PROCEEDINGS OF THE CHIEF CONTROLLING REVENUE AUTHORITY AND INSPECTOR GENERAL OF REGISTRATION
CHENNAI - 600 028.
Present: Tmt. B.Jothi Nirmalasamy, I.A.S.,

No.35856 /P1/2019 Dated 20.11.2019

Sub: Revision Petition– Document No.P325/2019 Sub Registrar Office, Kundrathur – Revision petition under section 56(1) of the Indian Stamp Act, 1899 - final orders issued – regarding.

Ref: 1.District Registrar, Chennai(South) proceedings No. 4514/B1/2019 dated 20.08.2019.
2. Revision Petition from M/s.W.S.T & D Ltd dated 26.08.2019
3. Hon'ble High Court order dated 16.09.2019 in W.P.No.27344/2019.

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ORDER:

The Revision Petition 2nd cited has been filed before the Chief Controlling Revenue Authority, under section 56(1) of the Indian Stamp Act, 1899, against the order 1st cited, passed by the District Registrar, Chennai (South), classifying the document as containing dual nature of 'Sale' and 'Transfer of Mortgage' thereby demanding payment of deficit registration fee of Rs.3,16,00,000/- in respect of pending document No. P325/2019 on the file of Sub Registrar, Kundrathur.

2) Gist of the instrument and facts and circumstances leading to the Review petition are as follows:

Document No.	P325/2019, Sub Registrar office, Kundrathur
Title of Document	SALE DEED
Date of Execution/Presentation	26.03.2019
Executant	W.S.Industries (India) Ltd., Chennai
Claimant	W.S.T&D LTD., Chennai

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Market Value of property as per Document	Rs.316,00,00,000/-
Stamp borne by the document	Rs.22,12,03,500/-
Nature of document determined by the District Registrar	Conveyance on Sale (Article 23) and Transfer of Mortgage (Article 62(c) (ii)
Deficit stamp duty determined by the District Registrar	NIL
Deficit Registration fee	Rs.3,16,00,000/-

The document in question has been impounded by the Sub Registrar under section 33 of the Indian Stamp Act, 1899 under the impression that the document has to be classified as containing dual nature of documents viz., Conveyance on sale (Article 23) and Mortgage with Possession (Article 40(a)). The primary reason for the Sub Registrar's decision is that the Seller for securing a loan availed from M/s.Abhishaya Infrastructure Pvt Ltd has already mortgaged the property in question to M/s.Abhishaya Infrastructure Pvt Ltd., through documents No.5166/2018 and 15447/2018 on the file of Sub Registrar, Kundrathur. Further through the present sale deed, purchaser has agreed to take over the outstanding loan amount of Rs.312,46,68,855/- in lieu of payment of consideration amount to the seller.

Consequently the Sub Registrar forwarded the document in original to the District Registrar (Administration), Chennai (South) for further action under section 38 read with section 40 of the Act.

The District Registrar, after issuing show cause notice and obtaining a reply from the purchaser company, decided that the document in question comprises two distinct nature of documents viz., Conveyance on sale (Article 23) and Transfer of Mortgage (Article 62 (C) (ii)).

The main contention of the District Registrar for aforesaid classification is that as per the recitals of the sale deed, the Lender cum

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Mortgagee viz., M/s.Abhishaya Infrastructure Pvt Ltd., has consented for the sale of the property in question on which it has mortgage rights.

Since the stamp duty borne by the document (Rs.22,12,03,500) commensurate with stamp duty required for both the nature of documents viz., Conveyance on Sale and Transfer of Mortgage, the District Registrar determined the deficit stamp duty payable for the document as 'NIL'. However the District Registrar arrived the deficit Registration fee as Rs.3,16,00,000/- as per Article 1(a) of the Table of fees under Registration Act, 1908. Though in a proceeding under section 40 of the Act, the District Registrar is not bound to determine the deficit Registration fee, it seems that he has chosen to determine the alleged deficit registration fee out of abundant caution.

Aggrieved over this decision of the District Registrar, W.S.T&D LTD., Chennai filed the present Revision petition under section 56(1) of the Act before the CCRA cum IGR on 26.08.2019. While the above revision petition was pending with CCRA cum IGR, the revision petitioner filed W.P.No.27344/2019 before the Hon'ble High Court of Madras with a prayer to direct the Sub Registrar to register and return the pending document. The Hon'ble High Court in their order dated 16.09.2019 allowed the writ petition with the following directions:

(i) The petitioner herein shall furnish irrevocable bank guarantee for a sum of Rs.316 lakhs in favour of Sub Registrar, Kundrathur. The bank guarantee shall be valid for six months and renewable if necessary.

(ii) The first respondent is directed to dispose of the revision petition filed by the petitioner within a period of eight weeks from today.

(iii) On furnishing the bank guarantee, the Sub Registrar shall register and return the documents to the petitioner within three days from the date of receipt of bank guarantee and the undertaking letter from the

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petitioner. Consequently, connected miscellaneous petition is closed. No costs.

In accordance with the above direction, the revision petitioner was called upon to appear before CCRA on 17.10.2019 for personal hearing. On that day representative of the company appeared before CCRA and submitted a written statement and also requested to adjourn the hearing to another date so as to put-forth their claim through their counsel. As per the request of the revision petitioner next hearing was posted on 14.11.2019. On that day the representative of the company along with their counsel appeared before the CCRA and submitted written arguments.

