IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.09.2015

DELIVERED ON :23.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.Nos.303, 304 and 474 of 2015
& Connected MPs

W.P.No.303 of 2015

1. State of Tamil Nadu
Rep. by Chief Revenue Controlling
Authority & Inspector General of Registration
No.100, Santhome High Road
Chennai-28.

2. The Sub Registrar
Royapuram, Chennai-13. ..Appellants/Respondents
(in WA 303 & 304/2015)

vs.

M/s. Prathishta Associates
rep.by Flat No.S-13, TNHB Complex
Old No.180, New No.4
Luz Church Road
rep. by its Partner
Smt. B.V.Manjula ..Respondent/Petitioner
(in WA 303/2015)

1. Lakshmi
2. M. Jothi
3. J. Sreedhar
4. C. Ganesh

5. M/s. Thems Aqua Farms Pvt. Ltd
No.113, Workers Estate
Neelangarai
Chennai-600 041
rep. by its Power of Attorney Agent
Sri D. Ravichandra Reddy ..Respondents/Petitioners
(in WA.304 of 2015)

W.A.No.474 of 2015

1. State of Tamil Nadu
   Rep. by its Chief Secretary
   Fort St. George
   Chennai-600 009.

2. The Principal Secretary
   The Commercial Taxes and Registration
   Department, Fort St. George
   Chennai-600 009.

3. Inspector General of Registration
   Chief Controlling Revenue Authority
   120, Santhome High Road
   Santhome,Chennai-600 004.

4. The Sub Registrar
   Kodambakkam SRO
   No.37/5 Alagiri Nagar
   5th Street, 100 Feet Road
   Vadapalani, Chennai-600 026. ...Appellants/Respondents

-Vs.-

S. Mahalakshmi ...Respondent/Petitioner.

PRAYER in W.A.Nos.303 & 304 of 2015: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 4 December 2014 made in W.P.Nos.13355 and 31274 of 2014 respectively on the file of this Court.

These Writ Petitioners praying that this Hon'ble Court may be pleased to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in Circulr No.30196/P1/2011-1 dated 13.09.2011 and quash the same and direct the 2nd Respondent to register the Sale deeds submitted by the petitioner and fifth petitioner respectively in respect of thepropertymore fully described in theSchedule hereunder and release the same without insisting for payment of additional stamp duty and Registration Charges (in WP.13355 of 2012 and WP.31274 of 2014).

PRAYER in W.A.No.474 of 2015: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 20 February 2015 made in W.P.No.9936 of 2014 on the file of this Court.

This petition prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorarified Madnamus calling for the records of the 3rd respondent culminating in the issuance of Circular Pa.Mu.No.30196/P1/2011-1 dated 13.09.2011 and quash the same (in WP.No.9936 of 2014)

For Appellants in all W.As. : Mr.P.H. Aravind Pandian
Addl. Advocate General
Assisted by
Mr.P.S.Sivashanmughasundaram
Spl. Govt. Pleader and
Mr.C.V. Shilendharan, GA

For Respondent in W.A.No.303/2015 & Respondents 1 to 5 in W.A.No.304/2015 : Mr. P. Subba Reddy

For Respondent in W.A.No.474/2015 : Mr.Vijay Narayan
Senior Counsel
for Mrs. S. Geetha

COMMON JUDGMENT

K.K.SASIDHARAN, J

Introductory:

Whether by making the prior agreement holder as a confirming party to the sale deed, the document would amount to two conveyances liable for separate stamp duty is the core issue that arises for consideration in these intra court appeals filed against the common order passed by the learned Single Judge quashing the circular issued by the Inspector General of Registration.

Brief facts:

2. The respondents in the respective intra court appeals (hereinafter referred to as "Purchasers") purchased the property from the original owners. The property was subjected to prior sale agreement. The prior agreement holder was made a party to the deed of conveyance. Since the prior agreement holder was shown as a confirming party, the Sub Registrar directed the purchasers to pay stamp duty as indicated in the circular dated 13 September 2009 issued by the Inspector General of Registration, Chennai.

3. The purchasers filed individual writ petitions in W.P.Nos.13355 of 2012 and 31274 of 2014 challenging the circular. The learned Single Judge quashed the circular dated 13 September 2009 and directed the Registration Department to register documents treating it as a single sale. The said order was relied on by the petitioner in W.P.No.9936 of 2014. The learned Single Judge followed the order dated 4 December 2014 and once again quashed the circular and directed registration of document by order dated 20 February 2015. Feeling aggrieved, the State has come up with these intra court appeals.

Submissions in brief:

4. The learned Additional Advocate General contended that the execution of sale deed by the agreement holder along with the vendor was not intended to cancel the earlier sale agreement and as such it cannot be treated as an instrument of cancellation chargeable under Article 17 of Schedule I to the Indian Stamp Act. According to the learned Additional Advocate General there were two transactions involved in the matter, one relating to the transfer of interest of the agreement holder and the other sale of property by the vendor. The Inspector General of Registration was therefore perfectly correct in issuing the circular directing the Registration Officers to collect stamp duty treating it as two transactions.

