IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

Date : 27.08.2020

THE HONURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.21618 & 24238 of 2019 &
W.M.P.Nos.20839, 20841, 24002 & 24003 of 2019

M/s.Kaavya Constructions and Developers Pvt. Ltd.,
Represented by its Directors Mr.Prem Kumar,
No.11/27, Perumal Koil Street,
Rajankuppam, Ayanambakkam, Chennai - 600 095.
... Petitioner in both writ petitions

vs.

1. The Deputy Director (Stamps)
Singaravelar Maligail, District Collector Office, Chennai.

2. The Inspector General Registration [Documents]
Santhome High Road, Mylapore, Chennai.

3. The Sub Registrar [In charge]
Sub Registrar Office, Poonamallee, Chennai.
... Respondents in both writ petitions

Prayer in W.P.No.21618 of 2019 : Writ Petition filed under Article 226 of the Constitution of India seeking to issue Writ of Mandamus directing the 3rd respondentto remove the deficit stamp dutyentries made in the Encumbrance Certificatebased on the Audit Remark copy of the 3rd respondent for the petitioner property situated at Vayalanallur in Thirumanam Village, Poonamallee, Chennai comprised in Old Survey No.389/2 [new Survey No.389/2B] 389/3, 389/1(New Survey No.389/1B) Registered as documennt Vide sale deed dated 14/05/2013, 10/05/2013, 14/05/2013 in document number 1842/2013, 1799/2013, 1843/2013, before sub Registrar office Ponnamalle Chennai.

Prayer in W.P.No.24238 of 2019 : Writ Petition filed under Article 226 of the Constitution of India seeking to issue Mandamus directing the 3rd Respondent to remove the deficit stamp duty entries made in the Encumbrance certificate of the Petitoner Vendor Title document comprised in Survey No. 386/6 and Survey No. 389/3 Registered as document number 1771 of 2013 before Sub Registrar office Ponnmalle Chennai.

For Petitioner : Mr.Arun Anbu Mani

For Respondents : Mr.T.M.Pappaiah
Special Government Pleader

COMMON ORDER

The issue involved in both the writ petitions are common and therefore, they are taken up together and this common Order is passed.

2. The writ petition in W.P.No.21618 of 2019 is filed by the owner of the property and W.P.No.24238 has been filed on behalf of the previous owner of the property. In both the writ petitions the entires made in the encumbrance certificate towards deficit stamp duty and registration fee while registering 4 documents to the tune of Rs.7,30,372/-, Rs.8,42,824, Rs.7,19,480/- and Rs.7,78,876/- respectively, by the owner of the subject property has been called in question.

3. The petitioner purchased the propery by virtue of a sale deed executed in the year 2013 by the previous owner of the property. When the same was submitted for registration before the third respondent, it was also registered. The petitioner also took steps to develop the property and approval was also obtained from the concerned authorities. The plots were sold to different persons. When it was sought to be registered, the petitioner found that entries have been made in the encumbrance certiificate to the effect that there is deficit stamp duty payable with regard to the property as per the audit report.

4. The learned counsel for the petitioner submitted that the sale deeds were executed in the year 2013 and till date no notice has been issued under section 41 A of the Indian Stamp Act. As per Section 47A of the Act, the respondents have to initiate proceedings within the period fixed and the last document has been registered on 19.05.2013 and even if that date is taken into consideration, the period of limitation comes to an end on 19.05.2018. Therefore, the learned Counsel submitted that what the respondents were not able to acchieve directly is now sought to be achieved indirectly by making an entry in the encumbrance certificate and thereby, the petitioner is prevented from dealing with the property and none of the documents are registered when it is presented before the third respondent.

5. The third respondent had filed a counter affidavit in both the writ petitions. The relevant portions in the counter affidavit filed in W.P.No.21518 of 2019 is extracted hereunder.

