



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

FRIDAY, THE 2ND DAY OF MAY 2025 / 12TH VAISAKHA, 1947

WP(C) NO. 18051 OF 2024

PETITIONER:

J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD
HAVING ITS REGISTERED OFFICE AT UNIT NO. 203-206,
2ND FLOOR, WING A, INSPIRE BKC,
BANDRA KURLA COMPLEX, BANDRA (EAST),
MUMBAI
(ACTING IN ITS CAPACITY AS TRUSTEE OF THE
JCF YES TRUST 2022-23/22),
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. BHAVYA UDANI, PIN - 400051

BY ADVS.
SRI SUNIL SHANKER
MS.VIDYA GANGADHARAN
SRI V.V.ASOKAN (SR.) (A-370)

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 INSPECTOR GENERAL OF REGISTRATION
DEPARTMENT OF REGISTRATION,
VANCHIYOOR, THIRUVANANTHAPURAM,
PIN - 695035
- 3 DISTRICT REGISTRAR, ERNAKULAM
DISTRICT REGISTRAR'S OFFICE,
OPP. MAHARAJA'S GROUND,
NEAR KPCC JUNCTION,
ERNAKULAM, PIN - 682016



4 THE SUB REGISTRAR
MARADU SUB REGISTRAR OFFICE,
MARADU, ERNAKULAM,
PIN - 682304

BY SRI.MUHAMMED RAFAEEK, SPL.GOV'T.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11.04.2025, ALONG WITH WP(C).23003/2024, THE COURT ON
2.5.2025 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

FRIDAY, THE 2ND DAY OF MAY 2025 / 12TH VAISAKHA, 1947

WP(C) NO. 23003 OF 2024

PETITIONER:

J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT UNIT NO. 203-206,
2ND FLOOR, WING A, INSPIRE BKC,
BANDRA KURLA COMPLEX, BANDRA (EAST),
MUMBAI
(ACTING IN ITS CAPACITY AS TRUSTEE OF THE
JCF YES TRUST 2022-23/21),
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. PRATIK GHORPADE,
PIN - 400051

BY ADVS.
SRI SUNIL SHANKER
MS.VIDYA GANGADHARAN
SRI V.V.ASOKAN (SR.) (A-370)

RESPONDENTS:

- 1 STATE OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM,
REPRESENTED BY CHIEF SECRETARY,
PIN - 695001
- 2 INSPECTOR GENERAL OF REGISTRATION
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VANCHIYOOR, THIRUVANANTHAPURAM,



PIN - 695035

3 DISTRICT REGISTRAR, ERNAKULAM
DISTRICT REGISTRAR'S OFFICE,
OPP. MAHARAJA'S GROUND,
NEAR KPCC JUNCTION, ERNAKULAM,
PIN - 682016

4 THE SUB REGISTRAR
THRIKKAKARA SUB REGISTRAR OFFICE,
THRIKKAKARA, ERNAKULAM,
PIN - 682021

BY SRI.MUHAMMED RAFAEEK, SPL.GOV'T.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11.04.2025, ALONG WITH WP(C).18051/2024, THE COURT ON
2.5.2025 DELIVERED THE FOLLOWING:



"CR"

T.R.RAVI, J.

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W.P.(C)Nos.18051 & 23003 of 2024

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Dated this the 2nd day of May, 2025

JUDGMENT

The writ petitions have been filed by the Asset Reconstruction Company, having a certificate of registration under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), from the Reserve Bank of India (for short 'RBI'). Ext.P1 is the certificate of registration. The petitioner in W.P. (C)No.18051 of 2024 entered into an asset reconstruction agreement with the Karnataka Bank Ltd. on 04.03.2024 and the petitioner in W.P.(C)No.23003 of 2024 entered into an asset reconstruction agreement with the Federal Bank Ltd. on 26.03.2024, copies of which have been produced as Ext.P2 in both the writ petitions. The agreements are as required under Section 5(1)(b) of the SARFAESI Act. The agreements are drawn up on



stamp paper worth Rs.1 lakh. Relying on Exts.P4, P5, and P6 judgments of this Court and G.O.(Ms.)No.9/2010/TD dated 13.1.2010, the petitioner presented the agreements for registration before the Registering Authority offering to pay Rs.25,000/- as registration fee. The Registering Authority declined registration for the reason that the stamp duty and the registration fee paid were not correct. The writ petitions have been filed in the above circumstances, seeking directions to the 4th respondent to register Ext.P2 assignment agreements.

