IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 24.01.2019

Order Pronounced on : 15.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No. 20262 of 2014

and

M.P.Nos.1 & 2 of 2014 and 1 of 2015

M/s. Ramjee Leathers & Supplies
a registered firm rep. by its partner
Shri R.Damodaran,
No.118/4, General Patters Road,
Chennai - 600 002 ... Petitioner

Vs

1. The District Registrar,
Revenue Corporation Annex
Kamaraj Salai,
Saram,
Puducherry - 605 013

2. The Sub-Registrar,
No.10, Ground Floor,
Taluk Office Back side,
Revenue Complex,
Bahour,
Puducherry - 607 402. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 to 2 to accept the value fixed by this Court in order dated 09.04.2014 in C.A.No.135 of 2012 in C.P.No.141 of 1999 as the market value of the property conveyed under the Sale Deed dated 16.04.2014 pending on the file of the 2nd respondent as Document NO.P-49/14 dated 04.07.2014 and register the same by assigning document registration number and consequently refund a sum of Rs.1,85,595/- collected excessively from the petitioner vide Registration receipt No.20910 dated 04.07.2014.

For Petitioner : Mr. C.S.K.Sathish

For Respondents : Mr. Gandhi Raja,
Spl. G.P. (Pondy)

ORDER

This writ petition has been filed seeking a direction to the respondents to register the documents by collecting stamp duty as per the value fixed in the Court auction sale, without demanding stamp duty on the market value of the property.

2. The case of the petitioner, in brief, is as follows:

The petitioner is a registered firm manufacturing and exporting leather jackets. The property, which is subject matter in the writ petition originally belongs to one Silical Metallurgic Ltd., Coimbatore, the above company has been wound up by the order passed by the Company Court, in C.P.No.141 of 1999, and the Official Liquidator attached to this Court was appointed as a Liquidator for the said Company. During the course of winding up proceeding, the above said property, measuring about 4.94 acres, comprised in Survey No.164/2, was brought for public auction, and the petitioner was declared as a successful bidder for a sum of Rs.1,63,00,000/-. The above sale was also confirmed by this Court, and, this Court directed the Official Liquidator to execute a sale deed in favour of the petitioner. Pursuant to the same, the Official Liquidator had executed a sale deed in favour of the petitioner on 16.04.2014 and also handed over the possession of the property on the same day. On the very same day, the Official Liquidator also addressed a letter to the second respondent, Sub-Registrar at Bahour, Pondicherry, to register the sale deed. In continuance of the above letter, the petitioner has also purchased a Electronic Stamp Certificate for a sum of Rs.16,30,000/-, towards Stamp duty payable on the sale deed to the Government of Pondicherry. When the petitioner produced the Electronic Stamp Certificate, before the second respondent, the second respondent refused to register the sale deed on the ground that the property has been undervalued, as the market value of the property is around 5,37,37,000/- and demanded additional stamp duty of Rs.53,73,700/-. Then, the petitioner approached the first respondent, and sent a representation to register the document accepting the value mentioned in the sale deed as it is a Court Auction purchase. Thereafter, the second respondent accepted the sale deed for registration, but only registered the same as pending document in P-49/14 dated 14.07.2014 and refused to return the sale deed.

3. According to the petitioner, he has paid stamp duty as per the value fixed by this Court in the Company Petition, and the sale consideration was fixed by this Court in a open public auction sale and the petitioner was the highest bidder. As the auction has been conducted under the supervision of this Court, this Court also confirmed the auction sale, there is no reason to believe that the property has been under valued and there is no willful suppression of market value of the property. Hence, the respondents cannot invoke the provisions of Section 47(A) of the Act. In the above circumstances, the present writ petition has been filed for the relief stated above.

4. The respondents filed a counter affidavit stating that, the above land was a Government Poramboke channel as per the GLR of the year 2013-14. The Sub-Collector (Revenue) has communicated the GLR value at Rs.250/- per square feet, and the total value of the property comes to Rs.5,38,00,000/- and hence, the value of the stamp duty was worked out to Rs.53,80,000/- by the Sub-Registrar, Bahour, and informed the same to the petitioner to pay the stamp duty as per the guideline

value on the date of registration. But the petitioner insisted to register the document as per the auction value. However, the second respondent has admitted the document as a pending document and collected the stamp duty on the auction value and keeping the matter pending registration and the stamp duty will be assessed under Section 47-A of the Stamp Act. The Sub-Registrar has informed the petitioner that the document will be regularized only after remitting the stamp duty as per the prevailing value fixed by the Government on the date of registration.

5. According to the second respondent, the value fixed by the Government as per the GLR value will be reckoned for collecting stamp duty by the concern Sub-Registrar. The petitioner under valuing the property and trying to evade stamp duty by presenting a wrong notion to the Court. The Sub-Registrar has to take the highest prevailing value as on the date of registration, and the decree obtained by the petitioner from this Court only pertains to the registration of the document and not to curtail the applicable stamp duty. It is for the petitioner to

approach the Collector in case of any increase in GLR value as per Section 47-A of the Stamp Act and if the value shown by the petitioner is accepted, there will be a serious loss to the Government.