> "3. This respondent reverently submits that the aaverments of the petitioner that lead to filing of this Writ Petition are that the

Petitioner Company Purchased lands through three sale deed from Smt.J.Shanthi represented by her General Power Agent, S.Mohanraj, registered as Doct.No.1799, 1842 and 1843/2013 on the file of the 3rd respondent. The registering officer after satisfying that there is no undervaluation committed by this Petitioner returned the above said three sale deeds. Subsequently based on the three sale sale deeds the said properties were ploted into housing layout and got the approval of CMDA on 25-09-2018 on the file of CMDA No.REGL/4412/2018. When the petitoner applied for encumbrance cerificate a note was made in each of of the aforside documents that a defecit stamp duty and regitration fee as per the audit report of the Account General is due to be paid i.e. Doct.No.1799/2013 - Rs.7,19,480/-, Doct.No.1842/2021- Rs.7,30,272/- and Doct.No.1843/2013- Rs.8,42,824/-. No action was taken under section 47-A(3) of the Indian Stamp Act, 1899 or notice has been recited in this regard from the 1st respondent. The statutory period for taking action under section 47-A(3) lapsed. Aggreived on the note made in Index-II of the defict stamp duty and fee liable to be paid for each document the Petitioner filed this Writ Petition seeking removal of such entries.

5. With regard to the averments made in Para 5 of the affidavit it is respectfully submitted that the 2nd resopondent Inspector General of Registratioin has inheritant powers under section 69 of the Registration Act, 1908 to issue circulars. One such circular is issued in No.2/2012 (File No.251/C1/2012) dated.24-05-2015 directing the registering offices to make foot note as to the deficit stamp duty and fee, if any, due to be paid based on the audit objection of the Accountant Genreal of Tamil Nadu in the relavant copy of document and also in the Index-II so as to reflect in the encumberance certificate in order to alert the subsequent purchasers from purchasing the property and also the registering officers from enteraning further registration unless the deficit stamp duty and regestration fee are paid.

6. With regard to other averments made in para 6 of the affidavit it is respectfully submitted that the 1strespondent willissue notice in this regard under section 47-A of the Indian Stamp Act 1899. Hence, the contention of the petitioner is not sustainable in law.

9. With regard to grounds made out by the petitioner in the affidavit it is respectfully submitted as under :-

a) With regard to ground (A) it is respectfully submitted that the action of this respondent in making entries of liability of payment of deficit stamp duty and fee to each document as per the audit observation as foot note is in accordance with the circular of the Inspector General of Registration submitted supra.

b) With regard to ground (B) and (C) it is respectfully submitted that if an instrument undervalued which is found out after registration and return of the document, the registering officer can invoke Section 47-A (3) of the Indian Stamp Act, 1899 within five years from the date of coming into knowledge of the registering officer of the undervaluation. The petitioner has suppressed the fact of approval by the CMDA for the layout formed comprising of the property conveyed under this document. As the petitioner has suppressed the said fact of approval which affects the chargeabily of the sale deed with duty with intention to defraud the Government, the petitioner is liable to be prosecuted under Section 64 read with Section 27 of the Stamp Act. However, without prosecuting the petitioner, the document has been simply referred to the first respondent under section 47-A (3) for determination of the market value and collection of difference in stamp duty, if any, on such determination.

c) With regard to ground (D), it is respectfully submitted that the petitioner while purchashing the property adopted the agricultural value but in respect of adjoining survey number the petitioner sold the house site at Rs.200/- per sq.mt. Hence, the failure on the part of the petition to adopt the site value of Rs.200/- per sq.mt. For the three sale deeds lead to loss of revenue to the exchequer. Hence, the contention of the petitioner has no mertis and as such the writ petition is liable to be dismissed.”

