HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.9870 of 2007

ORDER

This writ petition is filed for the following relief:

> "… to issue writ, order or direction more particularly one in the nature of Mandamus declaring the Notices No.1302/47A/2006, 1303/47A/2006, 1304/47A/2006 and 1306/47A/2006 all dated 26.03.2007 of the 2nd respondent threatening to put for public sale the property of the petitioners as illegal and arbitrary and consequently set aside the same and be pleased to pass such other order or orders as the Hon'ble Court may deem fit and proper in the interest of justice and in the circumstances of the case."

The petitioners state that they presented the deeds of sale executed by their vendors, before the 1st respondent, in respect of agricultural lands situated in Sy.Nos.384/3, 384/4 and 384/6 of Tummapala Sivaru, Moolapet Village, Satyanarayanapuram Panchayat, Anakapalli Mandal, Visakhapatnam District, having purchased the same @ Rs.2,20,000/- per acre. However, 1st respondent kept the documents pending on the ground that the market value of the property is Rs.6,00,000/- and referred the matter to the 2nd respondent for determination of the market value. The 2nd respondent issued notice in Form II, dated

29.09.2006 intimating the petitioners to appear before him on 09.10.2006. The petitioners submitted a representation before the 2nd respondent stating that the subject property is situated far away from the road, it is not fit for agriculture and as per the basic value register, in April, 2005, the value of the subject property was Rs.90,750/- per acre and some of the petitioners got registered at the said rate of Rs.90,750/- and they have furnished copies of the documents. It is further stated that to their utter surprise the steep escalation in the basic value register was shown to be increased from Rs.90,750/- to Rs.6,00,000/- per acre. They offered to sell the property to the Government at Rs.6,00,000/- per acre if the Government was willing to acquire the same. The 2nd respondent without considering their representation, passed an order on 27.10.2006 fixing the market value of the subject property at Rs.6,00,000/- per acre. Challenging the same, the petitioners filed W.P.No.24 of 2007 and the same was disposed of on 3.1.2007 directing the petitioners to approach the appellate authority. As the petitioners did not approach the appellate authority, the 2nd respondent passed an order on 26.03.2007 proposing to auction their immovable property for relealization of the deficit stamp duty of

Rs.1,44,400/- from petitioners 4 and 5, like amount from petitioners 6 and 7 and an amount of Rs.1,48,720/- from petitioners 9 and 10. Challenging the said demand notices, the present writ petition was filed.

A reading of the impugned demand notices show that the said notices were issued by the District Registrar in purported exercise of power under Section 48 of the Stamp Act.

Section 47 –A of the Indian Stamp Act 1989 deals with under valued documents. Sub-section (1) thereof states that when the registering authority gets a doubt with regard to the market value of the property he can keep document pending and refer the matter to the Collector for determination of the market value. It also provides that no reference shall be made by the registering officer unless an amount equal to fifty percent of the deficit duty arrived at by him is deposited by the party concerned. On receipt of the reference as per sub-section (1), the Collector shall after giving opportunity of making representation and holding an enquiry determine the market value of the property, the decision of the Collector subject to appeal under sub-section (4). Section 48 provides for recovery of duties and penalties.

In the instant case, it is not clear from the facts whether reference was made to the Collector after deposit of 50% of the deficit stamp duty arrived at by the Registering Authority. However, the matter was referred to the Collector, who determined the market value at Rs.6,00,000/- per annum. When the document was not registered, the petitioners approached this Court by filing W.P.No.24 of 2007 and the same was disposed of on 3.1.2007 giving liberty to the petitioners to approach the appellate authority. But only on the ground that the petitioners did not approach the appellate authority, now, their immovable property is sought to be put to public auction for non-payment of alleged deficit stamp duty.

The Sub Registrar, who is the 1st respondent, ought not to have referred the matter to the 2nd respondent without deposit of deficit stamp duty and if he has done so, the same is without any authority of law. After determination of the market value by the Collector, it was open to the petitioners to pay the amount or prefer an appeal, but the petitioners did not choose to adopt either course of action.

In these circumstances, the 1st respondent can keep the document pending, but he cannot coerce the petitioners to pay

the deficit stamp duty by invoking Section 48 of the Act. It is clear from the counter-affidavit that the document was not registered and released to the petitioners.

In view of the above, the impugned demand notices are set aside and it is open to the petitioners to take appropriate steps in accordance with law.

Accordingly, the Writ Petition is allowed. No costs.

JUSTICE A.RAMALINGESWARA RAO

6th July, 2017
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