3) The main averments of the revision petitioner are as follows:

i) Issuance of NOC (consent) by the lender (M/s.Abhishaya Infrastructure Pvt Ltd.,) is only to facilitate registration of Sale deed inspite of existing Mortgage over the property i.e., to fulfil the requirement found in departmental circulars regarding verification of encumbrance over the property.

ii) No transfer of mortgage rights has been made. Had such transfer been made, the privity of contract between Mortgagor and Mortgagee would have come to an end and a new privity of contract would have been created between the Mortgagor and the transferee. There are no such recitals to this effect in the instrument.

iii) In a 'Transfer of Mortgage' consideration amount will pass from 'Transferee to the 'Transferor'. But in the instant case, mortgage amount remains to be due and payable only to the mortgagee.

iv) The phrase 'interest secured by a mortgage deed' used in Article 62(c) of the Indian Stamp Act, 1899 refers to the interest

vested in the mortgagee over the mortgaged property pursuant to the mortgage.

In the written statement submitted by the counsel of the revision petitioner on 14.11.2019, following points have been urged:

a) Vendor has entered into the sale deed only after obtaining consent from the Government of Tamil Nadu vide G.O.No.145, Industries Department, dated 22.11.2018. The said G.O permits only sale of property.

b) No reference whatsoever towards alleged transfer of mortgage rights is found in the document.

c) Acknowledgement made by the purchaser regarding the fact of existing mortgage shall not amount to transfer of mortgage.

d) No transfer of mortgage rights can be effected through the instant document as the mortgagee is not a party to it.

e) The lender cum mortgagee remains to be the same entity viz., M/s.Abhisaya Infrastructure Pvt Ltd., Thus no transfer of mortgage rights has happened as alleged in DR order.

f) The purchaser has only acquired the right of equity of redemption of property from the vendor and only for that purpose pre-existing mortgage has been acknowledged in the sale deed.

g) Even in the impugned order of the District Registrar, it has been recorded that only by 'implied meaning' the transfer of mortgage found to be made, such implied meaning presumed by the DR shall not be sufficient to attract section 5 of Indian Stamp Act.

Based on the above contentions, the revision petitioner has stated that the document in question is only a 'conveyance simplicitor' and hence requested to set aside the order passed by the District Registrar.

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4) Contents of the Revision petition, connected records received from the District Registrar, the arguments advanced by the Revision petitioner have been carefully examined.

The core question to be answered is whether the instant document, besides evidencing sale of immovable property, also evidences 'Transfer of Mortgage rights'.

Section 2(17) of the Indian Stamp Act, 1899 defines a 'Mortgage deed' as instrument whereby for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, right over or in respect of specified property.

Article 62(c) provides for levy of maximum stamp duty of Rs.40/- for an instrument of 'Transfer of interest secured by a bond, mortgage deed or policy of insurance'. Further, as per Article 1(a) of the Table of fees under Registration Act, 1908, 1% Registration fee payable for such documents.

From the definition provided under section 2(17) of the Indian Stamp Act for 'Mortgage deed' it is evident that when a person mortgages a property in favour of the lender for securing a loan granted to him by the lender, a right over the mortgaged property is created in favour of the lender cum mortgagee. Hence it is apparent that through a 'Mortgage deed' fresh rights are created in favour of the Mortgagee (Lender).

Accordingly when such rights acquired through a mortgage deed is transferred by the 'Mortgagee' to a third party, such transfer deed becomes chargeable to stamp duty as per Article 62(C) of the

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Indian Stamp Act. Further such document is liable to registration fee at 1% as per Article 1(a) of the Table of Fees under the Registration Act, 1908.

However in the instant document, the Seller (Mortgagor) and the purchaser are the parties to the document and they have affixed their signature. Whereas the Lender cum Mortgagee (M/s.Abhishaya Infrastructure Pvt Ltd.,) is not a party to the document and has not joined in the execution of the sale deed. Moreover no consideration passes for alleged transfer of mortgage.

In view of the above legal position, it becomes clear that in order to bring a document within the folds of Article 62(c), a deed of transfer of mortgage rights should have been executed by the 'Mortgagee' (Transferor) in favour of another person (Transferee). Consequently the 'Transferee' will step into the shoes of the Mortgagee and outstanding mortgage money becomes payable only to such "Transferee". Since these foundations are lacking in the present document the document in question does not answer the description of Article 62(C) viz., 'Transfer of interest secured through a Mortgage deed'.

Based on the above decision the order passed by the District Registrar, Chennai (South) is set aside and the revision petition is allowed.

(Sd)/- B.Jothi Nirmalasamy/20.11.2019
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

25-11-19

For Inspector General of Registration.

25/11/19

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To

1. M/s.W.S.T & D Ltd.,
   (Presently RMZ One Paramount Ltd)
   108, Mount Poonamallee Road,
   Porur, Chennnai – 600 116.

2. M/s. O.L.V. Ganesh & S.Manivannan,
   2/5A, 16th Cross street, (opp Aavin Junction),
   Indra Nagar, Adayar,
   Chennai -600 020.

3. District Registrar,
   Chennai (South).
   (With original file)

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