

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 17th OF JANUARY, 2024**

WRIT PETITION No. 24776 of 2023

BETWEEN:-

**BRILLIANT ESTATES LTD. THROUGH
ITS DIRECTOR VINOD MISHRA S/O SIYA
SHARAN MISHRA, AGED ABOUT 53
YEARS, OCCUPATION: SERVICE 8TH
FLOOR, BRILLIANT PLATINA, SCHEME
NO. 78, PART 2, VIJAY NAGAR, INDORE
(MADHYA PRADESH)**

.....PETITIONER

SHRI AVIRAL VIKAS KHARE, ADVOCATE

AND

**INDORE DEVELOPMENT AUTHORITY
THROUGH ITS CHIEF EXECUTIVE
OFFICER PRADHIKARAN BHAWAN, 7-
RACE COURSE ROAD, INDORE
(MADHYA PRADESH)**

.....RESPONDENT

SHRI SHREY RAJ SAXENA, ADVOCATE

This petition coming on for order this day, the court passed the following:

ORDER

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 11.9.2023 passed by the respondent- Indore Development Authority (hereinafter to be referred to as “(IDA)”); whereby, the petitioner

company has been directed by the IDA to pay in all 6% transfer fee for mutation, as according to the respondent the petitioner Company was initially known as Ubiquity Digital Card Systems Ltd (hereinafter to be referred to as “UDCS”) and its name was changed to Brilliant Spaces Ltd., and thereafter this company has also been amalgamated into Brilliant Estates Ltd. Thus, on these two counts of transfer, 6% fees has been charged.

2. In brief, the facts of the case are that Plot No.9 situated at Scheme No.78 Indore admeasuring 6678 Sq. meters was allotted to the petitioner by the auction process by the respondent. Initially, it was allotted to “UDCS” and after payment of requisite dues including the rent and premium amount of Rs.4,20,71,400/-, registered lease deed was executed by the IDA in favour of UDCS on 28.3.2012, for a period of 30 years. Subsequently, on 26.5.2016, the name of the aforesaid company UDCS was changed to Brilliant Spaces Ltd, and subsequent to that on 10.4.2023, Brilliant Spaces Ltd was amalgamated into Brilliant Estates Ltd., which was the parent company. On account of the aforesaid change in the name of the company, an application for mutation was filed on 2.8.2023 which has led the respondent to pass the impugned order dated 11.9.2023, directing the petitioner to pay the total fee of 6% of the existent guideline plus 18% GST and additional charges.

3. Counsel for the petitioner has submitted that the respondent have relied upon a resolution No.74 dated 28.5.2016; whereby, it

has been resolved that in respect of change in the name of company, for any lease deed executed in favour of the said company 3% charges on the applicable guideline value shall be charged.

4. Counsel for the petitioner has submitted that the aforesaid resolution itself has been passed without any authority of law and specially when the Rules framed under M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 known as Madhya Pradesh Vikas Pradhikaranou ki Sampatiyou Ka Prabhadhan Thatha Vyayan Niyam, 2018 (hereinafter to be referred to as “Niyam, 2018”) were already in force. The aforesaid resolution could not have been passed. Counsel for the petitioner has also drawn attention of this Court to Rule 19 of the aforesaid Rules which provides for transfer of lease and that it shall not exceed Rs.5000. It is also submitted that otherwise also it is not a transfer of property but merely change in the name of the company.

5. Counsel for the petitioner has also submitted that amalgamation took place as per Rule 232 and Rule 233 of the Companies Act, 2013 and Section 2(1B) of the Income Tax Act, 1961 which defines the term amalgamation as the merger of one or more companies with another company or the merger of two or more companies to form a new company. Thus, it is submitted that after merger of Brilliant Spaces Ltd. to Brilliant Estate Ltd., it was not a transfer but only a merger for which a proper stamp duty as per Section 233(11) and s.232(3)(i) of the Companies Act, 2013

has been paid which comes Rs.55836663/-.

6. Counsel for the respondent on the other hand has opposed the prayer, and it is submitted that no illegality has been committed by the IDA while passing the impugned order as the same has been passed on the basis of resolution dated 4.2.2016, as also on 28.5.2016, as well as resolution no.9 dated 21.2.2019, in which it is clearly provided that transfer fees shall be charged in respect of transfer of lease. Thus, it is submitted that, no case for interference is made out. Shri Shreya Raj Saxena, learned counsel for the respondent has also referred to Rule 3(2) of Niyam, 2018 which provides the power of authority to amend rules.

7. In rebuttal, counsel for the petitioner has submitted that the aforesaid Rules shall not be applicable in the present case as there is no such regulations which have been published in the official gazette, and what the respondents have done is that they have simply passed the resolutions on their own without even referring to the provisions of law under which the resolutions provisions have been passed.

8. Heard. Having considered the rival submissions and on perusal of the documents filed on record, this court finds that the land was initially leased to UDCS which has been changed to Brilliant Spaces Limited, and thereafter, Brilliant Spaces Ltd. has been amalgamated into Brilliant Estate Ltd. which means that only

the name of the company has changed and its property has not been transferred from one party to another. Apparently, there is no conveyance executed between these companies, and the companies have been merged as per s.233 of the Companies Act, 2013 and for which, proper stamp duty has also been paid.

9. In such circumstances, it cannot be said that amalgamation of a company into another is a transfer of property. And considering the same to be transfer of lease, the respondent shall only be liable to be pay the fees not exceeding Rs.5000/-, which is applicable for transfer of lease as per the Rules of 2018, which the petitioner is ready to pay.

10. Under these facts and circumstances of the case, the impugned order dated 11.9.2022, cannot be sustained in the eyes of law and is hereby quashed. However, the petitioner shall be liable to pay the transfer fees as has been provided under the amended rules of 2018, i.e., not exceeding Rs.5000/- only.

11. The resolution dated 28.5.2016 and 21.2.2019 to the extent that they sanction levying transfer fee more than permitted, are hereby quashed.

12. The petition is accordingly **allowed and disposed of.**

Sd/-

(SUBODH ABHYANKAR)
JUDGE

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