BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.11.2016
CORAM :
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.415 of 2014
and
M.P(MD)No.1 of 2014

Kanagalakshmi Ganaguru ... Petitioner

Vs.

1.The Inspector General of Registration,
Santhome High Road, Chennai.
2.The Special Deputy Collector(Stamps)
Virudhunagar, Virudhunagar District.
3.The Sub Registrar,
Sattur Sub Registrar Office,
Sattur, Virudhunagar District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notice of the 2nd respondent, dated 25.11.2013 made in Tha.Pa.No.S1/1218/2013 and quash the same and direct the respondents herein to release the document presented by the petitioner on 09.04.2010 without insisting for payment of any additional stamp duty or penalty.

For Petitioner : Mr.R.Vijayakumar
For Respondents : Mr.R.Anandaraj,
Government Advocate.

ORDER

Challenging the notice issued by the Special Deputy Collector (Stamps), Virudhunagar, the second respondent herein, dated 25.11.2013 directing the petitioner to appear before him for enquiry pertaining to the proceedings for deficit stamp duty under Section 47-A of the Indian Stamp Act, 1899, the present writ petition has been filed.

2.Heard Mr.R.Vijayakumar, learned counsel appearing for the petitioner and Mr.R.Anandharaj, learned Government Advocate appearing for the respondents.

3.The case of the petitioner, in brief, is as follows:

The petitioner is a auction purchaser of the property sold in a public auction by the State Bank of India, Sivakasi Town in exercise of power conferred under Section 13 of the Securtisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with Rule 9 of the Security Interest Enforcement Rules, 2003 for a sum of Rs.18.22 lakhs. According to the petitioner after the deposit of the above said amount, the State Bank of India, Sivakasi Town issued sale certificate and handed over the possession of the property to the petitioner. Based on the said sale certificate, the petitioner approached the Sub Registrar, Sattur Sub Registrar Office, Sattur, the third respondent herein for registration of the said sale certificate. However, after registration, the third respondent refused to return the document stating that guide line value of the properties are higher than the amount mentioned in the sale certificate and directed the petitioner to pay a sum of Rs.2,66,131/- towards deficit stamp duty. Thereafter, the third respondent referred the matter to the Special Deputy Collector (Stamps), Virudhunagar, the second respondent herein to initiate proceedings under Section 47-A of the Indian Stamp Act, 1899. Based on the said reference made by the third respondent, the second respondent issued notice to the petitioner on 25.11.2013 to appear before him for enquiry, which is impugned in the present writ petition.

4.Learned counsel appearing for the petitioner submitted that the property has been purchased in a public auction conducted by a nationalised bank and therefore, the concept of invoking guideline value for payment of stamp duty does not arise. He would further contend that the power conferred under Section 47-A of the Indian Stamp Act, 1899 can be invoked only when the respondents have reason to believe that the market value of the property has not been truly set forth with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. In support of his contentions, learned counsel for the petitioner relied upon the following judgments:-

"(i)In K.Chidambara Manickam Vs.Shakeena reported in 2008(1) CTC 660;

(ii)In A.J.Mapillai Mohadeen Vs.The Sub Registrar reported in 2008 (5) CTC 239;

(iii)In V.N.Devadoss Vs.Chief Revenue Control Officer cum Inspector and others reported in (2009) 7 SCC 438 and

(iv)Y.K.Mohan Rao and others Vs.Chief Revenue Controlling Authority, Inspector General for Registration and others reported in (2014) 2 MLJ 678".

5.Per contra, learned Government Advocate appearing for the respondents submitted that the market value of the property is more than the amount mentioned in the sale certificate and therefore, the petitioner is required to pay additional amount of Rs.2,66,131/- towards deficit stamp duty and therefore, the second respondent has rightly issued notice invoking Section 47-A of the Indian Stamp Act, 1899.

6.I have considered the rival submissions made on either side and perused the materials available on record.

7.Admittedly, the petitioner purchased the property in a public auction conducted by the State Bank of India, Sivakasi Town in exercise of power conferred under Section 13 of the Securtisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 read with Rule 9 of the Security Interest Enforcement Rules, 2003 for a sum of Rs.18.22 lakhs. Based on that a sale certificate was issued and the possession was handed over to the petitioner. Therefore, if a sale certificate is issued in pursuance to the proceedings of the SARFAESI Act, 2002 which was opted to be registered, the stamp duty payable is under Article 18 read with 23 of the Stamps Act which will be collected on the sale price fixed in the sale certificate.

8.It is settled law that the sale certificate does not require any registration and non registration also does not affect the sale of property in public auction. However, if the purchaser is opted to register the sale certificate then the provisions of Indian Stamp Act, 1899 will come into play and stamp duty to be collected on the sale certificate under Article 18 read with 23 of the Stamps Act and the provisions of Section 47-A of the Indian Stamp Act cannot be invoked in the matter of sale certificate issued on the auction sale.

9.The Division Bench of this Court in K.Chidambara Manickam's case (supra), has held as follows:-

"...the sale certificate issued in this case does not require any registration as per Section 17(2)(xii) of the Registration Act, 1908 and our said view is fortified with the decisions of the Division Bench of this Court in Arumugham, S. & 2 others v. C.K.Venugopal Chetty & 5 others and the Supreme Court in B.Arvind Kumar vs. Government of India and Others, referred supra".

