

M/S Varaha Infra Limited vs State Of Rajasthan on 4 August, 2023

Author: Nupur Bhati

Bench: Nupur Bhati

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Civil Writ Petition No. 12189/2019

M/s Varaha Infra Limited, A Company Registered Under The Provisions Of The Companies Act, 1956, Having Its Registered Office At Plot No. 6, Jalam Vilas Scheme, Paota 'b' Road, Jodhpur, Rajasthan-342006, Through Its Authorized Signatory, Sh. Rajesh Bhootra S/o Sh. Ramratan Bhootra, Aged About 44 Years, B/c Bhootra, R/o 6, Near Oswal Ka Niyati Nohra, Pello Mundra Ki Gali, Jodhpur, Rajasthan-342006.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Finance (Revenue), 1st Floor, Main Building, Gate 2, Government Secretariat, Jaipur, Rajasthan 302005.
2. Registration And Stamps Department, Rajasthan, Through Collector (Stamps), Jodhpur Circle, Jodhpur, Above Rural Treasury, Rajasthan High Court Campus, Jodhpur, Rajasthan.
3. Registration And Stamps Department, Through Sub Registrar-2, Jodhpur, Above Rural Treasury, Rajasthan High Court Campus, Jodhpur, Rajasthan.

---Respondents

| | | |
|-------------------|---|---|
| For Petitioner(s) | : | Mr. Ravi Bhansali, Sr. Adv., assisted by Mr. Mohit Singhvi |
| For Respondent(s) | : | Mr. Sandeep Shah, Sr. Adv., cum AAG assisted by Ms. Akshiti Singhvi |

HON'BLE DR. JUSTICE NUPUR BHATI

JUDGMENT

| | | |
|---------------|----|------------|
| Reserved on | :: | 24/07/2023 |
| Pronounced on | :: | 04/08/2023 |

1. The present writ petition is filed under Articles 226 and 227 of the Constitution of India, claiming following reliefs:

"It is therefore, most respectfully prayed that in the light of arguments advanced and grounds raised the record of the case may kindly be called for and this petition may kindly be (2 of 22) [CW-12189/2019] allowed with costs throughout and by an appropriate writ, order or direction, this court may be pleased to:

i) Quash the impugned order(Annexure-8) dated 23-07- 2019 passed by Respondent No. 2; and/or

ii) Quash the notice dated 21.06.2018 (Annexure-3), 11.10.2018 (Annexure-5) issued by the Respondent No. 2 & notice dated 25.01.2019 (Annexure-6) issued by the Sub-

Registrar No. 2 of and/or

iii) Declare that the Respondent have no jurisdiction to raise a demand u/s 54 of the Rajasthan Stamps Act, 1998 when the WCCA is already being properly registered as per the applicable stamp laws of NCT of Delhi, i.e. the place of its execution; and/or

iv) Declare the demand raised by the Respondents contrary to the spirit of Rajasthan Stamp Act, 1998 and the Constitution of India, 1950; and/or

v) Pass any such other writ(s), order(s), directions(s) as are deemed fit and proper in the interest of justice."

2. The brief facts of the case are that the petitioner company - Varaha Infra Limited is a public limited Company incorporated under the provisions of the Companies Act, 1956 and has its registered office at Jodhpur, Rajasthan. That the Petitioner Company is inter alia engaged in construction of roads, bridges etc.

3. The Petitioner-company, in order to meet its business requirements and expansion, availed Working Capital Facility for an aggregate amount of Rs. 738.34 Crore from consortium of banks, on specific terms and conditions agreed between the Petitioner Company and the Consortium of Banks.

4. Thereafter, to avail the Working Capital Facility, the Petitioner Company executed three Working Capital Consortium Agreement (hereinafter referred to as 'WCCA') dated 06-12-2013, 20-03-

(3 of 22) [CW-12189/2019] 2014 and 18-04-2015 with the consortium of a total number of Nine banks, wherein the WCCA dated 06-12-2013 being the principle agreement, and would be the governing piece of docket for all the future outcomes and transactions, as decided through mutual consensus between the executing parties. That SBI being the biggest lender of the other banks was resultantly declared to be the lead lender.

