RAJASTHAN HIGH COURT
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``HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 14701/2015

M/s Rampabhu Hotels India Private Limited, a Company incorporated in India and registered under the provisions of The Indian Companies Act, 1956 and having its registered office at 3-BA-42, Jawahar Nagar, Jaipur-302004, through-Director Abhishek Khandelwal.

Rajasthan High Court
सत्यमेव जयते
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----Petitioner

Versus

1. State of Rajasthan, through Secretary Finance (Tax) Department, Jaipur.
2. Collector (Stamps) District Alwar, Rajasthan.
3. Deputy Inspector General of Stamps, Department of Registration and Stamps, Alwar, Rajasthan.
4. Sub Registrar-I, Alwar.

----Respondent

For Petitioner(s) : Mr. A.K. Sharma, Sr. Adv. with
Mr. Rachit Sharma
Mr. Abhishek Sharma

For Respondent(s) : Mr. Bharat Vyas,AAG with
Ms. Aditi Vats

HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

21/02/2025

AVNEESH JHINGAN, J

1. This petition is filed seeking quashing of order dated 03.08.2015 passed by the Collector (Stamps), Alwar (for short 'the Collector').

2. The relevant facts are that the petitioner is a private limited company (hereinafter referred to as 'company') registered under the Companies Act, 1956. The company purchased an agriculture land bearing Khasra Nos. 171, 212, 212/870, 212/871, 214, 215,

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RAJASTHAN HIGH COURT

and 212/869 situated in village Liwari, District Alwar (hereinafter referred to as 'property'). After following the procedure under Section 90B of the Land Revenue Act, 1956 (for short 'the Act of 1956') and Section 60 of Urban Improvement Trust Act, 1959 (for short 'the Act of 1959'), the Urban Improvement Trust, Alwar (hereinafter referred to as 'UIT') issued allotment letter dated 25.01.2023 in the name of the company. On 05.04.2003 the lease deed of the property for ninety nine years was executed by the UIT in favour of the company. The allotment to the company was through directors Mr. Mahavir Prasad Katta, Mr. Pradeep Kumar Katta, Mr. Prem Narain Gupta and Mr. Yogesh Chand Gupta. The directors of the company transferred their shares and new directors were appointed.

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2.1 The Collector on 24.05.2004 issued notices to the erstwhile directors to show cause that loss of stamp duty was caused by transfer of property of company by transferring the shareholding. Reply was filed that there was no transfer of property, sale of shares had nothing to do with the property owned by the company and the details of the current directors was provided. Notices dated 21.10.2014 were issued to the new directors alleging that transfer of property falls in the category of lease by way of assignment. Notices were responded on 24.12.2014. The collector after getting valuation of the property passed the impugned order dated 03.08.2015 creating a demand of Rs.7,62,73,440/-.

3. Learned senior counsel for the petitioner submits that UIT executed lease deed of the property in favour of the company. Share holdings of the directors were transferred to the new directors but the property was of the company and remained of

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the company. The contention is that in absence of transfer of property the stamp duty could not have been levied. Submission is that the impugned order is without jurisdiction and the writ petition be allowed.

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4. As per contra, the petitioner has a remedy of revision under Section 65 of the Act of 1998 and writ be dismissed on this ground alone. Reliance is placed upon the decisions of Supreme Court in **Hardev Asnani v. State of Rajasthan AIR 2011 SC 3748**; **Ansal Housing v. State of UP (2016) 13 SCC 305**; **Genpact (India) (P) Ltd. v. CIT (2019) 419 ITR 440** and decision of this Court dated **01.08.2022** in **DBSAW No. 619/2022** titled as **Param Prasad Charitable Trust v. State of Rajasthan & Ors.** and decision dated **02.02.2024** in **DBCWP No. 3730/2015** titled as **Manoj Kumar Gupta v. State of Rajasthan**.

4.1 Further, that the complete structure of the company was changed with the transfer of shares by the previous directors to the new directors. Submission is that directors were changed with the object to transfer the property of the company by evading stamp duty and it is a case for lifting of corporate veil. Reliance is placed upon the decisions of Supreme Court in **State of Rajasthan v. Gotan Khanij Udyog** reported in (**2016) 4 SCC 469**; **State of Karnataka v. J. Jayalalitha & Ors** reported in **(2017) 6 SCC 263**.

