

Deepti Ahuja Vs. The Chief Controlling Revenue Authority-cum- Inspector General of Registration, Chennai and Others

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Court : Chennai

Decided On : Jul-20-2016

Judge : R. Subbiah

Appeal No. : Writ Petition No. 211 of 2016 & W.M.P. Nos. 115 & 116 of 2016

Appellant : Deepti Ahuja

Respondent : The Chief Controlling Revenue Authority-cum- Inspector General of Registration, Chennai and Others

Judgement :

(Prayer: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the proceedings No.32813/P1/ 2015 dated 17.11.2015 passed by the first respondent confirming the order of the second respondent passed in Order No.3086/A1/2015 dated 04.06.2015, quash the same and consequently direct the second respondent to complete the registration of the lease deed dated 06.04.2015 pending document No.P113/2015 within the time to be stipulated by this Court.)

1. The petitioner calls in question the order dated 17.11.2015 passed by the first respondent, confirming the order dated 04.06.2015 of the second respondent. By the said order dated 17.11.2015, the first respondent rejected the statutory

revision preferred by the petitioner and directed her to pay the deficit stamp duty of Rs.5,34,788/- together with penalty of Rs.1,212/- as has been assessed by the second respondent in respect of the lease deed dated 06.04.2015.

2. The facts which led to the institution of the aforesaid writ petition can be briefly stated as follows:-

(i) A large tract of land measuring 1550 acres was owned by M/s. Mahindra World City Developers Limited. The said owner in turn has executed perpetual lease in favour of the fourth respondent in respect of the land measuring 218.982 acres from and out of the 1550 acres owned by them by means of various registered sale deeds for the purpose of development of residential facilities. The fourth respondent is a duly approved Small Economic Zone Co-developer which was recognised by the Board of Approval, Ministry of Commerce and Industry, Government of India by a letter of approval dated 24.08.2008 whereby the fourth respondent was authorised to develop residential facilities in the non-processing area of Small Economic Zone (hereinafter referred to as 'SEZ'). On the basis of such approval, the fourth respondent prepared a scheme to develop the above said lands by constructing residential units such as Villas, Town Homes and Apartments. In the course of such development, the petitioner herein has entered into a lease with the fourth respondent for taking out a residential unit with an intention to let it out to the employees of the SEZ. Accordingly, a lease deed dated 06.04.2015 was executed in favour of the petitioner by the fourth respondent on a non-judicial Stamp paper of Rs.20/-. According to the petitioner, such lease deed executed in her favour by the fourth respondent is exempted from payment of stamp duty as per Rule 11 (10) of the SEZ Rules and Section 3 of the Indian Stamp Act and therefore, the petitioner need not pay any stamp duty on the instrument viz., Lease Deed.

(ii) When the petitioner presented the lease deed dated 06.04.2015 for registration with the third respondent, the third respondent examined the same and referred it to the second respondent with his remarks. The second respondent, after examining the lease deed, has issued a show cause notice dated 03.07.2015 to the petitioner calling upon her to explain as to why an order be not passed for

collection of stamp duty of Rs.5,34,788/- with penalty of Rs.1,212/- from her. The petitioner submitted a reply dated 15.07.2015 contending that the lease deed is in respect of a non-processing unit of SEZ and it was executed by the fourth respondent, a Co-developer of SEZ. Further, the lease deed has been executed to carry out the purposes which have been spelt out in the SEZ Rules. It was further replied that the Co-developer can lease out the residential unit in favour of any person in respect of the land or building situate within the non-processing area and there is no embargo or restriction for the same in the SEZ Act or Rules. In such circumstances, the instrument presented for registration, in respect of a non-processing area within the SEZ, is exempted from payment of stamp duty. Notwithstanding such reply, the second respondent, by the order dated 04.08.2015, concluded that the lease deed presented by the petitioner is not exempted from payment of stamp duty. According to the second respondent, the exemption of stamp duty provided in Section 3 of the Indian Stamp Act, 1899 cannot be extended to the lease deed presented by the petitioner. Therefore, the second respondent justified the demand for payment of deficit stamp duty and penalty made by the third respondent. Aggrieved by the same, the petitioner has filed a revision before the first respondent.