5. Thereafter in pursuant to the grant of sanction letters by each bank and the execution of the WCCA, the stamp duty as applicable under the Stamp and Registration Laws of the place of execution of the agreement, i.e., the NCT of Delhi, India was paid for the registration of the said WCCA, on every document which was required to be registered before the Registration and Stamp Department, Delhi.

6. That Article 2 of the WCCA enumerating the Security agreed to be hypothecated by the Petitioner Company in favor of the consortium of banks to avail the Working Capital Facility in its favor mentions the following:

"i) The borrower's entire current assets (present and future), including but not limited to, stocks of raw materials, stores and spares, stock in progress, finished and semi finished articles/material etc. lying in the factories of the Borrower elsewhere and including goods in transit, present and future receivables, books debts, documentary bills, export bills, cheques, drafts, advances receivables in cash and kind.

ii) Equitable mortgage over the immovable properties as provided by the borrower and acceptable to the lender.

(4 of 22)

[CW-12189/2019]

iii) Personal Guarantees of the Director of the borrower."

7. And, the three aforementioned primary securities for the facility availed by the Petitioner Company, though forming part of the WCCA, separate deeds for the hypothecation of current assets and related securities as mentioned in point no. 1 and the deeds for personal guarantees of the Directors of the Petitioner Company as mentioned in point no. 3 were executed between the parties to the agreement, separately. Also to mention that, the original documents of titleship for the numerous immovable properties were provided to the consortium and separate stamp duty was paid by the Petitioner Company.

8. The Working Capital Facility was taken to utilize the funds, in the infrastructure development projects ongoing not only in the state of Rajasthan, but also for the projects pending in the states of Haryana, Maharashtra and Punjab, which can very well be identified from a glance at the Clause 1.4 of the Article 1 i.e. the Facility of the WCCA dated 06-12-2013.

9. After almost five years from the execution of the WCCA, the petitioner company received a demand notice dated 21.06.2018 under Section 54 of the Rajasthan Stamp Act, 1998 (hereinafter referred to as 'the Act of 1998') wherein demand of stamp duty to the tune of Rs. 12,11,47,300/- was raised by the Sub-Registrar 2, Department of

Registration and Stamps, Jodhpur, Respondent No. 3.

10. Thereafter the petitioner in immediate response of the aforementioned notice, furnished reply dated 02-07-2018 to the (5 of 22) [CW-12189/2019] Sub-Registrar 2, Department of Registration and Stamps, Jodhpur, Respondent No. 3, stating that the place of the execution of the WCCA being NCT of Delhi, the Stamp Duty has already been paid in NCT of Delhi, India.

11. Then after the above notice dated 21.06.2018, one more notice dated 11.10.2018 was again sent to the petitioner company in pursuance of Section 54 and Article 37 B of the Schedule of the Act of 1998 by the Sub-Registrar 2, Department of Registration and Stamps, Jodhpur demanding the stamp duty of 2.15% (sum of Rs. 12 Crores approx.) and the demand notice also mentioned a condition that if the petitioner company fails to pay the amount demanded in the notice, then the matter will be referred to the Collector (Stamps), Jodhpur.

12. That the aforesaid demand notices dated 21.06.2018 and 11.10.2018 were sent to the petitioner company on the basis that although the WCCA was executed in the NCT of Delhi, but the properties being situated in the state of Rajasthan, and hence, the petitioner company is required to pay the stamp duty.

13. The preliminary objections raised by the Petitioner in its reply dated 02.07.2018 was not considered by the Sub-Registrar 2, Department of Registration and Stamps, Jodhpur, Respondent No. 3, referred the matter to the Collector (Stamps), Department of Registration and Stamps, Jodhpur, Respondent No. 2, and the Reference Case was registered as Stamp Matter No. 487/2018.

