

HIGH COURT OF MADHYA PRADESH, JABALPUR

BENCH INDORE

(Single Bench)

(Hon'ble Shri Justice Vivek Rusia)

Writ Petition No.932 of 2004.

State of Madhya Pradesh and another

V E R S U S

Shri Birani Sons, Indore

Ms. Nidhi Bohara, learned Deputy Govt. Advocate for the
petitioners/State.

Shri A.K.Sethi, learned Senior Counsel with Shri Rishabh
Sethi, learned counsel for the Respondent.

O R D E R

(Passed on this 27th day of February, 2018)

THE petitioners have filed the present petition being aggrieved by order dated 28.04.2004 passed by the Member, Board of Revenue, Gwalior in Revision Case No.493-Two/2004 thereby set-aside the order dated 24.02.2004 passed by the Collector of Stamps, Dewas.

[2] Facts of the case, in short, are as under :-

(a) The Official Liquidator, High Court Calcutta in pursuance of an order dated 05.03.2001 passed in BIFR Case No.126/1991 in the matter of Reliance Ispat Industries Ltd., issued a sale notice in respect of the properties of the said industry situated at A.B. Road, Berakhedi, Dewas and invited tenders in the sealed cover from the intending purchasers. In response to the aforesaid sale notice, two parties submitted their offer. The

Respondent made highest offer of Rs.10.12 crores to purchase the entire property of the Reliance Ispat Industries Ltd. The Hon'ble Company Judge vide order dated 31.08.2001 accepted the bid of the Respondent and dictated the order in open Court on 31.08.2001. By the aforesaid order entire immovable and movable properties of the sick industry – Reliance Ispat Industries Ltd. were sold to the Respondent in consideration of Rs.10.12 crores. According to the petitioner in pursuant to the said order, a Sale Certificate dated 17.11.2003 was issued by the Official Liquidator, High Court Calcutta and sale-deed dated 25.07.2003 was executed between the Respondent and the Official Liquidator.

(b) The Respondent presented the sale-deed before the Registrar for registration who found that the sale-deed is not adequately stamped as the entire sale consideration has not been taken into consideration while affixing the stamps on the sale-deed. The petitioner No.1 impounded the sale-deed under the provisions of Section 33 of the Indian Stamp Act and referred the matter to the District Registrar and Collector of Stamps, Dewas vide reference order dated 06.12.2003. On receiving the aforesaid reference, the District Registrar and Collector of Stamps, Dewas initiated the proceedings against the Respondent by issuing show-cause notice. After receipt of the show-cause notice, the Respondent submitted a detailed reply on 12.01.2004 by contending that the impugned sale-deed is only in respect of sale of immovable property worth Rs.2,85,96,280-00 because the rest of the property worth

Rs.7,26,03,720-00 are movable properties for which he is not liable to pay stamp duty. During the course of enquiry, the petitioner No.2 inspected the spot and found that the plant and machinery are embedded in earth and observed that the plant is capable of running. The photo copy of the spot inspection report dated 20.02.2004 is filed as Annexure P/8. The District Registrar after affording sufficient opportunity to the Respondent and taking into consideration the entire material on record passed the order dated 24.02.2004 directing the Respondent to pay the stamp duty on entire sale consideration i.e. Rs.10.12 crores. The petitioner No.2 vide order dated 24.02.2004 directed the Respondent to pay a sum of Rs.76,26,200-00 towards deficit stamp duty and penalty.

(c) Being aggrieved by the aforesaid order dated 24.02.2004, the Respondent preferred an appeal before the Board of Revenue. By order dated 28.04.2004, the Board of Revenue had set-aside the order of Collector on the ground that the Respondent is liable to pay stamp duty on a value of the property mentioned in the sale-deed.

(d) Being aggrieved by the order of Board of Revenue, the State Government had preferred this writ petition before this Court.

[3] Ms. Nidhi Bohara, learned Deputy Govt. Advocate appearing on behalf of the petitioners/State submitted that the Respondent had purchased the entire movable and immovable property which constitutes “as is where is basis” in an auction proceedings conducted by the High Court of Calcutta in a liquidation proceedings. He

purchased the movable and immovable property of sick industry in total consideration of Rs.10.12 crores. A sale certificate in respect of sale of movable and immovable was issued to the Respondent. Therefore, he is liable to pay the stamp duty on entire value mentioned in the sale certificate. The Collector of Stamps has rightly passed the order on the basis of the inspection report that the plant and machinery are embedded in earth and the industry is a running industry. The Respondent cannot be permitted to purchase the entire plant and machinery without payment of adequate stamp duty. The Board of Revenue has wrongly interfered with the order of Collector. Hence, the same is liable to be set-aside.

