IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.07.2024**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.20943 of 2018

Prakash Ramaiah ... Petitioner

Vs.

1.The Chief Controlling Revenue Authority-cum-
Inspector General of Registration,
Santhome High Road,
Mylapore,
Chennai – 600 004.

2.The District Registrar,
Registration Department,
Chengalpet.

3.The Joint II Sub-Registrar,
Office of Sub Registrar,
Chengalpet.

4.M/s.Mahindra Residential Developers Ltd.,
a Company registered under the Companies Act
having office at Administrative Block, Central Avenue,
Mahindra World City, Natham Sub (PO),
Chengalpet Taluk,
Kancheepuram – 603 004. … Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus directing the respondents 1 to 3 herein to refund the sum of Rs.2,77,511/- paid towards Stamp Duty for the Lease Deed dated 08.09.2015 and registered as Document No.4681/2016 in the office of the third respondent herein to the petitioner.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.P.Ananda Kumar,
Government Advocate

ORDER

The petitioner has filed this petition to direct the respondents 1 to 3 herein to refund the sum of Rs.2,77,511/- paid towards Stamp Duty of the Lease Deed dated 08.09.2015 and registered as Document No.4681/2016 in the office of the third respondent herein to the petitioner.

2. The case of the petitioner is that the fourth respondent viz., Mahindra Residential Developers Limited is duly approved as a SEZ Co-Developer vide letter of Approval dated 25.04.2008 issued by the Board of Approval, Ministry of Commerce and Industry, Department of Commerce, (SEZ Section) Government of India and is developing residential facilities in the Non-Processing Area of the Special Economic Zone, Mahindra World City, Chengalpet. The authorized activities of the fourth respondent is to

develop residential facilities in the notified SEZ lands. As a Co-Developer, the fourth respondent is required to adhere to the terms of the letter of approval issued to them and also the Special Economic Zones Act, 2005 (SEZ Act) and the Special Economic Zones Ruls, 2006 (SEZ Rules) and other applicable laws.

2.1. The SEZ comprises of "Processing Area" where the industries are setup/located for activities being the manufacture of goods or services and the area exclusively for trading or warehousing purposes and the "Non-Processing Area" where social, residential and other non-industrial infrastructure are created either by the Developer or a Co-Developer. This being so, the petitioner herein has taken a residential apartment premises in IRIS Court Project bearing Unit No.F515, Unit Type 2 BHK, in Fifth floor in block name "F" admeasuring about 685 sq.ft. of Carpet area, corresponding to 761 sq.ft. of built up area, corresponding to 1008 sq. ft of saleable area together with undivided share of land of 363 sq.ft out of total land area 46245.91 sq.ft. at S.F.Nos.98 (part), 97/3 (Part), 96/2 (part), 114/2 (Part), 114/1 (Part), 113/1 (Part), 112/1 (Part) & 116/1 9Part) situated at Paranur Village, Chengalpattu Taluk, Kancheepuram District, on lease basis from the fourth respondent, for which a lease deed dated 08.09.2015 was also executed in favour of the petitioner and the same was duly presented for registration before the third respondent on 08.09.2015. But, the same was not registered and kept in pending, due to audit objections vide AG's (Accountant General) remarks, which refers to non-compliance with instruction No.18 dated 02.07.2009 and instruction No.65 dated 27.10.2010 issued by the Ministry of Commerce.

2.2. Since the lease deed was needed for urgent purpose, the petitioner has paid the Stamp Duty of Rs.2,77,511/- under protest with an express undertaking that he would be entitled to seek refund of stamp duty from the department. Thereafter, the third respondent herein registered the said lease deed as Doc.No.4681/2016 and released the document. At this juncture, this Court in W.P.No.211/2016 dated 20.07.2016, has passed an order holding that an individual is entitled for exemption from paying stamp duty, when the land is not for a sale but only for the purpose of leasing out to the employees of SEZ.