4.2 Circular No.6 of 2009 issued by the State Government is relied to submit that on transfer of property by change of legal character of the company falls under the head lease by way of assignment and stamp duty is payable.

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5. The issue involved in the present petition is:-

"whether changing of the directors tentamounts to transfer of the property of the company?"

6. The law is well settled that the company is a juristic person and has independent entity distinct from shareholders. Reference in this regard be made to the decisions of the Supreme Court in **Tata Engineering and Locomotive Co. Ltd. v. State of Bihar, AIR 1965 SC 40**, wherein it was held:

> 24.The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the Corporation. This position has been well established ever since the decision in the case of *Salomon* v. *Salomon and Co.* [1897 AC 22 HL] was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. xx xx xx

In **Electronics Corporation of India Ltd. and Ors. vs. Secretary, Revenue Department, Govt. of Andhra Pradesh and Ors. (1999)4SCC458**:

> 15. A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.

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7. The lease deed is unambiguous that UIT leased the property to company through directors. The company is a juristic entity but considering its formation has to act through authorized representatives and therefore lease deed was in favour of the company but through directors. The respondents erred in initiating proceedings under Section 47A of the Rajasthan Stamp Law (Adaptation) Act, 1952 construing that the lease deed was in favour of the directors of the company. The lease deed was in favour of the company and the property is owned by the company.

8. There cannot be quarrel with the proposition that the property of the company is not property of the shareholders. Reliance in this regard be made to decision of House of Lords in **Macaura v. Northern Assurance Company, Limited [1925] A.C. 619**, wherein it was held:

> My Lords, this appeal may be disposed of by saying that the corporator even if he holds all the shares is not the corporation, and that neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation.

8.1 The Supreme Court in **Bacha F. Guzdar vs. Commissioner of Income Tax, Bombay AIR 1955 SC 74** held:

> 8. xx xx xx It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association, to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The divided is a share of the profits declared by the company as liable to be distributed among the shareholders. xx xx xx

8.2 The Supreme Court in **Rustom Cavasjee Cooper and Ors. vs. Union of India (UOI) [1970] 3 SCR 530** held:

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> 14. A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholder. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the profit.

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9. Transfer of shareholdings by previous directors to the current directors does not impact the ownership of the property of the company. There is fallacy in the contention of counsel for the respondent that by changing directors property of company was transferred by evading the stamp duty and therefore the corporate veil be pierced. The legal status and character of company remained as it is and transfer of shareholding only resulted in change of directors. There was no transfer of property of company for which stamp duty was payable and no case is made out for lifting of corporate veil.

10. The Supreme Court in **Balwant Rai Saluja vs. Air India Ltd**. **(2014)9SCC407** has reiterated the principles when corporate veil may be pierced. The relevant portion is reproduced:

> 68. In recent times, the law has been crystallized around the six principles formulated by Munby J. in Ben Hashem v. Ali Shayif (2008) EWHC 2380 (Fam). The six principles, as found at paragraphs 159-164 of the case are as follows-
> (i) ownership and control of a company were not enough to justify piercing the corporate veil;
> (ii) the Court cannot pierce the corporate veil, even in the absence of third party interests in the company, merely because it is thought to be necessary in the interests of justice;
> (iii) the corporate veil can be pierced only if there is some impropriety;
> (iv) the impropriety in question must be linked to the use of the company structure to avoid or conceal liability;
> (v) to justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or

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RAJASTHAN HIGH COURT
सत्यमेव जयते

> misuse of the company by them as a device or facade to conceal their wrongdoing; and
> (vi) the company may be a 'facade' even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The Court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

Rajasthan High Court
सत्यमेव जयते
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11. It is undisputed fact that even in the year 2013-2014 property is shown in the audited balance sheet of the company. Rather during the course of the arguments the counsel for the respondents relied upon the balance sheet of company to buttress the argument that the property has been transferred to the new directors, as a result it is being shown in balance sheet of company prepared as on 31.03.2014. The contention is ill founded, balance sheet is of company and not of the directors. The property was leased to company and continues to be of the company even after change of directors.

