

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2025

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.A.No.1609 of 2024

Gita Power and Infrastructure Private Limited,
Having Registered Office at,
OPG Nagar, Periya Obulapuram Village,
Nagaraja Kandigai,
Madharpakkam Road,
Gummidipoondi,
Thiruvallur District,
Tamil Nadu-601 201
Represented by its Authorised Signatory,
Mr.Kaushik Ganguly.

: Appellant

Vs.

1.The Inspector General of Registration
cum the Chief Controlling Revenue Authority,
Office of the Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai-600 028.

2.The District Registrar (Administration),
Office of the District Registrar,
South Chennai, Jeenis Road,
Saidapet, Chennai- 600 015.

3.The Sub Registrar,
Office of the Sub Registrar,
94, Perumal Koil Street,
Teachers Colony,
Kotturpuram,
Chennai- 600 085.

: Respondents

PRAYER: Writ Appeal filed against the order of the learned Single Judge dated 27.11.2023 passed in W.P.No.33963 of 2022.

For Appellant : Mr.Derrick Sam G

For Respondents : Mr.U.Baranidharan
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM, J.)

Present writ appeal has been instituted challenging the writ order dated 27.11.2023 passed in W.P.No.33963 of 2022. Writ petitioner is the appellant before this Court.

2. The facts in short admitted between parties are that the appellant has presented a document before Sub Registrar/Registering authority for registration on 29.07.2021. It is an assignment agreement. The Registering Authority referred the matter to the District Registrar, Administration, on the ground that the document presented for registration was not sufficiently stamped. The appellant

found that the stamp duty is very high and took a decision to take back the document presented for registration. It is not in dispute that the said assignment agreement has been executed between the parties. Since the appellant has taken a decision not to proceed with the registration, an application was moved for return of document presented for registration. Application was dismissed by the Registering Authority. Appellant preferred a review questioning the demand of stamp duty by the Registering Authority. The said review was rejected by reducing the stamp duty. The document was impounded to recover the stamp duty. Under these circumstances, the writ petition came to be instituted. Writ court since dismissed the petition, present appeal has been instituted.

3. The learned counsel for the appellant would contend that the instrument has not been registered. Therefore, by choice, the appellant has submitted an application for return of document presented for registration. They have no intention to act on the assignment agreement. Therefore, the authorities have no powers to demand stamp duty.

4. The learned counsel for the appellant would rely on Rule 107 of the Registration Rules and would contend that the document presented has not been registered. Therefore, the presentant of the document is entitled to submit an application for return of documents. To substantiate the said condition, he relied on the judgment of the learned Single Judge of this Court in the case of **Cybercity Builders and Developers Private Limited vs The Inspector General of Registration** dated 02.08.2024. The learned Single Judge made an observation in the said judgment that the document which has not been registered is liable to be returned back to the presentant of the document. In the case of **Government of Andhra Pradesh and others vs P. Laxmi Devi (SMT)** reported in **(2008) 4 SCC 720** also such a position has been clarified and therefore the writ appeal is to be allowed.

5. The learned Special Government Pleader would strenuously oppose by stating that the provisions under the Registration Act and the Indian Stamp Act are unambiguous. Once the document is presented for registration, the Registering Authority is bound to verify the correctness of the stamp duty paid and in the event of any deficit, he has to initiate action by impounding the document and referring

the document to the Collector for determination of stamp duty to be paid by the presentant of document. In the present case such a procedure has been followed and there is no infirmity as such.

6. The learned Single Judge also has considered the relevant provisions of the Registration Act and Indian Stamp Act and held that the document presented need not be returned back once it is found that the stamp duty has not been duly paid. Thus, the writ appeal is to be rejected.

7. This Court has heard the parties to the *lis* on hand. It would be relevant to consider the provisions of the Registration Act and Indian Stamp Act. Chapter IV of Indian Stamp Act, 1899 deals with instrument not duly stamped.

7.1. Section 33 (1) (a) of the Indian Stamp Act reads as under:

"Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same."

7.2. Under the above provision once the public authority notice any insufficient payment of stamp duty, the instrument is to be impounded under the said provision.

7.3. Section 38 (2) of the Indian Stamp Act states that *"in every other case, the person so impounding an instrument shall send it in original to the Collector."* Therefore, on receipt of the document presented, any public authority has to verify the correctness of the stamp duty paid at the first instance and if it is found that the stamp duty paid is insufficient then the said authority is duty bound to impound the document and send it in original to the Collector for determining the stamp duty.

7.4. Section 40 of the Indian Stamp Act provides Collector's power to stamp instrument impounded. Sub Section 1 (b) to Section 40 reads as under:

"(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit 1[an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees :"

7.5. Section 42 stipulates endorsement of instruments on which duty has been paid under Section 35, 40 or 41. Subsection (1) to Section 42 reads as under:

" (1) When the duty and penalty, (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them"

7.6. Section 48 empowers recovery of duties and penalties and reads as under:

"Recovery of duties and penalties - All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue."

7.7. In the context of the above provisions of the Indian Stamp Act, it would be relevant to consider Rule 107 of the Registration Rules, which reads as under:

"107. When an impounded document is received back from the Collector after adjudication of stamp duty, the registering officer shall immediately give notice in writing to the presentant or to the person authorised by the presentant to take delivery of the document either to take steps to complete the registration of the document or to take delivery of the document."

