IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.31540 of 2016
and W.M.P.Nos.27380 to 27382 of of 2016

EVOS Design Living Private Limited
No.3, Khadar Nawaz Khan Road
Nungambakkam, Chennai – 600 006 .. Petitioner

Versus

1.The State of Tamil Nadu
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 District Registrar
Administration (General)
No.9, Jennis Road, Saidapet
Chennai – 600 015

4.The Sub-Registrar
Alandur
TNHB Building, Nanganallur
Chennai – 600 061 .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records on the file of

3rd respondent in the impugned order of the 3rd respondent bearing reference 5785/Aa1/2015 dated 28.3.2016 received on 2.8.2016 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 the Indian Stamp Act 1899 and consequently direct the 4th respondent to register sale deeds and constructions agreement executed by the petitioner or its agents and assigns pertaining to the property situated at T.S.No.105, Adambakkam Village, Alandur Town, Kancheepuram District admeasuring 2.69 acres.

For Petitioner : Mr.Mohan
for M/s.Nivedita S.Menon

For Respondents : Mr.Vijay Anand
Additional Government Pleader

ORDER

The case of the petitioner is that the petitoner is a company incorporated under the Companies Act, 1956 and is the owner of the property situated at T.S.No.105, Adambakkam Village, Alandur Town, Kancheepuram District. The property originally stood in the name of VAK Engineering Private Limited, a company registered under the Companies Act, 1956, a Scheme of Arrangement (Demerger) was filed before this Court in C.P.Nos.90-91/2014, praying for approval a scheme a demerger in respect of VAK Engineering Private Limited. The scheme proposes with the undertaking which belonged to VAK Engineering Private Limited and which comprised inter alia of the subject property, would be and stand transferred by the Order of the Court to the petitioner company. The said petitions was ordered on 24.07.2014 allowing sanctioning the scheme of demerger. After obtaining the certified copy of the order, the petitioner company presented the same for registration, it was kept pending in P.Doc.No.P365/2014 on the file of the fourth respondent. Further, the present impugned order is passed by the third respondent directing the petitioner company to pay stamp duty of 6% on the movable assets and 8% on the immovable assets. Challenging the said order, the present writ petition.

2. The learned counsel for the petitioner submitted that with regard to the issue of payment of 2% stamp duty, the matter is pending before the Hon'ble First Bench of this Court and with regard to payment of 8% and 6%, the petitioner paid the amount to the fourth respondent, even then, the respondent has not registered the document/order and release the same in favour of the petitioner is not sustainable one. Though the respondent received the amount and retaining the amount without registering the presented documents is contrary to the Stamp Act and Registration Act. If the petitioner presented the document/order for registration, it is the duty

cast upon them to initiate proceedings under Section 33A or 47A of the Stamp Act and without issuing such proceedings, keeping the order or decree has pending document is not sustainable one. Accordingly, he prayed for allowing this writ petition.

3. The learned Additional Government Pleader fairly conceded that the respondents do not have power to make a demand without registering the document. In the present case, the demand was made without registering the document. However, during the pendency of the writ petition, the petitioner has already paid a portion of stamp duty. Hence, submitted that the said order/document will be presented and further seeks liberty to the respondent to initiate proceedings under Sections 33A or 47A of the Stamp Act.

4. Heard both sides and perused the materials placed on record. Admittedly, the facts of the present case are not in dispute. The petitioner presented an Order of this Court in C.P.Nos.90 & 91 of 2014 before the fourth respondent for registration of Scheme of Arrangement (Demerger) and the same was not registered and kept pending in Doc.No.P365/2014 and

made a demand to the tune of Rs. 4,81,10,000/-. Challenging the same, the present writ petition. Further, during the pendency of this case, the petitioner paid 2% of stamp duty on the immovable properties and 6% of stamp duty on the movable properties. However, as on date, the said Order/Document is not registered. As rightly pointed out by the learned counsel for the petitioner, without registering the document/order, the respondents have no power to make a demand. The demand was made prior to the registration. Further, the petitioner has paid a major portion of the stamp duty on the file of the fourth respondent. Hence, there is no legal impediment to register the document. In view of the above, this Court is inclined to issue a direction to the fourth respondent to register the document/order and release the same within a period of six weeks from the date of receipt of a copy of this Order.

5. Further, with regard to the issue of payment of 2% stamp duty in terms of G.P.Ms.No.29, Commercial Taxes and Registration (J1) Department dated 01.03.2019, liberty is granted to the petitioner to make appropriate application with regard to the refund; subject to the result of the issue pending before this Court.

6. However, liberty is also granted to the respondents to initiate the proceedings under Section 33A or 47A of the Stamp Act, in respect of the payment of deficient stamp duty.

7. Accordingly, the present writ petition stands allowed with above terms. No costs. Consequently, connected miscellaneous petitions are closed.

21.09.2022

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order
dhk

To

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