14. Thereafter, the Collector (Stamps), Department of Registration and Stamps, Jodhpur, passed the final order dated 23-07-2019, rejected the arguments advanced by the petitioner (6 of 22) [CW-12189/2019] company in it's reply to the demand notices sent by the Respondent No. 3 earlier dated 21.06.2018 and 11.10.2018 and raised a demand of Rs.44, 42, 66, 799/- (Rupees Forty Four Crore Forty Two Lacs Sixty Six Seven Hundred and Ninety Nine Only) inclusive of the interest and other miscellaneous charges against the Petitioner Company.

15. Thereafter being aggrieved by the aforesaid order dated 23.07.2019 passed by the Collector (Stamps), Department of Registration and Stamps, Jodhpur, Respondent No. 2, the present Writ Petition is preferred by the petitioner company.

16. The learned counsel for the petitioner company submitted that the order dated 23.07.2023 passed by the Collector (Stamps), Respondent No. 2, is contrary to law as it does not fulfill the ingredients of Section 3 and 20 of the Act of 1998. Section 3 and 20 of the Act of 1998 reads as follows:

3. Instrument chargeable with duty - Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable

with duty of the amount indicated in the Schedule as the proper duty therefore respectively, that is to say,-

(a) every instrument mentioned in that Schedule, which not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act;

(b) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any matter or thing done or to be done in the State and is received in the State, or relates to any property situate in the State: Provided that no duty shall be chargeable in respect of, -

(7 of 22) [CW-12189/2019]

(i) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(ii) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1958 (Act No. 44 of 1958), as amended by subsequent Acts.

20. Payment of duty on certain instrument liable to increased duty in the State of Rajasthan- When any instrument has become chargeable in any part of India other than the State of Rajasthan with duty under the Indian Stamp Act, 1899 (Act No. 2 of 1899) or under any other law for the time being in force in such part and thereafter becomes chargeable with a higher rate of duty in the State of Rajasthan under this Act,-

(i) the amount of duty chargeable on such instrument shall be the amount chargeable on it under this Act less the amount of duty, if any, already paid on it in India; and

(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamp necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same person as though such instrument were an instrument received in this State for the first time, when it became chargeable with the higher duty.

17. The learned counsel for the petitioner also submitted that the WCCA was executed at the NCT of Delhi and was registered in the same state after paying the stamp duty and registration charges as per the laws applicable as per the stamp laws in the NCT of Delhi and therefore, once the document is executed in the NCT of Delhi, the laws prevailing there needs to be complied with and therefore, the question of Respondents demanding the stamp duty (8 of 22) [CW-12189/2019] as per the Act of 1998, i.e, as per the laws prevailing in the State of Rajasthan does not arise.

18. The learned counsel for the petitioner further submitted that the Respondent authorities does not have jurisdiction to send notice under Section 54 of the Act of 1998, which reads as follows:

54. Intimation of reference and payment of duty before reference- (1) Notwithstanding anything herein before contained, the registering officer shall, before making reference to the Collector under this Act, intimate to the parties concerned about the reference proposed to be made by him. (2) In case the person liable to pay the duty offers to pay the amount of duty chargeable on such instrument, the registering officer shall, on payment of such duty, certify it on the instrument by endorsement and shall not make the references.

and therefore, all the subsequent proceedings stands null and void.

19. The learned counsel for the petitioner also submitted that the most of the security for the loan was created by the hypothecation of the Current Assets, Cash Flows, Machines, etc. are mostly situated in the State of Punjab, Maharashtra and Haryana and not just their, the stamp duty stood paid in the NCT of Delhi and hence, the demand of the stamp duty by the Respondents is illegal and also without jurisdiction.

20. The learned counsel for the petitioner further submitted that the Section 51 and 54, under which the demand notices dated 21.06.2018 and 11.10.2018 by the Sub-Registrar 2, Department of Registration and Stamps, Jodhpur, Respondent No. 2, were issued, failed to get attracted as the language of the aforesaid (9 of 22) [CW-12189/2019] sections suggests that it talks about unregistered and unstamped documents and it is already submitted that the WACC is duly registered and stamped in NCT of Delhi.

