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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 7th DAY OF JULY 2009

BEFORE

THE HON'BLE MR.JUSTICE ANAND BYRAREDDY

W.P.No.12732/2007(GM-ST/RN)

And

W.P.No.9553/2007(GM-ST/RN)

In W.P.12732/07:
BETWEEN:

1 SOBHA PROJECTS AND TRADE (P) LTD,
REGISTERED UNDER THE COMPANIES ACT
HAVING ITS
OFFICE AT NO. 211/19A, 1ST MAIN
2ND CROSS, SANJEEVAPPA LAYOUT, C.V.RAMAN
NAGAR, BANGALORE - 560093,
REPRESENTED BY ITS
MANAGING DIRECTOR AND CEO
DR.MADHU NAMBIAR,
S/O. LATE SRI RAGHAVAN NAMBIAR
AGED ABOUT 49 YEARS. ... PETITIONER

(By SRI JANARDHANA.G, ADVOCATE)

AND

1 GOVERNMENT OF KARNATAKA
DEPARTMENT OF REVENUE
REPRESENTED BY ITS REVENUE SECRETARY
M.S. BUILDING
BANGALORE.
... RESPONDENT

(By SRI A.R SHARADHAMBA, AGA)

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IN W.P.No.9553/2007:
BETWEEN:

Sobha Renaissance Information
Technology Private Limited
Registered under the Companies Act
Having its Office at
SRIT House No.1131/B, ITPL Main Road
Kundalahalli, Bangalore-37
Represented by its Managing Director
And CEO Dr.Madhu Numbiar
S/o.late Sri.Raghavan Nambiar
Aged about 49 years ... **PETITIONER**

(By Sri.Janardhana.G., Advocate)

AND:

Government of Karnataka
Department of Revenue
Represented by its Revenue
Secretary, M.S.Building
Bangalore. ... **RESPONDENTS**

(By Smt.Sharadhamba.A.R., Additional Governmet Advocate)

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THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE COSNTITUTION OF INDIA PRAYING TO STRIKE DOWN AND DECLARE AS UNCONSTITUTIONAL AND VOID THE INSERTION/INTRODUCTION OF THE " EXPLANATION" TO ARTICLE 6 IN THE SCHEDULE TO THE KARNATAKA STAMP ACT 1957 AS PER SECTION 3(1) OF THE KARNATAKA STAMP (AMENDMENT) ACT, 2006 (KARNATAKA ACT NO.7 OF 2006), WHICH READS AS UNDER: EXPLANATION- FOR THE PURPOSE OF CLAUSE(1), NOTWITHSTANDING ANYTHING CONTAINED IN ANY JUDGMENT, DECREE OR

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ORDER OF ANY COURT ORDER OF ANY AUTHORITY, ANY LETTER, NOT MEMORANDUMOR WRITING RELATING TO THE DEPOSIT OF TITLE DEEDS WHETHER WRITTEN OR MADE EITHER BEFORE OR AT THE TIME WHEN OR AFTER THE DEPOSIT OF TITLE DEEDS IS EFFECTED AND WHETHER IT IS IN RESPECT OF THE SECURITY FOR THE FIRST LOAN OR ANY ADDITIONAL LOAN OR LOANS TAKEN SUBSEQUENTLY, SUCH LETTER, NOTE, MEMORANDUM OR WRITING SHALL, IN THE ABSENCE OF ANY SEPARATE AGREEMENT OR MEMORANDUM OF AGREEMENT RELATING TO DEPOSIT OF SUCH TITLE DEEDS, BE DEEMED TO BE AN INSTRUMENT EVIDENCING AN AGREEMENT RELATING TO THE DEPOSIT OF TITLE DEEDS etc.

These writ petitions coming on for hearing this day, the Court passed the following:-

ORDER

Heard the learned counsel for the petitioner.

2. The petitioner in W.P.No.9553/207 is a Software Company and has the benefit of credit facilities with the Corporation Bank for several years and has the enhanced credit limit of Rs.44.05 crore, which is called Package Credit Limit cum PCFC, overdraft facility, rupee advance

against export and various types of term loans. The petitioner had offered title deeds of immovable property as collateral security for repayment of the loan amounts without reducing the terms of such transaction into the form of a document except handing over a letter to that effect, along with executing other loan documents, by paying a stamp duty of 0.5% on the loan amount. The petitioner had again approached the Bank for a loan of Rs.70 crore in addition to the existing credit limit as on 1.6.2007. This having been sanctioned by the Bank on certain terms and conditions as evidenced at Annexure-"A" to the writ petition and in furtherance of the said document, the petitioner offered the very same immovable property, which was offered earlier, as a continuing guarantee while again, not reducing the transaction into any form of a document evidencing the agreement in this regard, as security for repayment of the enhanced loan amount. Hence, it is the contention of the petitioner that there was no memorandum of deposit of title deeds in so far as the