(iii) The first respondent/revisional authority, upon consideration of the claim of the petitioner in the revision, concluded that the petitioner is neither an employee nor an unit in the SEZ or an entity permitted to carry out operation within the SEZ as per the SEZ Rules. Further, the fourth respondent did not rent out the houses to the employees of the Units of SEZ and the Units in turn had not entered into any lease agreement for renting the premises to their employees for whom the facility has been created in the non-processing area. When the facility is meant to be used by persons who are working for establishment relating to SEZ developers, units or users of infrastructure facilities created in the SEZ, the claim made by the petitioner for exemption in payment of stamp duty cannot be considered and it is contrary to the SEZ Rules as well as the provisions of the Indian Stamp Act. By holding so, the first respondent rejected the statutory revision preferred by the petitioner.

3. Mr. M.S. Krishnan, learned Senior counsel appearing for the petitioner would contend that the petitioner entered into the lease deed only on the basis of the exemption granted in payment of stamp duty. The learned Senior counsel appearing for the petitioner would further contend that hitherto, the respondents 1 to 3 have granted exemption in payment of stamp duty by relying on a Circular issued by the Inspector General of Registration, which was issued on the basis of clarifications issued by the Government of India, represented by its Secretary, Commercial Taxes and Registration Department for grant of stamp duty exemption. In this regard, the learned Senior counsel for the petitioner relied on the Circulars dated 23.09.2008, 24.10.2008, 10.11.2008, 20.11.2009 issued by the first respondent instructing the Subordinate Officers to grant exemption from payment of stamp duty if the instruments relate to land and building situate at SEZ Zone and for the purpose of carrying out SEZ activities. However, contrary to such convention, in the case of the petitioner, the respondents 1 to 3 have relied on the Circular No.18 dated 02.07.2009 and Instruction No. 65 dated 27.10.1020 to refuse such exemption in favour of the petitioner. This according to the learned Senior counsel for the petitioner is contrary to and has an overriding effect of the provisions of the SEZ Act and Rules as also the Indian Stamp Act. According to the learned Senior counsel for the petitioner, it is well settled that an executive instruction in the form of Government Orders, notifications, Circulars cannot override the statutory provisions and therefore, the reliance placed by the respondents on the Circulars issued by the first respondent is legally not sustainable. The learned Senior counsel for the petitioner would further contend that the conclusion arrived at by the first respondent in the Circular that the guidelines issued by the Government of India is intended to regulate the objects sought to be achieved to establish SEZ and therefore due adherence of such guidelines is mandatory for the purpose of extending exemption of stamp duty is against the provisions of the SEZ Act and the Rules made thereon.

4. The learned Senior counsel for the petitioner, in order to add strength to his contentions, relied on the decision of the Constitutional Bench of the Honourable Supreme Court in (Mannalal Jain vs. State of Assam and others) AIR 1962 Supreme Court 386 to drive home the point that executive instructions, even if it is considered necessary to be issued with respect to a particular matter, cannot

override the statutory provisions of law. For the same proposition, he also relied on the decision of the Full Bench of the Supreme Court of India in (Union of India and another vbs. Charanjit S. Gill and others) (2000) 5 Supreme Court Cases 742 wherein it was held that administrative instructions issued or the notes attached to the Rules, which are not referable to any statutory authority cannot be permitted to bring about a result which may take away the rights vested in a person governed by the Act.

5. According to the learned Senior Counsel for petitioner, the conclusion arrived at by the first respondent that the Developer was not allowed to lease out the housing plots directly to the individuals is without any legal basis. What is prohibited is that it should not be utilised by persons other than the employees. In other words, the properties situate within the non-processing area in SEZ cannot be utilised by the outsiders. In the event of the property being utilised by the employees alone, then all industrial units and their expansions to be located in the Special Economic Zones will be exempted from payment of stamp duty and registration charges. The respondents did not consider the intention of the petitioner in entering into the lease agreement with the Co-developer to let out the property for rent to the employees of SEZ. In such circumstances, the petitioner is entitled for payment of stamp duty.