21. The learned counsel for the petitioner placed reliance on the case of Kalabharti Advertising v. Hemant Vimalnath Narichania and Ors., reported in AIR 2010 SC 3745, wherein it was observed:

"25. The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law"

means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. Passing an order for an unauthorized purpose constitutes malice in law."

22. The learned counsel for the petitioner also placed reliance on the case of Ashiana Amar Developers v. State of Rajasthan & Ors., (SBWP 4402/2013), wherein it was observed by the

coordinate bench of this court that the Respondents do not have jurisdiction to issue notices under Section 54 and subsequently, the initiation proceedings under Section 51 of the Act of 1998 does not even come into picture.

23. The learned counsel for the petitioner further placed reliance on para nos. 24, 28, 29, 32 and 33 in the judgement passed by (10 of 22) [CW-12189/2019] this High Court in the case of Himachal Futuristic v. State of Rajasthan, (DB Special Appeal Writ No. 1063/2019), wherein it was held that:

"24. Applying the aforesaid test as laid down by the Hon'ble Supreme Court, a plain reading of Section 3(b) of the Stamp Act of 1998 reveals that every instrument mentioned in the Schedule appended to the Stamp Act of 1998, which is executed out of the State, is chargeable with stamp duty under the Stamp Act of 1998, a State legislation, when it relates to any property situated, or to any matter or thing done or to be done in the State and is received in the State. Therefore, the provision clearly provides for the taxing event, which makes an instrument, though executed out of the State of Rajasthan, chargeable with stamp duty under the State legislation, i.e. the Stamp Act of 1998. The taxing event, in view of expression, "relates to any property situate, or to any matter or thing done or to be done in the State and is received in the State" bears connection in the nature of territorial nexus. In the absence of aforesaid legal requirement under Section 3 of the Stamp Act of 1998, an instrument as defined under the Stamp Act of 1998 even though as a conveyance and mentioned in the Schedule appended to the Stamp Act of 1998, could not be subjected to stamp duty. Further, if the first legal requirement under expression, i.e., "relates to any property situate, or to any matter or thing done or to be done in the State", is absent, even if it is received in the State, it may not be chargeable with stamp duty under the State legislation, i.e., the Rajasthan Stamp Act, 1998. Therefore, it is not enough that the instrument is a conveyance as covered by entry at Serial No. 21 in the Schedule appended to the Stamp Act of 1998, but it must bear territorial nexus as required under sub-section (b) of Section 3 of the Stamp Act of 1998, if the instrument happens to be an instrument executed out of the State.

(11 of 22) [CW-12189/2019]

28. Applying the principles as discussed in aforesaid decisions, the State legislation, i.e., the Stamp Act of 1998, while providing for chargeability of stamp duty on instruments executed outside the State, when received in the State, provides for territorial nexus in expression, "relates to any property situate, or to any matter or thing done or to be done in the State", incorporated in sub-section (b) of Section 3 of the Stamp Act of 1998. Section 20 of the Stamp Act of 1998 provides for payment of duty on certain instrument liable to increased duty in the State of Rajasthan. Under this provision, when any instrument has become chargeable in any part of India other than the State of Rajasthan with duty under the Indian Stamp Act, 1899 or under any other law for the time being in force in such part and thereafter becomes chargeable with a higher rate of duty in the State of Rajasthan under the Stamp Act of 1998, the amount of duty chargeable on such instrument shall be the amount chargeable on it under the Stamp Act of 1998 less the amount of duty, if any, already paid on it in India. It further provides that in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamp necessary for the payment of the amount of duty chargeable on it under the earlier clause in the same manner and at the same time and by the same