12. Reliance on Circular 6 of 2009 does not enhance the case of the respondents. Clause 11 of the circular deals with the instances where transfer of lease shall be considered transfer by way of assignment. The document executed by way of supplementary document or amended lease deed as result of change in partnership or dissolution of partnership or change of legal character of company shall fall within the category of lease by way of assignment.

13. Suffice to say that with change of share holding legal character of the company was not changed, it was a private limited company and continues to be so. It would be apposite to

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note that there was no amendment in the lease deed between UIT and the company. The mentioning of names of the directors in the lease deed shall not change the fact that the lease of property was given to the company.

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14. Before concluding in all fairness, we should deal with the objection raised of alternative remedy. Restriction of non-interference in writ jurisdiction on the availability of alternative remedy is a self imposed restriction.

15. The Supreme Court in cases of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai And Ors.*** **(1998) 8 SCC 1, Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority and Ors. AIR 2023 SC 781 and PHR Invent EducationSociety Vs. UCO Bank and Ors. (2024) 6 SCC 579** has enunciated the exceptions for interference in writ jurisdiction inspite of availability of alternative remedy. The relevant para from PHR Invent (supra) is reproduced:-

> "37.It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could been tertained in spite of availability of an alternative remedy. Some of them are thus:
> (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
> (ii) it has acted in defiance of the fundamental principles of judicial procedure:
> (iii) it has resorted to invoke the provisions which are repealed: and;
> (iv) when an order has been passed in total violation of the principles of natural justice.

16. The impugned order is beyond jurisdiction and is in violation of statutory provisions. On transfer of shareholding by directors demand of more than seven crores has been created on the

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erroneous basis that the property of the company was transferred to the new directors.

17. Another aspect to be considered is that for availing remedy of revision, there is requisite of pre-deposit to be made. In **M/s Tecnimont Pvt. Ltd vs. State of Punjab and Ors.**; **(2021) 12 SCC 477**, considering the earlier decision the Supreme Court upheld validity of the provision requiring pre-deposit for availing statutory remedy of appeal. It was held that the remedy of appeal is neither natural nor inherent but is statutory right and can be circumscribed by conditions. It was considered that for a safeguard against the arbitrary use of power or creation of exorbitant demand rendering remedy futile, writ jurisdiction can be invoked in appropriate cases. The relevant paras are:-

> **15.** In *P. Laxmi Devi case* [*State of A.P.* v. *P. Laxmi Devi*, (2008) 4 SCC 720] , validity of the proviso to Section 47-A of the Stamp Act, 1899 was in issue. The High Court had held [*P. Laxmi Devi* v. *State of A.P.*, 2001 SCC OnLine AP 448 : AIR 2001 AP 446] the said provision to be unconstitutional, which view was reversed by this Court. The proviso to the said Section 47-A reads:
>
> "Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned."
>
> The relevant discussion was as under : (*P. Laxmi Devi case* [*State of A.P.* v. *P. Laxmi Devi*, (2008) 4 SCC 720] , SCC pp. 735-36, paras 18-23)
>
> "*18*. In our opinion, there is no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by A.P. Amendment Act 8 of 1998. This amendment was only for plugging the loopholes and for quick realisation of the stamp duty. Hence it is well within the power of the State Legislature vide Entry 63 of List II read with Schedule VII List III Entry 44 to the Constitution.
>
> *19*. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As

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often said, there is no equity in a tax vide *CIT* v. *V. MR. P. Firm Muar* [*CIT* v. *V. MR. P. Firm Muar*, AIR 1965 SC 1216] . If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998.

20. In *Partington* v. *Attorney General* [*Partington* v. *Attorney General*, (1869) LR 4 HL 100] Lord Cairns observed as under : (HL p. 122)

> '… If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be.'

The above observation has often been quoted with approval by this Court, and we endorse it again. In *Bengal Immunity Co. Ltd.* v. *State of Bihar* [*Bengal Immunity Co. Ltd.* v. *State of Bihar*, AIR 1955 SC 661] this Court held that if there is hardship in a statute it is for the legislature to amend the law, but the court cannot be called upon to discard the cardinal rule of interpretation for mitigating a hardship.

21. It has been held by a Constitution Bench of this Court in *CIT* v. *T.S. Devinatha Nadar* [*CIT* v. *T.S. Devinatha Nadar*, AIR 1968 SC 623] (vide AIR paras 23 to 28) that where the language of a taxing provision is plain, the court cannot concern itself with the intention of the legislature. Hence, in our opinion the High Court erred in its approach of trying to find out the intention of the legislature in enacting the impugned amendment to the Stamp Act.

