HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 2700 of 2006

Order:

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

The case of the petitioner is that an extent of 1445 sq. yards in T.S.No.1855 in Ward No.8, Block No.2, Door No.126/A(2), situated at Tirupati Town, Tirupati Municipality, Chittoor district originally belonged to Sri Lakshminarayana Swamy Temple. The temple issued a notification in the year 2002 proposing to sell the above land by tender-cum-public auction. The auction was held on 09.05.2002. Since the bid amount was low, the Commissioner of Endowments did not accept the bid and decided to conduct fresh auction. Another notification was issued on 31.08.2002 proposing to conduct public auction on 16.09.2002. The tender notification states that the property would be sold on "as is where is basis" and the upset price was fixed at Rs.48,84,100/-. The petitioner participated in the said auction and became the highest bidder for a sum of Rs.60,24,000/-. The bid was confirmed by the Commissioner of Endowments vide his proceedings dated 16.10.2002. A sale deed was executed in favour of the petitioner on 08.11.2002 and a stamp duty of Rs.7,21,180/- and Rs.30,120/- towards registration was paid on the total consideration of Rs.60,24,000/-. Though the entire stamp duty and registration fee was paid, the document was kept pending by document No.P-235/2002 dated 08.11.2002. In those circumstances, the petitioner filed W.P.No.23450 of 2004 and the said Writ Petition was disposed of on 19.10.2005 directing the petitioner to submit a reply to the notice dated 03.04.2004 alleged to have been issued by the first respondent. The petitioner submitted a representation on 14.11.2005 through his counsel. The same was not accepted by the first respondent on the ground that the super structures built by the tenant were not removed and at the time of inspection of the property, the superstructures were still in existence and since the document conveys a right or interest in superstructures also the petitioner had to pay stamp duty and registration fee for the superstructures also. The first respondent issued a memo dated 17.11.2005 directing the second respondent to collect deficit stamp duty and registration fee from the petitioner. The second respondent in his notice dated 21.11.2005 determined the deficit stamp duty at Rs.2,03,460/- and deficit registration fee at Rs.8,480/- and issued a letter on 19.01.2006 asking the counsel for the petitioner to issue necessary instructions to his client to pay the deficit stamp duty and deficit registration fee. Challenging the same, the present Writ Petition was filed.

Learned counsel for the petitioner submits that the demand for deficit stamp duty and registration fee is not warranted in the case of property conveyed under specific market value in an auction conducted by the Central Government or the State Government or any authority or body incorporated by or under any law for the time being in force and wholly owned by Central or State Government in view of Section 47-A(6) of the Stamp Act. He further submits that as a matter of fact the superstructures so existing at that point of time were removed by the tenant and the tenant vacated the premises. However, by virtue of the interim order passed by this Court in the present Writ Petition, the document was released after registration on furnishing a bank guarantee for the amount of Rs.2,11,940/-.

The sale deed dated 08.11.2002 clearly recites that the superstructures on the schedule property (ACC sheet structure) belonged to the lessee (tenant) whereas the land alone belongs to the vendor and the superstructure is not conveyed under the deed. It is also stated that all efforts were being made to vacate the tenant and the same was under process. The market value of the property conveyed was indicated as Rs.60,24,000/- and only the land was conveyed under the deed. In view of the language occurring in the proviso to Section 47-A (6) of the Indian Stamp Act, the market value shown in the sale deed should have been taken into account. The first respondent also should have gone through the recitals in the document, but without having regard to the same, the deficit stamp duty and registration fee was sought to be collected. Now, as a matter of fact, the said superstructures were removed in the year 2007 itself and the said fact was intimated to the registering authority. It is also stated that after removal of superstructures, a building was constructed after obtaining permission from the competent authority and in that view of the matter also no adjudication is necessary. However, in view of the non-conveyance of superstructures under the document and the document was executed by the temple authorities under the sanction of the Commissioner of Endowments, this Court feels that the market value mentioned in the document alone should have been taken into account.

Accordingly, the Writ Petition is allowed and the bank guarantee furnished by the petitioner at the time of release of the document should be returned to the petitioner. There shall be no order as to costs.

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

A. RAMALINGESWARA RAO, J

Date: 06.07.2017
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