person as though such instrument was an instrument received in the State for the first time, when it became chargeable with the higher duty. In accord with the aforesaid statutory scheme engrafted under Section 3 of the Stamp Act of 1998, i.e. charging section, Section 21 of the Stamp Act of 1998 provides for payment of difference of duty on copies of instruments registered out of the State by providing that where any instrument is registered in any part of India other than the State of Rajasthan and such instrument relates, wholly or partly to any property situated in the State of Rajasthan, the copy of such instrument shall, when received in the State of Rajasthan under the Registration Act, 1908, be liable to be charged with the difference of duty as on the original instrument. Clearly therefore, it is only the difference of duty in case the instrument is liable to (12 of 22) [CW-12189/2019] increased duty in the State of Rajasthan, that is payable under the Stamp Act of 1998.

29. Having analysed the statutory scheme of chargeability of stamp duty on an instrument executed out of the State of Rajasthan applying the principles enunciated by the Hon'ble Supreme Court, i.e., with regard to taxing event and territorial nexus, in the present case, the instrument, i.e. the order of the High Court of Himachal Pradesh sanctioning the scheme of arrangement and amalgamation of Sunvision Engineering Company Private Limited with the appellant- company, i.e. Himachal Futuristic Communications Limited, upon being received in the State of Rajasthan, would be chargeable to stamp duty only in respect of the properties situated in the State of Rajasthan and not in respect of the shares transferred because the taxing event insofar as transfer of shares by virtue of order of amalgamation passed by the High Court of Himachal Pradesh is concerned, it did not happen within the territory of the State of Rajasthan. Both the companies are situated outside the territory of Rajasthan. The entire proceedings of arrangement and amalgamation and its sanction took place outside the State of Rajasthan. Therefore, to that extent, stamp duty under the Stamp Act of 1998 would not be leviable on the order of the High Court of Himachal Pradesh passed under the Companies Act as referred to at Serial No. 21 in the Schedule appended to the Stamp Act of 1998. The transfer of shares, having taken place outside the territorial application of the Stamp Act of 1998, by virtue of order relating to amalgamation, would not be taken into consideration for the purposes of levy of stamp duty under the State Act, i.e., the Stamp Act of 1998.

32. The finding of the learned Single Judge that the stamp duty, if not paid in the State of Himachal Pradesh, could well be levied under the Stamp Act of 1998, does not have any legal basis in view of the discussion as above. Firstly, there is no material on record placed by any of the parties to establish that the instrument-inquestion was leviable to (13 of 22) [CW-12189/2019] stamp duty under the State law in Himachal Pradesh. Secondly, irrespective of whether or not the appellant was liable to pay stamp duty in the State of Himachal Pradesh and whether or not it has been paid in that State, the stamp duty would be leviable only in respect of the properties situated in the State of Rajasthan and not in respect of transfer of shares under the instrument as that transfer by execution of instrument and passing of order by the High Court of Himachal Pradesh does not bear any territorial nexus.

Reliance placed by learned Additional Advocate General on the judgment of the Hon'ble Supreme Court in Hindustan Lever & Another Vs. State of Maharashtra & Another (supra) is misplaced as in that case the issue arising for consideration was as below:

"8. The issues which are debated before us are:

(1) whether the State Legislature had the legislative competence to impose stamp duty on the order of amalgamation passed by a court?

and (2) whether an order sanctioning a scheme of amalgamation under Section 394 read with Section 391 of the Companies Act, 1956, is liable to be stamped in accordance with the provisions of the Bombay Stamp Act in its application in the State of Maharashtra?"

In the present case, it is not the case of the petitioner that the legislature does not have the competence to impose stamp duty on order of amalgamation passed by a Court but chargeability to stamp duty in terms of the provisions contained under the statutory scheme of Section 3 of Stamp Act of 1998 and issue regarding territorial nexus. The decision of the Hon'ble Supreme Court in *New Central Jute Mills Co. Ltd. & Others Vs. State of West Bengal & Others*(supra) does not support the argument of the respondents State and it only supports the case of the petitioner that only the difference of the duty in case rate of duty is higher in the State of Rajasthan would be payable in view of the provisions contained in Section 21 of the Stamp Act of 1998. This is clear from what has been held by the (14 of 22) [CW-12189/2019] Hon'ble Supreme Court in Para 20 of the aforesaid judgment which is reproduced as below:

(20) The result of this will be that if an instrument after becoming liable to duty in one State on execution there becomes liable to duty also in another State on receipt there, it must first be stamped in accordance with the law of the first State and it will not require to be further stamped in accordance with the law of the second State when the rate of that second State is the same or lower; and where the rate of the second State is higher, it will require to be stamped only with the excess amount and that in accordance with the law and the rules in force in the second State."

