BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.10.2016
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Writ Appeal (MD)No.1346 of 2016
and
C.M.P.(MD).No.9774 of 2016

1. The Inspector General of Registration
   and the Controlling Revenue Authority,
   No.120, Santhome High Road,
   Chennai-20.

2. The District Collector,
   Thoothukudi District,
   Thoothukudi.

3. The District Revenue Officer (Stamps),
   O/o. District Revenue Officer (Stamps),
   Chennai District Collectorate Office,
   5th Floor, Mr.Singaravelar Building,
   No.32, Rajaji Salai,
   Chennai-01.

4. The Sub Registrar,
   Office of Thoothukudi Melur,
   Thoothukudi,
   Thoothukudi District. ... Appellants/Respondents 1 to 4

Vs.

1. Aswin Exim India Pvt. Limited
   represented by its Managing Director,
   A.Viswanathan,
   No.111-N, State Bank Colony,
   Nataraja Nagar,
   Polpettai,
   Thoothukudi 628 002,
   Thoothukudi District. ..1st Respondent/Petitioner

2. The Authorised Officer,
   Indian Overseas Bank,
   Regional Office,
   No.21, Victoria Road,
   Thoothukudi 628 001,
   Thoothukudi District. ... 2nd Respondent/5th Respondent

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order dated 31.08.2016 made in W.P.(MD).No.11163 of 2016 by this Court.

Prayer in WP(MD)No.11163/2016:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 4th respondent to deliver the original registered document no. 1709 of 2016 dated 10.06.2016 to the petitioner without insisting upon payment of additional stamp duty .

For Appellants : Mr.A.K.Baskarapandian
Special Govt. Pleader

J U D G M E N T

(Judgment of the Court was made by M.SATHYANARAYANAN,J.)

The first respondent had participated in the auction initiated by the second respondent under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in respect of Item No.5 and the sale was marked down in their favour. The first respondent/writ petitioner was also issued with a Sale Certificate and he presented the same before the fourth appellant herein for registration by paying necessary registration charges and stamp duty to the tune of Rs.3,03,100/- and it was calculated on the basis of 7% on the Sale Certificate amount of Rs.43,30,000/-. The fourth appellant herein after being satisfied with the execution and presentation of the document, registered the same in Document No.1709 of 2016. The grievance expressed by the first respondent/writ petitioner is that despite the registration of the Sale Certificate, the fourth appellant herein/fourth respondent in the writ petition had not returned the Registered Document No.1709 of 2016 and repeatedly approached them and despite that, he has not been favoured with any response and therefore, filed W.P.(MD). No.11163 of 2016, praying for issuance of Writ of Mandamus, directing the fourth appellant to deliver the Original Registered Document/Sale Certificate No.1709 of 2016, dated 10.06.2016, to him without insisting upon payment of additional stamp duty. The Writ Petition was entertained and notices were ordered to the respondents/appellants 1 to 4. The fourth appellant herein has filed a counter affidavit contending among other things that the stamp duty is payable only on the guideline value of the property and not on the price amount as alleged by the petitioner and also placed reliance upon the judgment in the matter of V.Sivakumar and others vs. Inspector General of Registration, Chennai, it has been held that the Sale Certificate is chargeable stamp duty on the guideline value of the property prevailing on the date of presentation of the Sale Certificate for registration and also stated that the fourth appellant had forwarded the same to the third appellant under Section 47A(1) of the Indian Stamp Act, 1899, for determination of the correct stamp duty and as such, the writ petition is to be dismissed. The learned Judge, after taking note of the rival submissions and also placing reliance upon the very many judgments, has disposed of the writ petition with a direction to return the Document by making an endorsement and thereafter, proceed further in accordance with law and challenging the legality of the said order, the Official Respondents 1 to 4 had filed this writ appeal.

2. Mr.A.K.Baskara Pandian, the learned Special Government Pleader appearing for the appellants/respondents 1 to 4 in the writ petition would contend that even at the time of passing the order in the Writ Petition, the fourth appellant had forwarded the Document to the third appellant under Section 47A(1) of the Indian Stamp Act, 1899 and in the light of Section 47A(2) r/w. Rules 4 and 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules 1968, the third appellant is entitled to retain the document till the ascertainment of the correct stamp duty due and payable and hence, prays for interference.

3. This Court has carefully considered the submissions made by the learned Special Government Pleader appearing for the appellants and perused the materials placed before this Court.

4. This Court has also requested Mr.M.Vallinayagam, the learned Senior counsel to assist the Court, as to the relevant statutory provisions.

5. The learned Senior counsel apart from inviting the attention of this Court to the above stated decision, has also drawn the attention of this Court to Section 61(2) of the Indian Registration Act, 1908, and would contend that once the document is registered, it shall be returned to the person, who presented the same for registration, or to such other person (if any), as he has nominated in writing in that behalf on the receipt mentioned in Section 52 and neither the fourth appellant nor the third appellant return the document, once it is registered.

