

The Sub Registrar Amudalavalasa vs M/S Dankuni Steels Ltd. on 26 April, 2023

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Bench: Hrishikesh Roy, K.M. Joseph

REPOR

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3134-3135 OF 2023
[@ SLP (CIVIL) NO(S).8708-8709/2019]

THE SUB REGISTRAR,
AMUDALAVALASA & ANR.

...APPELL

VERSUS

M/S DANKUNI STEELS LTD. & ORS.

...RESPON

JUDGMENT

K.M. JOSEPH, J.

1. Delay condoned. Leave granted.

2. By order dated 13.06.2002, the High Court of Andhra Pradesh ordered M/s. Midwest Iron & Steel company Ltd. (which is Respondent No.3 in the appeals) to be wound up. Though pursuant to order dated 22.09.2003, efforts were made to sell the property of respondent no.3 in three lots, finally, based on an auction for a consolidated sale, the second respondent herein, namely, M/s. SMC Marketing Private Ltd. who figured as the highest bidder, became the successful auction purchaser. It bid for the property which consisted of land, building, civil works, plant & machinery and current assets, etc. The amount for which the second respondent was declared the highest bidder was Rs.8.35 crores. On the basis of a direction given in C.A. No. 1203 of 2004 at the instance of the second respondent, the Official Liquidator was accorded permission by the learned Company Judge to execute the sale deed in favour of the first respondent in the appeals, viz, M/s. Dankuni Steel Ltd. A sale deed came to be executed by the Official Liquidator in favour of the first respondent dated 5th August, 2004. In the sale deed in the preambular portion we may notice the following statements:

“D. WHEREAS the Official Liquidator has put the properties of the Company for sale in terms of orders of the Hon'ble High Court and whereas the Hon'ble High Court of

Andhra Pradesh, Hyderabad by an order dated 04-02- 2004 made in C.A.No.736/2003 in R.C.C.No. 10/2001 (copy enclosed) was pleased to confirm the sale of the assets pf the Company such as land, building, plant and machinery and other assets in favour of Messrs SMC Marketing Pvt. Ltd., having its office at Room No.617, 6th floor, P 41, Princep Street, Kolkatta - 700 072, represented by its authorized representative Sri Amar Chand. Choudhary for a total sale consideration of Rs.8.35 crores.

E. WHEREAS the Hon'ble High Court of Andhra Pradesh, Hyderabad passed by an order dated 15-06-2004 made in C.A. No. 1202/2004 was pleased to direct the Official Liquidator to execute necessary conveyance deeds for the land sold in auction in favour of the vendee here in who is the nominee of the said highest bidder Messrs SMC Marketing Pvt. Ltd. A copy of which is enclosed herewith.”

3. Clause H of the preamble, reads as follows:-

“H. WHEREAS the Vendee has paid the full consideration to the vendor within the time stipulated by the Hon'ble High Court of Andhra Pradesh, Hyderabad and as per the terms and conditions of the sale, properties have been sold by the Vendor to the Vendee on 'as is where is whatever there is basis'. Vendor hereby admits and acknowledges that he has received the full consideration from the Vendee and there is no balance payable by him. Further the Vendor has already given possession of the Schedule property to the Yendee under due acknowledgement. The Vendor hereby conveys, transfers and assigns all the rights, title interest together with all the liberties, advantages, held and enjoyed by Messrs Midwest Iron & Steel Co. Ltd., to the Vendee, who shall hereinafter enjoy the same with full and absolute rights without any dispute or objection from any source as owner.

AND WHEREAS the total sale consideration is Rs.8.35 crores for the entire assets of the company comprising of land, building, Civil works, plant & machinery and current assets, etc”

An amount of Rs.1,01,05,000/- is taken as the value of the land, building and civil works basing on the offer received by the official liquidator when the assets were put for sale individually and the purchaser has agreed to pay the stamp duty / registration fees /transfer fees as per the-value derived by the sub registrar.

WHEREAS the land to an extent of Acres 46.7167 cents situated in Dusi Village as per details given below is now registered in favour of the VENDEE through this document, hereinafter referred to as the 'SCHEDULED PROPERTY' for brevity, which is fully described in the schedule of property and clearly delineated in red colour in the plan annexed hereto.

4. Next, the recital clause (1) reads as follows:

“NOW THE VENDOR HEREBY ASSURES AND COVENANTS THE VENDEE AS UNDER:

In consideration of the said amount paid by the Vendee, the Vendors hereby sell, transfer, convey, alienate, assign unto and to the use of the Vendee absolutely and forever all that the scheduled property along with all the rights, easements, interests etc., the rights which ordinarily pass on through such sale on and over the said land in favour of the Vendee to hold and to enjoy the same as absolute owner.”

5. Next, we must notice the schedule of the property which inter alia reads as follows:

“All that piece and parcel of the property admeasuring acres of 46.7167 cents situated at Dusi Village, Srikakulam District, within the limits of Sub-Registrar, Amudalavalasa, belonging to M/s. Midwest Iron & Steel Co. Ltd. in the above R.S. Numbers sold by the Vendor to Vendee is bounded by...” The boundaries are hereafter set out.

6. Since the sale deed in favour of the nominee, namely, the first respondent came to be executed pursuant to order of the Company Judge dated 15.06.2004 made in C.A. No.1202 of 2004 as stated in Clause E (supra), we may notice the prayers and relevant part of the order. They read as under:

“Application under Section of the Companies Act, 1956 R/W Rule 9 of the Companies (Court) Rule, 1959, praying that this High Court may be pleased to direct the Official Liquidator to execute the sale deed in respect of the land and building and civil works belonging to the company in liquidation for a consideration of Rs. 40,13,000/- in favour of the Applicant's nominees-M/s. Dankuni Steels Limited.

b) Direct the Official Liquidator to execute a sale certificate in favour of the Applicant's nominees. M/s. Dankuni Steels Limited, in respect of the plant and machinery for a consideration Rs. 751.27 Lakhs and in respect of the current assets and furniture and fixtures in the sum of Rs.

43,60,000/-.

c) Direct the Official Liquidator to obtain all the original documents of title deposited by company in liquidation with financial institutions viz., ICICI Bank Limited, IDBI, Canara Bank, United Western bank Limited, IFCI, IIBI and State Bank of India, and deliver the same to the Applicant's nominees, M/s. Dankuni Steels Limited.