33. As sequitur to aforesaid consideration and discussion, we hold that the appellant would be liable for payment of stamp duty only on the market value of the properties situated in the State of Rajasthan required to be assessed in accordance with the statutory scheme of the Stamp Act of 1998. The demand for payment of stamp duty in excess of such liability is in excess of authority under the Stamp Act of 1998. 34. In the result, order dated 07.06.2019 passed by the learned Single Judge is held unsustainable in law and the same is set aside. Writ petition is also allowed. Order and notice dated 07.03.2018 issued by Respondent No. 2, The Collector (Stamps), Jaipur Circle III (Annexure P-1 and Annexure P-2 attached with the writ petition) to the extent of including value of shares issued pursuant to the scheme of arrangement and amalgamation are also quashed. Respondent No. 2 is directed to carry out fresh assessment of duty payable by the appellant-company in accordance with the directions issued by this Court."

24. The learned counsel for the petitioner also submitted that vide Circular dated 28.12.2020, the Government of Rajasthan observed that a plethora of complaints pertaining to wrongful and (15 of 22) [CW-12189/2019] inappropriate calculation of stamp duty have been made with the concerned

authorities and to address the situation, a comprehensive analysis to clarify the amount of stamp duty to be levied on Simple Loan Agreement, Equitable Mortgage and Simple Mortgage without possession has been presented in the said circular and the said circular asserts that the stamp duty to be paid for the stated heads of instruments would be levied in consonance with the provisions of the circular and any demand made in conflict with the circular shall be reconsidered in light of it and the provision of the said circular are duly applicable in the present case and therefore, in the due pursuance of the circular dated 28.12.2020, the order of Collector (Stamps), Respondent No. 2 may kindly be remanded back for reconsideration upon the development of law cited.

25. The learned counsel for petitioner also placed reliance on the order dated 10.02.2021 passed by a Coordinate Bench at Jaipur Bench, Jaipur, in the case of [(Bank of India v. State of Rajasthan, (SBCWP 10412/2020)], stating that the controversy involved in the present case is identical to the abovementioned case and thus, the present writ petition be disposed in the light of it and same is reproduced hereunder:

"This Court finds that the circular dated 28th December, 2020 specifically provides that the demand, which has already been raised in respect of Simple Loan Agreement, Mortgage by deposit of title deed (Equitable Mortgage) and Simple Mortgage without possession, can be reconsidered and such issues can be reexamined.

This Court finds that the circular dated 28th December, 2020 is required to be considered and the Collector (16 of 22) [CW-12189/2019] (Stamps), Jaipur Circle-I is required to look into the matter again after keeping in mind the circular, issued by the State Government. The Authority will also be free to decide the applicability of requirement of paying stamp duty, as per law."

26. On the other hand, the learned counsel for the respondents submitted that the petitioner has itself admitted that the document was received in the State of Rajasthan and therefore, the petitioner company is liable to pay the stamp duty in line with Section 3 and Section 20 of the Act of 1958, which reads as follows:

3. Instrument chargeable with duty - Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable with duty of the amount indicated in the Schedule as the proper duty therefore respectively, that is to say,-

(a) every instrument mentioned in that Schedule, which not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act;

(b) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any matter or thing done or to be done in the State and is received in the State, or

relates to any property situate in the State: Provided that no duty shall be chargeable in respect of, -

(i) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(ii) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the (17 of 22) [CW-12189/2019] Merchant Shipping Act, 1958 (Act No. 44 of 1958), as amended by subsequent Acts.