2. A statement has been filed on behalf of the respondents. It is contended by the respondents that in the light of the law declared by this Court in Ext.P4 judgment in W.P.(C)No.19371 of 2017, Ext.P2 instrument is chargeable to duty as prescribed under Article 21 of the Kerala Stamp Act, 1959 at the rate of 8% of the purchase consideration and not a fixed stamp duty of Rs.1 lakh. It is the case of the respondents that Ext.P2, by its nature, would come within the definition of the word 'conveyance' as defined in Section 2(d)(iv) of the Kerala Stamp Act, 1959, and since it does not answer to any of the category of instruments covered by Article 55 of the Kerala Stamp Act, it is chargeable under Article 21(2) of



the Act. Reliance is also placed on Ext.P4 judgment to submit that Section 5(1A) of the SARFAESI Act read with Section 8F of the Indian Stamp Act, 1899 cannot be relied on to claim exemption from payment of stamp duty. It is also submitted that G.O. (Ms.)No.9/2010/TD dated 13.1.2010 is no longer relevant since the Constitutional Court has already declared the law.

3. Heard Sri V.V.Asokan, Senior Advocate, instructed by Sri Sunil Shankar, Advocate, on behalf of the petitioners and Sri Mohammed Rafeeq, Special Government Pleader on behalf of the respondents.

4. On the pleadings and the arguments raised, the following questions arise for decision;

- (i) Whether an Asset Reconstruction Agreement entered into under Section 5(1)(b) of the SARFAESI Act between a bank and an asset reconstruction company can be subject matter of levy of stamp duty, in the teeth of Section 5(1A) of the SARFAESI Act?
- (ii) If the answer to question No.(i) is in the affirmative, can the State levy stamp duty in excess of Rs.1 lakh and registration fee in excess of Rs.25,000/-, in the light of G.O. (Ms.)No.9/2010/TD dated 13.1.2010 and



Exts.P4, P5 and P6 judgments?

The counsel on either side addressed arguments referring to the entries contained in Lists I, II, and III of the 7th Schedule to the Constitution of India and the powers available under Article 246 of the Constitution of India. The question of the applicability of the Indian Stamp Act, 1899, and its provisions to Part B States, which have enacted legislation for the levy of stamp duty, was also extensively argued. Detailed argument notes have also been submitted by the counsel on either side.

ARGUMENTS ON THE SIDE OF THE PETITIONERS:

5. Reference was made to the following decisions on the side of the petitioners:

- (i) Ashok Vishnu Davare v. State of Maharashtra
[(2004) 9 SCC 438]
- (ii) Life Insurance Corporation of India v. State of
Rajasthan [2024 KHC 6247]
- (iii) India Cement Ltd. & Ors. v. State of Tamil Nadu
& Ors. [(1990) 1 SCC 12]
- (iv) State of Andhra Pradesh and Ors. v. Mc Ddowell
and Co. & Ors. [(1996) 3 SCC 709]
- (v) State of Bihar & Ors. v. Bihar Distillery Ltd. &
Ors. [(1997) 2 SCC 453]
- (vi) State of NCT of Delhi v. Sanjay [2014 (9) SCC



772]

