BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Writ Petition(MD)No.3365 of 2025
and
W.M.P(MD)No.2366 of 2025

Clarion Wind Farm Private Limited,
rep. by its Authorised Signatory,
Bascon Futura SV, 4th Floor,
No.10/1, Venkatnarayana Road,
T.Nagar, Chennai – 600 017.

..Petitioner

Vs

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.

2.The Deputy Inspector General of Registration,
Tirunelveli Zone,
Tirunelveli – 627 002.

3.The District Registrar (Audit),
Tirunelveli District,
Tirunelveli – 627 002.

4.Sub Registrar,
Panagudi SRO,
Panagudi – 627 109. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records comprised in No. 7069/A3/2024 dated 26.11.2024 on the file of the 2nd respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Raghuwaran Gopalan
For Respondents : Mr.R.Sureshkumar
Addl. Govt. Pleader

ORDER

The petitioner seeks to quash the proceedings of the second respondent in No. 7069/A3/2024 dated 26.11.2024.

2. The petitioner is the owner of several extents of land situated in Radhapuram and Tenkasi Taluks. For the loans availed by one M/s Orient Green Power Company Limited, the holding company of the writ petitioner, the petitioner executed a deed of mortgage on 23.10.2018 in favour of M/s Yes Bank Ltd. The mortgage was executed as security for a loan of Rs.50 crores.

3. It is the plea of the petitioner that it was a mortgage without possession. Hence, a sum of Rs.40,000/- was paid towards stamp duty and Rs. 10,000/- towards the registration fee. The petitioner pleads that the mortgage

debt was duly discharged and the mortgage has also been released. On 06.11.2023, the fourth respondent called upon the petitioner to pay a sum of Rs. 1,99,59,900/- towards deficit stamp duty and a further sum of Rs.1,90,000/- towards deficit registration charges. It is not in dispute that the demand was with respect to the mortgage deed dated 23.10.2018.

4. The petitioner pleads that the entire dues were discharged, and no due certificate was also issued as on 25.08.2023. The petitioner sent a reply to the notice received from the fourth respondent on 18.12.2023, stating that the deficit stamp duty would not apply as the present document is not one under Article 40(a) of the Indian Stamp Act, 1899 (herein after referred to as "Act"). According to the petitioner, it falls under Article 40(b) of the said Act. Furthermore, a plea was taken that the entire proceedings is barred by virtue of Section 33A of the Act. Despite the same, as the impugned order came to be passed on 26.11.2024, the petitioner is before this Court by way of this writ petition.

5. When the matter was taken up for admission, Mr.R.Sureshkumar, learned Additional Government Pleader, took notice for the respondents. He sought time to file a counter. Time was granted. He has also filed a counter.

6. According to Mr.R.Sureshkumar, in terms of clause 10(a)(ix) of the mortgage deed, the mortgage deed is one by which the possession of the property had been agreed to be handed over, upon directions issued by the mortgagee, and therefore, it falls under Article 40(a) of the Act. He further pleads that the demand is not barred by time, as the audit objections were received, and subsequently, the respondents became aware that there is a deficit. Hence, made the demand immediately. He also points out that the remedy for the petitioner is to approach the first respondent, who is the appellate authority, as per circular No.34675/T2/2018 dated 31.07.2018 and therefore, this writ petition is not maintainable.

7. I have considered the submissions of both sides.

8. The clause that is relied upon by Mr.Raguvaran Gopalan is Clause 17 of the mortgage deed. It states as follows:

> "Without prejudice to the generality of Clause 19 (Coats and Expenses), the Mortgagor does hereby expressly agree with the Mortgagee that neither the Lender(s) nor any receiver appointed as aforesaid shall, by reason of the Mortgagee or such receiver entering into or taking possession of the Mortgaged Properties or any part thereof, be liable to the Mortgagor to

account as a mortgage-in-possession for anything except actual receipts or be liable for any loss or for any default or omission for which a mortgage-in-possession might be liable."

9. A reading of the clause shows that the mortgagor and mortgagee had agreed that by virtue of the mortgage, neither the mortgagee nor any receiver, who is appointed for the said purpose, is entitled to enter into or take possession of the mortgage property.

