

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**W. P.(C) No.170 of 2014, W. P.(C) No.171 of 2014,  
W. P.(C) No.172 of 2014, W. P.(C) No.173 of 2014,  
AND W. P.(C) No.174 of 2014**

**IN W.P.(C) No.170 of 2014**

**Luxmi Tea Company Limited,**

A Company incorporated under the Indian Companies Act  
and having its registered office at Kishore Bhawan,  
17, R. N. Mukherjee Road, Kolkata-700 001

.....**Petitioner**

**- V e r s u s -**

- 01. The State of Tripura,**  
represented by the Chief Secretary  
to the Government of Tripura, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 02. The Secretary to the Government of Tripura,**  
Revenue Department, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 03. The District Collector,**  
Unakoti District, Gournagar, Kailashahar, Unokoti

.....**Respondents**

**IN W.P.(C) No.171 of 2014**

**Luxmi Tea Company Limited,**

A Company incorporated under the Indian Companies Act  
and having its registered office at Kishore Bhawan,  
17, R. N. Mukherjee Road, Kolkata-700 001

.....**Petitioner**

**- V e r s u s -**

- 01. The State of Tripura,**  
represented by the Chief Secretary  
to the Government of Tripura, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 02. The Secretary to the Government of Tripura,**  
Revenue Department, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 03. The District Collector,**  
Unakoti District, Gournagar, Kailashahar, Unokoti

.....**Respondents**

**IN W.P.(C) No.172 of 2014****Luxmi Tea Company Limited,**

A Company incorporated under the Indian Companies Act  
and having its registered office at Kishore Bhawan,  
17, R. N. Mukherjee Road, Kolkata-700 001

.....**Petitioner**

**- V e r s u s -**

- 01. The State of Tripura,**  
represented by the Chief Secretary  
to the Government of Tripura, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 02. The Secretary to the Government of Tripura,**  
Revenue Department, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 03. The District Collector,**  
Unakoti District, Gournagar, Kailashahar, Unakoti

.....**Respondents**

**IN W.P.(C) No.173 of 2014****Luxmi Tea Company Limited,**

A Company incorporated under the Indian Companies Act  
and having its registered office at Kishore Bhawan,  
17, R. N. Mukherjee Road, Kolkata-700 001

.....**Petitioner**

**- V e r s u s -**

- 01. The State of Tripura,**  
represented by the Chief Secretary  
to the Government of Tripura, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 02. The Secretary to the Government of Tripura,**  
Revenue Department, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 03. The District Collector,**  
Unakoti District, Gournagar, Kailashahar, Unakoti

.....**Respondents**

**IN W.P.(C) No.174 of 2014****Luxmi Tea Company Limited,**

A Company incorporated under the Indian Companies Act  
and having its registered office at Kishore Bhawan,

17, R. N. Mukherjee Road, Kolkata-700 001

.....**Petitioner**

**- V e r s u s -**

- 01. The State of Tripura,**  
represented by the Chief Secretary  
to the Government of Tripura, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 02. The Secretary to the Government of Tripura,**  
Revenue Department, New Secretariat Complex,  
P.O. Kunjaban, Agartala, West Tripura
- 03. The District Collector,**  
Unakoti District, Gournagar, Kailashahar, Unakoti

.....**Respondents**

**BEFORE  
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	:	Mr. D. K. Biswas, Advocate
For the respondents	:	Mr. D. Chakraborty, Sr. Advocate Mr. B. Datta, Advocate Mr. H. Laskar, Advocate
Date of hearing	:	<b>02.08.2017</b>
Date of delivery of Judgment & Order	:	<b>31.10.2017</b>
Whether fit for reporting:		<b>YES</b>

**Judgment and Order**

All these writ petitions being W.P.(C) No.170 of 2014, [Luxmi Tea Company Limited Vs. The State of Tripura and Ors.], W.P.(C) No.171 of 2014, [Luxmi Tea Company Limited Vs. The State of Tripura and Ors.], W.P.(C) No.172 of 2014, [Luxmi Tea Company Limited Vs. The State of Tripura and Ors.], W.P.(C) No.173 of 2014, [Luxmi Tea Company Limited Vs. The State of Tripura and Ors.] and W.P.(C) No.174 of 2014, [Luxmi Tea Company Limited Vs. The State of Tripura

and Ors.] are consolidated for disposal by a common judgment inasmuch as an identical question of law wades through all these writ petitions namely whether amalgamation of a company is a 'transfer' for purpose of Section 178 of the Tripura Land Revenue & Land Reforms Act, 1960 [hereinafter referred to as the TLR&LR Act].