This Application coming on for orders upon reading the Judge's Summons and the affidavit dated: 23-4-2004 and filed by Mr. Amar Chand Choudary, authorized Representative of the Application in support of this Application and upon hearing the arguments of Mr. Anil Kumar counsel for The Official Liquidator and of Mr. S. Ravi, Advocate for the applicant and of Mr. M. Anil Kumar, Counsel for the Official Liquidator on behalf of the respondent” “ ... The learned counsel also placed before

me Form No.32 issued by the Office of Registrar of Companies, Calcutta, showing that Sri Amit Ganguly, S/o late B.N. Ganguly, who is the Director of applicant company in M/s. Dankuni Steels Limited. A certificate issued by the Director of the applicant company placed before the Court would show that the applicant company holds 9,000 (Nine thousand only) shares of Rs.10/- each of M/ s. Dankuni Steels Limited. ..." "... Insofar as the relationship between the applicant company and M/ s. Dankuni Steels Limited, this Court is satisfied that the applicant is justified in taking sale deed in favour of M/s. Dankuni Steels Limited. Insofar as the relief in the application to direct the Official Liquidator to execute the sale deed in favour of M/s Dunkuni Steels Limited for a consideration of Rs.40, 13,000/- (Rupees forty lakh and thirteen thousand only) is confirmed in the auction conducted by this Court, as the land, building and machinery of the company in liquidation was sold to the applicant company at a price of Rs.8,35,00,000/- (Rupees eight crore thirty five lakh only), it would be better if the issue as to the value of the property in respect of which a conveyance deed has to be executed is decided by the Registration Authorities. It is needless to observe that at the time of completion of this exercise, Official Liquidator will hand over all the original documents in respect of the property.

The application is, accordingly, ordered." (emphasis supplied)

7. It is thereafter that as already noticed that the sale deed came to be executed on 05.08.2004. Respondents 1 and 2, it would appear claimed benefit of GOMS No.103 dated 07.02.2001. The said GOMS read as under inter alia:

"GOVERNMENT OF ANDHRA PRADESH ABSTRACT Indian Stamp Act, 1899 - 50°/o Exemption from payment of Stamp Duty and Registration Fee on the instruments of leases, lease-cum-sales and sales executed in favour of Industrial Units in the State for the purposes of selling up or expansion or development of Industries - Orders - Issued.

REVENUE (REGISTRATION.II) DEPARTMENT G.O.Ms.No.103 Dated :07 .02.2001
Read the following:-

1. Letter from the Chairman and Managing Director, A.P.I.I.C. No.SIPC/APIIC/M(Pig)/97, dt.11.5.2000.
2. From the Commissioner and Inspector General of Registration and Stamps Letter No.Sl/10783/2000, dt.28.9.2000 and even No., dt.17.11.2000.
3. G.O.Ms.No.9, Industries & Commerce Department, dt.5.1.2001.

ORDER:-

In pursuance of the decisions of the SIPD, orders were issued in G.O.Ms.No.9, Industries & Commerce Department, dt.5.1.2001, enunciating a New Industrial Policy for 2000- 2005. Among various other decisions, exemption of 50% Stamp

Duty, Registration Fee and Transfer Duty was allowed on lands meant for Industrial use. Exemption of Stamp Duty and Registration Fee 'for loan agreements, credit deeds, mortgages and hypothecation deeds executed by the Industries in favour of banks or financial institutions has also been included in the Policy. New Industrial Units other than listed as 'ineligible' in the Government order cited third above, would be eligible for the concession in stamp duty and registration fees as notified below.

Basing on the above decision, the following Notifications will be published in the next issue of the Andhra Pradesh Gazette:-

NOTIFICATION – I In exercise of the powers conferred by clause

(a) of sub-section -(1) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), the Government of Andhra Pradesh hereby reduces the stamp duty by 50 percent on the instruments of leases, lease-cum-sales and sales executed in favour of Industrial units and also remits Stamp Duty in full on loan agreements, credit deeds, mortgages and hypothecation deeds executed by such Industrial units in favour of banks or financial institutions for the purposes of setting up or expansion or development of Industries.

NOTIFICATION – II In exercise of the powers conferred under Section 78 of the Registration Act, 1908 (Central Act XVI of 1908), the Governor of Andhra Pradesh hereby makes the following amendment to the "Table of Fees" - issued in G.O. MS. No.1637, Revenue Department, dated the 3rd September, 1958 and published at pages 2250 to 2253 of Part I of the Andhra Pradesh Gazette, Dated:11.09.1993 is subsequently amended from time to time.

AMENDMENT In the said "Table of Fees" in article I(a), after clause "K (XCXXIV)", the following clause shall be added, namely :-

"K (XCXXV): The Registration Fee leviable under this Article on the instructions of leases, lease cum sales and sales executed in favour of industrial units shall be reduced by 50 percent and no registration fee shall be leviable on loan agreements, credit deeds, mortgages and hypothecation deeds executed by such industrial units in favour of banks or financial institutions for the purposes of setting up or expansion or development of industries".

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH) K.C.MISRA
PRINCIPAL SECRETARY TO GOVERNMENT"

8. It would appear that the respondents 1 and 2 applied for registration of the sale deed according to the appellants on the basis that the land and building had to be registered with the value thereof being shown as Rs.1,01,05,000/-. The Sub-Registrar, namely, the first appellant by communication dated 12.08.2004 informed the first respondent that the registration was kept pending for the

following reasons:

(1) The chargeable value as per the contents of the documents was assessed to be Rs.8.35 crores whereas respondents 1 and 2 had stated that only the land and buildings were being transferred for Rs.1,01,05,000/-.

(2) Since 50% exemption was being claimed, the G.O. had to be verified thoroughly.

(3) The land in some of the Survey Nos. were found to be Government land.

9. The respondents 1 and 2 feeling aggrieved filed Writ Petition No.16104 of 2001 challenging the said communication. The District Registrar, Srikakulam, [the second appellant before us] directed the first respondent and the Official Liquidator to deposit Rs.8629025/- as stamp duty besides penalty of Rs.1000/. It is challenging the said communication that Respondents 1 and 2 filed Writ Petition No. 19900 of 2004. Both the Writ Petitions came to be heard together and disposed by a learned Single Judge by the Judgment dated 12.07.2005. The learned Single Judge found inter alia as follows:

“5. Though the Company Court initially directed · auction of the assets of the Company in three lots, having felt that the bids received for the lots are inadequate, the learned Judge directed sale of all the three lots i.e. (i) Land, Buildings and Civil Works; (ii) Plant and Machinery; and cJii) Current Assets and Swaraj Mazda vehicle, as one lot only. Therefore, the fact that the Company Court originally directed sale of the assets of the Company in three lots has no relevance for deciding these petitions because second petitioner, admittedly, purchased the assets of the company as one lot only, in the open auction held by the Company Court, but not as three different lots .

