IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.A.No.1015 of 2020

L.Narayanan .. Appellant

Vs

1.The Inspector General of Registration,
No.120, Santhome High Road,
Santhome, Chennai – 8.

2.The Special Deputy Collector (Stamps),
Cuddalore.

3.The Special Tahsildar (Stamps),
O/o. District Collector.

4.The Sub-Registrar,
Nagalur, Kallakurichi Taluk,
Villupuram District.

5.The Revenue Tahsildar,
Kallakurichi. .. Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 47(a)(10) of Tamil Nadu Stamp Act, against the order made in Pa.Mu.No.18780/N3/2008, dated 20.06.2012, passed by the Principal Revenue Control Officer cum Inspector General of Registration, Chennai – 28.

For Appellant : Mr.S.N.Subramani

For Respondents : Mr.T.M.Pappiah, Spl.GP

JUDGMENT

The appellant/L.Narayanan has filed this Civil Miscellaneous Appeal challenging the impugned order dated 20.06.2012 passed by the first respondent/Inspector General of Registration, Chennai, in and by which, the request of the appellant to fix Rs.12/- per sq.ft. as guideline value for determination of the stamp duty was rejected.

2. Mr.S.N.Subramani, learned counsel for the appellant submitted that initially, the appellant had filed a suit for specific performance in O.S.No.15 of 2002 on the file of District Munisf Court, Kallakurichi, based on the sale agreement dated 04.07.2001 entered between the appellant and one Deivanai Ammal. After hearing both parties, learned District Munsif was pleased to decree the suit on 04.02.2002. Subsequently, the appellant has purchased the property bearing S.Nos.99/4A, 56/4A, 56/5-1, 36/3, 87/1A and 29 in Varanjaram Village, measuring an extent of 8.6 acres through learned District Munsif Court, Kallakurichi, vide registered Sale Deed dated 13.02.2002, bearing Document No.98/3, for a total sale consideration of Rs.10,000/- on the file of Sub-Registrar,

Nagalur/fourth respondent herein. He further submitted that the stamp duty can be levied as per Article 23 of the Indian Stamp Act on the market value of the property conveyed, that too, on the date of execution of sale deed. In the case of instrument executed pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of under-valuation or lack of bona fides, the mere fact that there is a time gap between the agreement of sale and the execution of the document is not sufficient to the Registering Officer to invoke his power under Section 47A of the Act unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to deliberately undervalue the subject of transfer with a view to evade payment of proper stamp duty. In support of the said submission, judgment of the Hon'ble Division Bench in the case of ***S.P.Padmavathi Vs. State of Tamil Nadu and others [1997 (II) CTC 617]*** was relied upon.

3. Again, taking support of unreported judgment in the case of ***State of Tamil Nadu and others Vs. Janab Habeeb Jan.K. (W.A.(MD).No.223 of 2007, dated 10.07.2007),*** learned counsel for the appellant submitted that the market value prevailing on the date of agreement alone shall be the basis on which stamp duty should be levied and therefore, the Registering Authority was not

justified in demanding payment of stamp duty on the escalated guideline value prevailing as on the date of registration of the sale deed.

4. Adding further, learned counsel contended that when the appellant had relied on a document bearing No.1296/2007 registered on the file of the fourth respondent fixing Rs.12/- per sq.ft., which is an adjacent land, the first respondent has wrongly rejected his request giving a reason that he has not supplied the said document to establish his stand that at the time of registration of sale deed bearing Document No.98/3, dated 13.02.2003, the prevailing market value was Rs.12/- per sq.ft. After rejection of his request, even though he has submitted the said document, the respondents failed to consider the same till date. Even assuming that the appellant failed to produce a copy of the said sale deed, the respondents can verify the said document available with them. It is their duty to be consistent in fixing the market value of the property at the time of registering the document. Therefore, looking at the case of the appellant from any angle, namely, from the settled legal position that mere time gap between the agreement of sale and the execution of the document is not sufficient to the Registering Authority to invoke his power under Section 47A of the Act as per the ***S.P.Padmavathi's case (cited supra)***; and on the basis of adjacent land of the

appellant's property registered on the file of the fourth respondent vide Document No.1296/2001, dated 12.12.2001, fixing Rs.12/- per sq.ft. as guideline value for determination of stamp duty, the approach adopted by the first respondent in fixing the guideline value at a higher rate than the one registered adjacent to his property cannot be sustained, hence, the same is liable to set aside.

5. In reply, Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents 1 to 5 submitted that there is a difference between an agreement to sell and a sale, hence, stamp duty on a sale has to be assessed on the market value of the property at the time of the sale, and not at the time of the prior agreement to sell, nor at the time of filing of the suit. This could be seen from Section 17 of the Stamps Act, for, as per Section 3, the instrument is to be registered on the basis of the valuation disclosed therein, whereas Section 47-A of the Act contemplates that in case it is found that properties are under valued then it is open for the Collector (stamps) to assess the correct market value. Taking support from the judgment of the Hon'ble Apex Court in ***M/s.Khandaka Jain Jewellers Vs. State of Rajasthan and others (Appeal (civil) No.5273 of 2007, dated 16.11.2007)***, learned Special Government Pleader pleaded that what is relevant in fact is the actual valuation of the property at the time of the sale,

because, the crucial expression used in Section 17 is 'at the time of execution'. Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time of when agreement to sale was entered into, for, an agreement to sell is not a sale, he pleaded.

