IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya

MAT 48 of 2020
With
IA No. CAN 1 of 2022

The State of West Bengal & Ors.
vs.
Mrs. Maya Misra

For the Appellants	:	Mr. Ayan Banerjee, Mr. Nilotpal Chatterjee, Ms. Debjani Sengupta …….advocates
For the Respondent	:	Mr. Sudhir Bhattacharya, Mr. Sushanta Laha ………advocates
Heard on	:	02.08.2022
Judgment on	:	05.09.2022

<u>Hiranmay Bhattacharyya, J.</u>:-

1. This appeal is directed against judgment and/or order dated November 25, 2019 passed by the learned Single Judge in WP

93(W) of 2019 directing the Registering Officer to register the deed of conveyance taking into consideration the market value of the property on the date of the agreement for sale.

2.The facts in a nutshell which are necessary for the purpose of disposal of this appeal are as follows:-

3.The respondent filed writ petition praying for issuance of a writ in the nature of mandamus to consider the valuation of the property prevalent in the year 1984 as per the set forth value mentioned in the deed of conveyance and to register the deed of the petitioner. The writ petitioner/ respondent filed a suit for specific performance of contract for sale dated September 21, 1984 in respect of an immovable property before the learned Civil Judge (Senior Division 9) Court at Alipore being title suit no. 110 of 2011. The said suit was decreed ex parte in favour of the petitioner on June 30, 2017 directing the vendor to execute a deed of conveyance within a period of 90 days from the date of the decree. Since the deed of conveyance was not executed within the aforesaid time limit, the decree was put into execution giving arise to title execution case no. 63 of 2017. The ADSR Alipore, 24 Parganas (South) (for short "ADSR") assesses the valuation of the decretal property for the purpose of registration of the deed of sale and assesses the stamp duty as per the present market rate of the decretal property. The writ petitioner thereafter took out an application before the Executing Court praying for an order directing the concerned ADSR to our reassess the valuation of the property after taking into consideration the market value of the property in the year 1984. The learned Executing Court by an order dated January 18, 2018 directed the concerned ADSR to reassess the valuation of the decretal property as per the market value prevalent in the year 1984. The Inspector General of Registration (for short "IGR") issued a memo dated November 1, 2018 observed that the consideration value of Rs. 5,37,600 of the year 1984 would be required to be adjusted with the notified cost inflation index which comes to Rs. 51, 28, 704. The concerned ADSR by a letter dated August 1, 2018 requested the Inspector General of Registration to pass an order directing the NIC personnel to fix the stamp duty which was applicable in the year 1984.

4.The learned Single Judge, by the order impugned, directed the concerned ADSR to register the deed of conveyance taking into consideration the market value of 1984 as mentioned in the letter dated August 1, 2018 addressed by the ADSR, Alipore to the IGR.

5.Being aggrieved against the said order, the State of West Bengal and the Registration Authorities have filed this appeal.

6.Mr. Banerjee, learned advocate appearing for the State contended that for the purpose of registration of a deed of conveyance the stamp duty is chargeable on the market value of the property at the time of presentation of the document for registration. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court of India in the case of *State of*

Rajasthan & Ors. vs. Khandaka Jain Jewellers reported at (2007) 14 SCC 339. He further contended that the learned Single Judge was swayed by the fact that the learned Executing Court directed the concerned ADSR to reassess the valuation of the decretal property as per the market value prevalent in the year 1984 without appreciating that the said direction is nullity as it is well settled that an Executing Court cannot travel beyond the decree. In support of such contention, Mr. Banerjee relied upon a decision of the Hon'ble Supreme Court in the case of *Shivshankar Gurgar vs. Dilip* reported at (2014) 2 SCC 465. He contended that the registration authorities are not bound by the Order passed by the Executing Court stamp duty in accordance with the provisions of the Stamp Act can be demanded from the respondent. He, thus, submitted that the IGR was not bound by the Memo number 217 dated August 1, 2018 issued by the ADSR.

7.Mr. Bhattacharyya, learned advocate for the writ petitioner/ respondent seriously disputed the contention of Mr. Banerjee. He contended that the agreement for sale was entered into as far back as on September 21, 1984 and since the vendor failed to carry out their obligations under the said agreement, writ petitioner was compelled to approach the Civil Court for a decree of specific performance which was ultimately granted and the learned Civil Court took six years to pass a decree in favour of the petitioner directing the execution of the deed of conveyance in favour of the writ petition. He further submitted that the petitioner was not in any way responsible for the delay in execution of the deed of conveyance. He further contended that, at this stage, it is not open to the State to reopen the issue as to the assessment of valuation of the decretal property for the purpose of registration as the Civil Court by an order dated January 18, 2018 directed the concerned ADSR to reassess the valuation of the decretal property as per the market value prevalent in the year 1984. He further contended that pursuant to an interim order passed by this Court on January 28, 2021 the deed of conveyance has been registered on March 1, 2021. In support of his contention that for the purpose of registration the stamp duty is chargeable on the market value of the property on the date when the agreement was entered into, Mr. Bhattacharya relied upon a decision of the Hon'ble Supreme Court of India in the case of *Residents Welfare Association, Noida vs. State of Uttar Pradesh and ors.* reported at (2009) 14 SCC 716. He concluded by submitting that the delay in execution and registration of the deed of conveyance is only due to the fact that the vendors refused to execute the deed of conveyance and the litigation took a long time.

