IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.11.2019	Pronounced on: 21.11.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.3231 of 2018
& W.M.P.No.3964 of 2018

Mr.V.Murugesan,
S/o.Vellaisamy,
No.1, 16th Central Cross Street,
Mahakavi Bharathi Nagar,
Chennai - 600 039. ... Petitioner

/versus/

1. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2. The Sub Registrar,
Madhavaram,
Chennai - 600 060.

3. The Sub Registrar,
Madavaram,
Chennai - 600 060. .... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the entire records pertaining by the impugned order in Ref. Nil dated 29.01.2018 passed by the 2nd respondent and quash the same thereby directing the respondents to register the General Power of Attorney, dated 29.01.2018 presented to the 2nd respondent and pass order.

For Petitioner : Mr.K.Mohana murali
For R1 to R3 : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondents 1 to 3.

2. The Petitioner herein has present a Power of Attorney deed before the 2nd respondent appointing Mr.V.Dhanasekar as his agent to deal with the properties, which

is subject to charge under Section 47 - A of the Registration Act.

3. The 2nd respondent has declined to register the Power of Attorney deed and had intimated the petitioner to pay the deficit stamp duty and registration fees of Rs.62,54,575/- before presenting the Power of Attorney document for registration.

4. The above said order passed on 29.01.2018 is challenged in this Writ Petition.

The background facts of this Writ Petition starts with the decree passed by the City Civil Court, Chennai in the specific performance suit filed by the Writ Petition in O.S.No.3259 of 2011, dated 20.09.2011. Pursuant to the decree, the sale deed was presented for registration at 2nd respondent Office on 17.10.2013. The document was retained on entertaining doubt over the correctness of the property value disclosed. Hence, the 2nd respondent referred the matter for adjudication under Section 47 - A of the Indian Stamp Act.

5. Aggrieved by the action of the 2nd respondent, the petitioner approached this Court by way of Writ Petition and sought for released of the document. This Court, in W.P.No.13313 of 2014 filed by the petitioner issued the following direction to the 2nd respondent in its order dated 19.03.2015.

"i. The second respondent shall return the document registered as 5750 of 2013 dated 17-10-2013 with an endorsement on the said document to the effect that a reference under Section 47-A(1) of the Indian Stamp Act is pending;

ii. The factum of pendency of the reference under Section 47-A(1) of the said Act in respect of the said document shall be entered into in the encumbrance register also so as to protect the interests of the purchasers for knowledge;

iii. Pending the final order to be passed under Section 47A(1) of the said Act, there shall be a charge over the property in favour of the Government as per Section 47A(4) of the said Act;

iv. After adjudication proceedings are completed including appeal, for which the petitioner is entitled to under the provisions of the Indian Stamp Act and after payment of the amount towards stamp duty ultimately arrived at, necessary endorsement shall be made both in the document concerned as well as encumbrance register that the proceedings under Section 47-A of the said Act have been terminated;”

6. Intra Court appeal against this order filed by the Registration Department was dismissed by the Division Bench on 24.06.2015 in W.A.No.826 of 2015. The Special Leave Petition filed against the order passed in W.A.No.826 of 2015 was also dismissed by the Supreme Court in S.L.P.(C).No.27705 of 2015 on 30.11.2017, with following observation.

> “However, the proceedings initiated under Section 47-A(I) of the Indian Stamp Act, 1899 be completed expeditiously, preferably within a period of three months from today in accordance with law. The respondent shall co-operate in the proceedings and shall not seek any undue adjournment in the matter.”

7. Despite direction from the Supreme Court, the respondents failed to return the document which forced the petitioner to file Contempt Petition and on filing the Contempt Petition, the document was returned to the petitioner with endorsement about the charge over the property.

8. Now, when the petitioner wanted to get the Power of Attorney deed registered the same is refused citing the charge created over the property.

9. According to the petitioner, the appeal against the order passed in Section 47-A proceedings is still pending before the 1st respondent. Therefore, the 2nd respondent cannot refuse registration demanding the deficit Stamp duty and Registration fees. The refusal to register his Power of Attorney deed is borne out of malafide intention.

10. The 2nd respondent, in his counter has stated that, “since the first charge has been created by operation of law as laid down in Section 47-A(4) of the Indian Stamp Act, 1899 and the note of 1st charge is entered as foot note in the sale deed in question as well as in Index-II register so as to reflect in the encumbrance certificate as a constructive notice to the public, any deed executed consequent to the aforesaid pending due amount to Government of Tamil Nadu, cannot be registered as per the extant order of the Inspector General of Registration and a statutory charge is created for the unpaid deficit stamp duty a note in this regard was made in the document as well Index-II so as to be constructive notice to the public. This respondent refused to accept for registration of the Deed of General Power of Attorney dated 29.01.2018 unless the deficit

stamp duty is adjudicated in finality and the same is paid as per the extant order of the Inspector General of Registration. Hence, the contention of the Petitioner is not sustainable in law and as such the Writ Petition is liable to be dismissed in limine."

