

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPO No. 3281 of 2022
with
WPA No.22339 of 2022**

**Indorama India Private Limited
Vs.
Collector of Stamp Revenue, Kolkata**

For the petitioner	:	Mr. Ranjan Bachawat, Sr. Adv. Mr. Pawan Sharma, Adv. Mr. Kaushik Mandal, Adv. Mr. Sarosij Dasgupta, Adv. Mr. Bhavesh Garodia, Adv.
For the respondent	:	Mr. S.N. Mookherji, Ld. Advocate General. Mr. T.M. Siddiqui, Adv. Mr. Ayan Banerjee, Adv. Mr. Yash Singhi, Adv.
Hearing concluded on	:	15.06.2023
Judgment on	:	12.07.2023

The Court:-

1. The moot question which has arisen in the present writ petition is whether the respondent-Authorities were justified in imposing stamp duty payable at the rate of 7 per cent instead of 0.5 per cent under the Indian Stamp Act, 1899 (as per West Bengal amendment). A cardinal feature here is that the transaction-in-question is a demerger of companies, in which none of the immovable properties of the transferor company are located in the State of West Bengal.

2. As per learned senior counsel for the petitioner, the calculation of stamp duty ought to have been under Clause (b)(ii) of the Proper Stamp-Duty column, stipulated under Article 23A of Schedule IA of the West Bengal amendment.
3. The learned Advocate General, appearing for the respondents-Authorities, on the other hand, argues that the general provision of the right-hand (“Proper Stamp-Duty”) column of Article 23A, and not the proviso, would be applicable, in view of none of the properties involved being situated in West Bengal.
4. The respondents have cited several judgments. In the first of such judgments, reported at *LXXI Indian Appeals 113 [Madras and Southern Mahratta Railway Company Limited Vs. Bezwada Municipality]*, it was observed that the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.
5. The Learned Advocate General, appearing for the respondent-Authorities, also cites *Rohitash Kumar and others Vs. Om Prakash Sharma and others*, reported at (2013) 11 SCC 451, where it was held by the Supreme Court that the normal function of a proviso is generally to provide an exception of something that is outside the ambit of usual intention of the enactment, or qualify something enacted therein, which, but for the proviso, would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise fall squarely within the general language of the main enactment. Usually, it was held, a proviso cannot be interpreted

as a general rule, nor can it be interpreted in the manner that would nullify the enactment, or take away entirely, a right that has been conferred by the statute. The proviso to a particular provision of a statute, it was held, only embraces the field which is covered by the main provision, by carving out an exception to the said main provision. In a normal course, the Supreme Court held that a proviso can be extinguished from an exception for the reason that exception is intended to restrain the enacting clause to a particular class of cases while the proviso is used to remove special cases from the general enactment provided for them specially.

6. The principles laid down in the said judgments are well-settled and there cannot be any quarrel in that regard. However, in the present case, the inter-play of inclusions and exclusions contemplated in the provisions of the Act, are to be interpreted in proper perspective.
7. The relevant provisions are Articles 23, 23A and 62 of Schedule IA, whereas, Section 2(10) of the Act itself is also tangentially relevant.
8. It has virtually been argued by both sides that Article 23A of Schedule IA is applicable in the present case. The dispute is, whether Clause (b) (ii) or the main provision of the stamp duty stipulated in the right-hand column against the said Article is applicable.
9. However, the said controversy loses relevance in the present perspective, in view of the description of instruments given in Article 23A.

10. In this context, Articles 23, 23A and 62 of Schedule IA (West Bengal Amendment) of the Stamp Act are required to be looked into and set forth below:

Description of Instruments	Proper Stamp-duty
23. Conveyance [as defined by section 2(10)], [not being a conveyance under No.23A and] not being a transfer charged or exempted under No.62. <i>Exemptions:</i> (a) Assignment of copyright by entry made under the Copyright Act, 1957 (14 of 1957), section 18. (b) Co-partnership Deed. See Partnership (No.46)	(a) Six per centum of the market value, in case of the market value of the property does not exceed rupees one crore, and seven per centum of the market value, in case the market valued of the property exceeds rupees on core, when the property is situated in the areas to which the Kolkata Improvement Act, 1911 or the Howrah Improvement Act, 1956, extends. (b) Six per centum of the market value, in case the market value of the property does not exceed rupees one core, and seven per centum of the market value, in case the market value of the property exceeds rupees one crore, when the property is situated in the areas of any Municipal Corporation or Municipality or a notified area other than those included in clause (a). (c) Five per centum of the market value, in case the market value of the property does not exceed rupees one crore, and six per centum of the market value, in case the market value of the property exceeds rupees one crore, when the property is situated in the areas other than those included in clause (a) or clause (b).

