BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD) No. 3732 of 2011
and
M.P. (MD) No. 1 of 2011

Southern Railway Co-operative Credit Society Ltd.,
Rep. by its Managing Director,
S.Ramalingam ... Petitioner

-Vs-

1.The Inspector General of Registration,
Chennai – 28.

2.The District Registrar,
Tiruchirappalli.

3.The Joint Sub Registrar,
Tiruchirappalli. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the proceedings of the third respondent in Na.Ka.No.8809/R/2010, dated 09.08.2010 and the proceedings in Na.Ka.No.8809/R/2010-1, dated 18.02.2011 and quash the same and consequently direct the respondents to complete the registration of the Document PD.No.50 of 2010 and release the documents.

For Petitioner : Mr.Issac Mohanlal
Senior Counsel
for Mr.A.Jenasenan

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by
Mr.G.V.Vairam Santhosh,
Additional Government Pleader

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ORDER

This writ petition is filed by the petitioner / Society as against the orders dated 09.08.2010 and 18.02.2011, in and by which, the petitioner was directed to pay a sum of Rs.13,49,470/- as stamp duty for registration of the document presented on 21.06.2010, pending as Document No.51 of 2010.

2. The petitioner Society purchased certain lands from M/s.Kothari Industrial Corporation Ltd., under a sale deed dated 21.06.2010 and the same was registered as Document (pending) No.51 of 2010, on the file of the third respondent. In the document, one K.Periasamy Gounder was also included as a confirming party, confirming the said transaction. The document does not involve any transfer of interest by the said K.Periasamy Gounder, however, as a confirming party, at the instance of the petitioner, he was also shown. The petitioner has also paid the stamp duty with reference to the sale consideration mentioned in the document and also remitted the required registration fee.

3. While so, they were served with an order dated 09.08.2010 of the third respondent directing them to pay deficit stamp duty of Rs.10,000/- and deficit registration fee of Rs.13,39,470/-, in terms of the orders of the second respondent dated 27.07.2010 and the orders of the first respondent dated 13.07.2009. The petitioner was also served with another order dated 18.02.2011 reiterating the

demand. Challenging these orders, the petitioner Society has moved the instant writ petition.

4. Learned Senior Counsel appearing for the petitioner made his submissions as follows:-

4.1. The property, which was purchased by the petitioner Society from M/s.Kothari Industrial Corporation Ltd., was originally proposed to be purchased by one K.Periasamy Gounder. A sale agreement dated 16.03.2009 was also entered upon. However, the said transaction did not take place and the petitioner Society has purchased the property. Though it is not required for the petitioner to obtain any signature from K.Periasamy Gounder, in order to avoid any future litigations, as an abundant caution, the said K.Periasamy Gounder has been added as a confirming party to the present sale proceedings and his signature was also obtained. However, by citing the same, the Department concluded that two transactions took place in the sale deed and made the impugned demand. There is only one transaction between the petitioner and the vendor, M/s.Kothari Industries Corporation Ltd.

4.2. As per Section 54 of the Transfer of Property Act, 'sale' has been defined as transfer of ownership in exchange for a price paid or promised or part-paid or part-promised by the buyer. Similarly, 'contract for sale' has been defined as a contract that a sale of such property shall take place on terms settled between the parties. A mere sale agreement does not, by itself, create any interest or charge on such property.

4.3. The said K.Periasamy Gounder signed in the sale deed only as a confirming party and not as a vendor or as a person relinquishing his rights, if any. Even assuming that there are numerous transactions in the sale deed, the Department has to look into the instrument and not the transactions. The primary instrument is the deciding factor. Here, the primary instrument is the sale deed executed in favour of the petitioner by M/s.Kothari Industries Corporation Ltd.

4.4. As per Section 4 of the Indian Stamp Act, if several instruments are used in a single transaction, the principal instrument alone shall be chargeable with the duty prescribed and the rest of the instruments shall be charged with Rs.5/-. The parties shall decide which is the principal instrument, provided the duty chargeable on the instrument shall be the highest duty which would be chargeable in respect of any of the said instruments.