8. Heard the learned advocates for the parties and considered the materials placed.

9. The issue that arises for decision in this appeal is what should be the relevant date for the market value of the property for assessment of the stamp duty for the purpose of registration of the deed of conveyance.

10. The contention of the appellant is that the market value of the property which is the subject matter of the deed of conveyance is to be ascertained on the date when the instrument is presented for registration whereas the respondent contended that the date when the agreement was entered into should be the relevant date.

11. At the first blush, the argument of Mr. Bhattacharya, learned advocate for the petitioner appeared to be an attractive one as the same is based on the principle that no person shall suffer on account of litigation. But on a closer scrutiny of the provisions of the relevant statute this Court is of the considered view that the decision of the learned Single Judge calls for interference as the same is against the rules of interpretation of the relevant statute and also the well settled principles of the binding effect of a void order.

12. This Court shall now recapitulate some of the provisions of the Indian Stamp Act, 1899 ("the 1899 Act" for brevity).

13. A portion of Section 47A of the said Act which will be relevant for the purpose of deciding the aforesaid issue is extracted hereinafter.

> *"**Sec. 47A. Instruments of conveyance, etc. undervalued, how to be dealt with**- (1) Where the registering officer appointed under the Registration Act, 1908, has, while registering any instrument of-*
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> *(a) agreement or memorandum of an agreement relating to a sale or lease-cum-sale of immovable property,*
>
> *(b) conveyance,*

(c) exchange of property,

(d) gift,

(e) partition,

(f) power-of-attorney-

(i) when given for consideration to sell any immovable property, or

(ii) in such other cases referred to in article 48 of Schedule IA, where proper stamp duty is payable on the basis of market value,

(g) settlement,

(h) transfer of lease by way of assignment,

reason to believe that the market value of the property which is the subject-matter of any such instrument has not been truly set forth in the instrument presented for registration, he may, after receiving such instrument, ascertain the market value of the property which is the subject matter of such instrument in the manner prescribed and compute the proper stamp duty chargeable on the market value so ascertained and thereafter he shall, notwithstanding anything to the contrary contained in the Registration Act, 1908, in so far as it relates to registration, keep registration of such instrument in abeyance till the condition referred to in sub-section (2) or sub-section (7), as the case may be, is fulfilled by the concerned person.

(2) Where the market value of the property which is the subject matter of an instrument has been ascertained and the proper duty chargeable thereon has been computed under sub-section (1), the registering officer shall, in the manner prescribed, send to the concerned person a notice calling upon him to make payment of the deficit amount of stamp duty within such time as

may be prescribed, and if such person makes payment of such deficit amount of stamp duty in the prescribed manner, the registering officer shall register the instrument."

14. Upon an instrument being presented for registration, the registration authority has to see whether market valuation of the property in question has been truly set forth in the instrument presented for registration. In case the Registering Officer has reasons to believe that the market value of the property which is the subject matter of the deed of conveyance has not been truly set forth in the instrument presented for registration, he is obliged in terms of Section 47A of the West Bengal Amendment of the Indian Stamp Act, 1899 to ascertain the market value of such property and compute the stamp duty chargeable on the market value so ascertained and if the person makes payment of the deficit amount of stamp duty in the prescribed manner, the Registering Officer shall register the instrument.

15. The expression "market value" used in Section 47A of the West Bengal Amendment to the Indian Stamp Act shall have the same meaning as defined in Section 2(16B).

16. Clause 16B inserted by the West Bengal Amendment to the Indian Stamp Act in Section 2 defines "market value" to mean in relation to any property which is the subject matter of an instrument, the price which such property would have fetched or would fetch if sold in open market on the date of execution of such instrument as determined in such manner and by such authority as may be

prescribed by rules made under the Act or the consideration stated in the instrument, whichever is higher.

17. Section 2(14) of the 1899 Act defines "instrument" to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

18. The expression "such instrument" used in Subsection 1 of Section 47A refers to the instrument presented for registration. The deed of conveyance is a compulsory registerable document under Section 17(1) of the Registration Act 1908. Section 47A of the West Bengal Amendment of the 1899 Act casts an obligation upon the registering authority to ascertain the market value of the property which is the subject matter of the instrument presented for registration for assessing the stamp duty chargeable on the instrument.

19. Section 3 of the Act is a charging section. A deed of conveyance is an instrument falling under Schedule 1A and is chargeable with stamp duty at the rate mentioned therein.