2.3. Citing the above, the petitioner made a representation dated

08.07.2017 requesting to refund the stamp duty amounting to a sum of Rs.2,77,511/- paid under protest for the lease deed dated 08.09.2015 bearing Doc.No.4681/2016. However, the aforesaid representation was not considered by the respondents. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that a lease deed executed in respect of residential unit in Non-Processing Area of SEZ executed by the Developer/Co-Developer is "not chargeable to stamp duty" as per the amendment brought out to the Indian Stamp Act by virtue of Section 57 of the SEZ Act.

4. Learned counsel for the petitioner further submitted that the stamp duty was paid under protest for the residential unit in SEZ Zone and the letter in this regard was sent to the Joint II Sub-Registrar, Registration Department, Chengalpattu. For better appreciation, the said letter is extracted hereunder:

Date: 24.03.2016

To
The District Registrar,
Registration Department,

Chengalpattu.

Dear Sir/Madam,

Sub: Seeking Refund of stamp duty paid under protest for the residential unit in SEZ

Ref: Lease Deed Document No.4681/2016 dated 08.09.2015 registered in your office by Mahindra Integrated Township limited (Lessor-SEZ Co-Developer) in favour of Mr.Prakash R for the Unit No.F515 in Project Iris Court

Mahindra Integrated Township limited (Lessor-SEZ Co-Developer) has registered the Lease Deed Document No.4681/2016 dated 08.09.2015 in favour of Prakash.R for the unit No.F515 in Project-IRIS Court situated in Special Economic Zone Mahindra World City Chengalpattu. For the total consideration Rs.34,68,888/- and paid the stamp duty amount of Rs.2,77,511/- under protest in joint-II sub registrar office.

I/We understand that our lease deed document is not chargeable to stamp duty as per the provisions of the Indian Stamp Act as amended pursuant to Sec.57 of the Special Economic Zones Act which is evident from the registrations done in the past by the SEZ Developer in favour of the Lessees. In this regard, one of our fellow customer (Lessee) has filed a Writ Petition No.211/2016 in High Court, Madras and got a favourable order dated 20.07.2016 stating there is stamp duty exemption for the units in the Special Economic Zone Mahindra World City.

Since we required the lease deed document for certain urgent purposes, we have paid the stamp duty Rs.2,77,511/- under protest with an express understanding that we would be entitled to seek refund of stamp duty from the Registration Department. I/We would therefore kindly request you to kindly refund the stamp duty amount of Rs.2,77,511/- which we paid under protest by way Demand Draft favoring in our name or deposit the amount in the following Account No:20012476443 State Bank of India, IFSC CODE: SBIN0004374

The receipt of this letter may kindly be acknowledged by your *office.*

Thanking you,

yours faithfully,

Seeking refund of 8% of total consideration is Rs.2,77,511/-

Copy to: Mahindra Integrated Township Limited.

5. The lease deed dated 08.09.2015 was registered as Doc.No.4681 of 2016 on the file of the Joint II Sub-Registrar, Office of Sub Registrar, Chengalpet/third respondent and the stamp duty of a sum of Rs.2,77,511/- was paid on the same day i.e., 08.09.2015 under protest.

6. Learned counsel for the petitioner further drew the attention of this Court to the order passed in W.P.No.211 of 2016 dated 20.07.2016 and W.A.Nos.1940 & 2058 of 2019, preferred against the aforesaid order dated 20.07.2016 passed in W.P.No.211 of 2016.