5. The learned Senior Counsel for the purchaser in W.A.474 of 2015 contended that while issuing the circular, the Inspector General of Registration failed to consider certain provisions of the Indian Stamp Act. According to the learned Senior Counsel even if there are two transactions, still, the liability is only to pay stamp duty as provided under Section 5 of the Indian Stamp Act, 1899. The learned Senior Counsel contended that at best the purchasers are liable to pay separate stamp duty for cancellation of agreement and registration of sale deed. In any case, it cannot be said that there are two conveyances involved in the matter and as such stamp duty should be paid treating it as two sale deeds.

6. The learned counsel for the purchasers in the related appeals contended that the Inspector General of registration earlier issued a circular dated 20 June 2008 to the effect that in case the prior agreement holder is made a party, still conveyance is chargeable to single stamp duty only.

Analysis and conclusion:

7. There is no dispute that the concerned purchasers have included prior agreement holders as a party to the sale deed. Though the prior agreement holders have agreed to purchase the property, the fact remains that they have not paid the balance amount for the purpose of registration of document. It was only thereafter the present purchasers have purchased the property. Since there were prior agreements relating to the property, naturally they wanted cancellation of those agreements. The concerned vendors instead of getting separate cancellation deeds executed by the respective agreement holders made them as confirming parties to the deed of conveyances. The Sub Registrar taking into account the impugned circular directed them to pay two sets of stamp duty treating the sale deed as two separate conveyances.

8. Section 54 of the Transfer of Property Act deals with sales of immovable property. As per the said provision, a contract for sale

of immovable property is described as a contract that a sale of such property shall take place on terms settled between the parties. The contract for sale does not, of itself, create any interest in or charge on such property. Therefore it is clear that the agreement holder by virtue of the sale agreement is not given any right in respect of the property.

9. The impugned circular proceeds as if the presence of the prior agreement holder as a confirming party would make the document as a sale deed executed by the agreement holder at the first instance and thereafter by the owner of the property in favour of purchaser.

Relevant Provisions:

10. The agreement or memorandum of agreement is covered by Article 5 of Schedule I of the Indian Stamp Act. The cancellation of sale agreement would come under Article 17. Similarly conveyance would come under Article 23. In case, the sale deed which comes under Article 23 is executed by the prior agreement holder as a confirming party, it would at the most amount to a transaction cancelling the prior agreement and sale of property thereafter by the owner. Similarly, in case the sale deed involves two transactions one falling under Article 17 and another under Article 23, the purchaser is liable to pay only the highest of the two duties in view of Section 6 of the Act.

11. The Registration Department wanted such document to be treated as two conveyances even though prior agreement holder has only agreed to purchase the property. The fact remains that there was no sale deed in his favour by the vendor. It is always open to the vendor to get the cancellation deed executed by the prior agreement holder before executing the sale deed in favour of the subsequent purchaser. The Sub Registrar in such cases can either resort to Sections 4 or 5. In case the document would fall under Section 4, the parties have to determine which of the instrument shall be deemed to be the principal instrument and liability thereafter is to pay highest duty chargeable on the instrument so determined. Similarly in case the document falls under Section 5, the liability is to calculate stamp duty on each of the distinct transactions. So far as sale agreements are concerned, cancellation would attract stamp duty under Article 17. The liability of the purchaser at the most is to pay stamp duty for cancellation of sale agreement under Article 17 and conveyance under Article 23. The transaction would not amount to two separate conveyances liable for two sets of stamp duty under Article 23 of the Indian Stamp Act.

12. The Inspector General of Registration while issuing the impugned circular failed to consider Section 54 of the Transfer of Property Act and proceeded as if such transaction would involve two distinct conveyances one by the prior agreement holder as a deemed conveyance and another deed of conveyance by the owners.

13. The learned Single Judge analysed the provisions of the Indian Stamp Act and correctly arrived at a conclusion that the impugned circular runs contrary to the provisions of Indian Stamp Act. We therefore do not find any merit in the contentions taken by the State.

14. In the upshot, we dismiss the intra court appeals. Consequently, the connected MPs are closed. No costs.

Sd/-
Assistant Registrar (CS-II)

True copy

Sub Assistant Registrar.

To
1. The Chief Revenue Controlling
Authority & Inspector General of Registration
State of Tamil Nadu
No.100, Santhome High Road, Chennai-28.

2. The Sub Registrar
Royapuram, Chennai-13.

3. The Chief Secretary
State of Tamil Nadu
Fort St. George Chennai-600 009.

4. The Principal Secretary
The Commercial Taxes and Registration
Department, Fort St. George
Chennai-600 009.

5. Inspector General of Registration
Chief Controlling Revenue Authority
120, Santhome High Road
Santhome,Chennai-600 004.

6. The Sub Registrar
Kodambakkam SRO
No.37/5 Alagiri Nagar
5th Street, 100 Feet Road
Vadapalani, Chennai-600 026.

+ 2 ccs to Mr.P.Subba Reddy, Advocate SR 51980

+ 1 cc to the Govt.Pleader, High Court, Madras SR 52045

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