- (vii) Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447]
- (viii) Union of India & Anr. v. G.M. Kokil & Ors. [AIR 1984 SC 1022]
- (ix) Dominion of India & Anr. v. Shrinbai A. Irani & Anr. [AIR 1954 SC 596]
- (x) South India Corporation Pvt. Ltd. v. Secretary, Board of Revenue, Trivandrum & Anr. [AIR 1964 SC 207]
- (xi) A. R. Antulay v. R. S. Nayak [AIR 1988 SC 1531]
- (xii) Municipal Corporation of Delhi v. Gurnam Kaur [AIR 1989 SC 38]
- (xiii) Judgment in W.P.(C)No. 19371 of 2017 (Ext.P4),
- (xiv) Judgment in W.P.(C)No. 22357 of 2015 (Ext.P5),
- (xv) Judgment in W.P.(C)No. 22551 of 2016 (Ext.P6),
- (xvi) State of Andhra Pradesh v. National Thermal Power Corporation Ltd. [(2002) 5 SCC 203]
- (xvii) Vijay v. Union of India & Ors. [2003 KLT Online 2030]
- (xviii) Abdul Azeez v. Authorized Officer, Phoenix ARC Ltd. [2024 (2) KHC 157]

6. SARFAESI Act was promulgated by the Parliament and the legislative power can be traced to Article 246(1) read with Entry 45 of List I of the 7th Schedule of the Constitution of India. Entry 45 authorises the Parliament to legislate with respect to “banking”.



Section 5 of the SARFAESI Act reads thus;

"5. Acquisition of rights or interest in financial assets.

(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any asset reconstruction company may acquire financial assets of any bank or financial institution—

(a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 (2 of 1899):

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.



(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the asset reconstruction company, such asset reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(2A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).

(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such



bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the asset reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, asset reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of asset reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the asset reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the asset reconstruction company, as the case may be.

(5) On acquisition of financial assets under sub-section (1), the asset reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate



Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the asset reconstruction company in such pending suit, appeal or other proceedings.”

7. Section 5(1A) was not originally included in the SARFAESI Act. It was brought in by way of amendment with effect from 1.9.2016 after the enactment of the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Act, 2016. Simultaneous amendments were made to the SARFAESI Act, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899, and the Depositories Act, 1996. Along with the amendment of the SARFAESI Act by inclusion of Section 5(1A), the Indian Stamp Act was also amended by adding Section 8F. Section 8F of the Indian Stamp Act, 1899 reads thus;

“8F. Agreement or document for transfer or assignment of rights or interest in financial assets not liable to stamp duty.— Notwithstanding anything contained in this Act or any other law for the



time being in force, any agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in favour of any asset reconstruction company, as defined in clause (ba) of sub-section (1) of section 2 of that Act, shall not be liable to duty under this Act.”

8. The contention of the Senior Counsel for the petitioners, is that a combined reading of Section 5(1A) of the SARAFAESI Act and Section 8F of the Indian Stamp Act would show that, the Legislature intended that no stamp duty should be levied on agreements falling under Section 5 of the SARFAESI Act.

9. There is no dispute that the petitioner is an Asset Reconstruction Company, which has been registered with the RBI. One of the primary contentions raised by the respondent/State is that even if Section 5(1A) and Section 8F are to be applied, the result would be that no stamp duty under the Indian Stamp Act will be payable. It is submitted that neither Section 5(1A) of the SARAFAESI Act nor Section 8F of the Indian Stamp Act, in any manner, prohibit the application of the Kerala Stamp Act. It is the



contention of the State that by exempting the document from stamp duty under the Indian Stamp Act, there cannot be any simultaneous exemption from the Kerala Stamp Act, concerning the very same documents.

10. The counsel for the petitioners submits that the SARFAESI Act has been enacted under Entry 45 of List 1 of the 7th Schedule of the Constitution of India. The legislative competence of the Union of India regarding the SARFAESI Act has not been challenged and there is no challenge to Section 5(1A) of the SARFAESI Act which has been introduced by way of an amendment. It is submitted that the Section specifically says that any document executed by any Bank or financial institution under sub-section (1) of Section 5 in favour of the Asset Reconstruction Company acquiring financial assets for asset reconstruction or securitisation, shall be exempted from stamp duty under Section 8F of the Indian Stamp Act, 1899. It is submitted that the State has not challenged the constitutionality of Section 5(1A) and the contention is that what is exempted is only stamp duty in accordance with Section 8F of the Indian Stamp Act and not stamp duty payable under the Kerala Stamp Act. Coming to Section 8F of the Indian Stamp Act,



the said Section was introduced into the Indian Stamp Act, 1899, by way of amendment and as a continuation of the amendment of the SARFAESI Act by introduction of Section 5(1)A. Section 8F starts with a *non obstante* clause whereby the provision has been made applicable notwithstanding anything contained in the Indian Stamp Act as well as in any other law for the time being in force. The Senior Counsel appearing for the petitioners submits that given the non obstante clause, the application of Section 1(2) of the Indian Stamp Act, 1899 as well as the application of the Kerala Stamp Act stands excluded and any agreement or other document for transfer or assignment of right or interest in financial assistance of Banks or financial institutions under Section 5 of the SARFAESI Act is exempted from the liability to duty.