**02.** The orders dated 06.01.2014 [Annexure-2 to the writ petitions] delivered in cases No.Rev/Revision/19/2012 [in W.P.(C) No.170 of 2014], Rev/Revision/22/2012 [in W.P.(C) No.171 of 2014], Rev/Revision/21/2012 [in W.P.(C) No.172 of 2014], Rev/Revision/23/2012 [in W.P.(C) No.173 of 2014] and Rev/Revision/20/2012 [in W.P.(C) No.174 of 2014] have been challenged by the petitioner contending that amalgamation of companies by forming a new company cannot be treated as 'transfer' within the meaning of Section 168 and for that matter even under Section 178 of TLR & LR Act. For purpose of reference, Section 168 of TLR & LR Act is gainfully reproduced hereunder:

***"168. Restriction on transfer or partition of land until excess land is determined.- No person who on or after the 24th January, 1971 holds land in excess of the ceiling limit shall, after the date of enforcement of the Tripura Land Revenue and Land Reforms (Second Amendment) Ordinance, 1974, transfer or partition any land until the land in excess of the ceiling limit is determined under this Act. Explanation.— In this section, "transfer" means transfer by act of parties (whether by sale, gift, mortgage with possession, exchange, lease or any other disposition) made inter-vivos; and "partition" means any division of land by act of parties made inter-vivos."***

**03.** The petitioner-company has contended succinctly that amalgamation of the companies cannot be read as transfer as explained under Section 168 of the TLR&LR Act. The petitioner, in all these writ petitions, is a registered company which has claimed right over 5 (five) tea estates in the Unakoti District, Tripura. The District Collector, Unakoti District had initiated a proceeding under Section 95 of the TLR & LR Act to determine whether the mutation in favour of ITP Ltd., in whose favour the land was settled by virtue of permission granted under Section 178(2) of TLR & LR Act is required to be interfered with or not. It has been averred that the ITP Ltd., a company incorporated under the Companies Act, 1956, applied to the High Court at Calcutta under Sections 191(2) and 194 of the said Act [vide Company Petition No.398 of 2011] for approving the scheme of amalgamation.

**04.** There is no dispute that the High Court at Calcutta by the judgment and order dated 11.06.2013 delivered in the Company Petition No.398 of 2011 approved such amalgamation, subject to payment of the stamp duty. There is even no dispute that the Sub-Divisional Magistrate (the SDM, in short), Kailashahar was asked to make an inquiry into the status of 5 (five) tea estates (TE, in short) namely (1) Sarojini T.E., (2) Jagannathpur T.E., (3) Kalishasan T.E., (4) Golakpur T.E. and (5) Manu Valley T.E.

**05.** The SDM, Kailashahar by his status report dated 16.01.2012 [Annexure-1 to the writ petition] has observed that (1) mutation of three tea estates namely Kalishasan T.E.,

Sarojini T.E. and Manu Valley T.E. were allowed without the exemption order from the Revenue Department, Government of Tripura under Section 178(1) of the TLR & LR Act, (2) the mutation orders were passed without any registered instrument. Hence, the Government of Tripura did not get any stamp duty for such type of transfer of the ownership. The SDM, Kailashahar had estimated the loss of revenue at Rs.45,14,780/- in respect of Manu Valley T.E., Rs.14,60,481/- in respect of Kalishasan T.E. and Rs.4,31,144/- in respect of Sarojini T.E. and thus there was violation of Section 54 of the Transfer of Property Act, 1882 and Section 49 of the Indian Registration Act, 1908 and (3) mutations were allowed on the basis of the Company Application No.624 of 2001 in the High Court at Calcutta under Sections 391 and 394 of the Companies Act, 1956. According to the said status report, the provisions contained in Section 108 of the Companies Act, 1956 provide that a company shall not register transfer of shares or debentures of the company unless a proper instrument of transfer, duly stamped are executed by or on behalf of the transferor or the transferee/s on specifying the name, address and occupation. On the other hand, any mutation prayer on the basis of any decree of the court should be submitted to the District Collector [see Rule 81 of TLR&LR Rules 1961]. Thereafter, the District Collector shall cause necessary entries to be made in the Mutation Register. But no such order was obtained from the District Collector. In respect of 2 (two) other tea estates, namely Golakpur T.E. and Jagannathpur T.E., it has been observed that without taking exemption order under

Section 178(2) of the TLR&LR Act, the purported transfer has been acted upon for mutation.

**06.** Based on the said status report, as stated earlier, proceeding under Section 95 of the TLR&LR Act was drawn up by the District Collector, Kailashahar.

**07.** According to the petitioner, the amalgamation is merely a change in nomenclature under Section 394 of the Companies Act, 1956. As the last mutation was done in the name of the ITP Ltd., now the mutation caused in the name of the petitioner-company cannot be held illegal or irregular. It is an admitted position that in the proceeding under Section 95 of the TLR & LR Act, two issues were framed for adjudication viz. (1) whether amalgamation of one company into another implies transfer of property and whether in such circumstances, the stamp duty for registration is attracted for validating the said transfer and (2) whether the amalgamation attracts the provisions of Section 178(2) of TLR&LR Act?