6. It is no doubt true, as per the proviso to Section 47A(6) of the, Stamp Act, instruments executed by or on behalf .of the Central Government or the State Government or any authority or body incorporated by or under any law for the time being in force and wholly owned by Central/State Government, the market value of the property shall be the value shown in such instrument. This provision, far from helping the petitioners, would go against their contention that sale deed can be executed for Lot I only, inasmuch as assets of the company were advertised for sale in three lots, because all the three assets of the company were purchased by the second petitioner only as one lot, but not in three different lots, and since there is nothing in the sale deed in question to show the exact value of the Land, Building and Civil works. The file produced by the official liquidator shows that there was correspondence between him and the petitioners with regard to the contents etc. of the sale deed to be executed by him i.e. official liquidator. Here, I am constrained to observe that the official liquidator does not seem to have acted fairly while executing the sale deed in question, and seems to have made an attempt to favour the petitioners by suppressing certain fact: and incorporating the undermentioned

highlighted portion in page 3 of the sale deed in question reading -

"AND WHEREAS the total sale consideration is Rs.8.35 crores for the entire assets of the company comprising of land, building, Civil works, plant & machinery and current assets, etc., An amount of Rs.1,01,05,000/- is taken as the value of the land, building and civil works basing on the offer received by the official liquidator when the assets were put for sale individually and the purchaser has agreed to pay the stamp duty/registration fees/transfer fees as per the value derived by the sub registrar."

obviously that statement, mentioning the value of the building etc. as Rs.1,01,05,000/- is made on the basis of the offers received by him (official liquidator) on 04-12-2003 whereat M/s.Bhagya Nagar Metals Ltd., offered Rs"101.05 lakhs for Lot No.1 and Rs.301.00 lakhs for Lot No.2, and M/s.Mahavir Ghantakaram Enterprises offered Rs.29.50 lakhs for Lot No.3. So, it is clear that the total value of the offers for the three lot received by the official liquidator, on 04-12-2003, was Rs.431.55 lakhs. But, on 30-12-2003, M/s.Concast Ispat Ltd., which (as per the letter dated 13-08-2004 of the General Manager, District Industries Centre, Srikakulam, addressed to the fourth respondent, relied on by the petitioners, produced as a material document along with the petition) seems to be a group company of the petitioners, gave a consolidated offer for Rs.576.00 lakhs for the three lots put together, and the bid ultimately was knocked down in favour of the second petitioner for Rs.835.00 lakhs, for all the three lots put together, in the court auction held on 04-02-2004. Thus, official liquidator knows, and if he were to say that he does not know, should be imputed with knowledge that this offer dated 04-12-2003 for the Land, Buildings and Civil works for Rs.101.05 lakhs does not truly and correctly represent the value of the Land, Buildings and Civil works. In fact, in his letter bearing No.OL/AP/RCC.10/ 2001/AR/2004 dated 04-02-2004 addressed to the second petitioner, official liquidator stated:

"With reference to the open auction held on 4-2-2004 before the Hon'ble High Court of Andhra Pradesh, Hyderabad in the matter of sale of entire assets of the subject company I am to inform you that the Hon'ble High Court vide their order dt.4-2-2004 made in C.A.No. 736/2003 accepted your offer for the purchase of entire assets of the company as one Lot i.e., Land & Buildings & Civil Works, Plant and Machinery and Current Assets, Furniture & Fixtures including Swaraj Mazda Vehicle lying at Dusi Village, Srikakulam District for a total sale consideration of Rs.8,35,00,000/-. The Hon'ble High Court was pleased to grant three months from the date of confirmation i.e., 4-2-2004 for making balance sale consideration of Rs.6.28 Crores as follows:

Yet, the official liquidator, for reasons known to him only, mentioned the non-existing 'offer value' of Rs.101.05 lakhs as the value of the Land, Buildings and Civil works, in the sale deed.

10. The Court further notes as follows:

“8. In R.C.C.No.10/2001/ AR/2004 dated 05-8- 2004 sent by him, in reply to the memo impugned in W.P.No.16104 of 2004 issued by the third respondent, official liquidator stated as follows. "In pursuance of the orders of the Hon'ble High Court of Andhra Pradesh, Hyderabad in the reference cited, I have executed a sale deed dated 05-08-2004, in favour of M/s.Dankuni Steels Limited, Kolkatta transferring the assets of the company M/s.Midwest Iron and Steel Limited, Dusi Village, Srikakulam District which is in liquidation for Rs.1,01,05,000/- and signed all the connected statements of the said document.

11. The learned single Judge thereafter referred to order passed in C.A. No.1202 of 2004. Thereafter, the single Judge found that there would be no doubt that respondents 1 and 2 M/s. Concast Ispat Limited were group companies. Another aspect noted by the learned Single Judge was the conduct of the second respondent filing Civil Appeal No. 823 of 2004 seeking permission of the Court to get the plant and machinery repaired and overhauled on the basis that it intended to revive the unit and run it. An Order, it was noted, was passed thereon on 06.04.2004 allowing the second respondent to carry out repair and overhaul operations inter alia subject to certain conditions. Next, the learned Single Judge noted the letter dated 13.08.2004 by the General Manager of the District Industries Centre to the second appellant. It reads:

"the Commissioner of Industries, Andhra Pradesh, Hyderabad informed that M/s.

Concast Ferro Inc, Dusi Village, Amadalavalasa Mandal, Srikakulam District who have obtained IEM No. 2284/SIA/IMO/2004 dt.25.06.2004 for establishing unit for the line of activity (1) Pig Iron (2) Granualated slag and (3) Coke Fines by acquiring the sick unit through official liquidator, High Court of Andhra Pradesh as a new Entrepreneur is entitled for availing 50% Exemption Duty exclusive under NIP 2000-2005 scheme.

Therefore I request you kindly allow 50% stamp duty, Registration fee and transfer for loan agreements, credit deeds, mortgages and hypothecation deeds executed by the Industrial Unit in favour of banks or financial institutions on lands meant for industrial units after fulfilling the formalities in terms of G.O.Ms.No.103 Revenue (Registration) Department dated 07.02.2001."

12. The learned Single Judge found that Respondents 1 and 2 were using the plant and machinery for their business and had no intention to remove and sell them as scrap or otherwise. It is further found that if respondents 1 and 2 were to contend that M/s. Concast Ferro Alloys which was obviously a mistake for M/s. Concast Ispat had no concern with the respondents 1 and 2, they would not have produced the letter dated 13.08.2004 of the General Manager. After referring to notification GOMS, No. 103 dated 07.02.2001 which we have referred to hereinabove, the learned Single Judge found that the benefit of the said G.O. could be claimed only by an industrial unit and since respondents were claiming benefit under the G.O. they intended to use the assets of the company and had no intention to remove the plant and machinery. Thereafter, the Court found as follows:

“From a combined reading of Section 3 of Transfer of Property Act, Section 2(6) of Registration Act and Section 3(26) of General Clauses Act, it is clear that plant and machinery of the company, purchased by second petitioner in court auction, also are immovable properties forming part of the land and buildings in or on which they are located. In my considered opinion, petitioners claiming benefit under G.O.Ms.No.103 dated 07.02.2001, while contending that the sale deed in question is for Land, Buildings and Civil works only, but not plant and machinery, would be incongruous, because the intention of the Government in passing the above G.O., obviously, is to give benefit to 'industrial units'. It does not enable an owner of an 'industrial unit' purchasing vacant land, claiming benefit of the G.O., just to sell it away as plots and make money. The intention of the government obviously is that 'industrial unit' should be established in the land and that the land should itself be used, for running an 'industrial unit' by the purchaser. So, it is clear that the above extracted G.O. is meant to encourage establishment and running of industrial units only. Since petitioners are claiming benefit of the above extracted G.O. and since they also obtained permission from the Court to clean and over haul the machinery, it is clear that the sale deed in question covers not only Land, Buildings and Civil works but plant and machinery also.”

