IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Writ Petition No. 43529 of 2016
and
WMP No.37352 of 2016

T.M.Nithyanandam ... Petitioner

Versus

1. The Special Tashildar (Stamps)
   Office of the District Revenue Officer (Stamps),
   District Collector Office,
   5^{th} Floor, Singaravelar Maligai,
   32, Rajaji Salai,
   Chennai 600 001.

2. The Sub-Registrar of Assurances,
   Ambattur,
   Chennai 600 053 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to release the Sale Deed dated 07.01.2014 vide Document No.980 of 2014 which was executed by the learned Principal District Judge, Thiruvallur sequel to auction sale, as the same does not attract provisions under Section 47-A(1) of Stamps Act, within the time frame stipulated by this Court.

For Petitioner : Mr. T.S. Rajamohan

For Respondents : Mr. S. Rajeswaran
Special Government Pleader

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ORDER

The petitioner has come up with this Writ Petition seeking for a direction to the respondents to release the Sale Deed dated 07.01.2014 registered as document No.980 of 2014 executed by the Principal District Judge, Thiruvallur, which is sequel to an auction sale, inasmuch as the same does not attract the stamp duty as contemplated under Section 47-A(1) of Indian Stamps Act.

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2. According to the petitioner, Trust O.P.No.172 of 1993 was filed by the Managing Trustee of Paramasiva Chettiar Trust on the file of the learned Principal District Judge, Chengalpattu seeking grant of permission to sell the Trust property being the immovable property comprised in land and building situated at Door Nos.35-40, 116 & 120, Chennai-Tiruvallur Highway in Survey No.200/1C1 measuring 4338 sq. ft. in Ambattur Taluk, Varadarajapuram Hamlet, Sembium Sub District, Chengalpattu-MGR District in Tiruvallur District. Thereafter, after due notice to the Trustees and by way of publication of notice, the learned Principal District Judge, Chengalpattu appointed one Mr. M.K. Kumarappan, Advocate Commissioner, to sell the above property by Court auction. Subsequent to the warrant in the above Trust O.P.No.172, the Advocate Commissioner proceeded to sell the above property by auction sale by effecting notices and complying with the procedures. The petitioner participated in the auction and he was declared as the highest bidder as could be seen from the report filed by the Advocate Commissioner on 31.07.1998. Based on the same, the Trust O.P.No.172 of 1993 was disposed of on 31.07.1998 with a direction to the Managing Trustee of the above Trust to execute the Sale Deed within two months from the date of obtaining the approval of Draft Sale Deed from the Court. Pursuant thereto, the draft Sale Deed was filed by the petitioner and the same was approved by the learned District Judge, Thiruvallur. Since the Managing Trustee of the above Trust refused to execute the Sale Deed in favour of the petitioner for extraneous reasons, the petitioner filed I.A.No.968 of 2008 in the above Trust O.P.No.172 of 1993 praying the Court to execute the Sale Deed before the competent Sub-Registrar Office and the said petition was allowed on 01.02.2010. Thereafter, the petitioner was directed by the Court to ascertain in writing the stamp duty leviable for executing the above Sale Deed, which the petitioner furnished by obtaining the same from the S.R.O., Ambattur vide letter dated 06.02.2012. Thereafter, the sale deed was executed by the said Court in favour of the petitioner on 07.01.2014.

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3. The grievance of the petitioner is that the above Sale Deed was registered on 07.01.2014 as Document No.980 of 2014 and the 2nd respondent/ Sub-Registrar of Assurances, however, the petitioner was informed him that the Sale Deed would be sent to the first respondent for determining the stamp duty payable on the instrument under Section 47-A of the Indian Stamps Act.

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Thereafter, the 1st respondent sent the petitioner a notice in Form-1 under Tamil Nadu (Prevention of Undervaluation of Property) Rules vide Ta.Ka.No.33 of 2014 stating that the market value of the above immovable property is Rs.2,27,04,000/- for the above extent of 4128 sq. ft. at Rs.5,500/- per sq. ft. and that the Stamp Duty works out to Rs.15,89,280/-. By giving credit to the sum of Rs.27,400/- paid by him, the petitioner was directed to pay the balance sum of Rs.15,61,880/-. The petitioner sent a representation dated 23.09.2014 to the first respondent stating that the above Sale Deed would not attract payment of stamp duty as contemplated under Section 47A of the Stamps Act. Since no further proceedings were taken up, by the first respondent, the petitioner is before this Court.