[4] Shri A.K.Sethi, learned Senior Counsel appearing on behalf of the Respondent drawn attention of this Court to the contents of sale-deed and emphasized that by sale-deed dated 25.07.2003 only immovable property valued at Rs.2,85,96,280-00 was sold to the Respondent and not the movable property worth Rs.7,26,03,720-00. The Board of Revenue has rightly come to the conclusion that the stamp duty is liable to be paid on the basis of the value of the property sold by way of registered sale-deed. Since the Official Liquidator and the Respondent entered into the sale-deed for sale of only immovable property worth Rs.2,85,96,280-00, the Respondent has rightly paid the adequate stamp duty. The plant and machinery are not part of the land being immovable property. Therefore, the Respondent is not liable to pay the stamp duty on the value of the movable property. Hence, no interference is called

for.

[5] The facts of the case are not much in dispute. The High Court of Calcutta on its original side passed the order dated 31.08.2001 in BIFR Case No.120/1990 accepting the highest offer of the Respondent i.e. Rs.10.12 crores and directed to deposit of the entire purchase price by the Respondent, then the possession of the property which is being sold will be made over. The Official Liquidator was directed to secure the entire purchase money and thereafter will take steps to issue the sale certificate. In compliance of the aforesaid order, a Sale Certificate dated 17.11.2003 was issued by the Official Liquidator. In pursuant to the aforesaid order of the High Court, a sale-deed dated 25.07.2003 was executed between the Respondent and the Official Liquidator. In the sale deed, Schedule "A" is in respect of the sale of land measuring 34.51 acres together with the building structures lying thereon butted and bounded which is reproduced below :-

"SCHEDULE 'A' ABOVE REFERRED TO

ALL THAT LEASE HOLD LANDS situated in A.B.Road, Berakhedi, Dewas (M.P.) being plot No.17A, 18, 19-B, 21-B, 20B, 22A, 21(a), 19(a) and 20(a) measuring about 34.51 acres together with Building structures lying thereon butted and bounded :-

On the North By - 24M vide Road & P.No.17-B, 16, 16E, 22C & 22 B

On the South By - 30M vide Road & P.No.20-C, 21-C

On the East By - 24M vide Road & Truck Stand

On the West By - 30M vide Road.

The sketch map of the property detailing in Red Ink is annexed herewith made part of this indenture."

(Emphasized supplied)

But the memo of consideration shows only receipt of amount of Rs.2,85,96,280-00. It was also mentioned in the sale-deed that the proportionate value and/or consideration of the interest, advantages and privileges of the lease hold land is assigned and assured for the residue on the basis of valuation report at Rs.72,51,611-00 and proportionate value of the building structures at Rs.2,13,44,669-00. The relevant part is reproduced below :-

“AND WHEREAS in compliance of the hereinbefore recited said order dt. 31-8-2001 and 3-9-2001 the proportionate value and/or consideration of the interest, advantages and privileges of the lease hold land hereby assigned and assured for the residue of the said terms of the said lease being for a period of residue of 99 years has been assessed by the Vendor on the basis of hereinbefore recited Valuation Report at Rs.72,51,611-00 and proportionate value of the building structures etc at Rs.2,13,44,669.”

[6] In the sale-deed it was also mentioned that the building structures lying there on or any part or portion thereof now is or are heretofore to have hold, own and possess will be used by the purchaser for the period of ninety nine years. The relevant part are reproduced below :-

“NOW THIS INDENTURE WITNESSETH that in pursuance of the said order dated 31-8-2001 and 3-9-2001 passed by the Hon'ble High Court, Calcutta and in consideration of the proportionate sum of Rs.2,85,96,280-00 paid to the Vendor before execution of these presents (the receipts whereof the vendor doth hereby admit and acknowledge and of and from the same and every part thereof for ever acquit, release and discharge the purchaser's beneficial interest, privileges and advantages vested on the Vendor as liquidator of the said Reliance Ispat Industries Ltd. (now in Liquidation) by virtue of the said Indenture dated 6th day of August, 1974, 3rd July, 1974 and 12th April, 1977 subsequently