4.5. At the most, the instruments can be construed as (i) the cancellation of the prior agreement of sale; and (ii) the conveyance by the vendor to the buyer. If it is so construed, these two transactions namely that of cancellation of the prior agreement and the conveyance in pursuance of the buyer, would fall under Section 6 of the Indian Stamp Act, which covers the instruments that come within two or more of the descriptions in Schedule I. In such an event, if the duties chargeable are different, the instruments should be charged only with the highest of the duties. Here, the petitioner has paid the duty chargeable in respect of the sale deed, which is the highest duty chargeable.

4.6. The Department has raised the impugned demand by invoking Article 55A [Schedule I] of the Indian Stamp Act, which is not correct, for the reason that the said K.Periasamy Gounder has nothing to relinquish. Therefore, the Circular of the first respondent dated 13.07.2009 relied on by the third respondent has got no relevancy.

4.7. He has also relied upon the decision of this Court in ***Pratishta Associates v. State of Tamil Nadu***, reported in ***(2015) 2 MLJ 45***, which was subsequently confirmed by a Division Bench of this Court in the decision reported in ***2015-4-L.W 777***.

4.8. In the decision in ***Pratishta Associates***' case (supra), a learned Single Judge of this Court has held as follows:-

> *"8. A careful look at the above circular would show that whenever a prior agreement holder is joined as an executant along with the parties to the subsequent agreement, the Department has construed the sale to be a composition of two conveyances, one by the prior agreement holder and another by the subsequent agreement*

holder. But unfortunately, the circular has gone simply by logic and not by law. The circular does not refer to the provisions of the Indian Stamp Act. Therefore, it is necessary to have a look at the provisions of the Indian Stamp Act before testing the correctness of the above circular.

9. Indian Stamp Act, 1899 makes certain instruments, listed in Section 3, liable to be charged with duty of the amount indicated in Schedule I, subject to the provisions of the Act and the exemptions contained in the same Schedule. A careful look at the provisions of Section 3 would show that what is made chargeable to duty is the instrument and the transaction and not the persons. This is made clear by Section 4. Section 4(1) makes it clear that where several instruments are employed for completing a transaction, the principal instrument alone shall be chargeable with duty prescribed in Schedule I. Each of the other instruments are chargeable with a fixed duty. Sub-Section (2) of Section 4 also gives an opportunity to the parties to determine for themselves, which of the instruments shall be deemed to be the principal instrument.

10. Section 5 deals with instruments relating to several distinct matters. If one instrument comprises or relates to several distinct matters, it shall be chargeable with the aggregate amount of the duties, with which, separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act. The instrument where the prior agreement holder merely joined as a confirming party in order to acquiesce himself to the subsequent agreement and the sale in the subsequent agreement, cannot be construed as an instrument relating to several distinct matters. At the most, such instruments can be construed as (i) the cancellation of the prior agreement of sale; and (ii) the conveyance by the vendor to the subsequent agreement holder. If it is so construed, these two *transactions namely that of cancellation of the prior agreement and the conveyance in pursuance of the second agreement, would fall under Section 6. Section 6 covers instruments that come within two or more of the descriptions in Schedule I. In such an event, if the duties chargeable are different, the instruments should be charged only with the highest of the duties.*

11. But unfortunately, without even any application of mind as to the provisions of Sections 3 to 6, the Inspector General of Registration has passed the impugned circular. Therefore, the same cannot be sustained.

12. Even if it is assumed for a minute that an instrument of sale, to which, the prior agreement holder joins as a confirming party, comprises of two transactions, the conclusion, to which, the Inspector General of Registration has come, is not possible. An agreement or memorandum of agreement is covered by Article 5 of Schedule I to the same Act. The cancellation of an agreement falls under Article 17. The conveyance comes under Article 23.