11. The legislative competence of the Central Government to enact the SARFAESI Act and the Indian Stamp Act is conceded and hence, though elaborate arguments were advanced regarding the source of power under Article 246 of the Constitution of India, the various entries dealing with banking and stamp duty under Lists 1 to 3 of the Seventh Schedule and the scope of Entry 44 in List 3 of the Seventh Schedule, there is no necessity to go into the said



questions. There can also be no challenge to the proposition that Section 5(1A) of the SARFAESI Act grants exemption from stamp duty in respect of any document executed between a Bank and an Asset Reconstruction Company, regarding acquisition of financial assets for asset reconstruction or securitisation. What needs to be considered is the effect of the words "in accordance with the provisions of Section 8F of the Indian Stamp Act, 1899" in Section 5(1A). If stamp duty is levied on an instrument of the nature specified in Section 5 of the SARFAESI Act, in accordance with Section 8F, such a levy cannot be justified in the teeth of Section 5(1A) of the SARFAESI Act, since the exemption will operate.

12. Coming to the question of applicability of the Indian Stamp Act and the Kerala Stamp Act, both of which are admittedly within the legislative competence of the Central Government and the State government respectively, the Indian Stamp Act has its source of power in Entry 91 of List 1 of Seventh Schedule, which says that the Parliament can fix rates of stamp duty in respect of bill of exchange, cheques or promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. The Entry is specific, and none of



the items mentioned in the Entry deal with stamp duty in respect of agreements of the nature specified in Section 5 of the SARFAESI Act. Entry 63 in List 2 of the 7th Schedule, on the other hand, specifically says of rates of stamp duty in respect of documents other than those specified in the provisions of List 1 concerning rates of stamp duty. Entry 44 of List 3 gives power to the Centre and the State to levy stamp duty. Thus, there is a power available both to the Centre and the State to levy stamp duty and to legislate regarding the rates of stamp duty of specified items. As far as Kerala is concerned, the Indian Stamp Act as well as the Kerala Stamp Act have distinct fields of operation, which can only be as guided by the entries in the respective Lists in the Seventh Schedule. The Indian Stamp Act will apply with regard to the stamp duty payable on instruments specified in Entry 91 of List 1.

13. The next question is regarding how Section 8F of the Indian Stamp Act must be understood. True, the Section begins with a *non obstante* clause. The way a *non obstante* clause should be interpreted is no longer res integra. In **State (NCT of Delhi) v. Sanjay [2014 (9) SCC 772]**, the Hon'ble Supreme Court held that the purpose of a *non obstante* clause is to give overriding



effect to the provision over some contrary provision that may be found within the same enactment or some other enactment. [See also the judgment in **Patharam Milk Producers Co-operative Society Ltd. v. State Co-operative Election Commission (2023 (4) KLT 143)**]. The operation of all the provisions of the Indian Stamp Act as well as the provisions of any other Act will thus stand suspended, for the purpose of giving effect to Section 8F of the Indian Stamp Act. However, Section 8F does not appear to grant exemption from all laws relating to levy of stamp duty. After referring to the type of documents which are entitled to exemption, in the operative portion of the Section, the exemption is restricted to “duty under this Act”, meaning thereby duty under the Indian Stamp Act. If all the words of the Section are to be given meaning, which is the golden rule of interpretation, it can only mean that, there can be no levy of stamp duty under the Indian Stamp Act. That is to say, there is no omnibus exemption from stamp duty under any other enactment. Neither Section 5(1A) of the SARFAESI Act, nor Section 8F of the Indian Stamp Act, state anything about exemption being granted to the stamp duty payable under any other enactment. It is settled law that a provision granting



exemption has to be strictly construed and the Court cannot by an interpretative process, expand the scope of the exemption, by reading into the provision such aspects, which in the opinion of the Court ought to have been included. I am hence of the opinion that the first contention of the counsel for the petitioners that there is a total exemption from stamp duty is not legally sustainable, even on a plain reading of the statutory provision.