**08.** It has been held that the transfer by amalgamation is 'transfer' but no stamp duty is called for. Further, it has been held that such transfer does not create any right to exemption on the surplus land over the ceiling limit. On such premises, mutation orders were cancelled with a direction to revert and retrieve the status of the tea gardens in the name of their original owners who enjoyed the exemption benefit. For purpose of reference, the entire text of the order dated

06.01.2014 passed in the proceeding, as stated above, is extracted hereunder:

***"The case has come up for final deposition before the Court of the D.M. & Collector on 7<sup>th</sup> January, 2014 on behalf of the respondent company, Ld. Advocate, Shri D. K. Biswas, Shri S. P. Purkayastha, Shri Manoj Debnath and Shri Saradindu Purkhyastha and the respondent company has stated on No.(i) issue of amalgamation of the Tea Gardens namely Manu Valley, Golakpur, Jaganathpur, Kalishasan and Sarajini that whether the Government has necessary right to charge and seek revenue from the amalgamation of Company's into ITP and subsequently Laxmi Tea Company Ltd. on the point of ceiling the issue. (i) It is put up to the D.M. & Collector that whether amalgamation implies transfer of property. (ii) Whether amalgamation is local process and does it attract the provision of transfer of property act or a Stamp and Registration act and is in Tripura. (iii) Whether this amalgamation tantamount to the provision of section 176 of the TLR act and (iv) and whether mutation is necessary for the said purpose.***

***On the 1st issue, the Ld. Advocate, Shri D. K. Biswas has given a written submission and as per his own submission submitted before the Hon'ble Court, the judgment dated 11-06-2013 in connection with Company Petition No.398 of 2011 in Hon'ble High Court, Calcutta. The respondent Tea Company has agreed to pay appropriate stamp duty on the order sanctioning the scheme of amalgamation. The respondent company stated that the stamp duty would be aid at the applicable rate. The respondents, in fact, have relied on the judgment of 8th February, 2012 taking into consideration of the Indian Stamp Act in the year 2012. The respondent company has also stated that there is no any provision in the Indian Stamp Act, 1899, which treats amalgamation of companies by way of agreement and is a instrument of conveyance.***

***Read with section 394(1) of the Company's Act and as per the order of the APEX Court with regard to payment of Stamp Duty, the transferee company is liable for payment of Stamp Duty. Accordingly, it is clearly understood that amalgamation implies transferred of property.***

***Issue No.(ii) of the above, wherein the Ld. Advocate has submitted his opinion with regard to the fact that various provisions of Indian Stamp Act are not applicable as in clause No.62 of schedule 1 of Indian Stamp Act of 1989, it is abundantly clear that transfer of shares is***



**exempted from the provision of the stamp duty. The Ld. Advocate has submitted that amalgamation is transfer by resolution passed by shareholders U/s. 581ZN of the Companies Act, sub-section 9 of the said section and act. Further, u/s.394 of the Company's Act, 1966 subsection 3 over such amalgamation should have been reported with due permission within 30 days to the Registrar for registration. Ld. Advocate has submitted that the specific permission was obtained.**

**However, in my view this transfer of shares means also the transfer of land and right of the land from one company to other and as such as per the opinion of the Law Department, it attracts the provision of the 170 of the TLR ct, wherein specific permission ought to have been obtained.**

**As per views expressed by the Law Department "amalgamation amounts to transfer and that Stamp Duty is also not chargeable. But Tea Garden land being ceiling surplus for which exemption and retention order has been issued cannot be transferred and therefore, it is illegal. DM(U) may issue show cause notice to the Tea Garden's owners as to why order of retention and exemption should not be withdrawn". The opinion of the Law Department do not lay any binding on this Court and it also states that the Retention Order may not be transferred and as such for the purpose of amalgamation, section 178(2) of the TLR & LR Act, 1960 is applicable.**

**Then question comes that whether entries made in column No.6 of land record for recording the description of title of the possessor. As per the format of the Khatian in Tripura in column No.6 the title and possession of the possessor's name has to be mentioned but in column No.10, it will indicate the separate Khatian of the sub-tenancy or under-rayati status and in Column No.16, the physical/permissible possession status will be recorded. However, as stated earlier this is subject to permission to be taken u/s. 178(2) of the TLR & LR Act, 1960. Subject to 164(6) of the TLR Act, ceiling limit of the company shall not exceed the some total of the ceiling limit of the company. As such the respondent has submitted the names of the shareholders with share holding right in the Kolkata High Court in their written submission of the amalgamation proceedings. However, it cannot be determined in this case only until the ceilings proceedings are taken up by the SDM to determine individual holding on the said premises of the said land. Additionally, it may be note-worthy to state that the first retention order of the company, the order does not state that the right is given to the shareholders of the company but to the individual holder namely such as Manu Valley Tea Estate,**

***Golakpur Tea Estate etc. Hence, it is not understood how the company has come into force and under what provision the share has been allocated on this said Tea Estate.***

***Keeping this above mentioned circumstances and provision of TLR & LR Act, 1960 in view, it is ordered that the land record may be corrected by deleting the name of ITP Ltd. against each of the five gardens namely (1) Manu Valley, (2) Golakpur, (3) Kalisashan, (4) Jaganathpur & (5) Sarojini Tea Estate from the Column No.6 and should be reflected as per their earlier recorded names at this stage as per the Retention order issued by the Revenue Department, Govt. of Tripura and the ITP Companies Ltd. may be reflected as only possessor in Column No.16 in the related land records.***

***Hence, the case is disposed of with direction to the SDM, Kailashahar for necessary action."***

[The order dated 06.01.2014 in all the five proceedings under consideration is exactly similar.]

