

(2011) 06 MAD CK 0560

In the Madras High Court

Case No : Writ Petition Nos.7700 and 7701 of 2008 and M.P. No's. 1, 2 and 3 of 2008

Accel Limited, Third Floor. No.75, Nelson Manickam Road,
Chennai 600 029 and Accel Tele. Net Limited 171, SFI
Complex, Valluvar Kottam High Road, Nungambak-kam,
Chennai-34

APPELLANT

Vs

The Inspector General of Registration, Santhome High Road,
Chennai 600 004 and The Sub Registrar, Office of the Sub
Registrar, Kodambakkam, Chennai 600 024

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Constitution of India, 1950 — Article 23, 5
Registration Act, 1908 — Section 17(1), 35, 47A(2), 49
Transfer of Property Act, 1882 — Section 53, 53A

Citation : (2011) WritLR 811

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Mr.Krishna Srinivasan, for M/s.Ramasubramaniam, Associates, for the Appellant; Mrs.Lita Srinivasan, Govt. Advocate., for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioners herein viz., Accel Limited and Accel Tele Net Limited, seek for issuance of writs of certiorarified mandamus to call for the records of the 2nd respondent culminating in passing of the impugned order No.1-I/2007, dated 12.02.2008, quash the same and consequently direct the 2nd respondent to return the Unregistered Sale Deed, dated 27.03.2003, bearing No.P42/2003, back to the petitioners.

2. Both the above writ petitions, wherein, the common question requires to be discussed and decided being,

whether, in the light of the provisions of the Stamp Act and Registration Act, the Registering Authority/Sub Registrar, before whom a document/sale deed is

presented for registration, can charge stamp duty for return of the unregistered document when such request is made by both the parties as the conveyance of the property itself has been aborted and no transfer of the property had taken place from the vendor to the purchaser and the vendor holds and retains possession of the property; in other words, when the provisions of the Stamp Act contemplate levy of Stamp Duty only if the conveyance as defined under the said Act as well as under the Transfer of Property has taken place between a purchaser and a seller on their joint registration for the purpose of conveyance of the interest in the property covered by the document seeking for registration under the Registration Act, whether a person who presented a document of sale deed for registration is entitled to withdraw the document in question before completion of the registration, without paying any stamp duty", have been taken up for common disposal and they are disposed of by this common order.

3. Learned counsel for the petitioners, at the first instance, outlined the facts of the case in brief thus:-

The petitioner in W.P. No.7700 of 2008 viz., Accel Limited (hereinafter referred to as "Transferor Company" or "Vendor"), is a company engaged in the business of manufacture and sale of computers and accessories, and its wholly owned subsidiary company-Accel Tele. Net Limited (referred to henceforth as "Transferee Company" or "Purchaser") is the petitioner in W.P. No.7701 of 2008.

In the year 2003, the petitioner/Transferor had, in the course of its business, entered into an Internal Re-structuring Process (IRP) with the petitioner-Transferee Company, thereby contemplating transfer of certain properties from the transferor to the transferee company. As a part of the IRP, the Transferor/Vendor Company had transferred the property comprising of land ad-measuring 8000 sq. ft. and building ad-measuring 14850 sq. ft. in Survey No.14/2E, T.S. No.27, Block No.15 of Vada Agaram Village, situate at No.75 (Old Nos.124 & 125), Nelson Manickam Road, Aminjikarai, Chennai, to the Transferee/Purchaser company, vide Sale Deed, dated 27.03.2003, for a sale consideration of Rs.4.41 crore with the terms and conditions as specified in the document. On presentment of the document for registration on 27.03.2003, the 2nd respondent-Sub Registrar, Kodambakkam, Chennai, assigned Pending Document No.42/03 to it. On the very same date, a sum of Rs.4,41,180/- being the registration charges payable @ 1 % of the sale consideration was paid with the 2nd respondent. As on date, the said document is still pending.