13. The Court relied on *Duncans Industries Limited v.*

*State of Uttar Pradesh and others*¹ and found that since the property covered by the sale deed covered not only the land, buildings and civil works, but plant and machinery also, the value of the plant and machinery also had to be considered for payment of stamp duty. The learned Single Judge found that the value of the current assets had to be reduced. Still further he found that since the first respondent was an industry and wanted to run the unit as an industry, the benefit of GOMS 103 Revenue (Registration) Department dated 07.02.2001 could be extended to it. Writ Petition No. 10101 of 2004 came 1 (2000) 1 SCC 633 to be dismissed with costs. Writ Petition No. 19900 of 2004 was allowed in part and the matter was remitted to the second appellant to determine the current assets and to deduct their value from Rs.8.35 crores and to reckon the remaining value as the value of the land, buildings, civil works, plant and machinery and collect stamp duty and penalty, if any, by extending the benefit of GOMS 103 dated 07.02.2001.

14. This led to the two writ appeals, viz., Writ Appeal No. 1873 of 2005 and Writ Appeal No. 2457 of 2005. One of the appeals was filed by the Respondents 1 and 2, viz., Writ Appeal No. 1873 whereas Writ Appeal No.2457 of 2005 was filed by the appellants. Both the Appeals were directed against the Judgment in Writ Petition No. 19900 of 2004. The short reasoning which appealed to the Division Bench and the relief granted was as follows:

“When we asked the learned Government Pleader as to how the petitioner could be forced to register even the plant and machinery when they only seek registration of the land and buildings, Learned Government Pleader would submit that the value of the land and buildings would be required to be determined by the Sub-Registrar; and the petitioner's claim that its value was only Rs.1,01,05,000/- could not be accepted.

As the petitioner only seeks registration of land and buildings, and would run the risk of the plant and machinery not being registered, the Sub-Registrar cannot force them to pay stamp duty on the value of plant and machinery when they do not seek its registration. The question whether the value of these lands and buildings, on the date of presentation of the document, was Rs.1,01,05,000/- or not is a matter which the Sub-Registrar is required to consider; and it is on the value of the land and buildings, as determined by him, that stamp duty and registration charges would be required to be paid subject, of course, to the petitioner's right to question the order of the Sub-Registrar before the appellate authority under the Act. As the petitioner has given up their claim for 50% exemption and Sri S. Ravi, learned Senior Counsel, would fairly state that, if a part of the land sought to be registered is found to be Government land it may be excluded from registration subject to the petitioner's right to avail their legal remedies, against any such action, being left open, we consider it appropriate to dispose of both the Writ Appeals directing the Sub-Registrar to consider the petitioner's request for registration of the lands and buildings of the company under liquidation, purchased by them in the auction conducted by the Official Liquidator;

determine its value on the date of
presentation of the document for

registration; collect the stamp duty and registration fees thereupon; and, thereafter, consider registration of the sale deed effecting transfer of the lands and buildings, of the company under liquidation, to the petitioner herein, in accordance with law. The entire exercise shall be completed at the earliest preferably within three 1 months from the date of receipt of a copy of this order. Both the appeals are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

SD/- K.GANGADHAR RAO DEPUTY REGISTRAR //TRUE COPY// SECTION OFFICER”

15. Notice was served on respondent no.1 but there is no appearance. Shri Mahfooz A. Nazki, learned Counsel appeared on behalf of the appellants. We may notice that despite time granted to the appellants to effect service on respondent no.2, in view of their failure to effect service, in terms of order dated 04.03.2020, the SLP was found to stand dismissed as against Respondent No.2. This is discernible from order dated 19.06.2020. Shri Gopal Jha, learned Counsel appeared on behalf of the third respondent's company (in liquidation) represented by the Official Liquidator. In view of the fact that there was no appearance for the first respondent, by order dated 20.10.2021, we appointed Shri S. Niranjan Reddy, learned Senior Counsel as Amicus Curiae.

SUBMISSION OF THE PARTIES

16. We heard the learned counsel as noted, as also the learned Amicus.

17. Shri Nazki would submit that the impugned judgment ignores the nature of the transaction, which culminated in the conveyance and the purpose for which the conveyance was made. It is pointed out that the first respondent had purchased the property with the intent to carry on the business, which consisted of manufacturing of the products in question. He sought fortification for the same from the support drawn initially from a Government Order premised on carrying on the manufacturing activity and to encourage it, with exemption of 50 per cent offered by the State. He would further point out that the District Registrar had analysed the facts correctly and applied the law laid down by this Court in *Duncans Industries Limited* (supra). By doing so, the District Registrar had correctly found that apart from land, building, and civil works, the plant and machinery must also be reckoned for the purpose of computation of stamp duty. He would contend that the Division Bench had fallen into error in adopting the reasoning that if the Respondents 1 and 2 did not want the registration of the plant and machinery, they cannot be compelled to do so. He would further point out that adequate opportunity was afforded to the respondents by the District Registrar but they chose not to avail the opportunity.

18. The learned Amicus would, after referring to the facts, project two issues as arising for consideration:

a. Whether there is a comprehensive sale of all the assets and, in a single transaction, is it permissible to draw up a conveyance for only a part of such transaction for seeking registration?

b. Second issue, according to him, is whether the Registration Authorities are empowered to go behind an ostensible instrument and ascertain the stamp duty payable on the actual transaction?

19. He took us to the definition of the word ‘instrument’ in the Stamp Act, 1899 (hereinafter referred to as, “the Act”). He further drew our attention to Section 47A introduced by the Andhra Pradesh (Amendment) Act of 1971. That apart, he also pointed out that by Andhra Pradesh Act (8 of 1988), a proviso has been inserted in Section 27 of the Act, which we shall advert to. He further pointed out that the triumvirate of Sections 4, 5, and 6 of the Act, has been succinctly explained by this Court in the decision reported in *Member, Board of Revenue v. Arthur Paul Benthall*². He would, on the strength of the law laid down therein contend that the destiny of this case would be governed by Section 5 of the Act. He would contend that there is only one instrument in this case, i.e., the deed of conveyance, and since more than one matter, as expounded by this Court, exists in substance, there would be justification for the Authorities having regard to the powers available, in particular, in Section 27 after the insertion of the proviso therein and Section 47A. He would point out that the preambular recitals in the conveyance, convey a version which may not square with the actual recitals and the purported terms of the operative part read with the Schedule. In other words, the auction sale in favour of the second respondent-auction purchaser, indicates that the sale was of assets of the company in liquidation, such as land, building, plant and machinery and other assets. 2 AIR 1956 SC 35 The total sale consideration is stated to be Rs.8.35 crores.