6. This Court has paid its best attention to the rival submission made by the learned Special Government Pleader appearing for the appellants as well as the submission made by the learned Senior counsel, who has been called upon to assist the Court.

7. It is relevant to extract Sections 47(A)(1), A(2) of the Indian Stamp Act, 1899 and Rules 4 and 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

47-A. Instruments of conveyance, etc., undervalued how to be dealt with. (1) If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 1908), while registering any instrument of conveyance [exchange, gift, release of benami right or settlement] has reason to believe that the market value of the property of which is the subject matter of conveyance [exchange, gift, release of benami right or settlement], has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the property duty payable thereon.

(2) On receipt of a reference under sub-section(1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, [exchange, gift, release of benami right or settlement], and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

Rules 4 and 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

4. Procedure on receipt of reference under Section 47-A.

(1) on receipt of a reference under sub-section (1) of Section 47-A, from a registering officer, the Collector shall issue a notice in Form I,

(a) to every person by whom and

(b) to every person in whose favour the instrument has been executed, informing him of the receipt of the reference and asking him to submit to him his representations, if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days from the date of service of the notice.

2. The Collector may, if he thinks fit, record a statement from any person to whom a notice under sub rule (1) has been issued.

3. The Collector may for the purpose of his enquiry-

(a) call for any information or record from any public office, officer or authority under the Government or any local authority,

(b) examine and record statements from any member of the public, officer or authority under the Government or the local authority; and

© inspect the property after due notice to the parties concerned.

4. After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order.

7. Final order determining the market value:

(1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after careful consideration of all the relevant factors and evidence available with him [pass an order within three months from the date of first notice] determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any.

(2) A copy of the order shall be communicated to the registering officer concerned for his record.

(3) The difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under sub-section(2) or sub-section (3) of Section 47-A.

(4) The Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under Section 47-A, give a certificate in Form III by endorsement on the instrument.

8. Section 47(A) of the Indian Stamp Act, 1899 speaks about instruments of conveyance etc., undervalued how to be dealt with and sub-section (2) says that on receipt of a reference under sub-section(1) , the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, [exchange, gift, release of benami right or settlement], and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

9. The learned Special Government Pleader appearing for the appellants draw the attention of this Court to Sections 47 (A) (B), and would submit that in the event of exercise of Stamp Rules, the concerned authority is entitled to call for the

instruments and as such, the document forwarded by the fourth appellant is being retained by the third appellant for the purpose of ascertaining the said value and as such, it cannot be returned.

10. Rule 4 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, speaks about Procedure on receipt of reference under Section 47-A and Rule 7 speaks about final order determining the market value.

11. It is pertinent to point out at this juncture that the copy of the document is also available with the fourth appellant, which contains description of the property and also other details such as subject matter of conveyance, the sale consideration, the stamp duty paid as well as the registration charges and in the light of the fact that all the particulars are available, it is not necessary on the part of the third appellant to retain the document for the purpose of dealing with the issue under Section 47(A)(1) and A(2).

12. It is also well settled position of Registration Act, 1908, Section 61(2) also says that once the document is registered, the document should be returned to the person, who presented the same for registration, or to such other person (if any) nominated in writing in that behalf on the receipt mentioned in Section 52.

13. It is also to be noted at this juncture, the interest of the respondents also protected for the reason that under Section 47(A)(4), every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section(3) shall pay such duty within such period as may be prescribed and in default of such a payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due [interest at one per cent per month on such amount for the entire period of default: The proviso also says that

"Provided that where a person has preferred an appeal against the order under sub-section(2) or sub-section(3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-section(2) or sub-section (3), as the case may be."

14. Therefore, 47(A) also protects the interest of the appellants and in the light of the reasons assigned above, this Court is of the view that the writ appeal deserves to be

dismissed. Accordingly, the writ appeal is dismissed at the admission stage and the order dated 31.08.2016 made in W.P.(MD). No.11163 of 2016 stands confirmed and the third / fourth appellants are directed to return the Document No.1709 of 2016 to the first respondent/writ petitioner within a period of two weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrr

To

1. The Inspector General of Registration
and the Controlling Revenue Authority,
No.120, Santhome High Road,
Chennai-20.

2. The District Collector,
Thoothukudi District,
Thoothukudi.

3. The District Revenue Officer (Stamps),
O/o. District Revenue Officer (Stamps),
Chennai District Collectorate Office,
5th Floor, Mr.Singaravelar Building,
No.32, Rajaji Salai,
Chennai-01.

4. The Sub Registrar,
Office of Thoothukudi Melur,
Thoothukudi,
Thoothukudi District.

+One cc to The special Government Pleader, SR.No.61684
akv
RL/6C/7P/SKS/RR/24.11.2016

Writ Appeal (MD)No.1346 of 2016

17.10.2016