4. So pointing out, learned counsel appearing for the petitioners would submit that the stamp duty leviable under the provisions of the Stamp Act was not paid as the subject document is completely exempted from the payment of stamp duty as per the remissions notified by the Government of Tamil Nadu in G.O. Ms. No.1224/Revenue/dated 25.04.1964. The said Notification was further amended by a Notification bearing G.O. Ms. No.37/CT & RE Department, dated 25.01.1995, clearly stating that to avail the said remission, both the companies should have the registered offices in the State of Tamil Nadu. Subsequently, the

aforesaid G.O., which was in force till 12.01.2007 came to be repealed by another Government Order in G.O. Ms. No.26, dated 12.01.2007. Since in the present case, both the transferor and the transferee companies/petitioners are having their respective registered Offices at Chennai, the only other condition attached to the Notification for availing the remission benefit is that the company-transferor availing the said benefit shall have to file the certified copies of their relevant records filed in the office of the Registrar of Companies to substantiate that the conditions have been fulfilled.

5. Learned counsel for the petitioners would further submit that the petitioner-Vendor is entitled to have the benefit of remission-reduction in the duties payable by it on the property meant to be transferred to its subsidiary company since the vendor is holding more than 90% of the share of the purchaser company. Thus, the Vendor-Company claimed exemption of remittance of the requisite stamp duty and thereafter, requested the 2nd respondent to register the conveyance after payment of Rs.4,41,180/- towards registration charges that was calculated at 1 % of the sale consideration. Though photocopies of all the relevant records including the Annual returns filed by both the companies for the year ending with 31.03.2002 duly certified by the Registrar of Companies and a Certificate from the Auditor of the companies to the effect that the purchaser company is a wholly owned subsidiary of the vendor company were submitted before the 2nd respondent at the time of registration of the document, not being satisfied with the same, the 2nd respondent issued a letter dated 14.05.2003 to the Registrar of Companies, Government of India, requesting the said Authority to issue the Share Capital Certificate of the Purchaser Company, whereupon, by office letter dated 22.05.2003, the Assistant Registrar of Companies replied to the 2nd respondent that, out of 80070 paid up Equity shares of the purchaser company, 80040 Equity Shares are held by the Vendor-Company. Even though the official letter written by the Assistant Registrar of Companies made the issue very much clear to the 2nd respondent that the petitioner-vendor holds more than 90% of the Capital shares of the purchaser-company, the 2nd respondent failed to register and release the document. Once again, the 2nd respondent, by his letter dated 31.05.2003, addressed to the Registrar of Companies, requested the said authority to furnish the position of shareholding of the companies as on the date of registration i.e., 27.03.2003, whereupon, the authority replied the 2nd respondent, requesting him to come and inspect the relevant records available in his office.

Pausing here, learned counsel would submit that having been asked by the Registrar of Companies to come and visit the documents available with them, without even inspecting the records at the office of the Registrar of Companies, again the 2nd respondent insisted upon the petitioner-vendor to pay the stamp duty when the petitioners' document is squarely covered by Notification No.1224, dated 25.04.1964. Further, the document in question was presented for registration on 27.03.03 i.e., when the Notification was in force as it came to be repealed on 12.01.2007 by virtue of G.O. Ms. No.26.