**09.** Mr. D. K. Biswas, learned counsel appearing for the petitioner company has submitted that by a note dated 01.01.2012, the Law Department gave opinion that transfer by amalgamation has been caused under Section 394 of the Companies Act and hence the same is a transfer for purpose of TLR & LR Act and all formalities under Section 172 of TLR & LR Act following such transfer are necessary to be acted upon or followed. The said opinion as disclosed under Section 6 of the Right to Information Act [RTI Act, in short] has been appended with the writ petition as Annexure-3. Mr. Biswas, learned counsel has fervently argued that the finding of the District Collector that the tea estates which were granted exemption under Section 178(1) of the TLR & LR Act do not have any right to transfer to any other company in any manner including amalgamation cannot be sustained in the legal regime for that

purpose. Hence, the direction to restore the records in the name of the original exemptee is flawed and is required to be interfered with. Mr. Biswas, learned counsel before embarking on the basic grounds taken for challenging the said orders dated 06.01.2014 has made his submission primarily emphasising on the distinction between the definition of transfer of property under Section 5 of the Transfer of Property Act, 1882 and the definition as provided by way of explanation under Section 161 of the TLR & LR Act. According to Mr. Biswas, learned counsel, there is striking resemblance between two definitions provided by the Transfer of Property Act, 1882 and the TLR & LR Act. But at the same time there is significant omission or difference which cannot be treated as *omissus causas*. Section 5 of the Transfer of Property Act has defined the 'Transfer of Property' as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and 'to transfer property' is to perform such act. It has been thereafter provided as follows:

***"In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."***

**10.** Mr. Biswas, has submitted that the part of Section 5 [the explanation] of the Transfer of Property Act, as reproduced hereinabove, has not been imported. Thus, the meaning of 'inter vivos' (living person) would be restricted to individuals not to the entities as provided after the substantive provisions

of Section 5 of the Transfer of Property Act by way of explanation. Therefore, Mr. Biswas, learned counsel has submitted that amalgamation as accorded by the High Court at Calcutta cannot be treated as transfer within the meaning as explained under Section 168 of the TLR&LR Act. Mr. Biswas, learned counsel has further submitted that the exemption from the ceiling limit was granted for the tea estate. Unless the character of the tea estate is changed by way of transfer, it is a mere formality for the State to grant the exemption to the transferee under Section 178(2) of the TLR&LR Act. For such formalisation, the transferee is required to make an application within three months.

**11.** Since there was no transfer, Mr. Biswas, learned counsel appearing for the company-petitioner has continued to submit in the alternative, that no such formalisation was required. According to him, amalgamation is merely a transfer of shares without any material transfer of the property. Such transfer is beyond the acknowledged modes of transfer as provided by the Transfer of Property Act. Hence, the record of rights would require to be changed and the record of rights be mutated on having the report of amalgamation by the competent revenue officer. According to Mr. Biswas, learned counsel, the said order has become unsustainable for directing restitution of the earlier entry in the record of rights, inasmuch as it was within the knowledge of the District Collector that the ITP Ltd. for all legal purposes does not exist for the said acknowledged amalgamation.

**12.** From the other side, Mr. D. Chakraborty, learned senior counsel assisted by Mr. B. Datta and Mr. H. Laskar, learned counsel has submitted that the amalgamation has not been defined anywhere in the Companies Act, 1956. Section 394 of the Companies Act, 1956 provides for facilitating reconstruction and amalgamation of the companies and the procedure therefor. On the application made under Section 394 of the Companies Act, in terms of the amendment carried out, for sanctioning of the scheme of arrangement or amalgamation as proposed between the said company and such persons including another company, the essential leave was granted. Such compromise or the arrangement for amalgamation of any two or more companies may be permitted by the competent court, now the tribunal, for purpose of whole or any part of the undertaking property or liabilities "to be transferred to another company, the transferee company". Effects of such arrangement would be as follows:

(i) Transfer to the transferee company or the new entity or the third company in the whole or any part of the undertaking property or liability of the transferor company from a date to be fixed by the parties. However, the tribunal may for reasons to be recorded decide otherwise.

(ii) Allotment or appropriation by the transferee company of any share, debenture policies or other like instruments in that company [the transferor-company] which under the compromise or arrangement are to be allotted or appropriated by the company or by any other person; the transferee

company is not to hold shares in its own name or in the name of the trust whether on its behalf or on behalf of any of its subsidiary or associate company. Such shares have to be cancelled or extinguished.

(iii) Continuation by or against the transferee company of any legal proceedings pending or against the transferor company on the date of transfer.

(iv) Dissolution without winding up of any transferor company.

(v) Provisions to be made for any persons who dissented from the scheme.

(vi) Other incidental allotment or arrangement including the consequential matters are necessarily to be secured fully and effectively.