14. The next question is whether the liability to pay stamp duty should be as per the Government Order No.G.O.(Ms) No.9/2010/TD dated 13.01.2010 in the light of Exts.P4, P5 & P6 judgments. G.O.(Ms) No.9/2010/TD dated 13.01.2010 is extracted below:

"GOVERNMENT OF KERALA

Abstract

Taxes Department - Registration - Capping the stamp duty and Registration fee payable on Security / Assignment of debt whether secure or insecure by a charge over movable or immovable properties - Limiting the concession to M/s. Asset Reconstruction Company (India) Ltd. (ARCIL) only and constitution of an empowered Committee -sanctioned-orders issued.

Taxes Department

GO(Ms) No.9/2010/TD Thiruvananthapuram dated 13-01-2010



- Read: 1. Letter No.LOGFY0806363 dated 17/9/2008 from
ARCIL Ltd.
2. Letter No. RRA/10879/2007 dated 17/7/2007 from
the Inspector General of Registration,
Thiruvananthapuram

ORDER

1. In the letter read 1st paper above, the Executive Vice President, Asset Reconstruction Company (India) Ltd. (ARCIL) registered under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Fund Act, 2002 has placed a proposal before Government for capping the stamp duty and registration fee payable on any assignment of debts whether secure or insecure by a charge over movable or immovable properties to a nominal amount not exceeding rupee one lakh and rupee twenty five thousand respectively in order to encourage construction activities by utilizing the high levels of Non-Performing Assets (NPA), roughly estimated at Rs.2600 crore noted in the accounts of various banking firms.
2. In the letter cited 2nd paper above the Inspector General of Registration has recommended reduction of stamp duty as rupee one for every thousand rupees subject to the maximum of rupees one lakh and the Registration fees of rupee one for every thousand rupees subject to a maximum of rupees twenty five thousand on securitization/assignment of debt.
3. Government have examined the matter in detail and are pleased to accept the proposal for capping the stamp duty and registration fee to an amount not exceeding Rs. One Lakh only and Rupees Twenty five thousand only respectively payable on securities / assignment of debt whether secure or insecure by a



charge over movable or immovable properties. Limiting the benefit to Asset Reconstruction Company (India) Limited (ARCIL). Sanction is also accorded to constitute an empowered committee with the Principal Secretary (Taxes) as convener, Additional Chief Secretary (Finance), Principal Secretary (Industries) as members to consider the cases of ARCIL and make securitization / suggestion thereof to Government.

By order of the Governor,

P. MARA PANDIYAN,
Principal Secretary "

15. A reading of the Government Order would show that it was issued on the basis of letters from the Executive Vice President, Asset Reconstruction Company India Ltd., and the Inspector General of Registration, Thiruvananthapuram. The Inspector General had recommended a reduction of the stamp duty on securitisation/assignment of debt. The order says that the Government has examined the matter in detail and is pleased to accept the proposal for capping the stamp duty and registration fee to an amount not exceeding Rs.One Lakh only and Rupees Twenty five thousand only respectively, limiting the benefit to Asset Reconstruction Company (India) Limited (ARCIL). The order also says that sanction has been accorded to constitute an empowered committee to consider the cases of the ARCIL and to make



recommendations and suggestions thereof to the Government.

16. The above Government Order is followed by G.O.(Ms) No.110/2013 on 10/2013/TD dated 21.05.2013, which reads thus:

"GOVERNMENT OF KERALA

Abstract

Taxes Department - Registration - Capping the stamp duty and registration fee payable on security/assignment of debt whether secure or insecure by charge over movable or immovable properties - Limiting the concession to M/S. Asset Reconstruction Company (India) Limited (ARCIL) only - Constitution of High Power Committee - Sanctioned - Orders issued.