6. Adding further, learned counsel states that, despite the letters of the Registrar of Companies, the 2nd respondent sent a letter dated 22.09.2003 to the said Authority requesting him to furnish the share holding of both the companies as on 31.03.2003 in the light of the annual returns having been filed by the purchaser. The Assistant Registrar of Companies immediately replied, reiterating that even as on 31.03.2003, 100% paid up capital shares of the purchaser company is held by the vendor company. Despite the clear fact that the petitioners' case falls under the exemption available under the Notification, a show cause notice, dated 08.10.2003 was issued to the petitioner-vendor, calling upon them to make payment of Rs.57,33,200/- towards deficit stamp duty. Immediately, a reply was sent on 21.10.2003 stating that the demand was not justified. Copies of necessary documents to substantiate the fact the petitioner-company is holding more than 90% of the shares of the purchaser-company as required under the Remission Notification of the year 1964 to avail the benefits provided thereunder were sent along with the Reply by way of enclosure. Notwithstanding the reply sent by the petitioner, the 2nd respondent has passed an order dated 23.10.2003, upholding the levy of deficit stamp duty of Rs.57,33,200/- on the vendor and purchaser companies. Aggrieved by the said order of the 2nd respondent, the petitioners/companies filed an appeal before the first respondent/Inspector General of Registration enclosing all necessary documents that were already filed before the 2nd respondent. After consideration of the materials placed and the submissions made on behalf of the petitioners, the 1st respondent passed an order vide No.59175/B(1)/2003, dated 08.11.2004, directing the 2nd respondent to receive the annual returns of the purchaser for the year 2003 and to consider the release of documents to the Vendor-Petitioner Company. Thereafter, as directed by the Inspector General of Registration, the petitioners addressed a communication dated 13.12.2004 to the 2nd respondent through their counsel by enclosing the annual returns for the year 2003-04, duly certified by the Registrar of Companies. However, despite the order of the first respondent and the detailed letter written by the petitioners, the 2nd respondent passed the order dated 25.04.2005, denying grant of exemption available to them under the aforementioned Notification. Once again, the petitioners approached the first respondent against the said order passed by the 2nd respondent and the first respondent, by order dated 14.03.2006, directed the 2nd respondent to re-consider the case of the petitioners for the second time. In the meanwhile, the first respondent had issued a Circular dated 14.02.2006, intimating that the annual return in Schedule V, copies of share certificates, register of members and minutes books can be produced by the parties for substantiating their share-holding pattern for claiming exemption under Remission Notification No.1224/64. In line with the said Circular issued, the petitioners sent all the documents including the annual return of the company in Schedule V under cover of their letter to the 2nd respondent. Based on the same, learned counsel appearing for the petitioners further submits that, in compliance with the Circular, dated 14.02.2006, issued by the first respondent, though the petitioners presented all the documents along with the letter, dated

25.01.2007, issued by the Registrar of Companies to substantiate their claim regarding share-holding so as to avail the remission under Notification No.1224/64, the 2nd respondent sent a letter, dated 02.03.2007, reiterating the stand taken by him in his earlier orders denying grant of exemption under the Notification. By reply, dated 28.03.2007, the petitioners clarified the entire state of affairs and sought for re-consideration of the order dated 02.03.2007, however, the 2nd respondent, by order dated 25.04.2007, directed the petitioners to pay deficit stamp duty of Rs.57,33,500/-. Aggrieved by the said order, the petitioners approached the first respondent for the third time by way of appeal and the same is pending.

At this juncture, learned counsel for the petitioners would point out that, during the pendency of the appeal, some new developments had taken place, whereby, the internal restructuring process did not completely take place between the petitioners- companies and consequent thereto, both of them decided to withdraw the sale deed, dated 27.03.2003, since both of them agreed to abort the restructuring process between them. On that basis, both the petitioners, by a joint letter dated 06.02.2008 wrote to the 2nd respondent, requesting the said authority to return the unregistered Document No.P42/03, dated 27.03.2003, to them. Even that request was also declined to be acted upon by the 2nd respondent vide impugned letter dated 12.02.2008 stating that the petitioners have to pay the deficit stamp duty to the respondents if at all they want the document to be withdrawn, unregistered. Only in that background, after all the exhaustive efforts went in vain, the petitioners have come to this Court seeking a direction to the respondents to return the unregistered document without demanding any deficit stamp duty by setting aside the impugned orders on the ground that whatever the document presented by the petitioners for registration before the 2nd respondent/Sub Registrar having not been registered nor any interest having been conveyed, the same should be returned forthwith.

