration fees specifically provides that the same will be levied on the advance money that is mentioned in the sale agreement. That apart, the Proviso stipulates that where the possession of the property is handed over or is to be handed over, the fee leviable shall be on the intended sale consideration. By invoking this provision, the respondents have interpreted Clause 1(c) of the agreement for sale to the effect that it stipulated the payment of the balance sale consideration of Rs. 63.75 Crores on or before 28.02.2013 and this payment was to be made during the currency of the sale agreement and hence, this amount should also be treated as an advance amount and the registration fee must be levied. Further, the respondents have interpreted the Proviso in such a way that the handing over of possession of the subject property even at a future date will fall under this proviso and hence, the fee must be levied on the total sale consideration.



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13. In the considered view of this Court, the respondents have completely misdirected themselves in understanding the scope of Clause 1(I). A plain reading of the provision shows that the registration fees is levied only on the advance amount mentioned in the sale agreement. In the present case, the advance amount was mentioned as Rs.23 Crores and the registration fee has been levied on this amount and it has also been paid by the petitioner. The sale agreement fixes a time limit for the payment of the balance sale consideration of Rs.63.75 Crores. By doing so, the parties have agreed to make time as the essence of the contract. The agreement also provided for the consequences of not paying the balance sale consideration within the time stipulated. By no stretch, fixing a time limit for payment of the balance sale consideration can be brought within the term "advance money". Unfortunately, the respondents have misunderstood this payment of the balance sale consideration as an advance money only on the ground that this money is paid before the execution of the sale deed in favour of the petitioner. Such an interpretation causes violence to the plain language that is used under Clause 1(I). On carefully going through the agreement for sale, it only makes the payment of the balance sale consideration to the Vendor as a condition precedent for execution of the sale deed in favour of the petitioner. If the interpretation given by the respondents for Clause 1(I) is accepted by this Court, in every case where a time is fixed for the payment of the balance sale consideration, the registration fee will be levied on the entire sale consideration. This interpretation will completely make the term "advance money" nugatory.



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14. This Court will now consider the scope of the Proviso to Clause 1(I), which has also been relied upon by the respondents to justify the levy of the registration fees on the entire sale consideration. The proviso has been extracted supra. The Proviso merely states that where the possession of the property is handed over at the time of entering into the sale agreement or the sale agreement itself provides the handing over of the possession at a future date during the currency of the sale agreement, the registration fee will be levied on the total sale consideration.

15. In the present case, the agreement for sale in more than one Clause clearly stipulates that the vendor will handover possession of the property to the petitioner at the time of registration of the sale deed. It is also seen from records that the physical possession of the property was handed over to the petitioner only on 02.04.2013, when the sale deed was executed in favour of the petitioner. The respondents have interpreted the term "to be handed over", very widely and beyond the scope of the Proviso. Clause 1(I) specifically deals with the registration fees leviable on a sale agreement. Therefore, this provision must be understood only within the scope of the agreement for sale and the events that takes place during the currency of the sale agreement. The handing over of possession at the time of the execution of the sale deed, is well beyond the scope of Clause 1(I).



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According to the respondents, the possession of the property handed over to the purchaser at any point in time at a future date, will also fall within the Proviso. This interpretation given by the respondents blows out of proportion the scope of the Proviso. The possession handed over at the time of the execution of the sale deed can never be brought within the Proviso to Clause 1(I).

16. The correct reading of the Proviso would be that - in the case of an agreement to sell, where the possession is handed over at the time of entering into the sale agreement or the sale agreement itself provides for handing over possession at a future date when the agreement of sale is in force, the registration fee should be levied on the intended sale consideration.

17. If the above interpretation given by this Court is applied to the facts of the present case, it can be clearly seen that the payment of the balance sale consideration of Rs.63.75 Crores on or before 28.02.2013, cannot be construed as an advance money and the physical possession handed over to the petitioner on the date of the execution of the sale deed will not come within the scope of the Proviso to Clause 1(I). In view of the same, the very basis on which the notice under Section 80A of the Act, was issued by the 3rd respondent, suffers from a patent illegality and the consequential orders passed are unsustainable in law.



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18. In view of the above discussion, this Court has absolutely no hesitation to interfere with the impugned proceedings that have been challenged in W.P.No. 13150 of 2015 and the same is hereby quashed. Since the impugned proceedings of the respondents are quashed, the impugned check slip dated 06.11.2015 issued by the 3rd respondent in W.P.No.9657 of 2016, which is only a consequence of the above proceedings, must also fall flat and the same is also quashed.

19. In the result, both the Writ Petitions are allowed. No costs.

18.07.2022

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Internet: Yes
Index: Yes



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To

1. The Inspector General of Registration
Tamil Nadu
No.100 Santhome High Road
Foreshore Estate,
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2. The District Registrar
(Assistant Inspector General Cadre)
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N.ANAND VENKATESH. J.,



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KP

**Pre-Delivery Common Order in
W.P.Nos.13150 of 2015 and 9657 of 2016**

18.07.2022