IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No. 23113 of 2007

Between

M/s Toshniwal Granites Private Limited
(formerly known as TT Granites (India)
Private limited), registered office at
18-4-563, Shamsheergunj, Hyderabad,
Rep. by its Director Kamal Kishore Toshniwal

.... Petitioner

And

The Sub-Registrar,
Choutuppal, Nalgonda district and another

.... Respondents

JUDGMENT PRONOUNCED ON : 12.07.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of local Newspapers may be allowed to see the Judgments? : YES

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : YES

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : YES

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

+ Writ Petition No. 23113 of 2007

% 12.07.2017

M/s Toshniwal Granites Private Limited
(formerly known as TT Granites (India)
Private limited), registered office at
18-4-563, Shamsheergunj, Hyderabad,
Rep. by its Director Kamal Kishore Toshniwal

…Petitioner

Vs.

$ The Sub-Registrar,
Choutuppal, Nalgonda district and another

… Respondents

!Counsel for the Petitioner : Sri M. Srikanth Reddy

^ Counsel for the Respondents : GP for Revenue

<Gist :

>Head Note :

? Cases referred:

1. 1998(1) ALD 186
2. AIR 1998 SC 1489

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.23113 of 2007

Order:

Heard learned counsel for the petitioner and learned Government Pleader for the respondents.

The petitioner states that M/s. Garvee Granites Limited was wound up by orders of this Court in R.C.C.No.6 of 2001 dated 20.09.2001 and the Official Liquidator attached to this Court was appointed as Provisional Liquidator. The land was auctioned as Lot No.1 and the plant and machinery was auctioned as Lot No.2. The petitioner was a successful bidder in the auction conducted by the Official Liquidator for sale of the land, buildings and civil works (land to the extent of Ac.4.73 cents in Survey No.383), situated at Malkapur Village, Choutuppal Mandal, Nalgonda District, for a total consideration of Rs.59,89,085/-. The petitioner was a successful bidder for the plant and machinery of the company, M/s. Garvee Granites Limited (in liquidation) also for the sale price of Rs.1,00,10,944/- and it was confirmed by the orders of this Court in C.A.No.918 of 2004. Accordingly, a report was filed on 29.06.2005 before this Court with regard to conduct of the sale of the assets as Lot Nos.1 and 2. A sale deed was executed after taking permission from this Court on 12.08.2005 in favour of the petitioner conveying Lot No.1. The first respondent received the sale deed for registration and required the petitioner to pay a stamp duty on the total sale consideration of Lot Nos.1 and 2 being Rs.1,60,00,029/-. When it was explained to him that the sale deed was only for Lot No.1, the first respondent kept the document for pending registration as document No.P/51/2005 and made a reference to the second respondent for adjudication under Section 47-A of the Indian

Stamp Act, 1899. The second respondent, by order dated 17.10.2005 ordered the payment of stamp duty on the entire consideration of Rs.1,60,00,029/- for Lot Nos.1 and 2 and challenging the demand of stamp duty on Lot No.2 also, the present Writ Petition was filed.

This Court by order dated 04.03.2008 directed the registration of the sale deed and release of the same on condition of the petitioner paying Rs.9,51,000/- subject to result of the present Writ Petition. Accordingly, the petitioner paid the said amount and the document was released after registration.

A counter affidavit is filed by the second respondent stating that the petitioner purchased Ac.4.73 cents of land at Malkapur village under the orders of this Court from the Official Liquidator. The petitioner objected for assessing the market value of the entire property of 22,894 sq. yards (Ac.4.73 cents) at Rs.250/- per sq. yard though it was abutting the National Highway. Though the upset price was fixed for Lot No.1 at Rs.45,91,000/-, the petitioner offered to purchase it for Rs.59,89,100/- and became the successful bidder. The petitioner submitted that the factory shed of 18,562 sq. feet of ACC sheets would not fetch the value at Rs.100/- sq. feet and requested to consider the sale price stated in the sale deed as market value for assessing the duty to be paid. The petitioner did not pay any stamp duty for Lot No.2. The market value of the property is the price which would fetch in the open auction as on the date of sale and such value should be taken for the purpose of collection of stamp duty. The rate of Rs.250/- per sq. yard was fixed for the property abutting the National Highway up to the depth of 60 feet, whereas the property involved in the present sale deed is at a depth of nearly 419 feet from the National Highway. The rate for interior area is