Such arrangement shall not be sanctioned by the court or the tribunal unless the court received the report from the Registrar of companies that the effect of interest would preserve the public in order to suppress the mischief. No order for deletion of any company under clause 4(4) shall be made by the court or the tribunal unless the official liquidator made a report to the court when the amalgamation has the effect of dissolution. It has been further provided that where an order under Section 394 of the Companies Act, 1956 has been passed sanctioning the arrangement of amalgamation, the property of the transferor company shall stand transferred and those liabilities shall be transferred to and shall become the liabilities

of the transferee company and in the case which is, by virtue of arrangement has brought about dissolution within 30 days after the amalgamation of the company is sanctioned under Section 394 of the Companies Act, 1956. The court/tribunal shall cause a certified copy thereof to be filed with the Registrar for registration. For default, in this regard, the person responsible for the company as the officer shall be subject to penalty since there was no dispute by the parties. There is no challenge regarding the procedure sanctioning the amalgamation and hence this court will not brood over or precisely, there is no occasion for this court to unleash the exercise of the procedure adopted, for purpose of scrutiny. It is obvious that amalgamation by way of the arrangement as sanctioned by the High Court at Calcutta is a clear transfer either of the shares or of the properties or any other interest including the liabilities and hence it has been stated by the respondents that there is no infirmity in the impugned orders.

**13.** Mr. Chakraborty, learned senior counsel has therefore contended that unless the permission by extending the exemption in favour of the transferee company is granted under Section 178(2) of the TLR&LR Act, the record of right cannot be mutated in favour of the transferee-company.

**14.** Having appreciated the submissions made by the learned counsel based on the respective averments in the writ petitions and the reply filed by the respondents on sustainability of the impugned order dated 06.01.2014, the questions those fall for response by this court are as under:

- i) Whether any permission is pre-requisite for transfer of the estate which has been exempted from operation of Section 164 of the TLR&LR Act, 1960 in exercise of the power conferred by Section 178(1) of the TLR&LR Act, 1960?
- ii) Whether even if the transfer is caused by taking permission from the State Government as pre-requisite to the transfer whether the transferee is bound to take further exemption from the operation of Sections 164 and 173 of TLR&LR Act, 1960?
- iii) Whether amalgamation under Section 394 of the Companies Act is a transfer of the undertaking properties in question within the meaning as explained under Section 168 of the TLR&LR Act, 1960?
- iv) If the conditions of exemption is affected, adverse to the interest of the state, during the transfer, whether the State is entitled to recover the land beyond ceiling from the transferee?

**15.** Let us examine first the issue of amalgamation and its effect. Amalgamation occurs when two or more companies are joined to form a third entity or one is absorbed into and blended with another from a definite appointed day. The effect is to wipe out the merging companies and to fuse them all into the 'one' created. The 'new' company comes into existence having all the property, rights and powers and subject to all the duties and obligation of both the constituent companies. Explaining the object of an amalgamation in the scheme of the statutory provision, Madras High Court in **W. A. Beardsell &**



**Co. (P) Ltd.** reported in **1968(38)Comp. Cas 1997 (Mad)**

has observed as under:

***"The word amalgamation has not been defined in the Act. The ordinary dictionary meaning of the expression is 'combination'. Judging from the context and from the marginal note of Section 394 which appears in Chapter-V relating to arbitration, compromise, arrangement and re-construction, the primary object of amalgamation of one company with another is to facilitate re-construction of the amalgamating companies and this is a matter which is entirely left to the body of the share holders and essentially an affair relating to the internal administration of the transferor company. The decision of the body of the share holders ought not to be likely interfered with."***

A re-construction or amalgamation may take any of the following forms.

- a) By sale of share
- b) By sale of undertaking
- c) By sale and dissolution
- d) By scheme of arrangement

Sale of shares is the simplest process of amalgamation or take-over. Shares are sold and registered in the name of the purchasing company. The selling share holders receive either compensation or shares in the acquiring company. The expression-'arrangement' under this provision would include the transfer of assets by a company without consideration by way of gift. If nine-tenth of the share holders of a class has approved the terms, shares of the rest can be acquired under Sections 235 and 236 of the Companies Act, 1956. The second method involves a sale of the whole of the undertaking of the transferor company as a going concern. Section 232 applies to every scheme which involves transfer of

the whole or any part of the undertaking liability of a company to another company. Section 230 therefore applies. An application can be made to the court or the tribunal by any person entitled to move under that section. The court or the tribunal may sanction the scheme and make necessary orders. Where an application has been made under Section 230 of the Companies Act for sanctioning the scheme of compromise or arrangement, it may be shown to the court or the tribunal that in essence the scheme involves reconstruction of the company or merger by amalgamation of two or more companies. The result would be that the whole or any part of the company's property or liability is to be transferred to another company or be divided or transferred to two or more companies. The court or the tribunal may, on the basis of such application, order a meeting of creditors or a class of them or of members or a class of them to be called and held according to the manner that the court or the tribunal may direct. The provisions of Section 230(3) to 230(6) are to apply *mutatis mutandis*.