Provided that in any case when an agreement relating to sale is excluded and registered with the ad velorem stamp-duty required under the proviso to article 5(d) and in furtherance of such agreement—

(a) if the final conveyance is made within four years from the date of agreement or within two years from the date of completion/occupancy certificate issued by appropriate authority or from the date of procurement of electric connection, whichever is earlier, in favour of the original purchaser or in favour of the member(s) of his/her family, the market value of the property as assessed at the time of registration of such. agreement shall be treated as the market. value of the property for the purpose of determination of chargeability at the time of registration of the final conveyance and the stamp-duty to be paid on such conveyance shall be the difference between the duty payable and the duty already paid under the proviso to article 5(d) at the time of registration of the agreement or rupees ten, whichever is greater;

(b) if the final conveyance is made, beyond the time limit as specified in clause (a), in favour of the original purchaser or in favour of the member(s) of his/her family, the market value of the property shall be reassessed at the time of registration of such conveyance and the stamp-duty to be paid on such conveyance shall be the difference between the duty

	<i>payable and the duty already paid under the proviso to article 5(d) at the time of registration of the agreement or rupees ten, whichever is greater:</i> <i>Provided further that if any document, other than document for amalgamation of contiguous land, is executed on or before 30th day of October, 2021, the proper stamp duty payable under this article will be as below:</i> <i>(a) Four per centum of the market value, in case the market value of the property does not exceed rupees one crore, and five per centum of the market value, in case the market value of the property exceeds rupees one crore, when the property is situated in the areas to which the Kolkata Improvement Act, 1911 (Ben. Act 5 of 1911), or Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), extends;</i> <i>(b) Four per centum of the market value, in case the market value of the property does not exceed rupees one crore, and five per centum of the market value, in case the market value of the property exceeds rupees one crore, when the property is situated in the areas of any Municipal Corporation or Municipality or a notified area other than those included in clause (a);</i> <i>(c) Three per centum of the market value, in case the market value of the property does not exceed rupees one crore, and four per centum of the market value, in case the market value of the property exceeds rupees one crore, when the property is situated in the areas other than those</i>
--	---

	included in clause (a) or clause (b). Provided further that the above provisions shall not be applicable, if final conveyance is made in favour of any person or persons other than the original purchaser or the member(s) of his/her family. Explanation.— For the purpose of this article, the expression "member of a family" shall have the same meaning as defined in article 33. Provided that when a document for amalgamation of contiguous land is executed and registered, ad valorem stamp duty at the rate of one- half of one per centum of the market value of the amalgamated property shall be chargeable, subject to a maximum of rupees three lakh.
23A. Conveyance, in respect of amalgamation, merger, reconstruction, or demerger, of companies, other than amalgamation, merger, reconstruction or demerger, of two banking companies or a banking company with a non-banking financial company, executed on the basis of decree or final order of any Civil Court or every order made by the Tribunal under section 394 of the Companies Act, 1956 (1 of 1956), as defined by section 2(10), not being a transfer charged or exempted under No. 62, on the market value of the property which is the subject-matter of the conveyance, when the property of the transferor company located in the State of West Bengal is transferred to the transferee company by way of such amalgamation, merger, reconstruction, or demerger of companies under the decree of final order of any Civil Court or every order of the Tribunal under section 394 of the Companies Act, 1956:	The same duty as a Conveyance (No. 23) on the aggregate of the market value of the shares issued or allotted, in exchange or otherwise, and the amount of consideration paid- (a) by the transferee company, for such amalgamation or merger: Provided that the amount of such duty chargeable under this article shall not exceed- (i) an amount equal to two per centum of the true market value of the immovable property located within the State of West Bengal of the transferor company, or (ii) an amount equal to half per centum of the aggregate of the market value of the shares issued or allotted, in exchange or otherwise, and the amount of consideration paid by such transferor company, for such