13. Suppose a person has entered into an agreement with another for the sale of an immovable property, such an instrument will come within the purview of Article 5. A sale deed will come within the purview of Article 23. If, in a sale deed, which comes under Article 23, a prior agreement holder is included as a confirming party, it would at the most amount to a transaction canceling the first agreement. In other words, the instrument, in respect of which, the impugned circular has been issued, may at the most cover two transactions, one falling under Article 17 and another falling under Article 23. Even in such an event, Section 6 would go to the rescue of the parties, making them liable to pay the highest of the two duties. Therefore, the impugned circular issued wholly without any relevance or reference to any of the *provisions of the Indian Stamp Act or the Schedule contained therein, is unlawful and liable to be set aside."*

4.9. While upholding the above ratio, the Division Bench of this Court has observed as follows:-

"7. There is no dispute that the concerned purchasers have included prior agreement holders as a party to the sale deed. Though the prior agreement holders have agreed to purchase the property, the fact remains that they have not paid the balance amount for the purpose of registration of document. It was only thereafter the present purchasers have purchased the property. Since there were prior agreements relating to the property, naturally they wanted cancellation of those agreements. The concerned vendors instead of getting separate cancellation deeds executed by the respective agreement holders made them as confirming parties to the deed of conveyances. The Sub Registrar taking into account the impugned circular directed them to pay two sets of stamp duty treating the sale deed as two separate conveyances.

8. Section 54 of the Transfer of Property Act deals with sales of immovable property. As per the said provision, a contract for sale of immovable property is described as a contract that a sale of such property shall take place on terms settled between the parties. The contract for sale does not, of itself, create any interest in or charge on such property. Therefore it is clear that the agreement holder by virtue of the sale agreement is not given any right in respect of the property.

9. The impugned circular proceeds as if the presence of the prior agreement holder as a confirming party would make the document as a sale deed executed by the agreement holder at the first instance and *thereafter by the owner of the property in favour of purchaser.*

Relevant Provisions:

10. The agreement or memorandum of agreement is covered by Article 5 of Schedule I of the Indian Stamp Act. The cancellation of sale agreement would come under Article 17. Similarly conveyance would come under Article 23. In case, the sale deed which comes under Article 23 is executed by the prior agreement holder as a confirming party, it would at the most amount to a transaction cancelling the prior agreement and sale of property thereafter by the owner. Similarly, in case the sale deed involves two transactions one falling under Article 17 and another under Article 23, the purchaser is liable to pay only the highest of the two duties in view of Section 6 of the Act.

11. The Registration Department wanted such document to be treated as two conveyances even though prior agreement holder has only agreed to purchase the property. The fact remains that there was no sale deed in his favour by the vendor. It is always open to the vendor to get the cancellation deed executed by the prior agreement holder before executing the sale deed in favour of the subsequent purchaser. The Sub Registrar in such cases can either resort to Sections 4 or 5. In case the document would fall under Section 4, the parties have to determine which of the instrument shall be deemed to be the principal instrument and liability thereafter is to pay highest duty chargeable on the instrument so determined. Similarly in case the document falls under Section 5, the liability is to calculate stamp duty on each of the distinct transactions. So far as sale agreements are concerned, cancellation would attract stamp duty under Article 17. The liability of the purchaser at the most is to pay stamp duty for cancellation of sale agreement under Article 17 and conveyance under Article 23. The transaction would not amount to two separate conveyances liable for *two sets of stamp duty under Article 23 of the Indian Stamp Act.*

12. The Inspector General of Registration while issuing the impugned circular failed to consider Section 54 of the Transfer of Property Act and proceeded as if such transaction would involve two distinct conveyances one by the prior agreement holder as a deemed conveyance and another deed of conveyance by the owners.

13. The learned Single Judge analysed the provisions of the Indian Stamp Act and correctly arrived at a conclusion that the impugned circular runs contrary to the provisions of Indian Stamp Act. We therefore do not find any merit in the contentions taken by the State."

5. Per contra, learned Additional Advocate General appearing for the respondents made his submissions as follows:-

5.1. The vendor, M/s.Kothari Industries Corporation Ltd., transferred the rights of the property in favour of the buyer, the petitioner Society, by executing a sale deed, in which, the confirming party / K.Periasamy Gounder has also signed, relieving the vendor with his obligation to sell the property to a third party.