7.8. A close reading of Rule 107 of the Registration Rules would indicate that an impounded document sent by the Registering Authority to the Collector for determination of deficit stamp duty. On receipt of an order from the Collector, the Registering Authority shall immediately give notice in writing to the presentant or to the person authorised by the presentant to take delivery of the document, either to take steps to complete the registration of the document or to take delivery of the document. Therefore, impounding the document under the Indian Stamp Act and sending it in original to the District Collector for determination and recovery of deficit stamp duty becomes mandatory on the part of Registering Authority. Once the stamp duty is determined by the Collector and an order is communicated to the Registering Authority, such Registering Authority is duty bound to issue notice in

writing to the presentant of the document. On receipt of the notice, the presentant of the document at his choice may proceed with the registration or file an application seeking return of the document. Therefore, it is unambiguous that the choice of the presentant of the Document will come into play only after determination of stamp duty by the Collector and recovery of stamp duty by following the procedures contemplated under the Indian Stamp Act.

8. Question arises, whether the presentant of the document has any right to seek return of document before registration and without payment of deficit stamp duty as demanded by the Registering Authority or determined by the Collector under the provisions of the Indian Stamp Act. In this context Rule 107 of the Registration Rules in clear terms stipulates that at the first instance document to be impounded and thereafter it must be sent to the Collector for determination of stamp duty and only after determination and recovery of the stamp duty the document will be sent back to the Registering Authority allowing the presentant either to register the document or seek return of document. Thus, statute contemplates an instrument executed and presented for registration must be scrutinized and correctness of stamp duty paid in the document to be verified.

Therefore, non registration of an instrument presented would not be a ground to seek return of document. Execution of document would be sufficient for the purpose of recovering deficit stamp duty by invoking the provisions of Indian Stamp Act.

9.The said position has been amplified by the Hon'ble Supreme Court in the case of **P. Laxmi Devi** cited supra. The relevant paragraphs are extracted hereunder:

“15. [Section 33\(1\)](#) of the Indian Stamp Act states :

"Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance in his functions shall, if it appears to him that such instrument is not duly stamped, impound the same".

16. A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorized to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. The use of the word 'shall' in [Section 33\(1\)](#)

shows that there is no discretion in the authority mentioned in [Section 33\(1\)](#) to impound a document or not to do so. In our opinion, the word 'shall' in [Section 33\(1\)](#) does not mean 'may' but means 'shall'. In other words, it is mandatory to impound a document produced before him or which comes before him in the performance of his functions. Hence the view taken by the High Court that the document can be returned if the party does not want to get it stamped is not correct.

17. In our opinion, a registering officer under the [Registration Act](#) (in this case the Sub-Registrar) is certainly a person who is in charge of a public office. [Section 33\(3\)](#) applies only when there is some doubt whether a person holds a public office or not. In our opinion, there can be no doubt that a Sub-Registrar holds a public office. Hence, he cannot return such a document to the party once he finds that it is not properly stamped, and he must impound it.

18. In our opinion, there is no violation of [Articles 14, 19](#) or any other provision of the Constitution by the enactment of [Section 47A](#) as amended by the [A.P Amendment Act 8 of 1998](#). This amendment was only for plugging the loopholes and for quick realization of the stamp duty. Hence it is well within the power of the State legislature vide [Entry 63 of List II](#) read with [Entry 44 of List III of the Seventh Schedule 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 often said, there is no equity in a tax vide [Commissioner of Income Tax vs. 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 [Indian 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 vs. Attorney-General (1969) LR 4 HL 100, Lord Cairns observed as under:

"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. On the other hand if the court 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. vs. State of Bihar](#) AIR 1955 SC 661 (685) 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 [Income Tax Officer vs. T.S Devinatha Nadar](#) AIR 1968 SC 623 (vide paragraph 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 [Indian Stamp Act](#)."

10. The said legal position has been reiterated again by the Apex Court in the case of **Tirupati Developers vs State of Uttrakhand and Others** reported in

2013 (9) SCC 332. The relevant paragraph No.13 has been extracted hereunder:

"13. Last attempt of Ms Makhija was that no adjudication was permissible at all because of the reasons that these agreements for sale were subsequently cancelled, that too within two months of the execution thereof. We are of the opinion that the subsequent conduct of the parties in cancelling the agreements cannot be a reason for not taking action under Sections 33/38 of the Act. That action was necessitated when the documents were produced before the Deputy Registrar and he found the same to be deficient. The subsequent cancellation would be no avail. In any case, keeping in view this aspect the High Court reduced the penalty to 15 % of the deficit stamp duty, thereby giving sufficient succour to the appellant."

11. In view of Sections 33, 38 40, 42 and 48 of the Indian Stamp Act read with Rule 107 of the Registration Rules, the legal position is unambiguous that any document/instrument presented for registration must be scrutinized at the first instance regarding correctness of the stamp duty paid. Once the Registering Authority found insufficient stamp duty has been paid, he is duty bound to impound the document and send it in original to the Collector for determination of stamp duty. After determination and recovery of deficit stamp duty, the document is to be sent back to the Registration Authority, who in turn has to issue notice to the presentant of the document. Thereafter, the presentant of the document may

take a decision either to complete the registration or seek return of document.

12. The judgment of the learned Single Judge of this Court relied on by the appellant is of no avail to him since the said judgment does not deal with the correct position under the Indian Stamp Act and the Registration Act as well as the legal principles settled by the Hon'ble Supreme Court in the judgments cited supra. Thus the judgment in the case of **Cybercity Builders and Developers Private Limited** has denuded to loose its status as precedent.

13. In view of the facts and the principles discussed above, the writ order impugned dated 27.11.2023 in W.P.No.33963 of 2022 stands confirmed and consequently, the writ appeal is dismissed. No costs.

(S.M.S., J.) (M.S.Q., J.)
07.10.2025

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
mrn

To

- 1.The Inspector General of Registration
cum the Chief Controlling Revenue Authority,
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100, Santhome High Road,
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**S.M.SUBRAMANIAM, J.
and
MOHAMMED SHAFFIQ, J.**

(mrn)

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