6. The learned Senior counsel appearing for the petitioner would contend that the respondents 1 to 3 failed to take note of the statutory provisions contained in Section 3 (3) of the Indian Stamp Act wherein it was clearly held that no duty shall be chargeable in respect of any instrument executed by, or on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the special economic zone. It is not in dispute that the property covered in the lease deed is situate within the non-processing area of SEZ and therefore, as per Section 3 (3) of the Indian Stamp Act, the petitioner is entitled for exemption of stamp duty. According to the learned Senior counsel for the petitioner, amendment to Section 3 of the Indian Stamp Act was effected by Section 57 of the SEZ Act on 10.02.2006. Pursuant to such amendment, Part III of the Third Schedule to the SEZ Act amendment to the Indian Stamp Act, 1989 has been effected. By virtue of such amendment, any instrument executed by a Developer or Co-developer shall

not be chargeable with any stamp duty. In the present case, admittedly, the fourth respondent was a recognised Co-developer who has executed the lease in favour of the petitioner. The respondents also failed to consider that it was not an absolute sale of the property in favour of the petitioner disentitling her to get the stamp duty exemption or the petitioner is going to enjoy the infrastructural amenity created within the non-processing area of the SEZ. The nature of the instrument is a lease deed, executed in favour of the petitioner with the intention to rent it out to the employees of the SEZ. Therefore, according to the learned Senior counsel for the petitioner, there is no embargo to either entertain the lease deed presented by the petitioner for registration or to grant exemption in her favour.

7. The learned Additional Advocate General appearing for the respondents 1 to 3 would vehemently contend that as per Circular No.18 dated 02.07.2009 issued by the Government, the exemption sought for by the petitioner is admissible only in cases where the conveyance of land and building taken over by lease or otherwise in the SEZ and such land or building must be made use of only to the units in SEZ or entities permitted to carry out operations within the SEZ areas. The developer was not allowed to lease out the housing plots/flats directly to the individuals. As per Rule 11 (10) of SEZ Rules, no vacant land in the non-processing area shall be leased for business and social purposes. As per Rule 11 (10) of SEZ Rules, the developer or co-developer shall lease out the completed housing facilities not only for the management and office staff but also for the workers of the special economic zones. According to the learned Additional Advocate General, Rule 11 (10) of SEZ Rules was inserted by virtue of an amendment dated 03.02.2009 so as to clarify the intention of the Government that the land, buildings etc., falling outside the notified SEZ will not be eligible for exemption from stamp duty. Further, sale of SEZ land to units or other persons or entities is not allowed. This was communicated by way of an executive instruction No.65 dated 27.10.2010 to reiterate the purpose for which the housing units inside the SEZ area are to be used. In other words, the Circular No.65 has been issued as an extract and supplement to the amendment brought to the statutory provision and it cannot be said that the Circular has been issued contrary to and in derogation of the SEZ Act and Rules.

8. The learned Additional Advocate General would further contend that Rule 11 (10) of the SEZ Rule contemplates that the Developer or Co-developer may lease out the completed infrastructure only to the manufacturers and the workers of SEZ. Rule 11-A was introduced as an attempt to relax the said restriction imposed on the developers. The domestic Tariff entity as mentioned in Rule 11-A means an entity from a Domestic Tariff Area as defined in Section 2 (i) of the SEZ Act which contemplates that Domestic Tariff Area means the whole of India including the territorial waters and continental shelf but does not include the areas of the Special Economic Zones. Therefore, any entity that is not a special economic zone entity is a domestic tariff area entity. In the present case, the petitioner is not a SEZ entity but only a domestic tariff entity intending to carry on business in Special Economic Zone by leasing out residential units to the third party. Therefore, in case where the Developer or Co-developer intends to allow a Domestic Tariff Entity, he has to get the approval of the Board as mandated by Rule 11-A. In other words, in order to let the petitioner to use the residential unit of SEZ developed either by the Developer or Co-developer, the fourth respondent has to repay the stamp duty exemption granted by the State for creation of infrastructure and to get a No Objection Certificate to that effect. Therefore, according to the learned Additional Advocate General when the Developer or Co-developer themselves did not enjoy stamp duty exemption, the claim of the petitioner for such exemption cannot be sustained.