<i>Provided that on and after the constitution of the National Company Law Tribunal, the expression 'High Court' shall be read as 'Tribunal'.</i>	<i>amalgamation,</i> <i>whichever is higher;</i> <i>(b) by the resulting company, for such reconstruction or demerger.</i> <i>Provided that in case of reconstruction or demerger, the amount of such duty chargeable under this item shall not exceed-</i> <i>(i) an amount equal to two per centum of the true market value of the immovable property located within the State of West Bengal of the transferor company, or</i> <i>(ii) an amount equal to half per centum of the aggregate of the market value of the shares issued or allotted, to the resulting company and the amount of consideration paid for such demerger,</i> <i>whichever is higher.</i>
..... 62. Transfer <i>(whether with or without consideration)-</i> <i>(a) of shares in an incorporated company or other body corporate;</i> <i>(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8;</i> <i>(c) of any interest secured by a bond, mortgage-deed in respect of which duty has been paid under Article No. 40 or policy of insurance-</i> <i>(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees;</i> <i>(ii) in any other case.</i>	<i>Twenty-five paise for every hundred rupees or part thereof of the value of the share.</i> <i>One-half of the duty payable on a Conveyance (No.23) for a consideration equal to the face amount of the debentures.</i> <i>The duty with which such bond, mortgage-deed or policy of insurance is chargeable.</i> <i>Rupees fifteen.</i> <i>Rupees twenty.</i>

<i>(d) of any property under the Administrator-General's Act, 1913 (III of 1913), section 25;</i> <i>(e) of any trust-property without consideration from one trustee to another trustee, or from a trustee to a beneficiary:</i> <i>Provided that if by any one instrument the interest secured by several bonds, mort- gage-deeds or policies of insurance is transferred, the duty payable in respect of such instrument shall be the aggregate of the duties which would have been payable if separate instruments of transfer were executed in respect of each such bond, mort- gage-deed or policy of insurance.</i> <i>Exemptions:</i> <i>Transfer by endorsement-</i> <i>(a) of a bill of exchange, cheque or promissory note;</i> <i>(b) of a bill of lading, delivery order, warrant for goods, or other mercantile documents of title to goods;</i> <i>(c) of a policy of insurance;</i> <i>(d) of securities of the Central Government.</i> <i>See also section 8.</i>	<i>Rupees ten or such smaller amount as may be chargeable under clauses (a) to (c) of this Article.</i>
--	--

- 11.** The main provision of stamp duty in the right-hand column of Article 23A contemplates two components. The first is the market value of the shares issued or allotted, in exchange or otherwise. The second component is:

(a) in case of amalgamation or merger, the amount of consideration paid by the transferee company for such amalgamation or merger; and,

(b) in case of reconstruction or demerger, the consideration paid by the resulting company for such reconstruction or demerger.

- 12.** In case of both amalgamation/merger and reconstruction/demerger, after the main provision, restrictions have been put in place by way of similar Provisos. Such restrictions are comprised of two alternatives, the high of which would be the upper limit of the duty chargeable in each case. The first alternative is an amount equal to 2 % of the true market value of the immovable property located in West Bengal of the transferor company; the second (in case of demerger), an amount equal to $\frac{1}{2}$ % of the aggregate of market value of the shares issued or allotted plus the consideration paid for the demerger.
- 13.** Thus, under Article 23A, either for amalgamation/merger or for reconstruction/demerger, the total amount arrived at under the main or general provision is limited by the higher amount of the two alternatives given in the Proviso.
- 14.** Hence, the argued conflict between the main provision and the Proviso, along the fault line of properties located in West Bengal in Alternative (i) of the Proviso, is artificial, since Article 23A would be applicable only if there are properties of the transferor located in West Bengal, which are transferred to the transferee company in the process of amalgamation/merger/reconstruction/ demerger.

- 15.** Omitting the unnecessary words in the context, the relevant part of the Description of Instruments in Article 23A is as follows:
“Conveyance in respect of amalgamation, merger, reconstruction, or demerger, of companies, other than amalgamation, merger, reconstruction or demerger, of two banking companies or a banking company with a non-banking financial company....., when the property of the transferor company located in the State of West Bengal is transferred to the transferee company by way of such amalgamation, merger, re- construction, or demerger of companies.....” Hence, it stares at the face that the said Article is applicable only when the property of the transferor company situated in the State of West Bengal is transferred to the transferee company, and not otherwise. Admittedly, in the present case, the transferor does not transfer any such property located in West Bengal to the transferee. Hence, Article 23A is not applicable in the instant case at all.
- 16.** Article 23 of Schedule IA is the residuary provision, covering Conveyance [as defined by Section 2(10)], *not being a conveyance under No. 23A* and not being a transfer charged or exempted under No. 62.
- 17.** Section 2 (10) of the Indian Stamp Act, as amended in West Bengal, reads as follows:-
“Conveyance. – “conveyance” includes a conveyance on sale, every instrument and every decree or final order of any Civil Court or every order made by the High Court under section 394 of the Companies Act, 1956 (1 of 1956), in respect of amalgamation, merger, reconstruction, or

demerger of companies, other than amalgamation, merger, reconstruction or demerger, of two banking companies or a banking company with a non-banking financial company by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in any other person inter vivos and which is not otherwise specifically provided for by Schedule I;

