IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

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The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.17988 of 2004
and
W.P.M.P.No.21393 of 2004

A.Shanmughasundaram .. Petitioner

vs.

1.The Chief Controlling Revenue Authority,
Inspector General of Registrations,
120, Santhome High Road,
Chennai-600 028.

2.The Joint II Sub Registrar,
Raja Street,
Coimbatore - 641 001. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records relating to the notice of the second respondent, the Joint No.II Sub Registrar, Coimbatore in Ref.360/2004 dated 14.04.2004 and 10.5.2004 and quash the said notices.

For Petitioner : No Appearance

For Respondents : Mrs.Vasudha Thiagarajan
Addl. Government Pleader

ORDER

This writ petition, arises under the Indian Stamp Act, 1899 (Central Act 2 of 1899) (as in force in the State of Tamil Nadu), which is hereinafter referred to as "said Stamp Act" in this order for the sake of brevity, convenience and clarity.

2. The subject matter of the writ petition is a registered sale deed dated 24.11.2003, which has been

executed in favour of the writ petitioner before me by the Court [II Additional Subordinate Judge's Court, Coimbatore] (hereinafter referred to as “said sale deed” in this order for the sake of brevity and clarity).

3. It is the case of the writ petitioner that he entered into an agreement to sell with a third parties, who subsequently became evasive. It is the further case of the writ petitioner that he therefore filed a specific performance suit being O.S.No.408 of 2003 on the file of the II Additional Subordinate Judge's Court, Coimbatore. It is seen from the records that the suit was decreed on 07.04.2003.

4. To be noted, the suit was decreed in the first hearing itself, the defendants therein having submitted themselves to decree.

5. It is the further case of the writ petitioner that his vendor did not execute the sale deed inspite of the aforesaid specific performance decree in his favour and therefore, he launched an execution petition being E.P.No.318 of 2003 on the file of the II Additional Subordinate Judge's Court, Coimbatore. It is seen that there is no contest in the execution petition also and in the execution petition, the said sale deed came to be executed by the Court in favour of the writ petitioner.

6. It is the further say of the writ petitioner that said sale deed was executed for a sum of Rs.2,10,000/-, he paid the stamp duty of Rs.27,300/- and registration fee of Rs.2,260/- on the same. The said sale deed is registered as Document No.2599/2003 on the file of the Joint Sub Registrar II, Coimbatore, who has been arrayed as respondent No.2 before me (the second respondent is hereinafter referred to as “jurisdictional Sub Registrar” in this order for the sake of brevity, convenience and clarity).

7. The Inspector General of Registration, who is also the Chief Controlling Revenue Authority in this regard has been arrayed as first respondent before me and the said authority is referred to as “Inspector General of Registration” (for the sake of brevity, convenience and clarity).

8. It is not in dispute that the document i.e., sale deed dated 24.11.2003, being Document No.2599/2003 on the file of the jurisdictional Sub Registrar (in other words 'said sale deed' as is being referred to in this order) has been released and the writ petitioner has received the said sale deed.

9. It is the case of the writ petitioner that he was suddenly slapped with a notice dated 14.04.2004 bearing

reference No.360/2004 from the jurisdictional Sub Registrar i.e., the second respondent before me, wherein and whereby the jurisdictional Sub Registrar has referred to the said sale deed and demanded a sum of Rs.40,458/- in all (Rs.34,793/- towards stamp duty and Rs.5,665/- towards registration fee). It is the case of the writ petitioner that this was followed by another notice dated 10.05.2004 bearing reference No.360/2004 from the jurisdictional Sub Registrar reiterating the demand and holding that further action in accordance with law will be initiated.

10. Assailing these two notices from the jurisdictional Sub Registrar, the instant writ petition has been filed. These notices are referred to collectively as 'impugned notices'. Independently, 14.04.2004 notice is referred to as the 'first impugned notice' and 10.05.2004 notice is referred to as the 'second impugned notice'.

11. It is also the case of the writ petitioner that he sent a detailed reply dated 16.06.2004 to the second impugned notice.

12. A perusal of the reply (dated 16.06.2004) reveals that the only contention of the writ petitioner is that the value of the property, which is subject matter of this writ petition/said sale deed stamp duty should have been taken on the basis of the prevailing market value on the date of the agreement for sale and not on the date of registration of said sale deed. To the above said reply of the writ petitioner dated 16.06.2004 the jurisdictional Sub Registrar has sent a response/rejoinder letter dated 17.06.2004, wherein and whereby the jurisdictional Sub Registrar has stated that the reply submitted by the writ petitioner has been meticulously analyzed. The jurisdictional Sub Registrar would say in his response/rejoinder letter that the agreement between the writ petitioner and his vendors is one where the value of the property has been deliberately under stated/under valued. The jurisdictional Sub Registrar has also reiterated that the instrument (said sale deed) has to be valued based on the prevailing market value on the date of registration of said sale deed and not on the date of the agreement.

13. It is the case of the writ petitioner that whenever there is an allegation that a particular instrument is under valued, the procedure adumbrated under Section 47-A and various sub-sections of the said Stamp Act has to be followed. The writ petition is predicated on the ground that the procedure adumbrated under Section 47-A and various sub-sections of the said Stamp Act has not been followed.

14. Today when the writ petition was called, there is no representation for the writ petitioner. Considering the fact that the writ petition is of the year 2004 (filed on 24.06.2004) and has been pending for more than 13 years in this Court,

coupled with the fact that at the time of admitting the writ petition and issuing Rule Nisi, an interim order of stay was granted on 29.06.2004 which is operating till date, I deem it appropriate to examine/hear the matter on merits on the basis of the available records and also by hearing the submissions of Mrs.Vasudha Thiagarajan, learned Additional Government Pleader appearing on behalf of both the respondents before me.