The relevant portions of the counter affidavit filed in W.P.No.24238 of 02019 is extracted hereunder :

“ 3. This respondent reverently submits that averments of the petitioner that leads to filing of this writ petition are that the petitioner company purchased land measuring 36 cents in Survey No.386/6 in Vianalur - B in Thirumanam Village through sale deed No.1972 of 2013 on the file of the third respondent. Likewise, another extent of 1.34 acres in Survey No.389/3 in the same village through sale deed No.1799/2013 on the file of this respondent since there is deficit stamp duty and registration fee to the tune of Rs.7,78,876/- as per the audit of the Accountant General of Tamilnadu, payable due to undervaluation of the prior sale deed, i.e., the sale certificate issued by Mrs.Shanthi rep. By her agent S.Mohanraj by State Bank of India under SARFAESI Act registered as Doct.No.1771/2013 [petitioner's vendor's document], the said liability to the tune of Rs.7,78,876/- is noted in the index so as to reflect in the encumbrance certificate. Aggrieved on the same, the petitioner filed this writ petition.

5. With regard to the averments made in para 5 to 8 of the affidavit it is respectfully submitted that since the sale certificate issued to the vendor of the petitioner by SBI under SARFAESI Act, registered as Doc.No.1771/2013, there was a undervaluation and as such there is loss to Government by way of stamp duty and registration to the tune of Rs.7,78,876/- as pointed out by the Accountant General of Tamilnadu in the year 2014. Hence, unless the aforesaid deficit stamp duty fee paid are paid further document for registration can be entertained by the respondent.

7. With regard to other averment made in the affidavit it is respectfully submitted that the guidelines is prima facie evidence as market value of the property and the same has to be adhered by the registrants. In the instant case, the petitioner has not verified before buying the property in question that its vendor has correctly adopted the value of the property as per guidelines register. The petitioner has failed to do so. The second respondent Inspector General of Registration has inherent power under section 69 of the Registration Act, 1908 to issue circular. One such circular issued in No.2/2012 [file No.251/C1/2012] dated 24.05.2012, the registering officers to make footnote as the deficit stamp duty and fee, if any, due to be paid based on the audit objection in the relevant copy of document and also in Index-II so as to reflect in the encubrance certificate in order to alert subsequent purchaser from purchasing the property and also registering officers from entertaining further registration unless the deficit stamp duty and registration fee are paid. Hence, the action of this respondent in making stamp duty and fee liability payable to sale certificate No.1771 of 2013 is in accordance with law and of the inherent power of the Inspector General

Registration, the second responsent's circular. Hence, there is no merit on the contention of the petitioner and as such the writ petition is liable to be dismissed.”

6. Mr.Pappaiah, Special Government Pleader appearing on behalf of the respondent submitted that the audit report of the Accountant General pointed out the fact that there was a deficit stamp duty and registration fee payable with regard to the subject property. The learned counsel further submitted that the petitioner at the time of registration of the document had adopted the value treating the property as agricultural land and suppressed that the adjoining survey number, prior to registration of the sale deed had been sold as a house site and the site value ought to have been adopted for the purpose of determining the stamp duty and registration fee. The learned counsel further submitted that the Government has been put to a huge loss due to under valuation of the property and therefore, left with no other option, necessary entries were made in the encumbrance certificate to ensure that the deficit stamp duty is collected from the petitioner.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. The main issue that requires to be gone into by this Court in the above writ petitions is as to whether the deficit stamp duty and registration fee that is alleged to be payable by the petitioner can be recovered without issuing a notice under section 47A of the Indian Stamp Act and conducting any enquiry and even if such notice is issued now, whether it will fall within the limitation prescribed under section 47A (3) of Act.

9. It will be beneficial to extract Section 47A of the Indian Stamp Act 1899 hereunder :

"47-A. Instruments of conveyance, etc., under-valued, how to be dealt with.--

(1) If the registering officer appointed under the Indian 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 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 made 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, 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 the commencement of the Indian Stamp (Madras 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 two percent 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."

10. A careful reading of the above provision shows that when the market value of the property, which is the subject matter of the conveyance, has not been truly set forth, it is open to the Sub Registrar to refer the document to the Collector for determination of the market value of the said property. In the present case, the third respondent at the time of registration of the document did not raise any such objections and had proceeded to register the sale deeds and the documents were also released. This had happened in the year 2013.