7. In reply, relying heavily on the grounds taken in the counter, learned Government Advocate forcibly contended that in terms of Paragraph No.4 of the Notification issued in G.O. Ms. No.1224/Revenue, dated 25.04.1964, a party seeking remission of stamp duty must show that 90% of the issued share capital of the Transferee Company is held by the Transferor Company. According to her, in the instant case, the certificate issued by the Registrar of Companies, Chennai, Vide ROC/TN/Records/2007, dated 25.01.2007, though reflected that the Transferor company is holding 80070 shares in the Transferee company as its paid up share capital, it does not state the share capital position as required in the Notification. Therefore, the 2nd respondent has rightly held that the document under question is not entitled for remission of stamp duty available under the Notification. So submitting, learned Government Advocate seeks for dismissal of the writ petitions.

8. Even before recording the reasons, this Court hastens to add that the submission made by the learned Government Advocate does not merit

acceptance for the simple reason that the Assistant Registrar of companies, in his office letter, dated 22.09.2003, while replying to the 2nd respondent, clearly stated that more than 90% of the issued capital of the petitioner-purchaser is held by the petitioner-vendor and the said letter goes to the root of the case that the petitioners are entitled to have the benefit of remission as per the Notification. The Notification is very clear in stating that, to enjoy the benefit of exemption granted by the remission Notification, it has to be simply proved that not less than 90% of the share of the purchaser-company are held by the vendor-company. This fact was clearly brought to the notice of the 2nd respondent by various relevant documents including the list of shareholders of the purchaser company for the year 2002, 2003, 2004 and also 2005. Further, the relevant Balance Sheets were also placed for perusal of the 2nd respondent to show that more than 90% of the shares of the purchaser are held by the vendor. When the order dated 23.10.2003 came to be passed by the 2nd respondent without even considering the relevant documents available with him from the office of the Registrar/Assistant Registrar of the Companies as well as the petitioners, an appeal was filed before the first respondent, who, after considering all the relevant materials on record, passed an order dated 08.11.2004, directing the 2nd respondent to receive the annual returns of the petitioner for the year 2003 and to re-consider the release of documents to the petitioners-company. In spite of the order passed by the first respondent, once again, the 2nd respondent declined to grant the exemption provided under the said Notification. On receipt of the Order, dated 25.04.2005, whereby, the 2nd respondent denied grant of exemption under the Notification, the petitioners approached the first respondent, who, by order dated 14.03.2006, directed the 2nd respondent to reconsider the case of the petitioners for the second time. Thereafter, the first respondent issued a Circular dated 14.02.2006 stating that the annual return in Schedule V, copies of share certificates, register of members, minutes book can be produced by the parties for substantiating their share holding pattern for claiming exemption under Notification No.1224/64. In terms of the said Circular, again, the petitioners sent all the documents including annual returns of the purchaser company in Schedule-V along with a letter dated 11.04.2006 to the 2nd respondent. This time, the Registrar of Companies, Chennai, by letter dated 25.01.2007 strengthened the case of the petitioners that the vendor/Company was holding 80070 equity shares in the purchaser/company as on 29.09.2006.

9. In this context, it is relevant to look at the issue slightly from a different angle. On the basis of the details given by the Assistant Registrar of Companies, by letter dated 22.5.2003, the position is made clear that out of the 80060 paid up equity shares of the purchaser company, 80040 equity shares were held by the vendor company. Consequently, the Registrar of Companies, Chennai, Department of Company Affairs, Ministry of Finance, Government of India, also made it clear that the vendor company holds more than 90% of the issued capital of purchaser company. On the face of those letters and communications, it is too vague for the 2nd respondent to contend that the Registrar of