20. Payment of duty on certain instrument liable to increased duty in the State of Rajasthan- When any instrument has become chargeable in any part of India other than the State of Rajasthan with duty under the Indian Stamp Act, 1899 (Act No. 2 of 1899) or under any other law for the time being in force in such part and thereafter becomes chargeable with a higher rate of duty in the State of Rajasthan under this Act,-

(i) the amount of duty chargeable on such instrument shall be the amount chargeable on it under this Act less the amount of duty, if any, already paid on it in India; and

(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamp necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same person as though such instrument were an instrument received in this State for the first time, when it became chargeable with the higher duty.

27. The learned counsel for the respondents also submitted that even if the WCCA was executed and the stamp duty was paid at the NCT of Delhi, still the provision of the Act of 1998 would apply upon the petitioner company as the language of Sections 3 and Section 20 suggests that when an investment is made in the State of Rajasthan and the document is received in the State of Rajasthan, then the provisions of the Act of 1998 will be applied upon the document.

28. The learned counsel for the respondents further submitted that it is the admitted fact that the registered office of the petitioner company is at Jodhpur and also all the mortgaged property in the said WCCA is situated in the State of Rajasthan (18 of 22) [CW-12189/2019] and hence, the reference proceedings initiated by the Collector (Stamps), Jodhpur was right and in line with the Section 54 of the Act of 1998, which reads as follows:

54. Intimation of reference and payment of duty before reference- (1) Notwithstanding anything herein before contained, the registering officer shall, before making reference to the Collector under this Act, intimate to the parties concerned about the reference proposed to be made by him. (2) In case the person liable to pay the duty offers to pay the amount of duty chargeable on such instrument, the registering officer shall, on payment of such duty, certify it on the instrument by

endorsement and shall not make the references.

29. The learned counsel for the respondents also submitted that as far as the document in question is concerned, it falls under the definition of mortgage deed provided under Section 2 (XXIV) of the Act of 1998 and reads as follows:

Section- 2 (xxiv) "mortgage deed" includes every instrument, whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of any engagement, one person transfers, or creates to, or in favour of, another, a right over or in respect of specified property; and the charging power is provided under Section 3 and Section 20 of the Act of 1998 and hence, the stamp duty is payable in the State of Rajasthan.

30. The learned counsel for the respondent further submitted that there is an alternate remedy available to the petitioner company under Section 65 of the Act of 1998 and placed reliance on *Genpact India Pvt. Ltd. v. Deputy Commissioner of Income Tax*, reported in 2019 SCC Online SC 1500; *Asst. Commissioner of Sales Tax & ors. v. Commercial Steel Ltd.*, (19 of 22) [CW-12189/2019] reported in SCC Online SC 884; *Ansal Housing & Construction Ltd. v. State of UP & Anr.*, reported in (2016) 13 SCC 305; and *Pheonix ARC Pvt. Ltd. v. Vishwa Bharti Vidya Mandir & Ors.*, reported in (2022) 5 SCC 345.; The learned counsel also placed reliance on *Param Prasad Charitable Trust v. State of Rajasthan & Ors.* (DBSAW 619/2022); *M/S Maharaja Enclave v. State of Rajasthan & Ors.* (SBCWP 10001/2018), wherein the coordinate bench of this court while observing the case of *Har Devi Asnani v. State of Rajasthan* reported in (2011) 14 SCC 160, held that there is availability of alternate and efficacious remedy to the petitioner and the court has remanded the matter to the appropriate authority; *M/S Fine Mineral Industry v. State of Rajasthan & Ors.* (SBCWP 7943/2007); *Smt. Durga Bhati v. State of Rajasthan* (SBCWP 14741/2017); *Nagendra Singh v. State of Rajasthan* (SBCWP 14541/2019); *Vinod Infra Developers Ltd. v. State of Rajasthan* (SBCWP 2936/2021).