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transaction was concerned and it only involved offering of the title deeds along with a letter of consent, to the banker. It is the petitioner's contention that in view of the amendment brought to the Karnataka Stamp Act by Amendment Act No.7/2006, with effect from 1.4.2006, Article 6 of the schedule to the said Act stands amended whereby the respondent is demanding payment of stamp duty of 5% on the transaction when the petitioner has offered the very same property, which was already offered as security to the banker, as additional security in respect of the enhanced credit limit. It is further contended that the amended Act No.7/07 with effect from 1.4.2007 has placed a ceiling limit in respect of the maximum stamp duty payable as Rs.5 lakh for development of property for commercial purposes and Rs.50,000/- for development of property for residential purposes and if immovable property is offered as security on enhanced limit, stamp duty of 1% is payable on the loan amount which would fall under Article 5(1) of the Schedule to the Act. It is this demand for additional stamp duty, which is sought to be challenged in the present petition.

3. In the connected W.P.No.12732/07, the petitioner is a company and is aggrieved in respect of a similar demand made in respect of an identical transaction.

4. The counsel for the petitioner would contend that under Section 58(f) of the Transfer of Property Act, the petitioner is permitted to deposit title deeds of immovable properties as security for repayment of loan without entering into a separate agreement or document and such transaction does not require registration nor payment of stamp duty, for the reason that no transaction takes place in respect of the specific immovable property as defined under Section 3 of the Stamp Act. Hence, the amendment brought to Article 6 of the Schedule to the Stamp Act by Act No.7/06 with effect from 1.4.2006 imposing stamp duty for deposit of title deeds in respect of the loan amount and also on the enhanced credit limit is unconstitutional and

contrary to the object of the Act and is liable to be struck down.

5. It is further emphasised that under Section 58(f) of the Transfer of Property, deposit of title deeds by handing over the title deeds of immovable property without execution of a further document will not create a right in the property and it is only by way of a consent letter given to the banker along with the execution of other documents pertaining to the loan transaction and it is not a sole document evidencing the loan transaction and hence, under these circumstances no stamp duty is attracted and the transaction also does not require registration. Hence, the amendment to the Stamp Act runs contrary to the object contemplated under Section 58(f) of the Transfer of Property Act, which is especially provided to save such a situation. The demand in terms of the amended Article is also bad since there is no document executed in writing except acknowledging that the title deeds held by the Bank would form a

continuing guarantee for due repayment of the loan.

6. The counsel for the petitioner would further contend that the Apex Court has held that interpretation by the Courts in respect of a provision of law cannot be nullified by recourse to legislation. In this regard, the counsel would place reliance on a judgment of the Supreme Court in ***S.R. BHAGWAT .VS. STATE OF MYSORE (AIR 1996 SC 188)*** whereby the Supreme Court in respect of such an attempt by the State Government bringing legislation to nullify the effect of a judicial pronouncement has, held as follows:-

> "10.Having given our anxious consideration to rival contentions we have reached the conclusion that the impugned provision of the Act, namely, Section 11 sub-section(2) is clearly ultra vires the powers of the State Legislature as it encroaches upon the judicial decision binding between the parties and consequently the relevant sub-sections of Section 4 which are also in challenge will have to be read down as indicated hereinafter in this judgement. Before we advert to the relevant provisions of the impugned Karnataka Act it will be

appropriate to keep in view the settled legal position governing the present controversy.

11. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaes the basis or foundation of the judgement and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective affect. We may only refer to two of these judgements.

12. A Constitution Bench of this Court in the case of Cauvery Water Disputes Tribunal, 1993 Supp.(1) SCC96(II) : (1992 AIRSCW 119) had to pronounce on the validity of Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 by which an interim order passed by a statutory Tribunal supported by the decision of this Court dated 26th April 1991, (reported in 1991 AIR SCW 1286) which had ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it, was sought to be displaced. Sawant, J., speaking for the Constitution Bench held that the said provisions were unconstitutional and ultra vires. In Paragraph 76 of the

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Report the following Observations were made : (para 17, at p.160 of AIR SCW).

The principle, which emerges from these authorities, is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside and individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate Court or Tribunal."

