IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.12.2019
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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14155 of 2017
and WMP.No. 15354 of 2017

T.M.Nithyanandam .. Petitioner

-vs-

1. The Special Tahsildar (Stamps),
Office of the District Revenue Officer (Stamps),
District Collector Office, 5th Floor,
Singaravelar Maligai, 32, Rajaji Salai,
Chennai – 600 001.

2. The Sub Registrar of Assurances,
Ambattur, Chennai – 600 053. .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to release the Sale Deed dated 07.01.2014 vide Document No. 980 of 2014 which was executed by the learned Principal District Judge, Thiruvallur Sequel to Court auction sale, within the timeframe to be stipulated by this Hon'ble Court.

For Petitioner : Mr.T.S.Rajmohan

For Respondents : Mr.P.P.Purushothaman
Government Advocate

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ORDER

Heard Mr.T.S.Rajmohan, learned counsel appearing for the petitioners and Mr.P.Purushothaman, learned Government Advocate appearing for the respondents.

2.With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed praying for issuance of a Writ of Mandamus, directing the respondents to release the sale deed dated 07.01.2014 registered as document No. 980 of

2014 executed by the learned Principal District Judge, Thiruvallur.

4. Trust O.P.No. 172 of 1993 was filed by the Managing Trustee of one Mr.Paramasiva Chettiar Trust on the file of the Principal District Court, Chengalpattu, seeking permission to sell the trust property, which is a immovable property situated at bearing No.35-40, 116 & 120, Chennai-Tiruvallur Highway Road in survey No.200/1C1.

5. The Court appointed an Advocate Commissioner to sell the property by Court auction and in the auction the petitioner was one of the person, who participated and was declared as the highest bidder and a report to the said effect was filed by the Advocate Commissioner on 31.07.1998. The petitioner had purchased the property for a sum of Rs.3,90,000/- (Rupees Three lakh ninety thousands only) and the entire amount has been deposited by the petitioner to the credit of trust OP.172 of 1993 in the year 1998. The trust OP was disposed of by the Court on 31.07.1998 with a direction to execute the sale deed and the draft sale deed was filed before the Court and the same was approved. The Managing Trustee of the said trust passed away before executing the sale deed and after his demise, one other, by name Sivaramakrishna Chettair was appointed as Managing Trustee, who did not come forward to execute the sale deed. Therefore, the petitioner filed interlocutory application in I.A.No.968 of 2008 in trust OP. 172 of 1993 for execution of the sale deed and the said petition was allowed by order dated 01.02.2010, after which, the petitioner is stated to obtain the stamp duty leviable on the sale deed and the report was submitted by the Sub-Registrar, Ambattur on 06.02.2012. The petitioner is stated to produce the sale deed for approval of the second respondent and after purchasing the necessary stamp papers, the same was deposited before the Principal District Court.

6. After the sale deed was prepared it was executed by the Principal District Judge, Thiruvallur on 07.01.2014 and presented for registration before the second respondent, who registered the sale deed as document No.980 of 2014. However, the Sub-Registrar has informed the petitioner that the value of the property has been showed lesser than the guideline value and therefore, if the petitioner has to deposit stamp duty of Rs.15,61,880/- (Rupees Fifteen Lakh Sixety one thousand and eight hundred and eighty only). The question would be whether the petitioner is required to pay the stamp duty by calculating the sale based on the guideline value of the area on the date when the sale deed was presented for registration. This issue is no longer res-integra and has been considered by the Division Bench of this Court. The decision is in the case of S.P.Padmavathi Vs. State of Tamil Nadu and ors. [reported in AIR

(1997) Madras 295(1)] wherein, it was held that the power under Section 47-A of the Stamp Act can only be exercised when the Registering Officer has reason the believe that the market value of the property, which is the subject of conveyance has not been truly set forth, with a view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement and the execution of the document 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 Stamp Act unless there is lack of bona fieds 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. Yet another decision of the Hon'ble Division Bench of this Court is in the case of Inspector General of Registration and 3 ors. Vs. K.P.Kadar Hussain [W.A.Nos.1436, 1437/2013, W.A.Nos.1770 to 1773/13, W.A.Nos.1921, 1922/2013 and W.A.Nos. 2026 of 2013]. In the said judgment, the decision relied on by the Government Advocate before this Court in the case of State of Rajasthan Vs. V.Khandaka Jain Jewellers [reported in 2007 14 SCC 339] was also taken into consideration and after referring to various decisions of the Hon'ble Supreme Court and the decision of Hon'ble Full Bench of the Calcutta High Court in CA.No. 1660 of 2008 between The State of West Bengal Vs. Sati Enclave Private Limited and Ors.] dismissed the appeals filed by the Government and confirmed the direction in the writ petition holding that additional stamp duty cannot be levied and collected.

8. In the instant case admittedly, the Court had executed the sale deed because the property was owned by a trust. The Managing Trustee of the Trust had to move the District Court seeking permission to sell the property and the District Court had appointed an Advocate Commissioner to conduct public auction and petitioner is a highest bidder and the amount was remitted by the petitioner. Due to subsequent development, death of the Managing Trustee, etc., the execution of the sale deed was delayed, the petitioner was compelled to move an application in I.A.No.968 of 2008, which was allowed on 01.02.2010 and thereafter, the sale deed has been executed. Therefore, there is no ground to suspect any under valuation of the property or any fraudulent attempt on the part of the parties to evade payment of stamp duty.

9. In the light of the above, the respondent cannot demand additional stamp duty based on the above guideline value. For the above reasons, the writ petition is allowed as prayed for and the respondents are directed to release the sale deed dated 07.01.2014 registered as Document No.980 of 2014 under S.R.No.33 of 2014 without demanding any additional stamp duty within a

period of three weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(JJ ACT)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Tahsildar (Stamps),
   Office of the District Revenue Officer (Stamps),
   District Collector Office, 5th Floor,
   Singaravelar Maligai, 32, Rajaji Salai,
   Chennai - 600 001.

2. The Sub Registrar of Assurances,
   Ambattur, Chennai - 600 053.

+1 cc to Government Pleader Sr.No. 104027

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A.SK(07/02/2020)