5.2. By relying upon the recitals of the sale deed, more particularly, paragraph nos.19, 23, 29, 31, 34 & 35, he contended that it is a dual document, coming under the purview of Section 5 of the Indian Stamp Act, viz., sale of the property by the vendor to the buyer / the petitioner and the third party, K.Periasamy Gounder, who entered into an agreement to purchase the said property by way of Memorandum of Understanding and who has invested huge money for discharge of the loans payable by the vendor, has relieved the vendor of their obligations to sell the property to him.

5.3. Apart from that, the confirming party has earlier approached the Company Court, as a party to the Memorandum of Understanding in C.A.No.1000 of 2009, seeking permission for purchase of the assets including the schedule property and he has also filed a Review Application in No.57 of 2010 in OSA.No.59 of 2010, wherein, there was an agreement between the parties to settle the lawful claim. Since the said K.Periasamy Gounder, the confirming party, has participated from the stage of Memorandum of Understanding till the Review Application filed before this Court, he has created an interest over the property and he is also having a valid right to purchase the property as per the Memorandum of Understanding.

5.4. Only before the Division Bench, the confirming party has given his consent that the buyer can purchase the property and also relieved / relinquished his right or obligation of the vendor to sell the property in his favour. Therefore, it is a dual document, viz., execution of sale deed and relinquishment of right of confirming party in favour of the vendor.

5.5. In the decision relied on by the petitioner in ***Pratishta Associates***' case (supra), which was also confirmed by the Division Bench of this Court, it was held that if in a sale deed, a prior agreement holder is included as a confirming party, it would at the most amount to a transaction cancelling the first agreement and even in such an event, Section 6 of the Indian Stamp Act would go to the rescue of the parties making them liable to pay the highest of the two duties.

5.6. Neither this decision nor Section 6 of the Indian Stamp Act would be applicable to the case on hand, for the reason that in the said decision, the confirming party has only confirmed the sale between the parties and he has not objected to the sale or relinquished any right in favour of the buyer or vendor. In this case, the confirming party has already participated in all the court cases and relinquished his right in favour of the vendor, enabling the vendor to sell the property to third party, the petitioner herein and there is a specific clause in paragraph no.34 of the document to this effect. Therefore, it is a dual document. It is not a simple confirmation of sale alone, but the confirming party has relinquished his right and therefore, it would come under Section 5 of the Indian Stamp Act and not under Section 6 of the Act.

6. This Court paid it's anxious consideration to the rival submissions made on either side and also perused the materials placed on record.

7. When the writ petition came up for hearing on 18.07.2022, this Court has passed the following order:-

"2.When the writ petition came up for hearing on 07.04.2022, there was no representation on behalf of the petitioner. However, Mr.J.John Rajadurai, learned Government Advocate, represented that the order has been complied with and nothing survives for adjudication. Recording the submission made by the learned Government Advocate, this Court closed the writ petition by order dated 07.04.2022.

3.However, at the time of signing the order copy, this Court found that there was an interim order dated 12.09.2011, in MP(MD)No.1 of 2011 in WP(MD)No.3732 of 2011, as follows:-

> *"5.In view of the above, the petitioner is permitted to deposit a sum of Rs.13,49,470/- in a nationalized bank and produce the fixed deposit receipt to the Joint Sub Registrar, Trichy, the third respondent herein, and on such production, he shall release the sale deed document (pending) No.51 of 2010 presented on 21.06.2010 within a period of two weeks from the date of production of the fixed deposit receipt, subject to the condition that he shall not alienate or encumber the property, pending disposal of this writ petition. The abovesaid direction is without prejudice to the rights of the petitioner in adjudicating the correctness of the impugned order. In the meantime, the respondents shall file their counter."*

4.In clear terms, the interim order was passed directing the petitioner to deposit the disputed amount and on such deposit, the respondents were directed to release the sale deed. This interim arrangement was without prejudice to the rights of the petitioner in adjudicating the correctness of the impugned order. However, a *representation was made by the learned Government Advocate as if order has been complied and nothing survives and based on such representation, this Court has also closed the writ petition.*

5.Since the writ petition was closed based on a misrepresentation, the earlier order dated 07.04.2022 was recalled and the matter was directed to be listed under the caption 'for clarification'. Mr.G.V.Vairam Santhosh, learned Additional Government Pleader, who was present in the Court, was directed to inform Mr.J.John Rajadurai, learned Government Advocate, on whose representation the writ petition was closed on 07.04.2022, about the listing of case and to appear before the Court.