Provided that on and after the constitution of the National Company Law Tribunal, the expression 'High Court' shall be read as 'Tribunal'.

Explanation. - ..."

18. Article 23 of Schedule IA also covers conveyance as defined in Section 2(10), and Section 2 (10), as amended in West Bengal, takes within its purview every instrument and every decree or order of civil court or tribunal in respect of amalgamation, merger, reconstruction or demerger (other than between two banking companies or a banking company with a non-banking financial company) by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in any other person *inter vivos* and which is not otherwise specifically provided for by Schedule I. Thus, the conveyance, on demerger, of property lying outside West Bengal is excluded from Article 23A but included in Article 23 of Schedule IA of the Stamp Act.
19. Seen in such perspective, the entire debate on the applicability of Article 23A and its proviso pales into insignificance and the applicable provision, it becomes evident, is Article 23. In the present case,

admittedly, none of the transferred properties is located in West Bengal.

- 20.** The main provision of stamp duty, as stipulated in the right-hand column of Article 23 of Schedule IA, has three independent clauses, (a), (b) and (c).
- 21.** Whereas Clause (a) deals with property situated in the areas to which the Kolkata Improvement Act, 1911 of the Howrah Improvement Act, 1956 extend, Clause (b) covers property situated in areas of any municipal corporation or municipality or notified area other than those included in Clause (a). Clause (c), on the other hand, covers properties situated in areas other than those included in Clauses (a) and (b).
- 22.** Since Clauses (a) and (b) are not applicable in the present case, as the properties concerned are not situated in West Bengal, it is Clause (c) which, by the process of elimination, is attracted.
- 23.** It is further relevant to mention that in the second proviso after Clause (c) in the right-hand column of Article 23, it is clearly stipulated that if any document, “other than document of amalgamation of contiguous land, is executed on or before October 30, 2021, the proper stamp-duty payable under the Article would be as below. Again, the fourth proviso after Clause (c) speaks about a document for amalgamation of contiguous land. The said two provisos clearly indicate that amalgamation is one of the transactions contemplated by Article 23.

- 24.** Taking a cue from the said provisos, there is no conceivable reason to preclude conveyances in respect of other similar transactions, clubbed together in Article 23A for convenience, from the ambit of Article 23, if the property transferred is not situated in West Bengal.
- 25.** Hence, in cases of merger, reconstruction or demerger as well, that is, transactions of similar nature as amalgamation, Article 23 would apply and the stamp-duty would be the relevant stamp as stipulated therein.
- 26.** Hence, the applicable clause is sub-clause (c) of the stamp duty specified in the right-hand column of Article 23 which stipulates that the stamp-duty would be 5 per cent of market value, if the value of the property does not exceed Rs. 1cr., and 6 per cent of the market value, in case the market value of the property exceeds Rs.1cr.
- 27.** Thus, the stamp-duty would be either 5 per cent or 6 per cent, according to the market value of the property transferred. In such view of the matter, the calculations have to be made afresh, since the registering authorities, erroneously, have marked the stamp duty at 7 per cent per annum of the market value.
- 28.** Accordingly, WPO No. 3281 of 2022 and WPA No.22339 of 2022 are disposed of by setting aside the assessments of stamp-duty made by the respondent-Authorities for the transfer of property with regard to demerger in both cases.
- 29.** The respondent/ registering authority is directed to reassess the stamp duty at the rates as stipulated in sub-clause (c) under “Proper

Stamp-duty” in the right-hand column of Article 23 of Schedule IA of the Indian Stamp Act, (as per West Bengal Amendment).

30. Such exercise shall be concluded by the respondent-Authorities within three (03) weeks from date and the assessed stamp-duty shall be intimated to the parties immediately thereafter for the purpose of the concerned party/parties to deposit the same and carrying through the transaction of demerger and associated conveyance accordingly, in due process of law.
31. There will be no order as to costs.
32. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)