Rs.130/- per sq. yard. Keeping in view the above facts, the Collector determined the market value of the property consisting of land and buildings at Rs.59,89,100/-, the price the purchaser offered in the public auction and the price the Official Liquidator and this Court accepted as highest bid amount and also received as consideration for sale of the property. The petitioner did not pay any stamp duty on Lot No.2 which consists of plant, machinery and current assets which are embedded to the earth and since they were also conveyed by the Official Liquidator under the orders of this Court for consideration of Rs.1,00,10,929/-, in view of the definition contained in Section 2(10) of the Indian Stamp Act, the demand for stamp duty for the entire property is valid. The stamp duty payable on the determined value is Rs.14,40,045/- and the registration fee payable is Rs.80,005/-, whereas the petitioner paid stamp duty of Rs.5,39,100/- and registration fee of Rs.29,950/- as reported by the Sub-Registrar, Choutuppal. Thus, the petitioner is liable to pay balance stamp duty of Rs.9,00,945/- and registration fee of Rs.50,055/-, totalling to Rs.9,51,000/-.

A reply affidavit is filed by the petitioner stating that as per the terms and conditions of the auction notice, the conveyance deed has to be executed only in respect of immovable property and the assets included in Lot No.2 are indicated to be removed from the premises of the company. The sale in favour of the petitioner company was confirmed by order dated 31.03.2005 in C.A.No.918 of 2004 in C.A.No.671 of 2003. The possession in respect of Lot No.2 was delivered on 29.04.2005. For execution of sale deed with respect to Lot No.1 by the Official Liquidator, the petitioner filed C.A.No.487 of 2005 and after filing report by the Official Liquidator on 29.06.2005, this Court by order dated 30.06.2005 directed the Official Liquidator to execute the sale deed. Accordingly, the sale deed was executed by the Official Liquidator on 12.08.2005 conveying Lot No.1 alone to the petitioner and the petitioner has paid requisite stamp duty on the sale deed dated 12.08.2005 with respect to property covered by Lot No.1 as the plant and machinery was already delivered by the Official Liquidator even before execution of the sale deed. After delivery of possession of Lot No.2, the petitioner company removed the same in compliance with the terms and conditions of the notice and 73 purchasers took away the scrap from the petitioner company. After purchasing Lot No.1, the petitioner company started erecting the granite industry therein by investing its money and also by raising loan from the State Bank of India. Therefore, the demand of stamp duty for the property described as Lot No.2 for registering the sale deed dated 12.08.2005 was stated as arbitrary.

In the light of the above facts, it has to be seen whether the demand of stamp duty for Lot No.2, in the facts and circumstances of the case, is valid or not.

There is no dispute that a notice inviting sealed tenders was published in Deccan Chronicle Daily Newspaper on 04.03.2005 for sale of the properties of M/s. Garvee Granites Limited (in liquidation) comprising of two lots with their minimum upset price as under:

Lot No.1	Comprising of land, building and Civil works (land to the extent of 4.73 acres situated at Sy.No.383, Malkapur village, Choutuppal Mandal, Nalgonda district.	Rs.45,91,000/-
Lot No.2	Comprising of plant and machinery multi disc express cutting machine, edge cutting machine, hand polishing machine, EOT Crane SWL, Line Polishing Machine, Block Dressing Machine, DG Sets, Transformer 500 KVA, other equipment and current assets.	Rs.76,74,000/-

The relevant Clauses relating to the said items are as follows:

> "7. The highest bidder whose bid is accepted shall pay the full consideration within 30 days from the date of receipt of the letter of

> the Official Liquidator or within such time as may be stipulated by the Hon'ble High Court and take delivery of the properties within 30 days from the date of the payment or such time as may be prescribed depending upon the exigencies. The possession of the properties purchased either movable or immovable and in respect of which, sale is confirmed will be handed over to the successful bidder within the above time provided, the successful bidder fulfils all the conditions and pay the sale consideration in full as stipulated. However, in the case of immovable properties viz., land and buildings, the successful bidder has to approach the Hon'ble High Court of Andhra Pradesh for suitable orders as regards execution of conveyance deeds and thereafter only necessary sale deed will be executed by the Official Liquidator in favour of successful bidder and or his nominees."
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> …………………
>
> 19. The successful bidder in respect of Lot No.2 has to deposit Rs.2.00 lakhs (non-interest bearing) with Official Liquidator, and the same shall be refunded after the assets are removed from the premises of the company. In the event of delay in lifting the assets/or damage caused to the land and building while lifting the assets covered in Lot No.2 the said deposit of Rs.2.00 lakhs will be forfeited and in addition to that, the amount determined by Official Liquidator as against demurrage charge/or damage as the case may also be payable. In this regard the decision of the Official Liquidator is final."