TAXES (E) DEPARTMENT

GO(MS)No.110/2013/TD. Dated,Thiruvananthapuram,21/05/2013.

Read:-1. GO(MS)No.9/2010/TD. Dated 13/01/2010.

2. Letter no. CLG./HP/FY12/8010 dated 15/11/2012 from the Managing Director & CEO, ARCIL.

ORDER

As per the Government Order read above, the Government of Kerala had approved the proposal for capping the stamp duty and registration fee, to an amount not exceeding Rupees One lakh and Rupees twenty five thousand respectively, payable on securities/assignment of debt whether secure or insecure by a charge over movable or immovable properties, limiting the benefit to Asset Reconstruction Company (India) Limited (ARCIL), Sanction was, also accorded to constitute an Empowered Committee, with the Principal Secretary (Taxes) as Convenor, Additional Chief Secretary (Finance), Principal Secretary (Industries) as Members, to consider the cases of ARCIL, and make recommendation/suggestion thereof to Government.

2. However, the Committee as stated in the Government Order read



above has not been constituted so far, because of which the proposal for adjudication of assignment agreement submitted to the Inspector General of Registration, Kerala, by the ARCIL is pending with the Inspector General of Registration. Hence, the Managing Director & Chief Executive Officer of ARCIL., as per the letter read as 2nd paper above, has requested the Government to constitute the Committee as stated in the Government Order read above, to consider the cases of ARCIL, and make recommendations/suggestions thereof to Government.

3. Government have examined the matter in detail, and are pleased to constitute a High Power Committee with the Secretary (Taxes) as Convenor, the Additional Chief Secretary (Industries) and the Principal Secretary (Finance) as Members, to consider the cases of ARCIL, and make recommendations/suggestions thereof to Government.

By Order of the Governor,

A. AJITH KUMAR,

SECRETARY TO GOVERNMENT."

17. It can be seen from the Government Order dated 21.05.2013 that the committee, as stated in the earlier Government Order, had not been constituted, and the proposal for adjudication of assignment agreements submitted to the Inspector General of Registration by ARCIL was still pending. The Government Order says that a committee was constituted as per the order. Admittedly, no orders have so far been issued by the committee, and the matter still appears to be pending. In Ext.P4



judgment, a learned Single Judge of this Court considered the issue regarding the liability to pay stamp duty on such agreements. The learned Single Judge held that Section 8F of the Indian Stamp Act does not apply to the State of Kerala. The learned Judge went on to consider whether the agreements mentioned in Section 5 of the SARFAESI Act come under Article 55C of the Schedule to Kerala Stamp Act, 1959 and held that the Instruments in question will not come under Article 55 of the Schedule to the Kerala Stamp Act. The learned Judge, thereafter, relying on the judgments of this Court in WP(C) No.22357/2015 and 22551/2016 wherein this Court had directed registration at the rate suggested in the Government Order dated 13.01.2010, held that the petitioners before the Court are also entitled to the same benefits on the principle of parity. Even though arguments were advanced to submit that the above-mentioned judgment had been rendered *per incuriam*, given my finding that the exemption under Section 8F is limited to levy under the Indian Stamp Act, there is no necessity to go into the question.

18. On the question of applicability of the Government Order dated 13.01.2010, the Special Government Pleader submitted that the Government Order was for the limited purpose of dealing with



cases of ARCIL and cannot be applied universally in all cases. It is submitted that the said order cannot be treated as a statutory order having the force of law. It is further submitted that the Government Order dated 13.01.2010 is not an order under Section 9 of the Kerala Stamp Act, issued following the procedure laid down therein. It is also submitted that Ext.P5 judgment had been challenged in a review petition, which is still pending before the Court. As far as Ext.P6 judgment is concerned, it is submitted that the only direction to the Government was to consider the representation submitted and that the Court had not made any declaration regarding the reliefs. Regarding Ext.P4 judgment, the Special Government Pleader submits that the said judgment cannot be treated as a precedent. It is submitted that no mandamus can be issued to restrain the Government from enforcing the provisions of law regarding the stamp duty payable. Reliance is placed on the judgment of the Hon'ble Supreme Court in **R. Muthukumar V. The Chairman and Managing Director, TANGEDCO & Ors. [2022 (1) SCR 577]**, to contend that there can be no negative equality. W.A.No.2007/2024 challenging the judgment in WP(C) No.19371/2017 is also stated to be pending before a Division