**16.** The merging companies or companies proposed to be divided have also to circulate for consideration of the meeting (a) a draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company (b) confirmation that a copy of the draft be filed with the Registrar (c) a report adopted by the directors of the merging companies explaining the effect of the compromise on each class of the share holders, key managerial personnel, promoter and non-promoter share holders, share exchange ratio laid down in

particular and specified in a special valuation difficulties (d) the report of expert on valuation (e) a supplementary accounting statement if the last annual accounts of any of the merging companies relate to a financial year ending more than six months before the first meeting of the company called for approving the scheme (see Section 231(2) of the Companies Act, 1956). If the court or the tribunal is satisfied that the requirement of the statute has been complied with, it may sanction the scheme of compromise or arrangement or may make provisions for the following matters: (a) transfer to the transferee company of the whole or any part of the undertaking property or liability of the transferor from the date which is determined by the court or the tribunal. The court or the tribunal may, for reasons to be recorded in writing, decide otherwise, (b) allotment or appropriation by the transferee company of any shares, debentures, policies or other instruments of the company which is under compromise or arrangement to be allotted or appropriated by the company or to any other person, the transferee company is not to hold in the name of any trust whether on its behalf or any of its subsidiaries or associate companies. Such shares have to be cancelled or extinguished, (c) continuation by or against company of any legal proceeding pending on the date of transfer against the transferor company, (d) dissolution without winding up of the transferor, (e) provision to be made for any person who dissented from the scheme where share-capital is held by any non-resident share holder under direct investment norms or guidelines specified by the Central Government or in

accordance with law, the allotment of shares of the transferee company to such share holders has to be in the manner as specified in the order. (f) transfer of employees on the date of transfer, (g) wherein the transferor company, the share holders decided to opt out of the transferee value of the shares and other benefits with the predetermined index or after an arrangement, the amount of payment is not to be less than what has been specified by SEBI, (h) where the transferor-company is dissolved the authorized capital be deemed fully and effectively carried out. After the sanction, the scheme with the appointed date with the certified copy of the arrangement as approved by the court, now the tribunal, shall be placed before the registrar of companies for purpose of deletion and/or incorporation in case of formation of a new entity by way of amalgamation. From the above discussion, it becomes abundantly clear that amalgamation of the nature as carried out by the IPT Ltd. and the petitioner is a complete transfer to the transferee company, of the whole of the undertaking property or liability of the transferee company. Therefore, in terms of the Section 394 of the Companies Act the amalgamation is a complete transfer of the IPT Ltd. By way of merger, the transferee company, the petitioner herein, is wholly a new entity and that process of formation was unknown to the State Government which granted the exemption under Section 178(1) to the estate as stated above. The question that Mr. Biswas, learned counsel has raised whether such transfer is a transfer within the meaning as explained under Section 168 of the TLR&LR Act. Under Section 168 of the TLR&LR Act

transfer has been defined as the transfer by act of parties, by sale, gift, with possession exchange, lease or any other disposition. The word, any other disposition is adequate enough to embrace traits of transfer by way of amalgamation. But Mr. Biswas, learned counsel has raised a question that if the transfer is not inter vivos, then it cannot be treated as transfer in terms of Section 168 of the TLR&LR Act. True it is that the 'transfer' for purpose of Section 168 has been restricted for limiting it inter-vivos. But under Section 5 of the Transfer of Property Act, the meaning of inter-vivos has been expanded. Living person includes a company or association or body of the individuals whether incorporated or not, but nothing therein contained shall affect any law for the time being in force relating to the transfer of the property to or by companies association or body of the individuals.

**17.** Under Section 168 of the TLR&LR Act, while defining 'transfer', the said explanation appearing below Section 5 of the Transfer of Property Act, is not found under Section 168 of the TLR & LR Act resulting in an unintended situation particularly for the land to be retained by an individual or a company beyond the ceiling limit in terms of Section 178(1) of the TLR & LR Act. Even if the exempted land is simply transferred to a company, it cannot be held to be 'transfer' within the meaning as provided by explanation below Section 168 of the TLR&LR Act. Even though, the basic definition as explained below Section 168 of the TLR&LR Act, is substantively *pari materia* to the meaning of transfer as given

under explanation below Section 5 of the Transfer of Property Act. But for absence of the explanation, below Section 5 of the transfer of Property Act, as reproduced above, the meaning of inter vivos or the living person has been restricted to the living individual but under the Transfer of Property Act, inter vivos – the living person includes a company or association or a body of the individuals whether incorporated or not. As a result, for omission as indicated, the meaning as provided under Section 168 of the TLR&LR Act unless it is read with the similar explanation would defeat the very purpose and object as provided under Section 164(a), 173 and 178(2) of the TLR&LR Act, 1960. The mischief is required to be suppressed for providing a meaningful interpretation for preserving the statute's object. True it is that the law is what the judges interpret the statute, to be not what the expert in their wisdom asserts to be. The duty of court is to construe the law as it stands and not to float a new thought as that may frustrate the very object of law. It is equally true that a statute is interpreted to meet the obvious intention of the legislation. A construction, in the rarest of rare occasions, may be pursued to suppress 'mischief' of law. That is allowed only where the court is extremely persuaded to undo some serious injustice or to prevent a statute provision from being reduced to otiose or for any other similar persuasive reason. No court obviously is competent to proceed on assumption that the legislature has made a mistake. The apex court in ***Union of India and others vs. Dharmendra Textiles Processors and others*** reported in ***[2008]306 ITR 277 (SC)*** had occasion to

examine the scope and ambit to deal with casus omissus. It has been observed by the apex court as under:

