BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.14346 of 2019
and W.M.P.(MD).No.10769 of 2019

Sugumari .. Petitioner

Vs.

The Sub Registrar,
Munjirai
Kanyakumari District. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent in Refusal No. RFL/Munjirai/24/2019, dated 06.06.2019, refusing to register the sale deed and imposing to pay 50% stamp duty at the market value of Rs.12,28,265/- determined by the respondent as pre-condition for Registration, quash the same and consequently direct the respondent herein to register the sale deed of the petitioner, dated 06.06.2019 and return the registered instrument in accordance with law.

For Petitioner : Mr.R.Russel Raj
For Respondent : Mr.V.Anand
Government Advocate

ORDER

This writ petition is filed to quash the impugned order of the respondent, dated 06.06.2019, refusing to register the sale deed and consequently, direct the respondent to register the sale deed presented by the petitioner, dated 06.06.2019 for registration.

2.It is admitted that the petitioner is a party to the sale deed, dated 06.06.2019, by which he purchased the property for a consideration of Rs.1,01,175/-. When the document was presented before the respondent for registration, the same was returned by the respondent with the following endorsement.

"*Reason for Refusal:*
1.*Others*: இந்த ஆவணம் 50 சதவீதம் சந்தை மதிப்பு போடாத காரணத்தால் திரும்ப வழங்கப்பட்டது."

3.The petitioner states that he has paid stamp duty of Rs.7,100/- as per the guideline value. However, the respondent has returned the document only on the ground of under valuation by stating that the document cannot be entertained as the petitioner has not valued the property less than 50% of the market value. The market value is not determined by the Sub Registrar, at the time of registering any instrument. By the impugned order, the respondent indirectly compel the petitioner to pay stamp duty more than the value shown in the document for registration of the document.

4.Section 47A of the Stamp Act reads as follows:

*"**47-A.Instruments of conveyance, etc., undervalued how to be dealt with.-** If the registering officer appointed under the Registration Act, 1908 (Central Act XVI if 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 matter 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.*

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules make under this Act, determine the market value of the property which is the subject matter of conveyance, [exchange, gift, release of benami right or settlement], and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) [The Collector may, suo motu or otherwise, within five years] from the date of registration of any instrument of conveyance, [exchange, gift, release of benami right or settlement], not already referred to him under Sub-Section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, [exchange, gift, release of benami right or settlement], and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that nothing in this sub-section shall *apply to any instrument registered before the date of commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.*

[(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 person 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.]

(5)Any person aggrieved by an order of the Collector under Sub-section (2) or sub-section (3), may appeal to such authority as may be prescribed in this behalf. All such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

(6)The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit.

(7)The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if,--

(a) the time for appeal against that order has not expired; or

(b)more than five years have expired after the passing of such order.

(8) No order under sub-section (6) adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard,

(9)In computing the period referred to in clause (b) of sub-section (7), the time during which

the proceedings before the Chief Controlling Revenue Authority remained stayed under the order of a Court shall be excluded.

(10)Any person aggrieved by an order of the authority prescribed under sub-section (5) or the Chief Controlling Revenue Authority under sub-section (6) may, within such time and in such manner, as may be prescribed by rules made under this Act, appeal to the High Court.]

[(11)Where the duty paid is found to be in excess as a result of an order passed on appeal or revision, the excess duty paid shall be refunded.]"

5.Hence, it is the duty of the Registering Officer, to verify whether the document is under valued, only after accepting the document of registration. Even if the document is under valued, Registrar has to register it and then refer the document to the Collector for determination of market value of the property dealt with under the document. Further procedure will have to be followed once reference is made under Section 47A(1) of the Act.

6.In the present case, the document itself was returned for non payment of sufficient Stamp duty, which cannot be permitted in view of the express provisions of Stamp Act. Hence, this Court is of the view that the impugned order is un-sustainable. Accordingly, the impugned order of respondent, dated 06.06.2019, refusing to register the sale deed is quashed. The respondent is directed to accept the sale deed for registration and refer the same to the District Collector in case the document is under valued.

7.With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

TM

To

The Sub Registrar,MunjiraiKanyakumari District.

+1 CC to M/s.R.RUSSEL RAJ, Advocate (SR-104572[] dated)

+1 CC to M/s.SPL.GP (SR-104654[F] dated 12/12/2019)

W.P.(MD).No.14346 of 2019

11.12.2019

SMA/20/12/19/4P/4C