6. The respondents also referred the various judgment of the Hon'ble Supreme Court and this Court to the effect that stamp duty has to be paid as per the guideline value of the property on the date of registration.

7. I have heard Mr. C.S.K.Sathish, learned counsel appearing for the petitioner and Mr. Gandhi Raja, learned Special Government Pleader (Pondy), appearing for the respondents and perused the materials available on records carefully.

8. The issue arises for consideration in the writ petition is that, whether the stamp duty payable for the instrument on the value fixed in the Court Auction sale, or on the prevailing guideline market value on the date of registration. It is an admitted case that the sale deed, sought to be registered is

relating to a property, which was purchased in the Court auction sale conducted by the Official Liquidator, pursuant to the order passed by the Company Court in C.A.No.135 of 2012 in C.P.No.141 of 1999. The petitioner was the highest bidder for a sum of Rs.1,63,00,000/- and this Court by an order dated 09.04.2014 in the Company Application in C.A.No.135/138 of 2012, accepted the offer made by the petitioner and confirmed the sale in favour of the petitioner subject to payment of balance amount. On payment of the remaining amount, this Court directed the Official Liquidator to execute the sale deed. Pursuant to the order passed by this Court, after deposit of the entire bid amount, the Official Liquidator executed a sale deed for a sum of Rs.1,63,00,000/-, and the sale deed was also sent to the second respondent by the Official Liquidator for due registration. Admittedly, the petitioner has paid entire stamp duty based on the value shown in the sale deed executed by the Official Liquidator. Now, the second respondent refused to accept the value of the property as given in the sale deed, insisting the petitioner to pay the stamp duty as per the prevailing guideline value fixed by the Government on the date of registration.

9. Mr. Sathish, learned counsel appearing for the petitioner would submit that the value shown in the sale deed is a value fixed by the Court and the registration authority ought to have accept the value of the property and the respondents cannot insist the petitioner to pay the stamp duty on the guideline value or the market value prevailing on the date of registration. The property has been purchased in the Court auction sale, and the respondents cannot insist the petitioner to pay the stamp duty for the value other than the value fixed by the Court, which amounts to exceeding the jurisdiction of the registering authority. The respondents/ Registering authority cannot invoke the provisions of Section 47-A of the Stamp Act, in the absence of any willful under valuation of the property with a fraudulent intention to evade the payment of proper stamp duty. It is further submitted that even though no order has been passed under Section 47 A of the Act, the counter affidavit filed by the respondents clearly shows that the respondents are demanding stamp duty based on the prevailing guideline value as fixed by the Government. In

support of his contention, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court reported in **2009 (7) SCC 438 (V.N.Devadoss /vs/ Chief Revenue Control Officer -cum- Inspector and others),** a Division Bench Judgment of this Court reported **in 2014-3 LW 865 (The Inspector General of Registration, Registration Department, Santhome High Road, Chennai and oters /vs/ K.P.Kadar Hussair and others), and** another judgment in **Srinivas /vs/ Sub-Registrar in W.P.No.29413/2007 dated 21.12.2009.**

10. Per contra, the learned Government Pleader (pondy), appearing for the respondents would vehemently contend that, the petitioner cannot relied upon the value fixed in the Court Auction Sale as a value of the property and he has to pay the stamp duty as per the prevailing value fixed by the Government as on the date of registration. That apart, the writ petition itself is pre-mature, since the second respondent has not passed any order fixing the value of the property and also the stamp duty payable on the instrument. Without any order being made under

Section 47-A of the Act, the petitioner ought not to have approached this Court. The sale deed has been executed by the Official Liquidator, the Official Liquidator cannot be considered as a Civil Court, and the sale deed executed by the Official Liquidator cannot be considered as a sale deed executed by the competent Court. The sale deed executed by the Official Liquidator does not fall under Section 17(2)(xii) and Section 89(2) of the Indian Registration Act and article 18 of First Schedule of Stamp Act. That apart, even though the Company Court has fixed the upset price of Rs.2,75,00,000/-, the petitioner offered only Rs.1,63,00,000/-, which is below the amount fixed by the Company Court. So it is clear that the property is thoroughly under valued the property and the petitioner is not entitled for return of document without paying the entire stamp duty payable on the market value of the property . The learned Government Pleader (Pondy) also relying upon the following judgments to support his contention:-

1. 2008 (1) CTC 60 (SC) (State of Rajasthan /vs/ Khandaka Jain Jewellers)

2. 2007 (3) SCC 79 (Raymond Ltd., /vs/ State of

Chandigar)

3. 2017 (6) CTC 449 (Division Bench, Madras High Court) (Spl. Deputy Collector (Stamps) /vs/ M.Alfred)

4. 2010 (2) CTC 113 (Madras High Court) (In Re, the Official Liquidator, High Court, Madras)

11. I have considered the rival submissions and perused the materials available on records carefully.

12. Section 47-A of the Stamp Act as amended by Pondicherry Amendment Act 21/1970, reads as follows:-

"47-A (i) If the registering officer appointed under the Indian Registration Act, 1908, (Central Act 16of 1908), while registering any instrument of conveyance, exchange or gift has reason to believe that the market value of the property which is the subject matter of conveyance, exchange or gift 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.