20. According to the learned Amicus, the Authorities are competent to verify the preambular recitals in Clauses (D), (F) and (H) along with the entire recitals, to ascertain whether the instrument purports to provide for a larger transaction than projected in the Schedule. He would no doubt point out that the earlier view of judicial review in these matters favoured a very limited power to the registering authority in traversing beyond the document (See *Himalaya Space House Company Limited v. Chief Controlling Revenue Authority*³). He would point out subsequent legislative changes by different legislatures which included Section 47A as also the insertion of the proviso to Section 27 by the Andhra Pradesh Amending Act (Act 8 of 1988), has expanded the power of the authority. He would contend that such an exercise would have the blessing of the law laid down in *Duncans Industries Limited (supra)* and 3 (1972) 1 SCC 726 also the view taken by this Court in *Chief Controlling Revenue Authority v. Coastal Gujarat Power Ltd. and others*⁴. The Authorities could verify the true extent and market value of the specified immovable property. The power flows from Section 27 and Section 47A of the Act. He would draw our attention to the definition of the word 'immovable property' in the Registration Act, 1908, the General Clauses Act, 1897 and the Transfer of Property Act, 1882. He would also point to Section 8 of the Transfer of Property Act, 1882, as a relevant provision, which sheds light and which should guide the Officer. The Authorities can and must break down the transaction or the instrument and demarcate the distinct matters and assess the matters separately and charge the aggregate of the stamp duty under Section 5 of the Act. He would submit that the registering authority is entitled to verify statements in D, F and H in conjunction with entire recitals to ascertain, if the instrument purported to provide for a larger transaction than seen projected 4 (2015) 10 SCC 700 in the schedule. Further, the appellant could ascertain by any measures indicated in Section 27 read with Section 47A as to whether the immovable property is wholly and properly described. This may include an exercise of verifying whether there is any embedded plant and machinery that ought to have been shown as immovable property and was wrongly excluded. He pointed out that the original transaction comprised the sale of all the following categories of assets of the company in liquidation. They are as follows:

A.Land and Building – which is immovable property.

B.Plant and Machinery that may be permanently embedded to the earth and answering the description of immovable property as defined.

C.Plant and Machinery and other effects which may not come under the description of immovable property and hence constitute movable property.

D.Current Assets and Motor Vehicle which are movable property.

21. He would point out that there were four distinct matters which were comprised in the composite sale.

22. The third respondent is the Company in liquidation represented by Official Liquidator. A Counter Affidavit has been filed in this Court. It is, inter alia, disclosed that based on the Order of the High Court, a Valuation Report was obtained from a Valuer. According to the Valuation Report, the land, building and civil works were

valued at Rs.4013000/-. Plant and machinery were valued at Rs.6,22,10,000/-. That apart, raw materials were valued at Rs.15,00,000/- and furniture, etc., were valued at Rs.3,50,000/-. A Valuation Report was also submitted on behalf of the Canara Bank wherein the value was shown as Rs. 25,10,275/- as FMV and Rs.1510705/- as disposal value. The Official Liquidator proceeded to set the value, taking the value as indicated hereinbefore, given by the Valuer, in regard to land, building and civil works and plant and machinery. The current assets, raw materials, furniture and fittings were shown as carrying the value of Rs.43,60,000/-. The second respondent herein made the highest offer of Rs.8,35,00,000/- for the properties of the company as a lot. Shri Gopal Jha would, in fact, point out that the High Court had made it clear that while permitting the sale in favour of the first respondent the stamp duty would be as determined by the authority and that the liquidator could not be blamed.

ANALYSIS

23. The expression “instrument” is defined under Section 2(14) of the Act as under:

“(14) "instrument" includes--

(a) every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;

(b) a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and

(c) any other document mentioned in Schedule I, but does not include such instruments as may be specified by the Government, by notification in the Official Gazette.”

24. Sections 3, 4 and 5 of the Act must be noticed and they read as follows:

“3. Instruments chargeable with duty. — Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that 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 India on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand] or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that no duty shall be chargeable in respect of— (1) 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;

(2) 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 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts.

4. Several instruments used in single transaction of sale, mortgage or settlement. — (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instrument so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

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.”

25. The next relevant provision is Section 27 of the Indian Stamp Act.

“27. Facts affecting duty to be set forth in instrument. —The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.”

26. Vide Andhra Pradesh Amendment Act 8 of 1988, the following proviso was added to Section 27:

“Provided that a registering officer appointed under the Registration Act, 1908 or any other officer authorised in this behalf, may inspect the property, which is the subject

matter of such instrument, make necessary local enquiries, call for and examine all the connected records and satisfy that the provisions of this section are complied with.”

27. The next relevant provision is Section 47A inserted by Andhra Pradesh (Amendment) Act, which reads as follows:

“47-A. Instruments of conveyance, etc., under-vaulted how to the dealt with: - (1) where the registering officer appointed under the Registration Act, 1908, (Central Act 16 of 1908), while registering any instrument of conveyance, exchange, gift partition, settlement, release , agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject matter or such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared adopted by the parties, he may keep pending such instrument, and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon:

Provided that no reference shall be made by the registering officer unless an amount equal to fifty percent of the deficit duty arrived at by him is deposited by the party concerned.

(2) On receipt of a reference under sub section (1), the Collector shall after giving the parties an opportunity of making their representation and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid:

Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him. Provided further that where after the determination of market value by the Collector, if the stamp duty borne by the instrument is found sufficient the amount deposited shall be returned to the person concerned without interest.

(3) the Collector may suo motu within two year from the date of registration of such instrument, not already referred to him under sub section (1), call for an examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of such instrument and the duty payable thereon and if, after such examination, he has reason to believe that market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in subsection (2).

The difference, if any in the amount of duty, shall be payable by the person liable to pay the duty: Provided that nothing in this sub- section shall apply to any instrument registered before the date of commencement of the India Stamp (Andhra Pradesh Amendment) act, 1971.