In the case of G.C.Kanungo v. State of Orissa, (1995) 4JT(SC) 589: (1995 AIR SCW 2596), a Division Bench of this Court speaking through Venkatachala, J., had to consider the validity of Arbitration (Orissa Second Amendment) Act, 1991 which sought to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upn them by the Act itself. Striking down the provisions as ultra vires and illegal Venkatachal, J., made the following observations in paragraph 28 of the Report : (para 29, at p.2608 of AIR SCW)

"Thus, the impugned 1991 Amendment Act seeks to nullify the awards made by the Special

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Arbitration Tribunals constitued under the 1984 amendment Act, in exercise of the power conferred upon them by that Act itself. When, the awards made under the 1984 Amendment At by the Special Aribitration Tribunals in exercise of the State judicial power conferred upon them which cannot be regarded as those merged in Rules of Court or judgments and decrees of Courts, are sought to e nullified by 1991 Amendment Act, it admits of no doubt that legislative power of the State Legislature is used by enacting impugned 1971 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, a judicial power (Se Re: Cauvery Water Disputes Tribunal, 1991 Supp(2) SCR497 : (1992 AIRSCW 119). From this, it follows that the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of basic feature of the Constitution - the Rule of law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, we have no option but to declare it as unconsitutional having regard to the well settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as

> invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it, but judicial power exercised by it encroaching upon the judicial power of the State vested in a judicial Tribunal as the Special Arbitration Tribunals under 1984 Amendment Act. Moreover, where the arbitral awards sought to be nullified under the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under 1984 Amendment Act to decide arbitral disputes to which state was a party. It canot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation."

The counsel would further place reliance on a judgment of the Supreme Court in ***AIR 1950 SC 272 [RACHPAL MAHARAJ .VS. BHAGWANDAS DARUKA AND OTHERS]*** wherein the Supreme Court in so far as a mortgage by deposit of title deeds and a memorandum given along with the title deeds, whether would require registration or otherwise whether would attract stamp duty, has held as follows:-

"4. A mortgage by deposit of title deeds is a form of mortgage recognised by S.58(f), T.P. Act, which provides that it may be effected in certain towns (including Calcutta) by a person " delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon." That is to say, when the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under S.59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under S.17, Registration Act 1903, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet may not be registrable, as in Obla Sundarachariar v. Narayan Ayyar, 58 I.A 68: (A.I.R (18) 1931 P.O 36). Or, it may be delivered at a later date and nevertheless be registrable, as in Hari Sankar Paul v. Kedar Nath Saha, 66 I.A.184: (A.I.R.(26) 1939 P.O. 167). The crucial question is : Did the parties intend to reduce their bargain regarding the deposit of the title deeds to the form of a document? If so, the document requires registration. If, on the other hand, its proper construction and the surrounding circumstances lead to the conclusion that the parties did not intend to do so, then, there being no express bargain, the contract to create the mortgage arises by implication of the law from the deposit itself with the requisite intention, and the document, being merely evidential does not require registration.

6. Turning now to the memorandum before us, it is clear, on the face of it, that the parties did not intend thereby to create the charge. The document purports only to record a transaction which had been concluded and under which the rights and liabilities had been orally agreed upon. No doubt it was taken by the respondents to show that the title deeds of the appellant's properties were deposited with them as security for the moneys advanced by them and to obviate a possible plea that the deeds were left with them for other purposes, as indeed was contended

> by the appellant in his written statement, taking advantage of the non-registration of the memorandum in question. But that is far from intending to reduce the bargain to writing and make the document the basis of the rights and liabilities of the parties. In agreement with the High Court, we are of opinion, that the memorandum delivered by the appellant along with the title deeds deposited with the respondents did not require registration and was properly admitted in evidence to prove the creation of the charge.

The counsel would also place reliance on a judgment in ***M/s.MURUGHARAJENDRA COMPANY .VS. THE CHIEF CONTROLLING REVENUE AUTHORITY IN MYSORE AND OTHERS [ILR 1974 KAR 276]*** whereby a Full Bench of this court, relying upon the judgments of the Supreme Court in the case of ***UNITED BANK OF INDIA LIMITED .VS. M/s.LAKHARAM SONARAM AND COMPANY (AIR 1965 SC 1951) and K.J.NATHAN .VS. S.V. MARUTHI RAO AND OTHERS (AIR 1965 SC 430)*** and the judgment of the Privy Council in ***OBLA SUNDARACHARIAR .VS. NARAYANA AYYAR (AIR 1931 PC 36)*** has opined that a mortgage by deposit of title deeds can be created by handing over the title deeds by the borrower to the lender with

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the intention that those documents shall constitute security for the debt. But, if the parties choose to reduce the contract to writing, that document alone would be the sole evidence of its terms.

7. Reliance is also placed on a Division Bench decision of this Court in ***STATE BANK OF MYSORE .VS. M/S.S.M. ESSENCE DISTILLERIES PRIVATE LIMITED AND OTHERS(AIR 1993 KAR 359)*** wherein this Court while referring to the several judgments cited herein above apart from other judgments, has reiterated the opinion expressed herein above.