**"18. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole, appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in *Artemiou v. Procopiou* (1965) 3 ALL ER 539 (All ER p. 544 I) "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* (1963) AC 557 where at AC p. 577 he also observed: (All ER p.664 I) "This is not a new problem, though our standard of drafting is such (that it rarely emerges).**

**19. It is then true that:**

**"When the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt."**

**"But", on the other hand,**

**"it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom". (See *Fenton v. Hampton* (1858) 11 MOO PC 347).**

**A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of**

**the legislature, or on the principle quod enim semel aut bis existit praetereunt legislatores, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - casus omissus et oblivioni datus dispositioni communis juris relinquatur; "a casus omissus", observed Buller, J. in Jones v. Smart 1785 (1) TR 44:99 ER 963 (page 967), "can in no case be supplied by a court of law, for that would be to make laws". The principles were examined in detail in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat (2004 (6) SCC 672.**

**The golden rule for construing all written instruments has been thus stated:**

***"The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further." (See Grey v. Pearson.)***

**The latter part of this "golden rule" must, however, be applied with much caution. "If", remarked Jervis, C.J.,**

***"the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied, where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely, because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning". (See Abley v. Dale, ER p.525)***

[Emphasis added)

**18.** This is the process of law. Unless it appears manifestly that there is some repugnance or inconsistency resulted in the statutory fudging shall these principles not be applied. It is only not a case of casus omissus but it creates hindrance in the way of just remedy. Hence, let us apply the mischief rule for construction. This is an important rule so far as the interpretation of statute in a situation of legislative



inadvertance. It was well-structured in Heydon's case: (1584) EWHC Exch. J 36. Lord Coke formulated the said principle in Heydon's case in the sixteenth century. The fundamental obligation comes from the intent to remedy. In India, the apex court has applied that rule in a good number of cases. In ***Raghunath Rai Bareja and another vs. Punjab National Bank and others*** reported in **(2007)2 SCC 230** it has been observed for sounding caution, as under:

***"43. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn. pp 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection."***

**19.** The said rule of interpretation other than the literal rule would come into play only if there is occasion the expressions used or the plain meaning would lead to an absurdity. The words are unequivocal. There is no scope for imparting any interpretation as observed in ***Pandian Chemicals Ltd. vs Commissioner Of Income-Tax*** reported in **(2003)5 SCC 590**. Only where the provisions of a statute are incomplete and its literal construction would only frustrate object of the statute if read as a whole, the court can outreach the strict construction. The apex court in ***Raghunath Rai Bareja and another (supra)*** had further observed:

**"44. As the Privy Council observed (per Viscount Simonds, L.C.):(IA p.71)**

**"Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used."(see Emperor v. Benoarilal Sarma, AIR 1945 PC 48, pg. 53).**

**45. As observed by this Court in CIT vs. Keshab Chandra Mandal, AIR 1950 SC 265:**

**"Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute".**

**46. The rules of interpretation other than the literal rule would come into play only if there is any doubt with regard to the express language used or if the plain meaning would lead to an absurdity. Where the words are unequivocal, there is no scope for importing any rule of interpretation vide Pandian Chemicals Ltd. vs. C.I.T. 2003(5) SCC 590.**

**47. It is only where the provisions of a statute are ambiguous that the Court can depart from a literal or strict construction vide Narsiruddin vs. Sita Ram Agarwal AIR 2003 SC 1543. Where the words of a statute are plain and unambiguous effect must be given to them vide Bhaiji vs. Sub-Divisional Officer, Thandla 2003(1) SCC 692.**

**48. No doubt in some exceptional cases departure can be made from the literal rule of the interpretation, e.g. by adopting a purposive construction, Heydon's mischief rule, etc. but that should only be done in very exceptional cases. Ordinarily it is not proper for the Court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible vide J.P. Bansal vs. State of Rajasthan & Anr. AIR 2003 SC 1405, State of Jharkhand & Anr. vs. Govind Singh JT 2004(10) SC 349 etc.. It is for the legislature to amend the law and not the Court vide State of Jharkhand & Anr. vs. Govind Singh JT 2004(10) SC 349. In Jinia Keotin vs. K.S. Manjhi, 2003 (1) SCC 730, this Court observed (SCC p.733, para 5) that the Court cannot legislate under the garb of interpretation. Hence there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron."**

**20.** No doubt in some exceptional cases departure can be made. Ordinarily, it is not the rule. It is the legislation that the court applies, as it is said that judicial legislation is an oxymoron.