10.In Y.K.Mohan Rao's case (supra), this Court has elaborately considered the scope of registration of sale certificate and has held as follows:-

"18.Therefore, the sale certificate per se does not require registration. However, if such sale certificate is opted to be registered, then the provisions of the Indian Stamps Act come into play. Article 18 of the Indian Stamps Act reads as follows:

> Art. 18. Certificate of Sale (in respect of each property put up as a separate lot and sold), granted to the purchase of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue Officer-

(a)Where the purchase money does not exceed Rs.10	One rupee (40 n.p under Act XIV of 1958; increased to 60 n.p by the T.N.Act VIII of 1962 (w.e.f 10.09.1962)

(b) Where the purchase money exceeds Rs.10 but does not exceed Rs.25;	Two rupees (w.e.f.1.7.1992) (Rs.1.50 prior thereto 75 n.p under Act XIV of 1958 were increased to Rs.1.15 (w.ef. 10.9.1962) by Act VIII of 1962 read with Section 78)
(bb) Where the purchase money exceeds Rs.25 but does not exceed Rs.50	Three rupees
(c) In any other case	The same duty as a conveyance (No.23) for a market value equal to the amount of the purchase money only.

19. Art. 18 deals with Stamp Duty to be collected on certificate of sale. However, if the value is more than Rs. 1000/- a stamp duty is payable as a conveyance under Article 23. Under Article 23 the present Stamp Duty payable is 7% of the market value.

20. However, in Devi Narayanan Housing Development Pvt. Ltd. rep. by its Managing Director N. Nandakumar v. Inspector General of Registration (supra) this Court has held that

> 10. On a reading of the explanation to Section 47A(1), it is clear that for the purpose of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the Appellate Authority, as the case may be, such property would have fetched or fetch if sold in the open market on the date of execution of the instrument of conveyance, (exchange, gift, release of benami right or settlement). In the instant case, as discussed earlier, the value of the property has been fixed in the Court auction sale and therefore, the amount fixed by this Court for the property is the value to be taken to determine the market value and this is in accordance with the explanation to Section 47A(1) of the Act.
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> 12. A harmonious construction and interpretation of the provision of Section 47A and also the rules has made it clear that the value fixed by the Court cannot be deviated. When a property is purchased in a Court auction, the value fixed thereon should be the value truly fixed based on material consideration. If any value other than the value fixed by the Court is taken into consideration, then, it tantamounts to exceeding the jurisdiction made under the law. The authorities concerned cannot sit on Appeal over the Court's decision unless an Appeal is preferred from such an order. Therefore, the value of the property in question for the purpose of determining the stamp duty to be paid by the purchaser is the value fixed in the Court auction purchase which is arrived at after an offer and

acceptance and the amount offered during the auction and accepted by the Court would represent the real market value of the property. In the instant case, the authority concerned has exceeded his jurisdiction by going beyond the value fixed by the Court. In the absence of any other principle, contrary to the above settled proposition of law, I am obliged to follow the proposition laid down by this Court in the case referred to above.

21. Therefore, in any Court auction sale, including an auction sale in SARFAESI and RDBI proceedings, if a sale certificate is opted to be registered, the stamp duty payable is under Article 18 r/w. 23 of the Stamps Act. However, such stamp duty will be collected on the sale price fixed in the sale certificate

22.Therefore, in any Court auction sale including an auction sale in SARFAESI and RDBI proceedings, if a sale certificate is opted to be registered, the stamp duty payable is under Article 18 r/w 23 of the Stamps Act. However, such stamp duty will be collected on the sale price fixed in the sale certificate."

11.In A.J.Mapillai Mohadeen's case, this Court has held as follows:-

19.As regards the second point, it is not the case of the respondents that the petitioner has wilfully or fraudulently presented the document with deficit stamp duty. It cannot also be disputed that the property in question was purchased by the petitioner in a public auction conducted by the public authority as per the provisions of the State Financial Corporations Act. The assessment of the value of the property by the public authority at the time of public auction is a material consideration for the assessment of the market value. It is seen, there is no much time gap either from public auction to confirmation of sale; from confirmation of sale to making of payment or from making of payment to the execution of sale deed. In the absence of any lapses on the part of the petitioner in presenting the document for registration, there cannot be any convincing reasons to disbelieve or doubt the value of the document, assessed by the public authority. Hence, there is no material before this Court to come to a conclusion that there is a fraudulent intention on the part of the petitioner in presenting the document for registration, by undervaluing the property and not paying the proper stamp duty."

12.Further, the Supreme Court in V.N.Devadoss's case (supra), has held as follows:-

"13.Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

.....

18.On the facts of the case it cannot be said that Section 47-A has nay application because there is no scope for entertaining a doubt that there was any undervaluation. That being so, the High Court's order is clearly unsustainable and is set aside. The registration shall be done at the price disclosed in the document of conveyance. There is no scope for exercising power under Section 47-A of the Act as there is no basis for even entertaining a belief that the market value of the property which is the subject matter of conveyance has not been truly set forth with a view to fraudulently evade payment of proper stamp duty."

13.In view of the above position of law, the respondent cannot invoke the provisions of Section 47-A of the Act and issue notice to the petitioner directing him to pay stamp duty based on the market value and the impugned notice is without jurisdiction and it is liable to be set aside. Accordingly, it is set aside and the respondents are directed to release the document presented by the petitioner on 09.04.2010, within a period of four weeks from the date of receipt of a copy of this order. The writ petition is accordingly allowed. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Inspector General of Registration,Santhome High Road,
Chennai.
2.The Special Deputy Collector,(Stamps)
Virudhunagar, Virudhunagar District.
3.The Sub Registrar, Sattur Sub Registrar Office,
Sattur, Virudhunagar District.

+One cc to Mr.R.Vijayakumar, Advocate, SR.No.66503
+One cc to The Special Government Pleader, SR.No.66661

sms

RL/6C/6P/KM/23.11.2016

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