8. Hence, the counsel would submit that for all of the above reasons, the amendment to Article 6 to the Schedule of the Stamp Act has to be held as ultra vires and unconstitutional.

9. The Government advocate has not chosen to file any statement of objections to the petition in either of these petitions. However,

would seek to contend that the challenge is to the Explanation appended to Article 6 to the Schedule of the Act. The Explanation is only by way of amplification of what is expressly provided under the Article all along and that under Article 6 the liability to pay stamp duty was ever present and this has been reaffirmed by way of the Explanation. Hence, it cannot be said that the Explanation seeks to impose a liability which was not present even under Article 6 as it stood before amendment and hence, would seek to contend that the various citations which are relied upon by the learned counsel for the petitioners do not advance the case of the petitioners and that the amendment cannot be said to be ultra vires or unconstitutional. The effect of any such declaration would result in a massive loss of revenue to the State and this consequence ought to be prevented notwithstanding that the State has not chosen to file its statement of objections and would seek to contend in this vein at length and draws attention to the Commentary by G.P. Singh on the Principles of

Statutory Interpretation in support of the contention. The Government advocate would further contend that it is within the domain of the State Government to legislate in respect of the subjects which are found in the State list and therefore, would plead that the Explanation to Article 6 of the Schedule to the Act is valid and that there is no warrant to strike down the same as being unconstitutional.

10. In the light of the above submissions, it is useful to extract Article 6 of the Schedule to the Amendment Act, which reads as follows:-

6. Agreement relating to deposit of title deeds, [pawn or pledge], that is to say, any instrument evidencing an agreement relating to,- (1) the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), where such deposit, has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt,-	

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Act No.8 of 2008,w.e.f.1-6-2008 (a)If such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement	*If drawn Singly*	*If drawn in set of two, for each part of the set*	*If drawn In set of three, for each part of the set*
	Rs.Ps.	Rs.Ps.	Rs.Ps.
(i) When the amount of the loan or debt does not exceed Rs.500	1.25	1.00	0.50
(ii) When it exceeds Rs.500 but does not exceeds Rs.1,000	2.50	2.00	1.00
(iii) When it exceeds Rs.1,000 but does not exceeds Rs.5,000	12.50	6.25	5.00
(iv) When it exceeds Rs. 5,000 but does not exceed Rs.10,000 " Provided that, if the loan is for the following purpose,- 1. Exclusively for the development subject of property for commercial use as indicated in the sanctioned plan. - 0.5% duty is to a maximum of Rupees five lakh. 2. Exclusively for the development of property for Residential use as indicated in the sanctioned plant - 0.5% duty is subject to a maximum of Rupees fifty thousand.	25.00	12.50	10.00
(v) When it exceeds Rs.10,000 for every additional Rs.5,000 or part thereof in excess of Rs.10,000	12.50	6.25	5.00
	Subject to a maximum of Rupees five Lakhs		

Act No.8 of 2003, w.e.f.1-4-2003	
(b) If such loan or debt is repayable not more than three months from the date of such instrument	Half the duty payable on a loan or debt under sub-clause(I)or (ii) or (iii) or (iv) or (v) of clause (a) [for the amount secured subject to a maximum of Rupees five lakhs.] **Explanation:-** For the purpose of clause (1), notwithstanding anything contained in any judgement, decree or order of any court, order of any authority, any letters, note, memorandum or writing relating to the deposit of title deeds whether written or made either before or at the time when or after the deposit of title deeds is effected, and whether it is in respect of the security for the first loan or any additional loan or loans taken subsequently, such letter, note, memorandum or writing shall, in the absence of any separate agreement or memorandum of agreement relating to deposit of such title deeds, deemed to be an instrument evidencing an agreement relating to the deposit of title deeds.]

It is clear that the phrase employed in the Explanation namely "For the purpose of clause(1) notwithstanding anything contained in any judgment, decree or order of any authority........" would clearly indicate that the intention of the legislature was a blatant act to nullify the affect of the aforesaid judgments of this Court as well as the Apex Court in holding that a transaction of the nature involved as in the present petition would attract stamp duty notwithstanding judicial pronouncements to the contrary. This has been frowned upon by the Supreme Court and it is held that such legislation would fall foul of the legislative competence of the State. Though in the decided cases there were veiled attempts to nullify the judgment or order, in the present case on hand, it is a positive declaration that notwithstanding a judgment or order of a Court, the transaction would be treated as one which attracted the stamp duty. This is therefore legislation, which cannot be upheld or permitted to remain on the statute book.

12. Accordingly, the Explanation to Article 6 of the Schedule to the Karnataka Stamp Act, 1957 as incorporated by amendment Act No.7/2006 is hereby declared as unconstitutional and void and the same is struck down as being ultra vires. The writ petitions are allowed.

Sd/-
Judge

*alb/-.