15. I have already set out the pivotal ground on which the writ petition is predicated and the surrounding facts and circumstances under which the writ petition came to be filed.

16. Adverting to the same, the learned Additional Government Pleader would make two fold contentions. The first contention of the learned Additional Government Pleader is that it is factually incorrect to say that the writ petitioner was not given an opportunity of participating in the adjudication as adumbrated under Section 47-A of the said Stamp Act.

17. The learned Additional Government Pleader would contend that Form-I notice as contemplated under the relevant Rules under the said Stamp Act dated 02.03.2004 was issued. The writ petitioner who duly received the same, did not respond. Thereafter, post spot inspection on 24.03.2004 (for which also the writ petitioner was put on notice) Form in another template also under relevant Rules under the said Stamp Act being Form-II dated 29.03.2004 was issued and the writ petitioner who duly received the same, did not respond to Form-II also.

18. To buttress her contention, the learned Additional Government Pleader has produced photo copies of the official records before me.

19. It is the further contention of the learned Additional Government Pleader that it is thereafter that the impugned notices came to be issued. It is also stated that the impugned notices have been issued on the basis of a spot inspection made on 24.03.2004 and valuation made thereafter.

20. As stated supra, as the learned Additional Government Pleader has also placed photo copies of official records before me, I proceed to hold that the official acts are deemed to have been done officiously and are recognised as valid, until proved otherwise. This principle has been reiterated time and again in a catena of judgments [Vide: (1987) 3 SCC 367 [Pushpa Devi M.Jatia v. M.L.Wadhawan] & (2002) 5 SCC 234 [Devender Pal Singh v. State (NCT of Delhi)].

21. Therefore, I have no difficulty in accepting the above contention made on behalf of the State.

22. The second contention that has been put forth by the learned Additional Government Pleader is that the entire exercise appears to be collusive because the defendants in the suit (O.S.No.408 of 2003 on the file of II Additional Subordinate Judge's Court, Coimbatore) have themselves submitted to decree that too in a specific performance suit on the first hearing date itself. Close on the heels of the same, execution petition has been launched and the said sale deed has also gotten to be executed. Highlighting these aspects, the learned Additional Government Pleader would submit that it appears to be a transaction which is intended to evade stamp duty and registration fee under the said Stamp Act.

23. Considering the nature and scope of this writ petition, I am not going into the question as to whether the suit is collusive and whether the execution petition was stage managed, though I am convinced that the submission of the learned Additional Government Pleader that the same has been done only to evade stamp duty under the said Stamp Act and registration fee, prima facie appears to have some force and is certainly not completely out of context as that is the subject matter of the instant writ petition.

24. Besides keeping in mind the nature and scope of the instant writ petition, at this distant point of time, it may not be appropriate to examine whether the exercise was collusive and intended to evade the revenue in terms of the stamp duty and registration fee.

25. Therefore, I am leaving this question open.

26. This takes me back to the sole pivotal ground on which, the writ petition has been predicated. As alluded to supra, the sole pivotal ground on which the writ petition has been predicated is that adjudication as adumbrated under Section 47-A of the said Stamp Act has not been followed and therefore, the writ petitioner has lost the opportunity of participating in the adjudication.

27. As stated supra, I have already accepted the submission made by the learned Additional Government Pleader that adequate opportunity and in fact notices have been given to the writ petitioner, on the principle that official acts are deemed to have been done officiously, until proved otherwise. However, I also examined what kind of prejudice if at all, can be caused to the writ petitioner in the instant case.

28. It is seen from the reply dated 16.06.2004 sent by the writ petitioner (in response to the second impugned notice dated

10.05.2004) that the only point which the writ petitioner is raising is whether the valuation of the property based on the agreement should be taken or whether the value of the property as on the date of registration of the sale deed should be taken.

29. The writ petitioner himself has referred to the judgment of this Court dated 05.04.1989 in C.R.P.No.1358 of 1986.

30. The learned Additional Government Pleader has placed before me the judgment of this Court reported in 1996-2-L.W. 719 (D.Jayaraman v. The Revenue Divisional Officer, Salem and The Appellate Authority (Principal, Subordinate Judge, Salem), wherein it was held that stamp duty should be computed on the basis of the date of presentation of the document. The learned Additional Government Pleader would also refer to the decision of the Hon'ble Supreme Court in State of Rajasthan and others v. Khandaka Jain Jewellers, reported in (2007) 14 SCC 339 and (2010) 4 SCC 350 [State of Haryana and others v. Manoj Kumar] to say that the stamp duty as prevailing on the date of presentation of the sale deed only should be taken into account, even in a case where the sale deed is executed by the Court.

31. In the instant case, it is seen that valuation has been arrived at on the basis of site enquiry/spot inspection and subsequent computation applying the rationale that stamp duty should be computed on the basis of the prevailing market value on the date of registration even in a case where the execution is by the Court.

32. Therefore, I have no hesitation in coming to the conclusion that no prejudice has been caused to the petitioner in the instant case, owing to his non-participation (though on his own volition) in the proceedings.

33. Owing to all that have been stated supra, the writ petition fails and the same is dismissed. Considering the nature of the matter and the trajectory of the proceedings, there will be no order regarding costs. Consequently, WP.M.P.No.21393 of 2004 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Chief Controlling Revenue Authority,
Inspector General of Registrations,
120, Santhome High Road,
Chennai-600 028.

2.The Joint II Sub Registrar,
Raja Street,
Coimbatore - 641 001.

W.P.No.17988 of 2004

MG(CO)
GN(26/07/2017)