(3-A) (i) The Inspector General may suo motu, call for and examine the record of any order passed or proceeding recorded by the Collector under subSection (3), and if such order or proceeding recorded is found leading to loss of legitimate revenue due to disregard of market value by the Collector, based on mistake, omission, or failure to take any factual evidence effecting the market value of the property, may make such enquiry or cause such enquiry and inspection of the property to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as he thinks fit determining the market value and corresponding deficit stamp duty: Provided that the powers conferred under this clause shall be invoked within a period of six months from the date of the order or proceeding issued by the Collector under sub- section (3);

(ii) The power under clause (I) shall not be exercised by the authority specified therein in respect of any issue or question which is the subject matter of an appeal before, or which was decided on appeal by the appellate authority under sub-section (5);

(iii) no order shall be passed under Clause (I) enhancing any duty unless an opportunity has been given to the party to show cause against the proposed revision of market value and deficit stamp duty;

(iv) where any action under this sub-section has been deferred on account of any stay order granted by the Court in any case, or by reason of the fact that another proceeding is pending before the Court involving a question of law having a direct bearing on the order or proceeding in question, the period during which the stay order was in force or each proceeding was pending shall be excluded in computing the period of six months specified in the proviso to clause (I) of this section for the purposes of exercising the power under this sub-section.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub- section (3) may appeal to the appellate authority specified in sub-section (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

(4A) Any person aggrieved by the order of the Inspector General under subsection (3A) may appeal to the High Court within a period of two months from the date of receipt of such order.

(5) The appellate authority shall be---

(i) in the cities of Hyderabad and Secunderabad, the City Civil Court,

(ii) elsewhere— (a) the Subordinate Judge or if there are more than one Subordinate Judge, the Principal Subordinate Judge, having jurisdiction over the area in which the property concerned is

situated; or

(b) if there is no such Subordinate Judge, the District Judge having jurisdiction over the area aforesaid.

(6) For the purpose of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument referred to in sub-section (1);

Provided that in respect of instruments executed by or on behalf of the Central Government or the State Government or any authority or body incorporate by or under any law for the time being in force and wholly owned by Central/state Government, the market value of any property shall be the value shown in such instrument.”

28. Now, we must notice the definition of the word ‘immovable property’ in the Registration Act, General Clauses Act, and the Transfer of Property Act. We must also advert to Section 8 of the Transfer of Property Act:

“In the Registration Act, 1908, the definition is;

“1(6) “Immovable Property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;

In the General Clauses Act, 1897 it reads:

“3(26) “immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

Transfer of Property Act, 1882

3. ... “immoveable property” does not include standing timber, growing crops or grass;

“instrument”, means a non-testamentary instrument;

Section 8 of Transfer of Property Act, 1882 “8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof. Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and, where

the property is machinery attached to the earth, the moveable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith; and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.”

29. In Member, Board of Revenue (supra), this Court had the occasion to expound the law by interpreting Sections 3, 4, and 5 of the Indian Stamp Act. In the said case, the Respondent therein had executed a power of attorney. The power of attorney countenanced power being conferred on the agent by the respondent in his individual capacity and also in other capacities such as trustee, etc. The question which inter alia fell for decision was whether the word ‘matter’ in Section 5 was to be conflated with category. It is necessary to notice what the majority of this Court held:

“4. We are unable to accept the contention that the word “matter” in Section 5 was intended to convey the same meaning as the word “description” in Section 6. In its popular sense, the expression “distinct matters” would connote something different from distinct “categories”. Two transactions might be of the same description, but all the same, they might be distinct. If A sells Black-acre to X and mortgages White-acre to Y, the transactions fall under different categories, and they are also distinct matters. But if A mortgages Black-acre to X and mortgages White-acre to Y, the two transactions fall under the same category, but they would certainly be distinct matters. If the intention of the legislature was that the expression ‘distinct matters’ in Section 5 should be understood not in its popular sense but narrowly as meaning different categories in the Schedule, nothing would have been easier than to say so. When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression “distinct matters” in Section 5 and “descriptions” in Section 6 have different connotations.

xxx xxx xxx

7. The error in this argument lies in thinking that the object and scope of Sections 4 to 6 are the same, which in fact they are not. Section 4 deals with a single transaction completed in several instruments, and Section 6 with a single transaction which might be viewed as falling under more than one category, whereas Section 5 applies only when the instrument comprises more than one transaction, and it is immaterial for this purpose whether those transactions are of the same category or of different categories. The topics dealt with in the three sections being thus different, no useful purpose will be served by referring to Section 4 or Section 6 for determining the scope of Section 5 or for construing its terms. It is not without significance that the legislature has used three different words in relation to the three sections, “transaction” in Section 4, “matter” in Section 5, and “description” in Section 6.”

30. In the Judgment of this Court in Himalaya Space House Company Limited (supra), this Court was dealing with the case under the Act containing Section 27 sans the proviso added by the Andhra Pradesh Act. Paragraph 11 of the judgment reads as under:

“11. It was urged that in view of Section 27 of the Stamp Act, it was permissible for the Revenue to look into the terms and conditions of the agreements entered into by Uttamchand with the various persons to whom he had assigned flats, offices and shops, particularly in view of the fact that the impounded document makes reference to those agreement. We are not able to accept that contention. Section 27 prescribes that “The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable shall be fully and truly set forth therein”. It is true that in view of this provision, the parties to a document are required to set forth in the document fully and truly the consideration (if any) and all other facts and circumstances affecting the chargeability of that document with the duty or the amount of the duty with which it is chargeable. But a failure to comply with the requirements of that section is merely punishable under Section 64 of the Stamp Act. No provision in the Stamp Act empowers the Revenue to make an independent inquiry of the value of the property conveyed for determining the duty chargeable. Article 23 is the article that governs the charging of stamp duty on “conveyance”. That article to the extent relevant for our present purpose reads:

“23. Conveyance as defined by Section 2(10) not being a transfer charge or exempted under Section 52. Where the amount or value of the consideration for such conveyance as set forth therein....” (emphasis supplied)

31. In other words, the Court apparently approved of the view taken that the Court should look at the instrument as it stood (see ILR 27 Bom 279 referred to in para 12).

32. Duncans Industries Limited (supra) is a case which arose under the Registration Act, 1908 and Section 47A of the Act [Section 47A considered in the case was an amendment by the Uttar Pradesh Legislature]. It involved a transfer on “as is where is” basis and “as a going concern” of a fertilizer business in favour of the appellant company. This was preceded by an agreement which involved also expressly the transfer of plant and machinery. The Collector levied stamp duty and penalty on the basis that since the transfer contemplated the sale of the unit as a going concern, the intention of the Vendor was to transfer all properties in the fertilizer business in question. The High court had held that the machineries which formed fertilizer plant was permanently embedded in the earth with an intention of running the factory. It was found that the machineries were immovable property which were permanently attached to the earth. Para 8 of the said judgment reads as under:

“8. ... The question whether a machinery which is embedded in the earth is moveable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties (sic party) when it decided to embed the machinery, whether such

embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertilizer plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertilizer plant. The description of the machines as seen in the schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertilizer at various stages of its production..... “10. The next question for consideration is whether the vendor did transfer the title of the plant and machinery in the instant case by the conveyance deed dated 9-6-1994. Here again, it is imperative to ascertain the intention of the parties from the material available on record. While ascertaining the intention of the parties, we cannot preclude the contents of the agreement pursuant to which the conveyance deed in question has come into existence. We have noticed that as per the agreement it is clear that what was agreed to be sold is the entire business of fertilizer on an “as is where is” basis including the land, building thereon, plant and machinery relating to fertilizer business — description of which is found in the definition of the term “fertilizer business” in the agreement itself which has been extracted by us hereinabove. It is not the case of the appellant when it contends that the possession of plant and machinery was handed over separately to the appellant by the vendor, that these machineries were dismantled and given to the appellant, nor is it possible to visualise from the nature of the plant that is involved in the instant case that such a possession dehors the land could be given by the vendor to the appellant. It is obviously to reduce the market value of the property the document in question is attempted to be drafted as a conveyance deed regarding the land only. The appellant had embarked upon a methodology by which it purported to transfer the possession of the plant and machinery separately and is contending now that this handing over possession of the machinery is dehors the conveyance deed. We are not convinced with this argument. Apart from the recitals in the agreement of sale, it is clear from the recitals in the conveyance deed itself that what is conveyed under the deed dated 9-6- 1994 is not only the land but the entire fertilizer business including plant and machinery. A perusal of clauses 10, 11 and 13 of the said deed shows that it is the fertilizer factory which the vendor had agreed to transfer along with its business as a going concern and to complete the same the conveyance deed in question was being executed. There is implicit reference to the sale of fertilizer factory as a going concern in the conveyance deed itself....”

11. Learned counsel for the appellant has placed for our consideration a judgment of this Court in the case of Himalaya House Co.

Ltd. v. Chief Controlling Revenue Authority [(1972) 1 SCC 726] to contend that a mere reference to an earlier agreement does not amount to incorporation of the terms and conditions of an earlier transaction or the intention of the parties. We have carefully considered the said judgment and, in our opinion, that judgment does not in any manner lay down the law in absolute terms that a court cannot look into prior agreements while considering the intention of the parties for finding out what actually is the property that is conveyed under the deed under consideration. It is again based on facts of that case that this Court came to the conclusion therein that the so-called terms and conditions which were found in an earlier agreement were not intended to be incorporated in the subsequent document....

13. For the reasons stated above, we are of the considered opinion that the vendor as per the conveyance deed dated 9-6-1994 has conveyed the title it had not only in regard to the land in question but also to the entire fertilizer business on “as is where is” condition including the plant and machinery standing on the said land.

Therefore, the authorities below were totally justified in taking into consideration the value of these plant and machineries along with the value of the land for the purpose of the Act.” (Emphasis supplied)

33. In Chief Controlling Revenue Authority (supra), the respondent secured financial assistance from a few lenders who formed a consortium and executed an agreement appointing one bank as its lead trustee. The respondent executed the mortgage with the lead trustee. The Revenue contended that the respondent had availed assistance from 13 lenders and, therefore, it was required to execute the mortgage deed in respect of 13 lenders. Thus, in substance the single mortgage deed with the lead trustee was a combination of 13 mortgages. This Court noted, inter alia, that the instrument of mortgage had come into existence only after separate loan agreements were entered into by the borrower with regard to separate loans advanced. The Court drew inspiration from Member, Board of Revenue (supra) and held that had the borrowers entered into separate mortgage deeds with the 13 financial institutions there would have been a separate documents. It was consequently found that the single mortgage must be treated as dealing with distinct matters within the meaning of Section 5 of the Act and justified the stand of the Revenue.

34. We have set out the Preamble and also the recitals in the sale deed. This is besides capturing the background leading up to the execution of the sale deed in favour of the first respondent. The second respondent was, undoubtedly, the auction purchaser. The auction sale related to the assets of the company, which included the land, the building, the plant and machinery and other assets. The vendee, who under the sale deed is the first respondent, being the nominee of the second respondent. It has been recited in Clause (H) that the vendee has paid the full consideration. More significantly, it is stated therein also that as per the terms of the sale properties have been sold by the vendor to the vendee on ‘as is where is whatever there is basis’. The total sale consideration, it is clear again from the sale deed itself, is Rs.8.35 crores, for the land, building, civil works, plant and machinery and current assets, etc. However, what had been done is an amount of Rs.10105000/- has been taken as the value of the land, building and civil works based on the offer received by the

Liquidator, when the assets were put up for sale individually. It is further stated that the purchaser has agreed to pay the stamp duty/registration fees/transfer fees as per the value derived by the Sub-Registrar. This last statement is traceable to order dated 15.06.2004 passed in civil Appeal 1202 of 2004 which we have referred to in paragraph 6. A copy of the said order is enclosed with the sale deed. It is further stated that the 46 acres and a few cents was 'now' registered in favour of the vendee. In the Recital Clause, thereafter, what has been purported to be done is that it is shown that the vendors have sold, transferred, conveyed, alienated, assigned to the vendee all the scheduled property. The matter does not end there. The aforesaid recital is followed up with the words 'along with all the rights, easements, interests, etc., the rights which ordinarily passed on through such sale on and over the said land in favour of the vendee and to hold and enjoy the same as absolute owner. In the Schedule, no doubt, what is mentioned is 46 acres and a little over 71 cents. We have already referred to the conduct of the first and second respondents, which commended itself to the learned Single Judge as conveying the impression that they wanted to repair and maintain the plant and machinery. Furthermore, they have also sought the benefit of the exemption provided under GoMS 103 dated 07.02.2001, which Government Order purported to provide for certain concessions in the form of exemption from stamp duty and registration fee in favour of industrial units. We are in agreement with the view taken by the learned Single Judge that the unit was purported to be operated as a going concern and apparently the first respondent did not intend to dispose of the plant and machinery as scrap. Bearing in mind this context, we proceed to examine the exigibility of the plant and machinery to stamp duty under the Act.

35. We have referred to Sections 3, 4 and 5 of the Act. We have also adverted to the interpretation traced on the same by this Court in Member, Board of Revenue (supra). The learned Amicus would submit that plant and machinery would constitute 'distinct matters' within the meaning of Section 5 of the Act. To put it differently, distinct matters are dealt with in one instrument, viz., the sale deed in question. If different instruments had been executed purporting to convey land, building, plant and machinery, it would be the aggregate of the value of such matters, which would have exposed them to duty. If instead of separate instruments, distinct matters are made subject matter of one instrument, then, it would hardly matter and the liability to pay duty would be still found within the four walls of Section 5 of the Act.

36. It is, no doubt, true that what is purported to be conveyed, going by the Recital Clause, is, at first blush, the land as comprised in the Schedule, viz., 46 and odd acres. What is conveyed is immovable property. Immovable property has been defined in the General Clauses Act, 1897 as 'including land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth'. When it comes to the definition of 'immovable property' in the Transfer of Property Act, it has been defined as 'not including standing timber, growing crops or grass'. In the Registration Act, 1908, immovable property includes, apart from land and buildings, things attached to the earth or permanently fastened to anything which is attached to the earth but not including standing timber, growing crops or grass. Most importantly, we cannot also be oblivious that Section 8 of the Transfer of Property Act declares that in the absence of an express or implied indication, a transfer of property passes to the transferee all the interests, which the transferor was capable of passing in the property and in the legal incidents thereof. Such incidents includes, inter alia, where the property is land, all things attached to the earth. When the property is machinery

attached to the earth, the movable parts thereof also are comprehended in the transfer.