31. The learned counsel for the respondents also submitted that when there is a situation where the stamp duty upon the instruments is coming within several descriptions under the Schedule of the Act of 1998, then as per Section 6 and 7, which reads as follows:

6. Instrument 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 (20 of 22) [CW-12189/2019] comprising or relating to one of such matters would be chargeable under this Act.

7. Instruments coming within several descriptions in the Schedule- Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in the Schedule, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties.

32. Learned counsel for the respondents also submits that the petitioner has not gone through the provisions of Section 51 or probably the petitioner wants to evade reading of the provision, which clearly starts with the word that when the instruments are undervalued, then, how to value them and nowhere provides for registration. Rather, sub-Section (4) and sub-Section (5) of Section 51 of the Act of 1998, operate in totally different field, which have not at all been probably gone through by the petitioner as there is requirement of registration of the document as far as the abovementioned sub-Sections of the Act of 1998 are concerned. Learned counsel for the respondents also submits that a bare perusal of notice will reveal that the same has been issued after considering the fact that the instrument was undervalued and requisite stamp duty was not paid. The notice will also reveal that exact amount of stamp duty and the outstanding stamp duty as per the Act of 1998, after deduction of the amount, has already been paid at Delhi.

33. The learned counsel for the respondents also submits that a total of 19 properties which are situated in the State of Rajasthan and further, the clause 2.1 of the Agreement itself reveals that all the properties are mortgaged. Thus, passing of the order in (21 of 22) [CW-12189/2019] question, was rightly considered while issuing the impugned notices. Learned counsel for the respondents further submits that the petitioner was unable to show on record to fortify the fact that the properties which were shown in Annexure-1 of the writ petition, were not given the security of 10% to avail its facility and also the fact that the document was received in the State of Rajasthan and this fact was sufficient enough to charge duty. Furthermore, the head office of the petitioner company is situated in the State of Rajasthan and therefore, the impugned order has been rightly passed by considering the relevant provisions of the Stamp Act.

34. Heard the learned counsels for both the parties and perused the records of the case as well as the judgments cited at the Bar.

35. This court finds that in the case of Bank of India v. State of Rajasthan, (Supra), the court held that:

"This Court finds that the circular dated 28th December, 2020 specifically provides that the demand, which has already been raised in respect of Simple Loan Agreement, Mortgage by deposit of title deed (Equitable Mortgage) and Simple Mortgage without possession, can be reconsidered and such issues can be reexamined.

This Court finds that the circular dated 28th December, 2020 is required to be considered and the Collector (Stamps), Jaipur Circle-I is required to look into the matter again after keeping in mind the circular, issued by the State Government. The Authority will also be free to decide the applicability of requirement of paying stamp duty, as per law."

Thus, in view of the fact that in similar controversy, the Court had remanded the matter back to the Collector (Stamps), this Court (22 of 22) [CW-12189/2019] while maintaining judicial discipline and judicial consistency and without entering into merits of the case, deems it appropriate to dispose of

the instant case in light of the order dated 10.02.2021 passed in Bank of India Vs. State of Rajasthan & Ors. (supra).

36. Accordingly, the order dated 23.07.2019 passed by Collector (Stamps), Jodhpur, as well as all consequential orders dated 21.06.2018 and 11.10.2018 passed by Sub-Registrar No.2, Department of Registration and Stamps are set aside. The matter is remanded back to the Collector (Stamps), Jodhpur. The Collector (Stamps), Jodhpur, is directed to look into the matter again while keeping in mind the Circular dated 28.12.2020 issued by the State Government and the Authority will also be free to decide applicability of the requirement of paying stamp-duty, as per law. The Collector (Stamps) will afford opportunity to both the sides and after considering the relevant documents and hearing of the parties, fresh order may be passed in accordance with law.

37. With the aforesaid, the present writ petition is disposed of and all the pending applications are also disposed of.

(DR. NUPUR BHATI), J Devesh Thanvi/-

Powered by TCPDF (www.tcpdf.org)