7. Heard the learned counsel on either side and perused the materials available on record.

8. At this juncture, it is pertinent to extract the relevant paragraphs of

the order passed by this Court in W.P.No.211 of 2016 dated 20.07.2016 and the same reads as follows:

> *"18. According to the learned Additional Advocate General, as per Rule 11 (10) of SEZ Rules, no vacant land in the non-processing area shall be leased for business and social purposes. As per Rule 11 (10) of SEZ Rules, the developer or co-developer shall lease out the completed housing facilities not only for the management and office staff but also for the workers of the special economic zones. According to the learned Additional Advocate General, Rule 11 (10) of SEZ Rules was inserted by virtue of an amendment dated 03.02.2009 so as to clarify the intention of the Government that the land, buildings etc., falling outside the notified SEZ will not be eligible for exemption from stamp duty. Further, sale of SEZ land to units or other persons or entitles is not allowed. This was communicated by way of an executive instruction No.65 dated 27.10.2010 to reiterate the purpose for which the housing units inside the SEZ area are to be used. In other words, according to the learned Additional Advocate General, the Circular No.65 has been issued as an extract and supplement to the amendment brought to the statutory provision and it cannot be said that the Circular has been issued contrary to and in derogation of the SEZ Act and Rules. This submission of the learned Additional Advocate General does not merit acceptance. The petitioner has obtained the lease deed from the fourth respondent only with an intention to lease it out or rent it out to the employees of the SEZ. It is not the petitioner who is intending to enjoy the*

infrastructural amenity provided within the non-processing area. What is prohibited is that the land or building within the non-processing area should not be sold to outsiders. When it is not a sale and the intention of the petitioner is only to lease out the land situate within the non-processing area, there is no prohibition or embargo for the petitioner to get the lease deed executed in her favour and also to get exemption from payment of stamp duty.

19. For all the reasons mentioned supra, the impugned order of the first respondent dated 17.11.2015, confirming the order dated 04.06.2015 of the second respondent are set aside. The writ petition is allowed. No costs. Consequently Connected Miscellaneous petitions are closed. The third respondent is directed to register the lease deed dated 06.04.2015 presented by the petitioner within a period of two weeks from the date of receipt of a copy of this order."

9. The relevant paragraphs of the judgment passed by this Court in W.A.Nos.1940 & 2058 of 2019, preferred against the aforesaid order dated 20.07.2016 passed in W.P.No.211 of 2016 are extracted hereunder:

"11. *Concedingly, the lessee has not utilised the property for any purposes, contrary to the purposes of the Special Economic Zones Act,2005. It is not even the case of the*

Appellants-State before us or it was so before the learned Single Judge either. So long as the lease or any other conveyance attracting Stamp Duty is within the specified geographical limits of the Special Economic Zone, we fail to understand as to why Section 3 (3) of the Indian Stamp Act,1899, will not stand attracted. The Stamp Duty is payable on the Conveyance Deed and not on the nature of User, to which the property is sought to be put.

12. In view of the admitted facts before us that the property in question is admittedly located within the Non-processing zone of the Special Economic Zone in question, the learned Single Judge, in our considered opinion, was perfectly justified in upholding the exemption in favour of the writ petitioners. Therefore, we find no merit in these Appeals and they are liable to be dismissed.

10. The above case is squarely applicable to the case and the petitioner is also entitled for exemption from paying the stamp duty in view of the above Division Bench order of this Court.

11. The petitioner is entitled for refund of the stamp duty paid by him in view of the above order passed by the Division Bench of this Court in W.A.No.1940 & 2058 of 2019 which has granted exemption from

payment of the stamp duty. This apart, the petitioner has paid the stamp duty under protest which is evident from the letter dated 08.09.2015 and the postal acknowledgement card is also submitted before this Court and the lease deed was registered on 08.09.2015, after making the payment under protest. On these two grounds, the petitioner is entitled for refund of stamp duty.

12. In view of the ratio laid down by this Court in W.P.No.211 of 2016 dated 20.07.2016 and W.A.Nos.1940 & 2058 of 2019 dated 22.07.2019, this Court directs the respondents 1 to 3 to refund a sum of Rs.2,77,511/- paid by the petitioner towards stamp duty for the lease deed vide Doc.No.4681/2016 dated 08.09.2015, within a period of three months from the date of receipt of a copy of this order.

13. This writ petition is allowed with the aforesaid observation and direction. No costs.

03.07.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

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To:

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Inspector General of Registration,
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