2. ......

3. ......

4. ......

5. ......

Explanation : For the purposes of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange or gift."

13. A perusal of the above provision, it is clear that the registering authority, while registering any instrument of conveyance, has reason to believe that the market value of the property has not been truly set forth in the instrument, after registering the instrument refer the same to the Collector for determination of the market value of the property and also stamp

duty payable on it. The very basis for exercising power under Section 47-A of the Act is that, there is a willful under valuation of the property, coupled with fraudulent intention to evade payment of proper stamp duty.

14. In the instant case, the property has been purchased in an auction sale conducted by the Official Liquidator pursuant to the order passed by the Company Court in a company application in C.A.No.135 of 2012 in C.P.No.141 of 1999. In the above said public auction, the petitioner was the highest bidder, and auction sale was also accepted by the Company Court, and the Court also directed the Official Liquidator to execute the sale deed. Pursuant to the same, the present sale deed has been executed. In the above circumstances, there is no question of any willful undervaluing the property, and it is also cannot be held that, the petitioner has any fraudulent intention to defraud the Revenue. In the similar circumstances, the Hon'ble Supreme Court in **Devadass /vs/ Chief Revenue Control Official** reported **in 2009 (7) SCC 438** has held a follows :

" 16. Market value is a changing concept. The Explanation to sub-rule(5) makes the position clear that (sic market) value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the revenue or non-disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AAIFR and that too on the basis of value fixed by Assets Sales Committee. The view was expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, debenture-holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any undervaluation and therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that BIFR was

only a mediator. "

15. In a similar circumstance, the Division Bench of this Court in **2007(5) CTC 60 (Devi Narayanan Housing Developmetn Pvt. Ltd. rep. by its Managing Director, N.Nandakumar, /vs/ The Inspector General of Registration)** has held that as per the explanation to Section 47-A of the Act, the amount fixed by the Court in a Court auction sale should be treated as a market value of the property. The relevant portion of the judgment reads as follows :

> *"On a reading of the explanation to Section 47-A(1), it is clear that for the purpose of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or fetch of sold in the open market on the date of execution of the instrument of conveyance, (exchange, gift , release of benami right or settlement). In the instant case, as discussed earlier, the value of the property has*

been fixed in the court auction sale and therefore, the amount fixed by this Court for the property is the value to be taken to determine the market value and this is in accordance with the explanation to Section 47-A(1) of the Act. "

16. Considering the above judgment, it is clear that the value fixed in the Court auction should be treated as a market value of the property as per the explanation to Section 47-A(1) of the Stamp Act and the respondents cannot fix the value other than the value fixed by the Court Auction sale and demand the stamp duty on that.

17. In the counter filed by the respondents, it is clearly stated that the second respondent fixed the market value of the property as per the guideline value fixed by the Government and demanded the stamp duty on that, and worked out the value of the property at Rs.53,80,00,000/- and demanded the stamp duty at Rs.53,80,000/-. As the respondents have fixed the market value of the property and the stamp only payable on it, now it

cannot be contended that the writ petition is pre-mature.

18. The next contention of the learned Government Pleader is that, the auction conducted by the Official Liquidator cannot be considered as a Court Auction sale. The Official Liquidator has only conducted the auction pursuant to the order passed by the Company Court in C.A.No.135 of 2012 in C.P.No.141 of 1999 and it is only an auction conducted by a Company Court through the Official Liquidator. Subsequently the sale has been confirmed by the Company Court and the Official Liquidator has acted only as original owner of the property, and as per the direction of the Company Court, the Official Liquidator has executed the sale deed. That apart, the document sought to be registered is only a sale deed and not a sale certificate, hence the provisions of Article 18 of the Schedule to the Indian Stamp Act is not applicable to the present case. So far as the judgments relied upon by the learned Government Pleader are concerned, those judgments are relating to the registration of the documents based on the sale agreement, and in those cases, Courts have held that the Stamp duty is not payable on the value mentioned

in the sale agreement, but on the market value prevailing at the time of registration of sale deed, and those judgments do not apply to the facts of the present case.

19. In the above circumstances, I am of the considered view that the respondents cannot demand stamp duty based on the market value fixed by the Government prevailing on the date of registration, but only on the value fixed in the Court auction sale.

20. Consequently, the writ petition is allowed and the second respondent is directed to register the document by accepting the value fixed in the auction sale, and by collecting stamp duty as per the value mentioned in the sale deed. No costs. Consequently, connected miscellaneous petitions are closed.

.02.2019

Index:Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
mrp

To

1. The District Registrar,
   Revenue Corporation Annex
   Kamaraj Salai,
   Saram,
   Puducherry - 605 013

2. The Sub-Registrar,
   No.10, Ground Floor,
   Taluk Office Back side,
   Revenue Complex,
   Bahour,
   Puducherry - 607 402.

V.BHARATHIDASAN,J.

mrp

Pre-delivery order

in

W.P.No. 20262 of 2014

and

M.P.Nos.1 & 2 of 2014

and 1 of 2015

15.02.2019