4. When the matter is taken up for hearing, this Court specifically posed a question to the counsel for the petitioner regarding the inordinate delay in presenting the sale deed for registration for which there was no proper explanation offered. The learned counsel for the petitioner would only contend that whenever the Sale Deed is presented to the Registration Department, the date on which the document is presented for registration will be the determining factor for ascertaining market value of the property as has been held by the Division Bench of this Court in the judgment in (A.J. Mapillai Mohadeen vs. The Sub-Registrar, Registration Department, Sub-Registrar Office, Arakandanallur and 2 others) reported in (2008 (5) CTC 239 wherein it was held that when the sale deed was executed by the Official Liquidator, the question of invocation of Section 47-A of the Indian Stamp Act does not arise.

5. The learned Special Government Pleader appearing for the respondents would contend that the learned Principal District Judge directed the Managing Trustee of the Trust to execute the Sale Deed in favour of the petitioner by an order dated 31.07.1998. The petitioner, contending that the Managing Director refused to execute the sale deed, once again approached Court with a delay of ten years. Thereafter, the learned Principal District Judge, Tiruvallur executed the sale deed on 07.01.2014 in favour of the petitioner. In the interregnum, the market value of the property would have naturally escalated and therefore, the registering authority cannot register the document in the year 2014 by taking note of the market value which prevailed on 31.07.1998. By reason of the long delay in getting the sale deed executed in favour of the petiitoner, the respondents have taken up the instrument for examination and rightly passed the order on the basis of the prevailing market

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value. The learned Special Government Pleader would also contend that on 07.04.2014 the first respondent issued a notice in Form I to the petitioner indicating the deficit stamp duty payable by the petitioner at Rs.15,61,880/- for which the petitioner has also filed an objection after a period of five months on 23.09.2014. The petitioner has not challenged the notice dated 07.04.2014 but only filed the writ petition seeking for issuance of a Mandamus. Even in the reply dated 23.09.2014, the petitioner has not stated that the prevailing market value taken up by the respondents for determining the stamp duty is incorrect or furnished any documentary evidence in support of the same. It is further stated that the first respondent has not passed final order determining the deficit stamp duty payable. Even if such an order has been passed, it is an appellable order before the Government. In such circumstances, the learned Special Government Pleader prayed for dismissal of the writ petition.

6. I heard the learned counsel on either side and perused the material records available on record. By an order dated 31.07.1988 passed in OP No. 172 of 1993, the learned Principal District Judge, Tiruvallur directed the Managing Trustee of the Paramasiva Chettiar Trust, whose property were brought for auction sale, to execute the Sale Deed in favour of the petitioner. Even though it was complained by the petitioner that the Managing Trustee refused to execute the sale deed in favour of the petitiner, the petitioner did not immediately seek redressal before the learned Principal District Judge, Tiruvallur. On the other hand, nearly after 12 years, the petitioner has filed an application in I.A. No. 968 of 2008 seeking the indulgence of the Court to execute the sale deed in his favour and the said application was allowed on 01.02.2010. Thereafter, the sale deed has been executed on 07.01.2014. Thus, in the interregnum, the market value of the property has been increased manifold. That is the reason why when the sale deed was presented for registration by the petitioner on 07.01.2014, even though it was registered, it was taken up for examination by the registering authority for determining the correct market value of the property. For determining the market value of the property, the first respondent cannot reckon the date on which originally the learned Principal District Judge, Tiruvallur directed the Managing Trustee of the Trust to execute the sale deed on 31.07.1988. When the sale deed was registered on 07.01.2014, the stamp duty payable by the petitioner as on that date has to be determined and rightly it was done in this case by the first respondent. Further, the petitioner has not challenged the notice dated 07.04.2014 but only filed the writ petition seeking for issuance of a Mandamus

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to release the document. In such view of the matter, when the respondents have examined the registered sale deed and arrived at an amount payable towards deficit stamp duty by the petitioner, at this stage,, the prayer sought for in this writ petition to direct the respondents to release the sale deed dated 07.01.2014 cannot be granted. Accordingly, the writ petition is dismissed. No costs. Consequently connected MP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

aeb/rsh
To:

1. The Special Tashildar (Stamps),
Office of the District Revenue Officer (Stamps),
District Collector Office,
5th Floor, Singaravelar Maligai,
32, Rajaji Salai,
Chennai 600 001.

2. The Sub-Registrar of Assurances,
Ambattur,
Chennai 600 053.

+1cc to M/S.T.S.Rajamohan, Advocate Sr.708
+1cc to the Government Pleader Sr.879

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