22. In this connection we may also mention that just as the reference under Section 47-A has been made subject to deposit of 50% of the deficit duty, similarly there are provisions in various statutes in which the right to appeal has been given subject to some conditions. The constitutional validity of these provisions has been upheld by this Court in various decisions which are noted below.

23. In *Gujarat Agro Industries Co. Ltd.* v. *Municipal Corpn. of the City of Ahmedabad* [*Gujarat Agro Industries Co. Ltd.* v. *Municipal Corpn. of the City of Ahmedabad*, (1999) 4 SCC 468] this Court referred to its earlier decision in *Vijay Prakash D. Mehta* v. *Collector of Customs*

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[*Vijay Prakash D. Mehta* v. *Collector of Customs*, (1988) 4 SCC 402] wherein this Court observed : (*Vijay Prakash case* [*Vijay Prakash D. Mehta* v. *Collector of Customs*, (1988) 4 SCC 402] , SCC p. 406, para 9)

'*9*. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.' "

16. While dealing with the submission that in terms of the said proviso, no relief could be granted even in cases where the requirement of pre-deposit may result in great prejudice, this Court went on to observe : (*P. Laxmi Devi case* [*State of A.P.* v. *P. Laxmi Devi*, (2008) 4 SCC 720] , SCC pp. 736-37, paras 28-29)

"*28*. We may, however, consider a hypothetical case. Supposing the correct value of a property is Rs 10 lakhs and that is the value stated in the sale deed, but the registering officer erroneously determines it to be, say, Rs 2 crores. In that case while making a reference to the Collector under Section 47-A, the registering officer will demand duty on 50% of Rs 2 crores i.e. duty on Rs 1 crore instead of demanding duty on Rs 10 lakhs. A party may not be able to pay this exorbitant duty demanded under the proviso to Section 47-A by the registering officer in such a case. What can be done in this situation?

29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] . Hence, the party is not remediless in this situation."

17. In *Har Devi Asnani* [*Har Devi Asnani* v. *State of Rajasthan*, (2011) 14 SCC 160 : (2012) 4 SCC (Civ) 801] the validity of the proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 came up for consideration in terms of which no revision application could be entertained unless it was accompanied by a satisfactory proof of the payment of 50% of the recoverable amount. Relying on the earlier decisions of this Court including in *P. Laxmi Devi* [*State of A.P.* v. *P.*

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RAJASTHAN HIGH COURT सत्यमेव जयते

Laxmi Devi, (2008) 4 SCC 720], the challenge was rejected and the thought expressed in *P. Laxmi Devi* [*State of A.P.* v. *P. Laxmi Devi*, (2008) 4 SCC 720] was repeated in *Har Devi Asnani* [*Har Devi Asnani* v. *State of Rajasthan*, (2011) 14 SCC 160 : (2012) 4 SCC (Civ) 801] as under : (*Har Devi Asnani* [*Har Devi Asnani* v. *State of Rajasthan*, (2011) 14 SCC 160 : (2012) 4 SCC (Civ) 801] , SCC p. 168, paras 27-28)

Rajasthan High Court सत्यमेव जयते Web Copy - Not Official

"*27*. In *State of A.P.* v. *P. Laxmi Devi* [*State of A.P.* v. *P. Laxmi Devi*, (2008) 4 SCC 720] this Court, while upholding the proviso to sub-section (1) of Section 47-A of the Stamp Act introduced by Andhra Pradesh Amendment Act 8 of 1998, observed : (SCC p. 737, para 29)

> '*29*. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution (vide *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248]). Hence, the party is not remediless in this situation.'

28. In our view, therefore, the learned Single Judge should have examined the facts of the present case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made from the appellant by the Additional Collector were exorbitant so as to call for interference under Article 226 of the Constitution."

18. In view of discussion, it is found to be a fit case for interference in writ jurisdiction.

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19. For the reasons mentioned herein above, the impugned order dated 03.08.2015 is set aside. The writ petition is allowed.

(ASHUTOSH KUMAR),J (AVNEESH JHINGAN),J

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Reportable : Yes

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