11. Only during the audit, the objection was raised by the Accountant General of Tamilnadu in the year 2014-2015. The objection seems to be that the property was treated as an agricultural land, whereas it was used for the purpose of developing a layout and therefore appropriate site value should have been determined by taking into account the market value and the stamp duty and registration fee should have been paid thereon . Therefore, the next question is, on such audit objection, what will be the recourse for the respondent to be followed for the purpose of recovering the stamp duty. Section 47A (3) gives sumotto power to the Collector to deal with such a situation and the said provision itself fixes the period of limitation of five years from the date of registration of the instrument. Even though the audit objection was made in 2014-2015, admittedly no proceedings have been initiated under section 47A (3) of the Act till date. Even in the counter affidavit it is stated that a notice will be sent to the petitioner.

12. In this case, the period of limitation comes to end on 13.05.2018, even considering the last sale deed that was executed in favour of the petitioner.

13. The learned counsel for the petitioner relied upon the following judgments to substantiate his submissions :

1. Harihar Alloys M. Ltd., Vs. The Inspector General of Registration and Others passed in W.P.(MD).No.9130 of 2018

2. K.Nachimuthu Vs. The District Registrar (Audit) and another, reported in 2015 SCC OnLine Mad 8022

3. E.Jayabarathi Vs. The Chief Controlling Revenue Authority and Others, reported in 2014 SCC Online Mad 1726

4. Thajunissa and another Vs. The Special Deputy Collector (Stamps), reported in 2073 (5) CTC 577

5. Karpagavinayaga Associates Vs. The Inspector General of Registration and Others, reported in 2014 (3) l4WN Civil 508

6. State of Uttar Pradesh and Others Vs. Ambrish Tandon and Another, reported in 2012 (5) SCC 566

7. The Special Deputy Colledor (Stamp), Cuddalore Vs. Chemlcals and Plastics Ltd., reported in 2004 (1) CLC 187

The learned counsel for the petitioner submitted that in all the above judgments, this Court had taken note of the sumotto power under section 47A (3) of the Act and it has been held that the said power cannot be exercised beyond the period of limitation. The above judgments will squarely apply to the facts of the present case also.

14. If the respondents have not exercised their power and authority to recover the deficit stamp duty from the petitioner, by initiating appropriate proceedings, the same cannot be attempted to be recovered indirectly by making an entry in the encumbrance certificate and thereby preventing any transactions from taking place without payment of the deficit stamp duty and registration fee. This Court cannot allow the respondents to indirectly achieve their purpose which they cannot directly achieve under the provisions of the Stamp Act. Therefore, the entires made in the encumbrance certificate will have to be reversed by the respondents.

15. In view of the above discussion, both the writ petitions are allowed and the third respondent is directed to reverse the entries made in the relevant records and reflected in the encumbrance certificate, by recording the Orders passed by this Court in the present writ petition. The process of reversing the entry shall be completed within a period of six weeks from the date of receipt of a copy of this Order. By such reversal of entry, there will be no prohibition for the petitioner or any other subsequent purchaser from submitting any document for registration and the same will be taken on file by the third respondent and it will be registered, if it is otherwise in Order. It goes without saying that the petitioner or any other subsequent purchaser will properly value the property and will pay the stamp duty and registration fee, as and when any document is presented for registration.

16. These Writ Petitions are disposed of with the above directions. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vrc

To

1. The Deputy Director (Stamps)
Singaravelar Maligail,
District Collector Office, Chennai.

2. The Inspector General Registration [Documents]
Santhome High Road, Mylapore, Chennai.

3. The Sub Registrar [In charge]
Sub Registrar Office, Poonamallee, Chennai.

+1cc to Government Pleader SR.No.28332

W.P.Nos.21618 & 24238 of 2019

PP(CO)
GMY(09/11/2020)