6.Mr.J.John Rajadurai, learned Government Advocate along with the third respondent / Joint Sub Registrar appeared before the Court and produced a joint fixed deposit receipt. It appears that the petitioner-Society has made a fixed deposit in the name of the petitioner-Society and the third respondent / Joint Sub Registrar for a sum of Rs.13,49,470/-. On production of this receipt, the sale deed was also released by the respondents. Therefore, the interim order dated 12.09.2011, has been complied with.

7.The issue now left to be decided is about the correctness of the impugned order, the demand made by the respondents and the fate of the joint fixed deposit made by the petitioner-Society. However, without referring to any of these, a vague representation was made by the learned Government Advocate that the order has been complied and nothing survives for adjudication.

8.Even after listing the matter under the caption 'for clarification', neither the learned Government Advocate nor the Department has come forward with any explanation. Even on merits, nothing was placed before the Court as to how the impugned demand has been arrived upon. This Court is not satisfied with the manner in which the representation was made and the manner in which the case is being conducted on behalf of the Department.

9.When this Court was about to call for a report from the first respondent / Inspector General of Registration in this regard, Mr.Veera Kathiravan, learned Additional Advocate General, who is present before the Court, requested for a short accommodation to get instructions and to assist the Court.

*10.List the matter on **29.07.2022**. This Court requests the learned Additional Advocate General to lead this matter, after getting instructions."*

8. Pursuant to the aforesaid order, Mr.J.John Rajadurai, Government Advocate, has filed an affidavit dated 16.08.2022, as follows:-

"4. ... while so, the writ petition was listed for hearing before this Hon'ble Court on 29.03.2022. Hence, I contacted the 3rd respondent office over phone on 28.03.2022 for getting instruction. In turn, the 3rd respondent vide letter Na.Ka.No.4095-3/R/2022, dated 29.03.2022, stating that as per the order of this Hon'ble Court made in WP(MD)No. 3732 of 2011 the pending documents in P.50/2011 was registered in Document No.7048/2011 on 11.10.2011 and the original document was handed over to the petitioner.

5. I respectfully submit that inadvertently and thought that the department amount demanded was paid and documents were released. So I informed this Hon'ble High Court that nothing survives in the matter on 29.03.2022 in the view of the payment made. But after that I came to know that I wrongly understood the fact of the case and I am tendering my unconditional apology and pray this Hon'ble Court to decide the matter on merits.

6. I most respectfully submit that this Hon'ble High Court came to conclusion I made misrepresentation. It is not with intention and willfully and not favour to anybody."

The affidavit filed by Mr.J.John Rajadurai, Government Advocate, stands recorded.

9. During the course of arguments, it was represented that this Court, as a Special Government Pleader, has appeared for the respondents in this case. However, both the parties reposed confidence on this Court to hear the matter and accordingly, the matter was heard on merits.

10. The petitioner has purchased an immovable property, with market value of Rs.13,39,47,000/-, from one M/s.Kothari Industries Corporation Ltd. Prior to this transaction, M/s.Kothari Industries Corporation Ltd., has borrowed money from various financial institutions by mortgaging this property. These financial institutions have also initiated action as against the Company for non-payment of the amount. In order to avoid the same, the Company has entered into a sale agreement with one K.Periasamy Gounder on 16.03.2009, as per which, the

Company has to sell the property to K.Periasamy Gounder. This agreement dated 16.03.2009 is not a registered one. Based on this agreement, K.Periasamy Gounder has paid the amount to the financial institutions, which is liable to be paid by M/s.Kothari Industries Corporation Ltd.