9. As regards the amendment brought to Section 3 (3) of the Indian Stamp Act, the learned Additional Advocate General would contend that such amendment was brought to serve the purpose of SEZ. Further, Section 51 of the SEZ Act specifically contemplates that the provisions of the SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Therefore, according to the learned Additional Advocate General, Section 51 of the SEZ Act has an overriding effect to the provisions of Section 3 (3) of the Indian Stamp Act and therefore, Section 3 (3) of the Indian Stamp Act cannot be pressed into service in this case.

10. The learned Additional Advocate General would further reiterate that after insertion of Rule 11-A of the SEZ Rules, if the developer or Co-developer intends to bring in a third party who is not associated with SEZ to run a business in the infrastructure developed in the SEZ area, then he has to refund the stamp duty and get No Objection Certificate from the State Government besides getting an approval of the Board. In other words, Section 11-A of the SEZ Rules has an overriding effect than Section 3 (3) of the Indian Stamp Act and therefore, the claim of the petitioner for exemption is untenable.

11. I heard the learned Senior counsel for the petitioner, learned Additional Advocate General appearing for the respondents 1 to 3 and the learned counsel for the fourth respondent. I had perused the materials placed on record. The question that arise for consideration in this writ petition is as to whether the first respondent is justified in refusing to grant of exemption on payment of stamp duty in favour of the petitioner.

12. Before dealing with the rival contentions made on behalf of the counsel on either side, it is necessary to look into the object with which the SEZ Act came to be enacted. The Act has been enacted to provide for establishment, development and management of the Special Economic Zone for promotion of exports and for matters connected therewith. Section 2 (f) of the SEZ Act defines a "Co-developer" which means a person, who or a State Government which, has been granted by the Central Government, a letter of approval under sub-section 12 of Section 3. Section 2 (g) defines the word "Developer", which means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section 10 of Section 3 and includes an Authority and a Co-developer. Section 3 of the Act provides for procedures to establish a Special Economic Zone, either jointly or severally by the Central Government, State Government or any person for manufacture of goods or rendering services or for both or as a Free Trade and Warehousing zone. Section 50 of the Act empowers the State Government to grant exemption for the purpose of giving effect to the provisions of this Act with particular reference to grant of exemption from the State Taxes, levies and duties to the developer or the entrepreneur. Thus, the object with which SEZ Act has been enacted is to promote SEZ, invite investments and

to encourage entrepreneurs and others persons interalia to grant certain concessions in the matter of levy of State tax and duties to more effectively achieve the object of the Act.

13. It is also necessary to look into the provisions of the Indian Stamp Act, particularly proviso to Section 2 and 3. Section 2 (6) of the Indian Stamp Act contemplates the instruments which are chargeable for payment of stamp duty. As per Section 2 (6), an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and as applied to any other instrument chargeable under the law in force in India when such instrument was executed or, where several persons executed the instrument at different times, first executed. Thus, the expression 'chargeable' defines the instruments which are chargeable under the Indian Stamp Act at the time when such instruments are presented for registration with the registering authority. Section 3 of the Act relates to exemption for registration of certain instruments. Section 3 (1) of the Indian Stamp Act contemplates that no duty shall be chargeable in respect of 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. Section 3 (3) of the Act contemplates that no duty shall be chargeable in respect of any instrument executed, by, or on behalf of, or in favour of the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

14. Section 6 of the SEZ Act, 2005 classifies the processing area and non-processing area. As per Sub-section (c) of Section 6, the non-processing area is one where there are activities other than those specified under clause (a) and (b) thereof which relates to areas meant for setting up Units for activities such as manufacture of goods, or rendering service, including area earmarked for providing warehousing facilities. As per Section 5 of the SEZ Act, the Board has to grant approval in favour of the fourth respondent as a Co-Developer. As per Rule 11 of the SEZ Rules, the areas with the SEZ have been demarcated as processing zone and non-processing zone. Of course, there is a prohibition contained under Rule 11 (10) of the SEZ Rules relating to lease of vacant lands in non-processing area if it is meant for business and social purpose such as educational institution,

