IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.18482 of 2009
and M.P.Nos.1 & 2 of 2009

Srikam Print Pack Pvt. Ltd.,
rep. by its Director S.Ravi .. Petitioner

-vs-

1. The District Revenue Officer (Stamp Duty),
Collectorate,
Singaravelar Maligai 5th Floor,
32, Rajaji Salai,
Chennai-600 001.

2. The Sub-Registrar,
Registration Department,
Government of Tamil Nadu,
Padappai-601 301.

3. The Tamil Nadu Small Industries
Development Corporation,
rep. by its Chairman and
Managing Director,
Garment Complex-II,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-600 032. .. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the entire records of the respondents relating to proceedings of the first respondent in the impugned order passed by the first respondent in Tha.Ka.No.4613/A6/ Si.Pa.79 dated 30.06.2008 and quash the same thereby forbear the 1st and 2nd respondents from demanding stamp duty on the market value of the property instead of the stamp duty paid by the petitioner on the actual sale consideration in respect of the property situated in Plot No.50 in the SIDCO Industrial Estate, Thirumudivakkam Village, Chennai-600 044 and consequently direct the 1st and 2nd respondents to release and return to the petitioner the registered original sale deed in Document No.2919/2008 on the file of the second respondent.

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For petitioner : Mr.V.Jeevagiridharan

For respondents : Mr.T.M.Pappiah,
Special Government Pleader
for R1 and R2

Mr.B.Manoharan for R3

ORDER

The writ petition has been filed challenging the correctness of the impugned order dated 30.06.2008 made in Tha.Ka.No.4613/A6/ Si.Pa.79 passed by the first respondent and forbearing the 1st and 2nd respondents from demanding stamp duty on the market value of the property instead of the stamp duty paid by the petitioner on the actual sale consideration in respect of the property situated at Plot No.50 in the SIDCO Industrial Estate, Thirumudivakkam Village, Chennai-600 044 and seeking a direction to 1st and 2nd respondents to release and return the registered original sale deed in Document No.2919/2008 to the petitioner.

2.Learned counsel appearing for the petitioner would submit that the Tamil Nadu Small Industries Development Corporation, the third respondent herein (hereinafter referred to as 'SIDCO') had developed an Industrial Estate at Thirumudivakkam, Chennai and the petitioner being a small scale industry, applied to SIDCO for allotment of an industrial plot. While so, on 26.03.2002, the petitioner was allotted an industrial plot bearing Plot No.50 admeasuring to an extent of 0.601 acre. However, by an order dated 22.04.2002, the SIDCO fixed the price of the plot as Rs.12,40,740/- and directed the petitioner to pay the entire amount within thirty days, after deducting the advance amount already paid. Learned counsel appearing for the petitioner would further submit that on 24.04.2002, the petitioner paid the entire sale consideration to the SIDCO and on such payment, the possession of Plot No.50 was handed over to the petitioner immediately. After the factory building was constructed and the business was commenced, the SIDCO sent a letter dated 08.02.2006 to the petitioner directing the petitioner to apply for the execution of the sale deed for the said Plot No.50 allotted to them.

3.According to the learned counsel for the petitioner, on 07.05.2007, the petitioner sent a letter to the SIDCO enclosing all necessary documents seeking execution of the sale deed. On 06.06.2008, the SIDCO duly executed the sale deed dated 11.04.2008 for the said Plot No.50 in favour of the petitioner. However, the actual sale consideration of Rs.12,40,740/- as

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shown in the sale deed and the necessary stamp charges of Rs.49,532/- were also paid by the petitioner, but the second respondent insisted the petitioner to value the document at the existing market value as on date as Rs.52,40,800/- and demanded to pay Rs.2,09,632/- towards stamp duty. As the petitioner objected the demand, the second respondent registered the document in Document No.2919/2008 and referred the matter under Section 47-A of the Indian Stamp Act, 1898 to the Collector for adjudicating the value. However, the first respondent sent the impugned order dated 30.06.2008 directing the petitioner to pay the difference of the stamp duty amount of Rs.1,60,000/- as claimed by the second respondent within thirty days or to submit explanations. On receipt of the impugned order, the petitioner sent a detailed reply dated 05.08.2008 explaining the legal position laid down by this Court in similar cases holding that in a transaction between the Government authority, there can be no concealing of any consideration or under valuation.

4.In this regard, learned counsel appearing for the petitioner, referring to a judgment of the Division Bench of this Court in the case of S.P.Padmavathi vs. the State of Tamil Nadu and others reported in 1997 (II) CTC 617, would submit that a mere lapse of time between the date of agreement will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power under Section 47-A of the Act, unless there is lack of bonafides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty. Therefore, if the same ratio is applied in the present case, no fault can be found from the petitioner's side. When the third respondent by order dated 22.04.2002 directed the petitioner to pay the entire amount, the same was paid, within two days namely, on 24.04.2002, by the petitioner, as entire sale consideration and consequently, the SIDCO by their communication dated 08.02.2006 invited the petitioner to come for execution of the sale deed. When there is no fault on the part of the petitioner and the same lies only on the SIDCO, the respondents cannot refer the issue by invoking Section 47-A of the Act.

5.A counter affidavit filed by the third respondent shows that the petitioner has paid the entire sale consideration.

6.Therefore, the contention made by the respondents that due to the long gap because of both petitioner and SIDCO, they cannot prevent the respondents 2 and 3 from invoking Section 47-A of the Act, cannot be accepted. It has been answered in a judgment of the Division Bench of this Court in the case stated supra, which is given as under:

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'15. We accordingly, answer Point No.1 as follows:
"... Power under Section 47-A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth, with view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power under Section 47-A of the Act, unless there is lack of bonafides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty...." '

7.As I mentioned above, by an order dated 22.04.2002, when the SIDCO fixed the price of the plot as Rs.12,40,740/- and directed the petitioner to pay the entire amount within thirty days, the petitioner paid the entire sale consideration on 24.04.2002, namely within two days to the SIDCO and the possession of Plot No.50 was handed over to them immediately and after the business was commenced, the SIDCO sent a letter dated 08.02.2006 to the petitioner directing them to apply for the execution of the sale deed for the said Plot No.50 allotted to them. When the petitioner sent a letter to the SIDCO enclosing all necessary documents seeking execution of the sale deed on 06.06.2008, the SIDCO duly executed the sale deed dated 11.04.2008 for the said Plot No.50 in favour of the petitioner. As the counter affidavit filed by the third respondent itself shows that the petitioner has paid the entire sale consideration, this Court, finding no fault on the part of the petitioner, is inclined to allow the petition, following the above ratio laid down by this Court. Accordingly, the writ petition is allowed and the impugned order is set aside. The second respondent is directed to release and return the registered original sale deed within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected M.Ps. are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vga

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To

1. The District Revenue Officer (Stamp Duty),
Collectorate,
Singaravelar Maligai 5th Floor,
32, Rajaji Salai,
Chennai-600 001.

2. The Sub-Registrar,
Registration Department,
Government of Tamil Nadu,
Padappai-601 301.

3. The Chairman and Managing Director,
The Tamil Nadu Small Industries
Development Corporation,
Garment Complex-II,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-600 032.

+1cc to M/s.K.Ashok Kumar, Advocate, S.R.No.15021
+1cc to the Government Pleader, S.R.No.15601

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SJ(CO)
CS/08/04/2019

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