IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2018

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THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.21893 of 2008 and
M.P.No.2 of 2008

Vijay Raghunath .. Petitioner

Versus

1. The State of Tamil Nadu rep. by its
   Secretary to Government,
   Commercial Taxes & Registration,
   Fort St. George, Chennai - 9

2. The Sub-Registrar, Mylapore
   No.100, Santhome High Road,
   Chennai - 600 028. .. Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records comprised in the impugned demand notice dated 04.08.2008 of the second respondent in all respect of document No. 2798/2007 and quash the same as illegal and arbitrary.

For Petitioner :Mrs.Akshaya Ramadurai
for Mr. R.Parthasarathy

For Respondents :Mr.M. Tamilarasan
Government Advocate.

ORDER

The petitioner has filed this writ petition for issuance of a Writ of Certiorari calling for the records comprised in the impugned demand notice dated 04.08.2008 of the second respondent in all respect of document No. 2798/2007 and quash the same as illegal and arbitrary.

2. The case of the petitioner is that he purchased the said property in Flat No. C4, Cresando Apartment (Old Door No.24,), New Door No. 26, Desika Road, Mylapore, Chennai - 600 004, comprised of a built up area of 1730 sq ft. along with an

undivided share of 1085.22 sq. ft out of a total extent of 5 grounds and 362 sq. ft of land. The said property was purchased during the Court auction held by the Official Liquidator. One Mr.P.Palanisway was the highest bidder in the auction and he assigned his right and interest in the favour of the petitioner, which fact was duly intimated to the Court and appropriate order was obtained.

3. The subject property intially belonged to M/s. Siv Industries, and the said company was winded up vide proceedings C.P.No. 17 of 2004 and an order was passed on 25.08.2004, directing the Official Liquidator to take charge of all the assets of the said company. Thereafter, by an order dated 14.06.2006 the High Court of Madras, directed the Official Liquidator to invite the sealed tenders for the sale of the properties belonging to the said company.

4. Mr. Palanisway, who was one of the bidders won the Court auction, with an offer of Rs.58,00,000/- for the property and a earnest money deposit of Rs.15,00,000/- was declared as bid amount and it was also duly recorded in the order dated 28.07.2006 and the remaining amount of Rs.44,86,330/- was to be paid within two weeks which condition was duly complied with Palaniswamy vide pay order No. 370121 dated 22.12.2006, drawn on Indusind Bank, Nunmgambakkam Branch, Chennai - 600 034.

5. The said Palaniswamy filed an application before this Court, praying for a direction to the Official Liquidator to execute and register the sale deed in favour of his assignee, namely the petitioner Mr.Vijay Raghunath. This Court directed the official liquidator to execute the sale deed in favour of the petitioner and the same was duly compiled on 13.07.2007 in favour of the petitioner. The Official liquidator by his communication dated 13.07.2017 had forwarded the original sale deed to the second respondent for registration and returned to the petitioner. Meanwhile, the petitioner would also contend that the demand notice was issued by the 2nd respondent on 04.08.2008, directing the petitioner's to remit the deficit stamp duty and registration charge of Rs.82,472/- and Rs.10,310/- in total Rs.92,782/- by the petitioner. The petitioner was aggrieved by the said demand notice, which is arbitrary, unjust and unreasonable under the Indian Stamp Act 1899, read with Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Since, the petitioner had purchased the properties in the Court action, the guideline value of the lands has to be taken only on the value of the land fixed by the Court and not on the market value.

6.The second respondent has fixed the value of the subject property as Rs.5,373 per sq. ft as against Rs.4,423 per sq. ft is unjustifiable and cannot be sustained. The petitioner also represented Judgment of this Court in K. Sivaramaiah V. Special Deputy Collector, Urban, Cuddapah, 1989(1) Alt 546 wherein, it was held that the sale deed executed by official liquidator in Court auction cannot be questioned by the respective authorities. The learned counsel for the petitioner would contend that Section 47 A of the Act has no application to this case and the second respondent has passed the order mechanically. Hence, the petitioner's had relied on the above Judgment wherein it was held that the true value of the property for the purpose of registration shall be the price paid by the party in the public auction.

7. The respondents has not filed any counter and going through the Judgment passed in the Division Bench of this Court in Writ appeal Nos. 1436 & 1437 of 2013 in W.A.No. 1921 & 1922 of 2013, The Sub Registrar, Mettur, Salem District Appellant Vs. K.P.Kadar Hussain & Others it could be seen that the instrument of conveyance executed pursuant to the decree passed by Civil Court, in which there is no allegation of under valuation or lack of bonafides the mere fact that there is time gap between the agreement of sale and the execution of the document, is not sufficient to the Registering Officer to invoke his power under Section 47-A of the Act, unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to deliberately undervalue the subject of transfer with a view to evade payment of proper stamp duty. When a property is purchased in Court auction sale, if any value other than the value fixed by the Court, is taken into consideration for the purpose of determining the stamp duty, it tantamounts to exceeding the jurisdiction made under the law. Hence, the payment of the proper stamp duty fixed by the Court cannot be devolved from. The basic valuation is only for the purposes of collecting stamp duty and cannot be foundation to determine market value.

8. Since, the petitioner had purchased the properties in the Court auction sale conducted by the company and the official liquidator executed the sale deed wherein the petitioner has the right to transfer his interest and the amount has been paid without any delay and the sale deed was executed by the official liquidator vide letter dated 13.07.2007, the respondent cannot question the sale value fixed by the Court, since, the Court auction sale was conducted by calling of sealed tenders and auction was conducted before this Court and only after that the Court has come to a conclusion that he has paid the amount as he is the successful bidder and the same was executed in favour of this petitioner. As the valuation was fixed by the Court, the respondent cannot question merely on the ground that the sale value mentioned in the sale deeds purchased by the petitioner

herein cannot be termed as market value.

9.This Court has held that 47(A) of the Indian Stamp Act, 1899 has no application whatsoever, in so far as the respondents are concerned, because of the prime reason that there is no room for entertaining a simmering doubt that there was any undervaluation in regard to the Sale Deeds executed by the Official Liquidator.

10. Since the petitioner had purchased the property from the Court auction and the sale deed was executed by the official liquidator and the same cannot be questioned by the respondents. As per "Explanation" appended to Section 47-A of the Indian Stamp Act, 1899 only the price that would have fetched if the property was sold in open market to be termed as its "Market Value". The sale has been conducted by Court order and the respondent, who has not raised any doubt regarding valuation of the property at the time of registration, is not entitled to dispute the same at later point of time.

11. On the above facts and circumstances this writ petition is allowed and the order issued by the second respondent is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To.

1.The Secretary,
The Commercial Taxes & Registration,
Fort St. George, Chennai - 9

2. The Sub-Registrar, Mylapore
No.100, Santhome High Road,
Chennai - 600 028.

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No. 50469
+1cc to the Government Pleader, S.R.No. 50344

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VD(CO)
GN(03/01/2019)