

ORDER SHEET

WPO 211 of 2020
IA No. GA 1 of 2020
(Old GA 914 of 2020)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BIMAL KUMAR DUTT
Versus
STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : October 19, 2020.

(Via Video Conference)

Appearance:
Mr. Suman Dutta, Adv.
Ms. Madhurima Sarkar, Adv.
Mr. Saptarshi Chakraborty, Adv.
...for the Petitioner

Mr. Sirsanya Bandyopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.
... for the State

Mr. Sakya Sen, Adv.
Mr. Aniruddha Mitra, Adv.
Mr. Dhilon Sengupta, Adv.
Mr. Anirban Ghosh, Adv.
...for the Respondent nos. 5 to 7

The Court : Despite direction of this Court, no affidavit-in-opposition has been filed by the State respondents. The petitioner is aggrieved by the inaction on the part of the registering authorities, i.e., Registrar of Assurances, Kolkata, Government Place North, Kolkata-700001 and Additional Registrar of

Assurances-II, Government Place North, Kolkata-700001 being the respondent nos. 3 and 4, in registering the property purchased by the petitioner at an auction held by the High Court. Reference is made to page 30 of the application from which it appears that the petitioner was sold the property by a Court sale at an offer of Rs.92 lakh. It was also recorded in the order dated September 24, 2018 that as the property was sold after advertisements, the registering authority shall take the consideration price as the market value for the purpose of registration of the property in question. All costs, charges and expenses for registration shall be borne by the buyer. Subsequently by another order, the petitioner was asked to pay a sum of Rs.5 lakh towards compensation for the delay in tendering the consideration amount to the trustees, i.e., the erstwhile owner of the property. By the said order dated 13th March, 2020, this Court again directed that the time to execute the conveyance was extended by a period of six weeks subject to the payment to be made in terms of the order. Thereafter, the petitioner paid the compensation to the trustees, i.e., the respondent nos. 5 to 7 herein and also represented before the authorities through the learned advocate on August 21, 2019 for registration of the deed of conveyance taking the amount of consideration as Rs.92 lakh. Such representation of the petitioner's advocate went unattended and another representation was made on September 11, 2019. Thereafter by a letter dated October 3, 2019, the Additional Registrar of Assurances-II, Kolkata intimated the learned advocate of the petitioner that the learned advocate should appear with all documents for hearing and verification of the Hon'ble High Court's order. The learned advocate for the petitioner appeared

before the concerned authority with documents and the order of the High Court. Thereafter, the Additional Registrar of Assurances-II, Kolkata by a letter dated November 23, 2019 sought legal opinion from the Inspector General of Registration and Commissioner of Stamp Revenue. It was stated in the said letter that the market value of the property was Rs.5,34,09,258/- as per the valuation report of the valuer. The query of the said Additional Registrar of Assurances-II, Kolkata was that whether the market value as decided by the High Court on September 24, 2018 would be acceptable despite the market value determined by the valuer of the State respondents to be much higher. The Additional Registrar of Assurances-II, Kolkata, was of the view that the stamp duty should be charged on the present market value of the property.

It is submitted on behalf of the petitioner that once the Hon'ble Court had decided that registration should be done on the basis of the consideration money paid in the Court sale, it was not open for the respondents to raise the query as to the market value of the property.

Mr. Bandyopadhyay, learned Junior Standing Counsel submits that the State of West Bengal was not a party to the Court sale and as such could not raise any objection to the direction passed by the Court to treat the consideration money as the market value of the property and charge stamp duty thereon. He submitted that the registering authority had the right to exercise power under Section 47A of the Indian Stamp Act, 1899 and fix its own market value to avoid under-valuation of instrument under the provisions of West Bengal Stamp (Prevention of Under-valuation of Instruments) Rules, 2001.

It, however, appears that the State of West Bengal despite being aware of this order has not taken steps to either prefer any appeal or a review against the order of this Court dated September 24, 2018. Unless the said order is modified, vacated or set aside in any appeal, the decision of the coordinate Bench to take the consideration money of Rs.92 lakh as the market value of the property at the time of registration of the conveyance deed cannot be interfered with by this Court sitting in a coordinate jurisdiction. The respondents were open to proceed against the said order in accordance with law but if the same has not been done and the order has been allowed to stand for two years, then the order dated 24th September, 2018 shall be treated as final on the point of the market value of the property in question for the purpose of fixation of stamp duty. This is a point which cannot be improved by way of affidavits. The State respondents cannot sit in appeal over the decision of this Court.

Reliance was placed by the petitioner in the decisions of *State of West Bengal vs. Sati Enclave Pvt. Ltd. & Ors.* reported in 2010(3) CHN (CAL) 651. Paragraph 29(1) of the said decision is quoted below:-

“29. In view of the above discussion, our conclusions are as under;-

(1) On a correct interpretation of the provisions of section 47A read with section 2(16A) of the Indian Stamp Act, 1899 as applicable to the State of West Bengal and the West Bengal Stamp (Prevention of Under-valuation Instruments) Rules, 2001, the sale conducted by the Court or conducted by the Court through its officers which qualifies to be an open market sale as contemplated in section 2(16B) of the Act cannot be the subject-matter

of exercise of powers by the registering authority under sub-sections (1) & (2) of section 47A of the Act.”

It also appears from the records that this sale in question qualifies to be a open market sale because it was done by publication of an advertisement and the purchaser of the property was not connected with the authority conducting the sale.

Under such circumstances, the writ petition is allowed. The letter dated November 23, 2019 is set aside. The respondents are directed to generate the query for the registration of the deed of conveyance of the property being no. 197, Bipin Behari Ganguly Street, Bowbazar, Kolkata-700012 in favour of the petitioner treating the market value of the same as fixed by this Court in its order dated September 24, 2018 and reiterated in the order dated 13th March, 2020.

Parties to act on the server copy of this order.

(SHAMPA SARKAR, J.)

sg.