amended these deeds on 21-8-1981 hereinafter referred to as the 'said Lease' for the residue of the said term of ninety nine years contained in the said Lease on ALL THAT LEASEHOLD LAND admeasuring an area of 34.51 acres be same a little more or less situate lying at A.B.Road, Berakhedi, Dewas (M.P.) being plot Nos.17A, 18, 19-B, 21-B and 20B, 22A and 21(a), 19(a) and 20(a) fully described in the schedule 'A' HEREUNDER written OR HOWEVER OTHERWISE the said property being the said lease hold land. Building structures lying there on or any part or portion thereof now is or are heretofore was or were situate or situated, tenanted, butted, bounded called known numbered, described or distinguished TO HAVE HOLD, OWN AND POSSESS the said lease hold land, building, structures hereby granted or expressed so to be unto and to the use of the purchase and each of them for the residue of the said term of ninety nine years of the said Indenture of Lease TOGETHER WITH the full and exclusive benefit, advantages improvement and extension thereof (subject to the terms, condition and covenants contained in the said Lease) AND the purchaser for themselves and their executors, administrators, successors and legal representatives CONVENANT WITH THE VENDOR THAT from the date of the execution of these presents all the terms and conditions and covenants contained in the said Lease shall be performed and observed by the purchaser AND THAT the Vendor shall not be liable or responsible to the Head Lessor under all or any of the terms, conditions and covenants contained in the said Lease AND that all the terms conditions and covenants contained in the said Lease be as effectual and binding on the Vendor as if the said original "Lease" was entered into by and between the said Head Lessor and Assignee/Vendor AND THAT the Vendor shall not be liable for any default or breach of all or any of clauses whatsoever contained in the said 'Lease by the Assignee / Purchase. CONVENANT WITH THE ASSIGNEE / PURCHASER THAT notwithstanding any act, deed or thing by the Assignor / Vendor done or executed or knowingly suffered to the contrary the Assignee / Purchaser is lawfully, rightfully and sufficiently entitled to the beneficial interest, privileges and advantages vested on the said Company (in Liquidation) by virtue of the said lease in the said leasehold AND THAT notwithstanding any such act, deed or thing whatsoever as aforesaid the Assignor / Vendor has full power and absolute authority to assign, assure and cohnfirm the beneficial interest, privileges and advantages on the said property being the

said lease hold land hereby granted assigned and assured or expressed so to be unto and to the use of the Assignee / Purchase in the matter aforesaid AND THAT Assignee / Purchase keeps and Assignor / Purchaser INDEMNIFIED against all actions, proceedings, expenses, claims demands and liabilities on account of the non-payment of the rent reserved by the said Lease or any part thereof or breach of the said covenants and conditions or any of them contained in the 'said Lease'."

[7] The Official Liquidator issued a Sale Certificate dated 04.08.2003 certifying that Birani Sons of 5/12, Yeshwant Niwas Road, Indore has purchased the assets of the Reliance Ispat Industries Ltd. being its factory premises at the Industrial Area, A.B. Road, Berakhedi, Dewas (both movable and immovable assets) in Rs.10.12 crores. The purchaser has deposited the full consideration of money on 04.10.2001 and the possession of the said property movable and immovable were handed over to the Proprietor. The Sale Certificate is reproduced below :-

"Sale Certificate

This is to certify that the Birani sons of 5/12, Yeshwant Niwas Road, Indore – 3 has purchased the assets of the Reliance Ispat Industries Ltd. (In Liquidation) lying at its factory premises at the Industrial Area, A.B.Road, Berakhedi, Dewas, M.P. (both moveable and immovable assets) and moveable assets at New Lohamandi, Indore vide order dated 31.8.2001 and 3.9.2001 of the Hon'ble High Court, Calcutta at Rs.10.12 Crores. The said purchaser has deposited the full consideration money of Rs.10.12 Crores on 4.10.2001 and the possession of the said property i.e. moveable and immoveable properties were handed over to Mr. Dilip Birani, Proprietor of M/s Birani Sons on 8th & 9th of November, 2001. A list of assets both moveable & immoveable) as per sale notice is enclosed herewith. The proportionate value of the moveable property is Rs.7,26,03,720-00.

Encl : As stated;

Sd/-

**Dated 4th day of August, 2003. Official Liquidator,
High Court,Calcutta"**

[8] Thereafter vide letter dated 17.11.2003, the Official Liquidator informed the Registrar, Dewas to register a sale-deed that he has executed the instrument of conveyance in respect of the properties of the Company in liquidation and he is exempted from personal appearance to any registration of any instrument executed by him in official capacity. He has authorized his assistant Sri Tapas Kumar Das to appear and execute the sale-deed.

[9] It appears that the Official Liquidator had executed the sale-deed with Respondent on 25.07.2003 much before issuance of the Sale Certificate dated 04.08.2003. When a property was sold by public auction in pursuance of an order of the Court and the bid was accepted and the sale was confirmed by the High Court in favour of the purchaser, the sale becomes absolute and the title vested in the purchaser only when the sale certificate is issued to the purchaser. The sale certificate is conveyance of such title and the auction purchaser derives title on confirmation of sale in his favour and a sale certificate is issued evidencing such sale and title.

[10] In the present case the Sale Certificate was issued for sale of entire industry including movable and immovable in total consideration of Rs.10.12 crores, but before its execution a deed of conveyance had been executed for sale of only the land in consideration of Rs.2,85,96,280-00. But in the Schedule appended to the sale-deed, the building structures lying thereon has been mentioned as the property sold. The sale was made “as is where is basis” by the Court. The sale certificate was issued

by the Official Liquidator for movable and immovable property both. Therefore, the Registrar has rightly come to the conclusion that the Respondent is liable to pay the stamp duty on total consideration of Rs.10.12 crores.

[11] In view of the aforesaid, this petition is allowed. The order dated 28.04.2004 passed by the Board of Revenue, Gwalior is hereby set-aside.

No order as to costs.

[VIVEK RUSIA]
JUDGE

Sharma AK/*