10. Per contra, Mr.R.Sureshkumar, referring to Clause 10(a)(ix) of the mortgage deed, states that the mortgagee and mortgagor had agreed that the mortgaged properties would be handed over to the mortgagee on a demand made by the mortgagee.

> "The Mortgagor shall always be in a position to hand over peaceful possession of the Mortgaged Properties to the Mortgagee or any nominees, assigns or representatives of the Lender(s)/Mortgagee and shall forthwith hand over peaceful possession of the Mortgaged Properties upon being directed by the Mortgagee."

11. He states that this clause should be treated as one under Article 40(a) of the Stamp Act.

12. The entire reading of the mortgage deed shows that it is a simple mortgage entered into by the petitioner for the term loan that had been advanced by the mortgagee. The fact that the possession had not been handed over to the mortgagee becomes clear from a mere glance at Clause 13(vi), which states that the mortgagee, will be entitled to enforce security interest in the event of default. Furthermore, as long as the mortgagor satisfies the demand of the mortgagee, with respect to the payments demanded, the mortgagee is not entitled to take possession of the property. Similarly, Clause 16 of the mortgage deed shows that in the event of default, the mortgagee is entitled to appoint a receiver in terms of Section 69A of the Transfer of Property Act, 1882, and take possession of the property. This shows that unless and until there is a default, or enforcement of security interest invoking Section 69A, the possession of the mortgagor continues in and over the property.

13. The clause relied upon by Mr.R.Sureshkumar points out the duties of the mortgagor which states that a mortgagor shall not transfer the property in favour of any third party and ensure that the peaceful possession will be handed over upon being directed by the mortgagee. This shows that there must be an act, which enables the mortgagee to demand the mortgagor to hand over

possession. Hence, it is not a situation, which is covered under Article 40(a), where the possession is handed over or agreed to be handed over at a later date. Possession in this case would arise, as pointed out above, only when there is a default committed by the mortgagor and the mortgagee decided to invoke Section 69 r/w 69A of the Transfer of Property Act, 1882. In this case, both the eventualities never arose, as the mortgage had been duly discharged.

14. Apart from this, in terms of Section 33A of the Indian Stamp Act, the Registrar of a District is entitled to demand the payment of deficit stamp duty after an enquiry. However, the Second Proviso to Section 33A(i) makes it clear that there is a period of three years from the date of registration of the instrument. It is not in dispute that the document was registered on 23.10.2018. The period of three years lapsed on 22.10.2021. Even if I were to apply the extension of the Limitation Act, as directed by the Supreme Court in Suo Moto Writ Petition (Civil) No.3/2020 dated 23.03.2020, the limitation expires on 30.04.2022. Therefore, the issuance of notice on 06.11.2023 is hopelessly barred by limitation.

15. The plea of Mr.R.Sureshkumar that the aspect of deficit stamp duty came to the knowledge of the department only after an audit inspection in 2020

does not improve his case. Section 33A(i) 2nd proviso does not give any room for the alleged delay in discovery of the deficit stamp duty at the instance of the Audit Department of the Registration Wing.

16. It is here that the submission of Mr.Raguvaran Gopalan has to be taken note of. He submits, rightly, in my view, that the Audit Department had pointed out the last date to initiate action was on 22.10.2021. Yet the impugned proceedings were initiated on 06.11.2023. Therefore, even if I agree to the submission of Mr.R.Sureshkumar that the audit report gives the cause of action for the issuance of notice, the fourth respondent had slept over the audit report from 2021 to 2023.

17. In the light of the above discussion, I am unable to sustain the impugned proceedings. The writ petition is allowed. The impugned proceedings No. 7069/A3/2024 dated 26.11.2024 on the file of the 2nd respondent is quashed. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2025

NCC : Yes/No
Index : Yes/No
Internet:Yes
skn

To

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.

2.The Deputy Inspector General of Registration,
Tirunelveli Zone,
Tirunelveli – 627 002.

3.The District Registrar (Audit),
Tirunelveli District,
Tirunelveli – 627 002.

4.Sub Registrar,
Panagudi SRO,
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V.LAKSHMINARAYANAN, J.

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