6. Having heard both parties, it could be seen from the judgment of the Hon'ble Apex Court in ***M/s.Khandaka Jain Jewellers' case (cited supra)*** that what is relevant in fact is the actual valuation of the property at the time of sale, for the reason that the crucial expression used in Section 17 is "at the time of execution". Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into, for, an agreement to sell becomes a sale after both the parties signed the sale deed. Therefore, if Section 17 read with Section 2(12) are properly looked into, at the time of registration, the Registering Authority is under an obligation to ascertain the correct market value at that time, and should not go by the value mentioned in the instrument. In this context, it is pertinent to extract paragraph Nos.12 and 13 of ***M/s.Khandaka Jain Jewellers' judgment.***

"12. In this back-ground, if we construe Section 17

read with Section 2(12) then there is no manner of doubt that at the time of registration, the Registering Authority is under an obligation to ascertain the correct market value at that time, and should not go by the value mentioned in the instrument.

13. Learned counsel for the respondent submitted that if we construe Section 3 read with Section 27 of the Act then the Registering Authority is under an obligation to only see the value mentioned in the instrument. In our opinion Section 3 which is the charging section cannot be read in isolation but has to be read along with Section 17 of the Act. From a composite reading of Sections 3,17 and 27, it becomes abundantly clear that the valuation given in an instrument is not conclusive. If any doubt arises in the mind of the Registering Authority that the instrument is under- valued then as per Section 47-A of the Rajasthan (Amendment) the instrument can be sent to the Collector for determination of the correct market value. Under Section 47-A read with Sections 3,17 and 27, it becomes clear that the Registering Authority has to ascertain the correct valuation given in the instrument regarding market value of the property at the time of the sale."

In the light of the above said ratio, it is clear that the respondent shall take into account the market value of the instrument at the time of execution of the sale deed and they should not go by the value mentioned in the instrument.

7. The Hon'ble Division Bench of this Court in ***S.P.Padmavathi's case (cited supra)*** held thus:

> *"26. Therefore, we are of the view that in the case of instrument of conveyance executed pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of under-valuation or lack of bona fides, the mere fact that there is a time-gap between the agreement of sale and the execution of the document, is not sufficient to the Registering Officer to invoke his power under Section 47A of the Act, unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to deliberately under-value the subject of transfer with a view to evade payment of proper stamp duty."*

8. In addition thereto, it is also relevant to take note of the observations made by the learned Single Judge in ***K.Noorunnissa and another Vs. the District Collector, North Arcot, Vellore [(1982) 2 MLJ 28],*** whereby it is held that the

stamp duty can be levied as per Article 23 on the market value of the property existing on the date of registration. The said ratio has been approved by the Hon'ble Apex Court in ***M/s.Khandaka Jain Jewellers' case (cited supra)*** ruling that market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into.

9. In the present case, in a suit for specific performance moved by the appellant on the basis of sale agreement dated 04.07.2001, learned District Munsif Court, Kallakurichi, decreed the suit in O.S.No.15 of 2002, dated 04.02.2002, and thereafter, it has executed the sale deed bearing Document No.98/3, dated 13.02.2003 on the file of the Sub-Registrar, Nagalur, Kallakurichi/fourth respondent herein, in favour of the appellant. Therefore, upon execution of the sale deed, the stamp duty has to be determined after assessing the market value of the instrument at the time of registration in the light of various decisions cited supra.

10. Be that as it may, now, as could be seen from his representation dated 23.04.2003, the appellant, by relying on a Document No.1296/2001, dated 12.12.2001 registered on the file of Sub-Registrar, Nagalur, Kallakurichi/fourth

respondent herein, stated that while registering the said document pertaining to Survey No.99/4A, which is adjacent to the properties in question, the Registering Authority has fixed Rs.12/- per sq.ft. as market value for determination of the stamp duty, hence, the same may be taken into account for determination of stamp duty with regard to the properties in question. The said document relied on by the appellant has not been denied by the respondents. Therefore, when the sale deed under question was registered on 13.02.2003, the respondents cannot claim more than the stamp duty collected by them during 2003. But, this was not properly looked into by the first respondent while passing the impugned order. Thus, on this count, the impugned order passed by the first respondent is set aside and the respondents are directed to consider the claim of the appellant based on the sale deed bearing document No.1296/2001, dated 12.12.2001, registered on the file of Sub-Registrar, Nagalur, Kallakurichi/fourth respondent herein fixing Rs.12/- per sq.ft. and levy the stamp duty without discrimination and do the needful in accordance with law, within a period of six weeks from the date of receipt of a copy of this judgment.

11. In fine, for the reasons stated above, the Civil Miscellaneous Appeal stands allowed. No Costs.

11.02.2021

rkm
Index:yes/no
Internet

To

1.The Inspector General of Registration,
No.120, Santhome High Road,
Santhome, Chennai – 8.

2.The Special Deputy Collector (Stamps),
Cuddalore.

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T.RAJA, J.
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