11. However, the Company has brought the property for sale. Therefore, the confirming party, viz., K.Periasamy Gounder approached this Court in OSA.No.59 of 2010, in which, this Court directed the Company and the confirming party to pay a sum of Rs.10 Crore for release of the assets. The Company, in order to mobilize the resources for meeting the demand of Kotak Mahindra Bank Ltd, in terms of the order of this Court dated 26.04.2010, sought the consent of the confirming party for sale of the schedule property to the petitioner / purchaser. Accordingly, the sale was effected on 21.06.2010. The confirming party has also signed in this document / sale deed. Considering the fact that the agreement for sale was in existence between the vendor and the confirming party, the Department has levied additional duty. Challenging the same, the present writ petition is filed.

12. Section 5 of the Indian Stamp Act reads as follows:-

> *"5.Instruments relating to several distinct matters – Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act."*

13. Article 55A [Schedule I] of the Indian Stamp Act reads as follows:-

"Release, that is to say any instrument (not being such a release as is provided for by section 23A) or a release referred to in clauses B,C and D of this Article whereby a person renounces a claim upon another person or against any specified property – One rupee for every Rs.100 or part thereof of the market value of the property which is under release."

14. The recitals of the sale deed, more particularly, paragraph nos.19, 23, 29, 31, 34 & 35, relied upon by the respondents, are extracted as under:-

"19.In view of these developments, VENDOR Company had approached Bank of Baroda, Central Bank of India, Punjab National Bank and State Bank of Travancore (excluding State Bank of India) with proposals for One Time Settlement and to fund the said One Time Settlement proposal entered into Memorandum of Understanding (MOU) with Mr.K.periasamy Gounder (the CONFIRMING PARTY herein) <u>and agreed to sell its assets, including the Schedule property in consideration of his paying in advance the sale consideration for settling the dues of these Banks</u>.

...

23.In accordance with the MOU dated 16.03.2009 and the above said permission granted (to pay the amounts to Banks towards one time settlement) by the Hon'ble Division Bench of the Madras High Court vide order dated 30.04.2009 in M.P.No.2 of 2009 in OSA.No.89/2009 and at the request of the VENDOR Company, the CONFIRMING PARTY herein had paid (a) a sum of Rs.186 lakhs to Bank of Baroda on 06.05.2009; (b) a *sum of Rs.12.37 lakhs to Central Bank of India on 06.05.2009 and (c) a sum of Rs.100 lakhs to Punjab National Bank on / before 24.09.2009. The remaining amounts due to Bank of Baroda, Central Bank of India and the entire compromise amount due to State Bank of Travancore was paid by the VENDOR Company out of other sources.*

...

29.Consequently the Confirming Party herein, with due support of the VENDOR Company, was constrained to move the Company Court in CA 1000/2009 seeking permission for purchase of assets including the schedule property as per the Memorandum of Understanding signed with the VENDOR, which was dismissed on 22.12.2009.

...

31.As a result, the Confirming Party herein filed a Review Application No.57/2010 in OSA.No.59/2010 and an order came to be passed for on 26.04.2010 (as further clarified on 29.04.2010) after taking into account the counter filed by Kotak Mahindra Bank Limited stating that, they will not oppose the Review Application if the same is allowed with a direction to the Review Petitioner (the Confirming Party herein) and the first respondent (the VENDOR Company) to unconditionally remit a sum of Rs.10 crores towards the sums due to State Bank of India directly to Kotak Mahindra Bank Limited.

...

34.Having been so permitted by the Hon'ble Madras High Court to get, inter alia, the schedule property released from the charge and to sell it upon payment of a sum of Rs.500 lakhs to Kotak Mahindra Bank Limited, the VENDOR Company herein with a view to mobilize sufficient resources to meet their obligations with regard to the Schedule property in terms of the order dated 26.04.2010, <u>sought the consent of the Confirming Party</u> herein for sale of the Schedule property to the

PURCHASERS herein and accordingly the Confirming Party has since relieved the VENDOR of their obligations to sell the Schedule property to the Confirming Party under the Memorandum of Agreement dated 16.03.2009 and instead permitted the VENDOR herein to sell the Schedule Property to the Purchasers herein.