Companies did not clearly state the share capital possession as required under the Notification, and to say that the petitioners are not entitled for remission of stamp duty. Further, the Registration Authority itself received 1% of the sale consideration viz., Rs.4,41,180/-being the registration charges payable on the document when the document was presented on 27.03.2003. Therefore, even at the first instance the authority did not demand or collect the stamp duty leviable under the provisions of the Stamp Act, presumably, as the document in question is completely exempted from payment of stamp duty as per the remission notified by the State Government. Added to that, admittedly, the document was not registered and, in the meantime, both the vendor and purchaser companies made a joint request to the registration authorities not to proceed with registration of the document as the purpose for which the transaction was made under the document did not materialise. Therefore, unless and otherwise the document presented is impounded for any "justifiable reason" supported by legal basis, in genuine cases as in the instant one where the interest sought to be transferred or conveyed in the sale deed having not been conveyed and the document itself is sought to be returned at a stage when the instrument is kept pending for quite a long-time unregistered, there may not be any justification to reject the request for return and in demanding deficit stamp fee which is not at all attracted in the case. That is why, the decision reported in Mohammed Nachiar Vs. The District Registrar, Chidambaram, relied on by the learned Government Advocate cannot be made applicable to the facts of the present case, for, in the said case, the document was impounded for insufficient stamp duty, whereas, in the instant case, the document was though impounded initially, later on, the first respondent set aside the impoundment, and moreover, the registering authority itself, in a way accepting the claim of the petitioners that the document attracts the exemption notification, readily received the 1 % of the sale consideration towards the registration charges, however, all along kept the document pending unregistered until the parties ultimately made a joint request for return of the document as such, unregistered. It is pertinent to point out that a Division Bench of this Court in Park View Enterprises vs. State Government of Tamil Nadu (1991 71 Comp Cas 723 Mad), held that no provision is made either in the Stamp Act or in the Registration Act to compel parties to an instrument to register it. It is further held therein that failure to register a document which is compulsorily registrable u/s 17(1) of the Registration Act disables the effectiveness of the document only to the extent provided in the Section and not otherwise. No doubt, it suffers certain handicaps as in Section 35 of the Act. But, at the same time, the Registrar has no power to compel the parties to an instrument to register it. It is better to extract below the relevant portion from the above-referred case law:

Yet another plea put forth by petitioners is that, the Registering Authorities before whom conveyance of undivided share in land is produced for registration cannot compel production of agreements which are unconnected with an undivided share sold in the land, which alone is chargeable to duty under Art. 23,

and that by summoning construction agreements they cannot impose the stamp duty under Art. 5(i) on such agreements and insist upon registering them. Undoubtedly, it is entirely left to the parties, either to register or not to register the instrument. If they do not choose to register the document, the consequences are spelt out in Sec. 49 of the Registration Act. Even thereunder, the proviso is to the effect that an unregistered document affecting immovable property could be received as evidence of a contract in a suit for specific performance, or as evidence of part-performance for the purpose of Sec. 53A of the Transfer of Property Act, or as evidence of any collateral transaction not required to be effected by registered instruments. Therefore, failure to register a document which is compulsorily registrable under Sec. 17(1) of the Registration Act, disables the effectiveness of the document only to the extent provided in that section and not otherwise. It suffers certain handicaps as in Sec. 35 of the Act. Therefore, on the Registering Authority under R.3(3) getting at an agreement which would come under Art. 5(i) or even the Collector on coming across such an agreement when he assesses the market value under S. 47A(2) of a share of land sold under a sale deed; cannot compel the parties to register such agreements. Hence an agreement covered by Article 5(i) and which is not registered and proper stamp duty not paid thereon, would suffer the disability as known to law. No provision is made either in the Stamp Act or in the Registration Act, to compel parties to an instrument to register it.

Coming to the case on hand, having received and accepted a sum of Rs.4,41,180/-, which was the amount payable on the basis of 1% of the sale consideration, the 2nd respondent should have granted exemption by registering the document since, admittedly, the stamp duty leviable under the Stamp Act is completely exempted by the Exemption Notification. Under such circumstances, when the petitioners do not wish to take back the document registered and the authorities respondents also, even after receipt of the registration charges applicable to the document accepting the instrument as the one falling under the Exemption Notification, did not register the documents despite repeated requests of the petitioners and ultimately, the purpose for which the document was sought to be registered did not materialise, this Court is of the view that ends of justice would meet by holding that, in the given set of facts, the petitioners are entitled to receive back the document and accordingly, respondents are directed to return back the document to the petitioner-vendor, without insisting for stamp duty as it is not applicable to this case, within a period of three weeks from the date of receipt of copy of this Order.

10. Writ petition is ordered accordingly. No costs. Connected Miscellaneous Petitions are closed.