37. In the Recital Clause, a proper reading of the same would tend to indicate that what is conveyed is rights over the scheduled property, which, no doubt, is the land, as described in the Schedule but it includes all the rights, easements, interests, etc., i.e., the rights which ordinarily passed on such sale over the land. It is from a reading the said recital in conjunction with Section 8 of the Transfer of Property Act that the intention of the parties become self-evident that the vendor intended to convey, all things, which inter alia stood attached to the earth. The mere fact that there is no express reference to plant and machinery in the Recital Clause cannot mean that the interest in the plant and machinery which stood attached to the land, which was scheduled, was not conveyed to the first respondent. The value of, what was actually purchased, has been expressly set out in the Preamble to the sale deed. The value has been reflected as Rs.8.35 crores. The sum of Rs.8.35 crores had been, in unambiguous terms, indicated as the total sale consideration for the asset sold to the first respondent, comprising of land, building, civil works, plant and machinery and current assets, etc. The first respondent has taken out the value of the land, building and civil works, and shown it at Rs.10105000/-, and then indicating only the said amount as value. This is apparently to tide over the liability to stamp duty for what was actually, in law, conveyed to the first respondent. The Division Bench appears to have proceeded on the basis that the first appellant could not force Respondents 1 and 2 to pay stamp duty on the value of the plant and machinery, when they do not seek its registration. As respondents 1 and 2 had given up their claim for exemption based on the Government Order, the Division Bench accepted the same. The Division Bench overlooked the nature of the transaction, the effect of the auction sale, the property sold and their value, and the fact that the Company Judge had by order dated 15.06.2004 left it open to the authority to determine the liability. The Division Bench did not consider the preambular part. It also failed to bear in mind the power available with the authorities.

38. The effort of respondents 1 and 2 was to avoid payment of the stamp duty as due in law. The Division Bench erred in not noticing the true purport of the sale deed in conjunction with Section 8 of the Transfer of Property Act and the definition of the word 'immovable property', which we have adverted to. Viewed in the context of Duncans Industries Limited (supra) and Member, Board of Revenue (supra), as also the other attendant facts, including the contents of the Preambular portion, as also the conduct of the Respondents 1 and 2, it would be clear that the sale deed operated to convey the rights over the plant and machinery as well, which was comprised in the land scheduled in the sale deed. As far as the plant and machinery is concerned, it must, however, be only such plant and machinery, which was permanently embedded to the earth and answering the description of the immovable property as defined. It would appear that such an inquiry was not done to ascertain the same by the appellants.

39. The proviso to Section 27 of the Act, added by the Andhra Pradesh Amending Act (8 of 1988), does empower the Officer to inspect the property, make local inquiries in the facts, call for connected records, examine them and satisfy that the provisions of Section 27 are complied with. Section 27, undoubtedly, provides that the consideration, if any, and the other facts and circumstances, affecting the chargeability of any instrument or the amount of duty, must be fully and correctly set forth. Equally, Section 47A of the Andhra Pradesh Amending Act (8 of 1988),

empowers the Registering Officer to deal with undervalued instruments. We have adverted to the provision and it provides for an elaborate procedure to deal with the problem of undervaluation. It may be true that Section 27 of the Act read with Section 64, as interpreted in Himalaya Space House Company Limited (supra), was understood as meaning only that failure to comply with Section 27, was punishable under Section 64. The Court, in the said case, in fact, noted the absence of any provision, empowering the Revenue to make an independent inquiry for determining the value of the property. As far as Andhra Pradesh is concerned, with the addition of the proviso to Section 27, power has been conferred on the Authority, which was found conspicuous by its absence in Himalaya Space House Company Limited (supra). This is besides Section 47A of the Act.

40. We would think that the learned Amicus is right in pointing out that in the nature of the transaction, and what was actually sold by the Official Liquidator, plant and machinery, such as would answer the description of immovable property, must also be found part of the property for the purpose of the stamp duty and other charges as per law.

41. There are two aspects, which remain. Firstly, as noted by us, on account of the default of the appellants to effect service on the second respondent, the SLP stood dismissed. We, however, notice that, at the request of the second respondent, the Company Court ordered that the sale deed be executed in favour of its nominee, viz., the first respondent. The first respondent, accordingly, became the vendee under the sale deed. It is the first respondent, which is liable in law as vendee to pay the stamp duty. Therefore, we would think that the absence of the second respondent, may not affect passing of an order as against the first respondent, which, as the vendee, is the entity liable to bear the liability towards stamp duty. Another aspect is that the matter may have to go back to consider the actual plant and machinery as would answer the description of immovable property as correctly pointed out by the learned Amicus. The passage of time may have its bearing. But it may have to be carried out.

42. As noticed by us, the appellants had also appealed against the Judgment of the learned Single Judge. The Single Judge, it must be remembered, while upholding the Order of the second appellant (District Registrar) in regard to the value of the plant and machinery, had directed deducting the value of the current assets and also directed making available benefits of GoMS 103 dated 07.02.2001. Apparently, Respondents 1 and 2 in the Appeal gave up their claim to the exemption on the basis that they succeeded in having the sale deed registered without having to include the value of plant and machinery before the Division Bench. The stand of the appellants would appear to be that GoMS 103 dated 07.02.2001 applied to new industrial units other than those listed as ineligible under GoMS 9 dated 05.01.2001. It appears to be their case that the subject industry is a mini steel industry and mini steel industry plants were not eligible and the item appears as Item 56 in Annexure 1 to GoMS 9 dated 05.01.2001. Since, the respondents gave up their claim for exemption, the case of the appellants was not gone into by the Division Bench. We are of the view that the second appellant can look into this aspect as well.

43. The upshot of the above discussion is that the Appeal filed against Writ Appeal No. 1873 of 2005 is allowed. The Appeal filed against the Judgment in Writ Appeal No. 2457 of 2005 is partly allowed. The impugned Judgment is set aside and we restore the Judgment of the learned Single Judge

subject to the modification that we set aside the direction to the second appellant to give the benefit of GoMS 103 dated 07.02.2001. The second appellant will ascertain the value of plant and machinery on the basis of it answering the description of the immovable property as understood in law. The second appellant will also go into the question, whether the first respondent would be entitled to the benefit of the exemption of stamp duty, etc., as claimed while taking a decision and make available the exemption, if entitled in law. We make it clear that the second respondent cannot be made liable under this judgment. Parties will bear their respective costs.

.....J. [K.M. JOSEPH]J. [HRISHIKESH ROY] NEW
DELHI;

DATED: APRIL 26, 2023.