35.The PURCHASERS have evinced interest to purchase the Schedule Property from the VENDORS herein and the VENDORS with the due consent of the CONFIRMING PARTY herein have agreed to sell the Scheduled Property to the PURCHASERS herein for the consideration specified hereunder."

15. The issue before this Court is that on the signature of K.Periasamy Gounder as a confirming party, whether the document is liable to be charged with additional registration fee for the agreement between the vendor and the confirming party dated 16.03.2009. As pointed out by the learned Additional Advocate General, the recitals of the agreement dated 21.06.2010 entered into between the vendor and the buyer / petitioner, which were extracted supra, are very vital in deciding the issue. Pursuant to the agreement of sale dated 16.03.2009, by which the Company has agreed to sell its assets to the confirming party / K.Periasamy Gounder, the confirming party has paid Rs.390 lakhs to Bank of Baroda, Rs.50 lakhs to Central Bank of India, Rs.75 lakhs to Punjab National Bank on 31.03.2009 and Rs.186 lakhs to Bank of Baroda, Rs.12.37 lakhs to Central Bank of India on 06.05.2009 and Rs.100 lakhs to Punjab National Bank on 24.09.2009, for the outstanding payable by the vendor Company. However, the Company brought

the property for sale. Issues came before this Court and the matter was agitated by the confirming party. Thereafter, by adding as a signatory to the sale deed dated 21.06.2010, the confirming party has relieved the vendor of their obligations to sell the schedule property to the confirming party as per the memorandum of agreement dated 16.03.2009.

16. As per Article 55A [Schedule I] of the Indian Stamp Act, if any person renounces a claim upon another person or any specified property, 1% of the mortgaged value of the property is liable to be charged. On a combined reading of the recitals in the sale deed dated 21.06.2010 and Article 55A [Schedule I] of the Indian Stamp Act, the contention of the petitioner that the impugned document does not provide for transfer or relinquishment of rights by the confirming party does not merit consideration. The consent of the confirming party referred to in the sale deed means the relinquishment of the confirming party.

17. The contents found in the sale deed dated 21.06.2010 shows the intention of the parties, the right of the confirming party and his relinquishment of rights. That apart, before signing as a confirming party in the sale deed dated 21.06.2010, he has also agitated before the Court of law for the purchase of the properties as per the agreement dated 16.03.2009. Therefore, the decisions relied upon by the learned Senior Counsel appearing for the petitioner would not be applicable to the facts and circumstances of this case. Therefore, this Court is not

inclined to interfere with the impugned order demanding deficit stamp duty and deficit registration fee from the petitioner.

18. The petitioner Society, in pursuance of the interim order dated 12.09.2011, made in M.P(MD)No.1 of 2011 in W.P(MD)No.3732 of 2011, has already made a fixed deposit in the name of the petitioner Society and the third respondent / Joint Sub Registrar for a sum of Rs.13,49,470/- and on production of this receipt, the sale deed was also released by the respondents. Since this Court has now upheld the impugned demand, the respondents are entitled to encash the amount in the aforesaid joint fixed deposit, together with the interest accrued thereon.

19. In the counter affidavit filed by the respondents, it is stated that the properties of M/s.Blue Mountain Estate and Industries Ltd., has been transferred to M/s.Kothari (Madras) Ltd., by way of an order passed by this Court in C.P.No.61 of 1970, which has been averred in the sale deed dated 21.06.2010. As per the decision of the Hon'ble Supreme Court in Hindustan Lever Ltd., v. Government of Maharasthra [(2004) 9 SCC 438], the order of this Court in C.P.No.61 of 1970 has to be treated as conveyance and as such, applicable stamp duty has to be paid. This Court is not passing any orders in this regard, inasmuch as it is not the subject matter of this writ petition. It is always open to the authorities to take further action, if they are permitted to do so, as per the relevant law.

In the result, this writ petition stands dismissed. There shall be no order as to costs.

Internet : Yes
Index : Yes / No
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02.12.2022

To

1.The Inspector General of Registration,
Chennai – 28.

2.The District Registrar,
Tiruchirappalli.

3.The Joint Sub Registrar,
Tiruchirappalli.

B.PUGALENDHI, J.

gk

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and
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