The petitioner became the successful bidder in respect of Lot Nos.1 and 2 for an amount of Rs.59,89,100/- and Rs.1,00,10,929/- respectively. The sale in favour of the petitioner was confirmed by order in C.A.No.918 of 2004 in C.A.No.671 of 2003 dated 31.03.2005. After confirmation of the sale as aforesaid, the plant and machinery covered by Lot No.2 was delivered to the petitioner on 29.04.2005. Pursuant to the application filed by the petitioner in C.A.No.487 of 2005 and after filing report by the Official Liquidator on 29.06.2005, this Court by order dated 30.06.2005 directed the Official Liquidator to execute the sale deed. Accordingly, a sale deed was executed by the Official Liquidator on 12.08.2005 in respect of Lot No.1 alone. The plant and machinery was removed from the site by the petitioner and was sold to 73 scrap dealers/purchasers and a new machinery was erected in the land purchased by the petitioner. These facts are not in dispute.

Section 47-A(6) of the Indian Stamp Act, 1899 reads as follows.

> "(6) For the purposes 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 would fetch if sold in the open market on the date of execution of any instrument referred to in sub-section(1):
>
> Provided that in respect of instruments executed by or on behalf of the Central Government or the State Government or any authority or body incorporate by or under any law for the time being in force and wholly owned by Central/State Government, the market value of any property shall be the value shown in such instrument."

A reading of the above said Section makes it very clear that in respect of the sales conducted by the Court, the consideration mentioned in the sale deed has to be taken into consideration. An identical issue came up for consideration in Bharatia Pulverisers Private limited, Adilabad v. Sub-Registrar of Assurances, Adilabad[1], and this Court held that the value mentioned in the public auction should be taken into consideration. The relevant observations of this Court are as follows:

> "18. In this case, the petitioner has purchased the land and building in public auction on 26-3-96 and having opted to get the sale deed registered, presented the sale deed before the first respondent for registration after paying necessary stamp duty and registration fees on 21-3-1997 under the document PI/97. Petitioner has stated in his affidavit that he desired to obtain loan from financial institutions/banks by pledging the property purchased through the document No.PI/97 to run the unit. However, the first respondent referred the matter to the Collector under Section 47A of the Act as if the petitioner has shown the value of the property lesser and has not disclosed the true value of the property. If the petitioner has to approach the Collector and if the Collector passes an adverse order, the petitioner has to take the matter in appeal before the competent Civil Court, I am of the view, it will be an unending litigation, with the result, the petitioner would not be in a position to secure loan to run his unit. Law, in my view, shall assist a party who *bona fidely* believed the value to be true and presented the document for registration, but cannot create problems and hurdles. It is in this context, I am inclined to hold that the petitioner has rightly approached this Court under Article 226 of the Constitution of India assailing the steps taken by the first respondent seeking to refer the matter to the Collector under Section 47A of the Act though such contingency has not arisen in the facts and circumstances of the case. I am, therefore, inclined to hold that the parties cannot be driven from pillar to post only to satisfy the whims and fancies of the authorities and the authorities cannot go scot-free with their fanciful actions. Though the learned Government Pleader has supported his contentions by referred to the decision (Sub-Registrar, Hyderabad v. M. Damodar Reddy, 1997 (3) ALD 325 (DB)), I am afraid, the said decision cannot come in the

[1] 1998(1) ALD 186

> way of this Court to grant appropriate relief to the petitioner in the light of the proposition laid down by the five-Judges of the Supreme Court way back in the year 1961 in the decision cited above (A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506)."

When a Writ Appeal in W.A.No.355 of 1998 was filed against the said decision, it was disposed of on 11.03.1998 holding that in public auction sales conducted by the State agencies malfeasance cannot be attributed and so the authorities under the Indian Stamp Act cannot, by invoking Section 47-A of the said Act, make an enquiry in respect of the property sold in public auction by the State agencies.

Though the learned counsel for the petitioner relied on a decision reported in Sirpur Paper mills Limited v. The Collector of Central Excise, Hyderabad[2], for the proposition that the plant and machinery would not automatically become immovable property merely because it has to be installed in earth for better functioning, the said decision need not be considered in view of the clear language employed by the Legislature.

The Writ Petition is, accordingly, allowed and the amount collected by the respondents pursuant to the orders of this Court dated 04.03.2008 shall be refunded to the petitioner. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

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A. RAMALINGESWARA RAO, J

Date: 12th July 2017
Nsr

[2] AIR 1998 SC 1489