**21.** Having read the meaning of 'transfer' as provided by way of explanation below Section 168 this court is of the view that it is one of the exceptional cases of the legislative inadvertence or omission where the court may provide the words to arrest the statute from resulting in absurdity and making it harmless to its object for remedy, by suppressing the mischief as would be by import, unless interpreted by the court with purpose. Hence, the note/explanation below the Transfer of Property Act shall be read with the explanation as provided under Section 168 of the TLR & LR Act for getting the meaning of word 'transfer'. For the purpose, the said note appearing below Section 5 of the Transfer of Property Act is referred at the cost of repetition - Living person includes a company or association or body of the individuals whether incorporated or not but nothing shall effect any law for the time being in force relating to the transfer of the property to or by companies, association or body of the individuals.

**22.** Now, this court does not have any hesitation to hold that the amalgamation is a transfer within the meaning of Section 168 of the TLR & LR Act and such transfer by the mode as provided between the inter vivos and the inter vivos include the company as well as the body of individual.

**23.** Whether any permission is prerequisite for transfer of the estate which had been previously granted exemption from operation of Section 164 of TLR & LR Act in exercise of the power conferred by Section 178(1) of the TLR&LR Act, to have the answer, it is to be remembered that exemption was provided for a particular purpose i.e. preserving the original tea estate. The said exemption can be withdrawn by the Government, if there is any violation of conditions as laid down by virtue of Section 178 of the TLR & LR Act, 1960. Therefore, there is no absolute ownership of the estate. However, the transfer can be deemed to be absolute if the transfer is restricted to the ceiling limit (see Section 164(a) of the TLR & LR Act) with a declaration that the transferred land will be the retained land subject to determination. As such, the consent of the State in respect of such declaration is essentially required inasmuch as the transferor is coming out of the exemption and acquiescing him to the provisions of Section 164 of the TLR & LR Act by implication. Moreover, there is always a danger of transfer by way of fragmentation which might defeat the very purpose of the exemption as the estate's land will be transferred to the multiple individuals and the right in their favour would accrue unless the transfer is declared null and void in due process. In that event, a complex situation would emerge which would play against the interest of the State and this is not the intendment of Section 178(1) of the TLR & LR Act. As such, the permission for transfer shall be treated as the pre-requisite for transfer of the estate or any part thereof.

**24.** Let us now also consider the case when the entire estate or the estates are transferred to an individual or the company. Whether immediately after the transfer, a fresh order of exemption would be required to be taken by the transferee or not? The answer must be in the affirmative. If the transferee intends to enjoy the exemption, he must apply for such exemption within three months from the day of transfer and the State Government if it deems fit shall issue a fresh exemption order binding the transferee with the terms or conditions of Section 178(1) of the TLR & LR Act. If such exemption order is not obtained, it has to be deemed that in respect of the estate, no exemption order is in force and the appropriate Government shall ask the owners to retain the land permissible under the ceiling as provided by Section 164 and 164(a) of the TLR & LR Act. Only thereafter, following the procedure as laid down under Chapter XIII of the TLR & LR Act, retention may by furnishing return be considered. The individual or the company shall also be governed by Section 173 of the TLR & LR Act which restricts classification of the land beyond the ceiling limit. Therefore, the State is within its authority, if the condition of exemption is found to have been breached or not recognised during the course of transfer, to recover the land beyond the ceiling limit immediately thereafter from the transferee. Section 182 of the TLR & LR Act is to be read to understand the consequence what might visit if any transfer, partition or lease of land made in contravention of the provisions of Chapter XIII of the TLR & LR Act. Section 182 of the TLR&LR Act reads as under:

***"182(1) Any transfer, partition or lease of land made in contravention of the provisions of this Chapter shall be void."***

**25.** In this regard, it has to be observed as corollary that even in the case of lease the person in whose favour the exemption has been granted under Section 178(1) of the TLR&LR Act shall take previous sanction from the State before entering into lease. No partition without permission of the State can be carried out as the owners do not have any absolute right over the land. Thus, the State will be entitled to enforce vesting of the land beyond the ceiling limit in its favour after drawing a procedure as laid down under Chapter XIII of the TLR & LR Act.

**24.** Having observed thus, this court does not find any substantive infirmity in the impugned orders. But the consequential order is absolutely bizarre inasmuch as when a company is amalgamated with another company by completely withering its existence, the District Collector ought not have directed to restore the entries in their favour, particularly when such amalgamation has been sanctioned by the High Court at Calcutta. The District Collector ought to have directed the transferee to retain the land within the ceiling limit as prescribed by Section 164(a) of the TLR & LR Act by furnishing the return and thereafter would have vested the land beyond the ceiling limit in favour of the State. It ought to have been done when it has been noticed that the transferee company, the petitioners herein, did not even apply for fresh exemption in their favour in terms of Section 178(2) of the TLR&LR Act. Hence, that part of the order is interfered with by protecting

the remaining part on applying the principles of severability. As corollary, all the orders directing the restoration of the entry is set aside and quashed. The District Collector shall be at liberty to draw the ceiling procedure. Till then, the petitioners are restrained from transferring any land by creating the third party interest. However if the State Government having approached by the petitioners decides to grant exemption by waiving the requisites as discussed above, it shall remain within their discretion on the basis of a transparent policy.

In terms of the above, the writ petitions are dismissed subject to interference as recorded above. There shall be no order as to costs.

**JUDGE**

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