(i). Section 47 - A of the Indian Stamp Act, reads as below:-

> 47-A. Instruments of conveyance, etc., undervaluation how to be dealt with:-
>
> (1) If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 1908), while registering any instrument of conveyance [exchange, gift, release of benami right or settlement] has reason to believe that the market value of the property of which is the subject of conveyance [exchange, gift, release of benami right or settlement], has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(ii). Sub-Section (4) of Section 47-A deals with creation of charge:-

> (4) Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, [interest at one per cent per month on such amount for the entire period of default:
>
> Provided that where a persons has preferred an appeal against the order under sub-section (2) or sub-section (3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-section (2) or sub-section(3), as the case may be.

11. The Hon'ble Supreme Court in State of Rajasthan & Ors Vs. M/s. Khandaka Jain Jewellers reported in 2008(1)CTC 60, has held as under:-

> “10. It may be mentioned that there is a difference between an agreement to sell and a sale. Stamp duty on a sale has to be assessed on the market value of the property at the time of the sale, and not at the time of the prior agreement to sell, nor at the time of filing of the suit. This is evident from Section 17 of the Act. It is true that as per Section 3, the instrument is to be registered on the basis of the valuation disclosed therein. But Section 47-A of the Rajasthan (Amendment) Stamp Duty Act contemplates that in case it is found that properties are under valued then it is open for the Collector (Stamps) to assess the correct market value.”
>
> “The learned single Judge as well as the Division Bench in the present case had taken into consideration that the agreement to sell was entered into but it was not executed. Therefore, the incumbent had to file a suit for seeking a decree for execution of the agreement and that took a long time. Therefore, the Courts below concluded that the valuation which was in the instrument should be taken into account. In our opinion this is not a correct approach. Even the valuation at the time of the decree is also not relevant. What is relevant in fact is the actual valuation of the property at the time of the sale. The crucial expression used in Section 17 is "at the time of execution". Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into. An agreement to sell is not a sale. An agreement to sell becomes a sale after both the parties signed the sale deed. A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasize that a taxing statute has to be construed strictly and considerations of hardship or equity have no role to play in its construction.”

12. As far as release of the sale deed is concerned, the issue has reached finality on disposal of Special Leave

Petition by Hon'ble Supreme Court with the observation extracted in the earlier part of this order.

13. It is now clear from the counter that, though the Hon'ble Supreme Court in its order dated 30.11.2017, has directed the parties to complete the proceedings initiated under Section 47-A (1) of the Indian Registration Act, as expeditiously preferably within a period of three months and the petitioner should co-operate to complete the proceedings without seeking undue adjournment, till date, the proceedings had not reached the finality.

14. The Petitioner herein wants his Power of Attorney deed to be registered, pending adjudication with endorsement of charge. This Court, on reading the recital in Power of Attorney find that the Agent is empowered to deal with the property including alienation. If the Power of Attorney is registered and he enter into agreement with 3rd party to sell the property, who is ready to buy the property with encumbrance and such alienations are to continued perpetually without deciding the liability of deficit Stamp duty, the State exchequer will be at loss. Therefore, the decision of the 2nd respondent refusing to register the Power of Attorney is correct but the reasoning and demand to pay the deficit stamp duty and registration fees pending appeal before the 1st respondent is incorrect.

15. Hence, the Writ Petition is disposed, with direction to the 1st respondent to pass order on the appeal filed by the Petitioner in the proceedings pending before him within a period of three months from the date of receipt of a copy of this order. On disposal of the appeal, if any stamp duty and registration fees payable, then on payment of the same, the Power of Attorney deed or any deed presented by the petitioner shall be registered and returned to the Petitioner by collecting necessary stamp duty and Registration fees as per law.

16. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Inspector General of Registration,
   Santhome High Road, Chennai - 600 028.

2. The Sub Registrar,
   Madavaram,
   Chennai - 600 060.

3. The Sub Registrar,
   Madavaram,Chennai - 600 060.

+2cc to Mr.K.Mohana Murali, Advocate, S.R.No. 97007
+1cc to the Government Pleader, S.R.No. 97555

Writ Petition No.3231 of 2018

CA(CO)
GN(17/02/2020)