

HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD

MAIN CASE No: W.P(PIL).No.68 OF 2023

PROCEEDING SHEET

S. No.	DATE	ORDER	OFFICE NOTE
06.	25.09.2023	<p><u>CJ & NVSK, J</u></p> <p><u>W.P(PIL).No.68 OF 2023</u></p> <p>Mr. D.Narendar Naik, learned counsel for the petitioners.</p> <p>Mr. Harender Pershad, learned Special Government Pleader attached to the office of learned Advocate General for respondent No.1.</p> <p>Heard on the question of admission. Petition is admitted for hearing. <i>Rule Nisi.</i> Call for records. Notice returnable in four (04) weeks.</p> <p><u>I.A.No.1 OF 2023</u></p> <p>Learned counsel for the petitioners submits that impugned G.O.Ms.No.84, Revenue (Registration-I) Department, dated 26.07.2023 has the drastic effect of overriding the statutory provisions including provisions of Transfer of Property Act, 1882, the Registration Act, 1908, and the Indian Stamp Act, 1899. It is further submitted that the transactions effected by notarized documents in relation to non-agricultural urban properties cannot be</p>	<p>Transferred to i/o folder, before corrections, if any.</p>

regularized. It is further submitted that the aforesaid impugned G.O. will give rise to further litigation and there is no intelligible differentia between the intended persons by permitting such regularization on the basis of plot size instead of verifiable economic criteria.

On the other hand, Mr. Harender Pershad, learned Special Government Pleader submits that in pursuance of G.O.Ms.No.84 dated 26.07.2023, the State Government does not seek to register any documents, which are prohibited to be registered under the Registration Act, 1908. It is further submitted that the impugned G.O. dated 26.07.2023 has been issued with a salutary object to collect the stamp duty on notarized documents and the State Government has power to do so under Section 9 of the Indian Stamp Act, 1899.

We have considered the rival submissions made on both sides.

Section 9 of the Indian Stamp Act, 1899, reads as under:

“9. Power to reduce, remit or compound duties – (1) The Government if satisfied that it is necessary to do so in the public interest, may, by rule or order

		<p>published in the Official Gazette:</p> <p>(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instrument or any particular class of instrument, or any of the instruments belonging to such class, or any instrument when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and</p> <p>(b) provide for the composition or consolidation of duties of policies of insurance and in the case of issues by any incorporated company or other body corporate or of transfers where there is a single transferee whether incorporated or not of debentures, bonds shares or policies of insurances, proxies and receipts other marketable securities.</p> <p>(2) In this section, the expression "<i>the Government</i>" means:</p> <p>(a) in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts and in relation to any other stamp duty chargeable under this Act and falling within Entry 96 in List I in the Seventh</p>	
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Schedule to the Constitution, except the subject-matters referred to in clause (b) of sub-section (1) the Central Government;

(b) Save as aforesaid and in respect of clause (b) of sub-section (1), the State Government.”

Thus, from perusal of the aforesaid provision, it is evident that the State Government may reduce, remit or compound duties in respect of composition or consolidation of duties of policies of insurance and in the case of issues by any incorporated company or other body corporate or of transfers where there is a single transferee whether incorporated or not of debentures, bonds, shares or policies of insurances, proxies and receipts or other marketable securities.

G.O.Ms.No.84 dated 26.07.2023 is *prima facie* beyond the scope of Section 9 of the Indian Stamp Act, 1899 in as much as it seeks to regularize the notarized documents in relation to non-agricultural urban properties in the State and insofar as it directs the registering authorities in the State to accept the documents as valid link documents for further transactions.

Clause 10 of the aforesaid G.O. also *prima facie* is in contravention of the

provisions of the Transfer of Property Act, 1882, the Registration Act, 1908, and the Indian Stamp Act, 1899.

It is therefore directed that operation and effect of impugned G.O.Ms.No.84 dated 26.07.2023 shall remain stayed until further orders.

CJ (AAJ)

NVSK, J

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