hospital, hotel, recreation and entertainment facilities, residential and business complex to any person except a Co-developer approved by the Board. The proviso to Rule 11 (10) categorically stipulates that the Developer or Co-developer may lease the completed infrastructure along with the vacant land for such purpose. Therefore, as per Rule 11 (10), the lands within the non-processing area has to be leased out or otherwise transferred only after providing complete infrastructure thereof and it should not be leased out as vacant land. The second proviso to SEZ Rule says that adequate housing facilities shall be made not only for the management and office staff but also for the workers working in the SEZ. However, after amendment inserting Rule 11 (A), even the non-processing area shall be earmarked for business and social purpose after obtaining approval from the Central Government, including a No Objection Certificate from the concerned State Government. Thus, there is no embargo or prohibition anywhere in the Act and Rules to lease out the completed infrastructural amenity along with the vacant land appurtenant therewith in the non-processing area to third parties like the petitioner. What is prohibited is that it should not be used for any other purpose except for residential use and even if it is meant for any other purpose, prior permission has to be obtained from the Developer and a No Objection Certificate from the concerned State Government. In this case, the property covered under the lease deed is a residential unit and not a vacant land situate within a non-processing area. The intention of the petitioner is to take the property on lease and to lease it out to the employees of the SEZ. Thus, when the object sought to be achieved by the Act and Rules is fulfilled by reason of the petitioner letting out the leased property situate within the non-processing area for rent to the employees of the SEZ, then the petitioner is entitled for exemption from stamp duty.

15. In the present case, admittedly, the fourth respondent was recognised as a Co-developer by a letter dated 25th April 2008 by the Government of India as has been defined in Section 2 (f) of the SEZ Act. As per the letter dated 25th April 2008, the fourth respondent was recognised as a Co-developer for providing infrastructure facilities within the Special Economic Zone situated at Mahindra World City Developers Limited. In the letter of approval in favour of the fourth respondent, certain conditions are imposed in paragraph No.5 (i) to (xvi). In none of the conditions, there is any embargo or prohibition for the fourth respondent to

execute a lease deed in favour of an outsider in respect of a land or building situate within the non-processing area of the SEZ. In other words, if the land or building covered under an instrument is situate within the notified area of the SEZ, then such instruments are exempted from payment of stamp duty. If the instrument relates to sale of any land or building at a place outside the notified area, then the concession of exemption of stamp duty will not be available.

16. It is seen from the records that by a Government letter dated 24.10.2008 issued by the Commercial Taxes and Registration Department, the proposal sent by the first respondent with reference to grant of exemption of stamp duty in respect of the lease deed executed by the fourth respondent was considered. After considering such proposal, the Government directed the first respondent to grant exemption in respect of the lease deeds executed by the fourth respondent and to release such of those lease deeds which are kept as pending document in the office of the third respondent. In other words, it was categorically stated that the exemption provided under Section 3 of the Indian Stamp Act, 1899 is applicable to those lease deeds executed by the fourth respondent and that no notification needs to be issued by the Government separately for such purpose. Thus, the argument of the learned Senior counsel for the petitioner that hitherto the registering authorities have granted exemption from payment of stamp duty in respect of the lease deeds executed by the fourth respondent, but now, by referring to the Circular No.18 dated 02.07.2009 and Instruction No. 65 dated 27.10.1020 the first respondent refused to grant such exemption to the petitioner is to be accepted. Such a refusal is legally not sustainable since the administrative order in the form of Circular cannot override the Statute.

17. It is trite to note that an executive or administrative instructions can neither supplement nor override the statutory provision or Rules or Regulations. It is seen from the impugned order passed by the first respondent that reliance was placed on Circular No.18 dated 02.07.2009 and Instruction No.65 dated 27.10.2010 to negate the claim of the petitioner for exemption of stamp duty. When Section 3 (3) of the Indian Stamp Act provides that no duty shall be chargeable in respect of an instrument executed by a Developer or Co-developer in connection with any land or building situated within the SEZ, it cannot be nullified by placing reliance on the

Circular issued by the administrators. The respondents ought not to have placed reliance on such Circulars, which have no statutory force. This was the view taken by the Full Bench of the Supreme Court of India in (Union of India and another vbs. Charanjit S. Gill and others) (2000) 5 Supreme Court Cases 742 which was relied on by the learned Senior counsel for the petitioner wherein it was held that administrative instructions issued or the notes attached to the Rules, which are not referable to any statutory authority cannot be permitted to bring about a result which may take away the rights vested in a person governed by the Act.

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

stamp duty.

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

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