Bench. Regarding the judgment in **Abdul Azeez V. Authorised Officer, Phoenix ARC Ltd. [2024 (2) KHC 157]**, the Special Government Pleader submits that the said judgment is dated 10.01.2024 and has been rendered without reference to the judgment in WP(C) No.19371/2017 which is dated 07.12.2023, concerning the chargeability of the instruments of similar nature and Section 2D read with Article 21 of the Kerala Stamp Act, 1959 and hence cannot be treated as a precedent. In **Abdul Azeez (Supra)**, the learned Single Judge held that what is transferred by a Bank to an Asset Reconstruction Company is only the economic interest and there is no conveyance of property or proprietary interest and such conveyance will not fall in any of the categories mentioned in Article 22 of the Kerala Stamp Act. This Court held that Article 22 would apply only when there is a sale of immovable property and since the Bank has not conveyed any property and what is transferred is only the debt and the right to recover the debt, the said Article can have no application. The said judgment was rendered in a dispute between the debtor and the Asset Reconstruction Company and was not a dispute between the Asset Reconstruction Company and the State regarding the stamp duty



payable. The said judgment cannot bind the State in any manner. The Special Government Pleader has a case that what would apply is Article 21 of the Kerala Stamp Act and that the document in question would fall within the ambit of a conveyance under Section 2(d)(iv) of the Kerala Stamp Act. However, so long as the State has not challenged Exts.P4, P5, and P6 judgments, I do not think that relief should be denied to the petitioners to the extent of the relief granted in those judgments. While I hold that Section 8F of the Indian Stamp Act will not apply, I also find that the petitioners are entitled to relief on the second question raised in these cases.

19. The writ petitions are hence allowed in part. There will be a direction to the 4th respondent to register Ext.P2 assignment agreements by extending the benefit granted to the petitioners in Exts.P4, P5, and P6 judgments, based on the rates suggested in the Government Order dated 13.01.2010 within one month from the date of receipt of a copy of this judgment. It is made clear that this direction will be subject to any final determination of stamp duty based on any amendment to the Stamp Act. It is also made clear that this Court has not gone into the merits of the contention of the State that stamp duty is payable by treating the agreement



in question as a conveyance under Section 2(d)(iv) of the Kerala Stamp Act, under Article 21 of the Schedule to the Act, since it is an aspect to be considered while the Government is taking further steps on the Government orders referred above.

Sd/-

T.R.RAVI
JUDGE

dsn



APPENDIX OF WP(C) 18051/2024

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 24.07.2019
Exhibit P2	TRUE COPY OF THE ASSIGNMENT AGREEMENT DATED 04.03.2024
Exhibit P3	TRUE COPY OF THE ACKNOWLEDGEMENT CUM RECEIPT DATED 18.04.2024 ISSUED BY THE REGISTRATION DEPARTMENT, GOVERNMENT OF KERALA
Exhibit P4	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP[C] NO.19371 OF 2017 DATED 7.12.2023
Exhibit P5	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP[C] NO.22357 OF 2015 DATED 16.9.2015
Exhibit P6	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP[C] NO.22551 OF 2016 DATED 2.6.2023



APPENDIX OF WP(C) 23003/2024

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 24.07.2019
Exhibit P2	TRUE COPY OF THE ASSIGNMENT AGREEMENT DATED 26.03.2024
Exhibit P3	TRUE COPY OF THE ACKNOWLEDGEMENT CUM RECEIPT DATED 04.06.2024 ISSUED BY THE REGISTRATION DEPARTMENT, GOVERNMENT OF KERALA
Exhibit P4	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP[C] NO.19371 OF 2017 DATED 7.12.2023
Exhibit P5	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP[C] NO.22357 OF 2015 DATED 16.9.2015
Exhibit P6	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP[C] NO. 22551 OF 2016 DATED 2.6.2023