HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.39 OF 2017

ORDER:

Heard Sri G. Manohar, learned counsel for the petitioner, and the learned Assistant Government Pleader for the State of Andhra Pradesh appearing for respondent No.4, and perused the order under revision including the material on record.

2. The learned counsel for the petitioner, to substantiate the stand taken by the revision petitioner that the stamp duty payable relates to the date of execution of agreement of sale, relied on the ruling in **S.P. Padmavathi v. State of Tamilnadu**[1]. A Division Bench of Hon'ble Madras High Court in paragraph Nos.20 and 23 record thus:

> "20. We have already pointed out that, in the instant case, there is no such plea raised by the respondents or even by the Registering Officer, who had passed the order under Sec. 47A of the Act. There is no finding recorded that there was lack of bona fides or any reason to believe that there was under-valuation. The Registering Officer has purported to exercise his power in the instant case under Sec. 47A of the Act to determine the market value only on the ground that there is a time-gap between the agreement of sale and the date of execution of the sale deed and in the meanwhile the value of the property has gone up, without there being no lack of bona fides on the part of

[1] AIR 1997 MADRAS 296(1)

the parties to the document and no attempt on their part to fraudulently evade payment of proper stamp duty.

23. Therefore, we are of the view that in the case of instrument of conveyance executed pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of under-valuation or lack of bona fides, the mere fact that there is a 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 47A 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 under-value the subject of transfer with a view to evade payment of proper stamp duty."

3. The other ruling relied on by the learned counsel for the petitioner is in **M/s. Residents Welfare Association, Noida v. State of U.P.**[2] The learned counsel relies on paragraph Nos.23 and 26, where expression of the Hon'ble Supreme Court is thus:

"23. Before we part with this aspect of the matter, that is to say, whether the document/instrument was in fact a deed of assignment or an outright sale, we must also keep in mind that the nomenclature to the document of assignment cannot be said to be determining factor in deciding whether a particular deed or document was a lease or a deed of assignment. In *Madras Refinery Ltd.* vs. *C.S.* AIR 1977 SC 500, it was held that in order to decide whether a particular document is a lease or a deed of assignment, one has to look at the substance of

[2] 2009(5) SCJ 13

the deed of assignment to the document and not the nomenclature. Therefore, it must be held that no importance can be given to the nomenclature to the document. Although some of the members of the association had termed the document as a deed of sale or transfer cum sale deed instead of as a deed of assignment, it remains as a deed of assignment as has been noted above by us.

24. … … …

25. … … …

26. Section 47 A would be applicable only when Article 23 is applicable. In case Article 63 applies, the registration officer does not have any jurisdiction to enquire into the market value of a property under Section 47 A of the said Act. It is to be noted that the power under Section 47 A of the Act can be exercised in respect of an instrument presented for registration on which duty must be charged on its market value. Thus Section 47 A applies in case of an outright sale. Since in this case, the instrument in question is not an out right sale but a lease hold right, therefore, the question arises whether the condition precedent mentioned in the Act has been fulfilled and, if not, the reference under Section 47 A was invalid. Moreover, even if we assume that Section 47 A applies in this case; we have to enquire whether the appellant intentionally tried to undervalue the property in the alleged document. At this juncture, it is necessary to again consider Section 47 A. Section 47 A clearly provides that when the valuation shown in the agreement presented for registration is, according to the authorities, under valued, in that case, the registering authorities are conferred with the discretion

to hold an enquiry to find out if the duty chargeable on the market value of the property is less than even the minimum value determined in accordance with the rules made under the Act. As is evident from the records placed before us, the appellant could not execute the sale deed because of the failure of the respondent No.4, i.e. Noida Authorities, to execute transfer memorandum due to the orders of injunction passed in pending litigations before the different courts. Therefore the appellant cannot be faulted for not executing the same. We have observed that the consideration mentioned on the agreement to sell was absolutely adequate with regard to the market value of the property at that time and the same was registered before the registering authority. Moreover, we find that there are no allegations on record against the appellant of under-valuation at the time of entering into the agreement for transfer of the property. Therefore we do not see any fraudulent intentions on the part of the appellant to under value the property in order to evade stamp duty paid thereon. Since the stamp duty is to be charged on the consideration mentioned in the document under Article 63 of Schedule 1-B of the Act in case of an assignment of lease, the consideration mentioned on the document was adequate in respect of the time when the agreement of the transfer by way of lease was registered. It would be a different question that when the said deed is to be executed, the value of the said property has increased with the passage of time. The execution of the deed had not been delayed due to any fault on the part of the appellant and therefore he cannot be held liable for intentionally suppressing the value of the property. Moreover as we have noticed, the appellant did not make any undue delay in

> executing the deed after the Noida Authorities issued the transfer memorandums. Therefore, considering the above circumstances, it would be unwise to say that the appellant had any intention to evade the stamp duty as specified under the Act. Thus even if Section 47 A of the Act would have applied, the registering officer would have no jurisdiction to refer it to the Collector since there was never any intention on the part of the appellant to undervalue the property."

The Hon'ble Supreme Court referring to the ruling of the Hon'ble Madras High Court in **S.P. Padmavathi[1],** holding that the relevant date for calculation of market value and the stamp duty is the date on which the consideration was frozen.

4. The learned Assistant Government Pleader would readily agree the stand taken by the revision petitioner in view of the rulings relied on by the learned counsel for the petitioner.

5. The Court below, in fact, relied on the ruling in **Siddula Madhukar v. Govt. of A.P[3],** wherein a Division Bench of this Court held that for the sale deed executed pursuant to decree in a suit for specific performance of agreement of sale, stamp duty payable be calculated on the market value of property prevailing on the date of execution of the sale deed and not at the rate prevailing at the time of execution of agreement of sale. However, by the date of the order under challenge, the ruling of the Hon'ble Apex Court in **M/s. Residents Welfare Association[2]** was already holding the field, but, it appears that none of the parties brought the same to the notice

of the Court below and that has been the reason, somehow, the Court below went wrong in dismissing the application.

6. When the learned Assistant Government Pleader has rightly agreed that there are no other rulings subsequent to the decision in **M/s. Residents Welfare Association**[2], certainly, it has to be held that the Court below went wrong in dismissing the application. Further, the Court below has not recorded any reason that there has been fraudulent intention on the part of the petitioner to undervalue the property with a view to evade payment of proper stamp duty. Hence, the order under challenge is liable to be set aside.

7. Accordingly, the Civil Revision Petition is allowed and the order under challenge is set aside. Consequently, E.A.No.28 of 2016 is allowed.

Miscellaneous petitions, if any pending in the present revision, shall stand closed.

JUSTICE A.SHANKAR NARAYANA

Dt: 27.04.2018
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[3] 2002 (6) ALT 144 (D.B.)