20. Section 17 of the said Act provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.

21. The word "execution" has been defined in Section 2(12) of the 1899 Act. It says that "execution" used with reference to instruments, mean "signed" and "signature".

22. The instrument presented for registration in the case on hand is the deed of conveyance and not the agreement for sale.

23. Upon reading the aforesaid provisions of the 1899 Act, this court is of the considered view that the relevant date for the market value of the property for the purpose of Section 47A is the date of execution of the deed of conveyance. The Registering Officer while performing his duties under Section 47A of the said Act has to ascertain the market value of the property which is the subject matter of the deed of conveyance prevalent on the date of execution of the said instrument for the purpose of assessing the stamp duty chargeable on the conveyance.

24. This takes the Court to the principal argument of the writ petitioner/respondent that stamp duty on the market value of the property cannot be demanded from the respondent as it would be against the well settled principle that no person shall suffer on account of litigation.

25. The 1899 Act is a fiscal statute. In *Khandaka Jain Jewellers* (supra), the Hon'ble Supreme Court of India has laid down the rules of interpretation of a fiscal statute.

26. It was held therein that the literal rule of interpretation applies to a taxing statute. It was further emphasized that the considerations of hardship or equity have no role to play in the construction of a taxing statute and such statute is not contingent on the inconvenience of the parties. The Hon'ble Supreme Court held thus-

“20. ……….A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasise that a taxing statute has to be construed strictly and considerations of hardship or equity have no role to play in its construction. Viscount Simon quoted with approval a passage from Rowlatt, J. expressing the principle in the following words:

" In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax.

There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

21. The same view was expressed by Hon'ble Bhagwati J. in the case of A.V. Fernandez v. State of Kerala. The principle is as follows:

"29. ……..In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

Hon'ble Shah J. has formulated the principle thus:

"11. ……….In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not

> *expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."*
>
> *Therefore, a taxing statute has to be read as it is. In other words, the literal rule of interpretation applies to it."*

27. In *Khandaka Jain Jewellers* (supra) the respondent before the Supreme Court had filed a suit for specific performance of contract since vendors backed out and did not execute the sale deed of the property in pursuance of the agreement dated October 20, 1983 and the decree for specific performance of contract was passed and a stand was taken that the respondent therein should not suffer on account of pendency of the matter before a court of law. The Hon'ble Supreme Court held that simply because the matter has been in litigation for a long time that cannot be a consideration to accept the market value of the instrument when the agreement to sale was entered. The said decision of the Hon'ble Supreme Court in *Khandaka Jain Jewellers* (supra) is squarely applicable to the facts of this case as the delay between the date of agreement for sale and the date of execution of the deed of conveyance in the case on hand is also on account of the default on the part of the vendors and the long time taken in litigation.

28. The agreement of the respondent that the stamp duty has to be charged on the market value of the property prevalent on the date of the agreement for sale cannot be accepted as the same is against the rules of interpretation of the fiscal statute.

29. The issue that now arises for consideration is when an order has been passed by the Civil Court in connection with the execution proceedings directing reassessment of the valuation of the decretal property as per the market value prevalent in the year 1984, whether the registration authorities can demand stamp duty as per the market value of the property prevalent on the date of execution of the instrument. For the purpose of deciding the said issue it would be relevant to take note of the decree dated 30.06.2017 passed by the Civil Court. The respondent got a decree for Specific Performance of the Agreement dated 21.09.84 and the defendants in the suit were directed to execute a deed of sale in respect of the suit property in favour of the plaintiff within 90 days from the date of the said order.

30. In terms of the said decree the decree holders/petitioners filed the draft copy of the deed before the Executing Court and the said draft was also approved. The learned Executing Court by an order dated 12.12.2017 directed the office concerned to write a letter to the ADSR for the ascertainment of the stamp duty which the decree holder/ writ petitioner is required to pay for the purpose of registration of the said deed. Pursuant to the said order the stamp duty and the registration fee payable by the writ petitioner was assessed by the registration authorities as per the present market rate of the said property. The writ petitioner thereafter filed a petition dated January 8, 2018 praying for reassessment of the valuation of the decretal property after taking into consideration the

market rate of the property in the year 1984. The learned Executing Court by an order dated January 18, 2018 directed the concerned ADSR to reassess the valuation of the decretal property as per the market value prevalent in the year 1984. Since the Sheristadar of the learned Civil Court presented the said document before Registering Officer for registration as per the order of the above referred case, the concerned ADSR requested the IGR to pass an order directing the NIC personnel to fix the stamp duty which was applicable in the year 1984.

31. The learned advocate for the writ petitioner/ respondent strenuously contended before this court that since the State and the registration authorities did not challenge the said order and has accepted the same by issuance of the memo dated August 1, 2018, the respondent authorities are estopped from demanding stamp duty on the basis of market value of the property on the date of presentation of the said document for registration.

32. It is a settled principle of law that the Executing Court cannot travel beyond the decree. It must execute the decree as it is. The said decree did not decide on the aspect of valuation of the decretal property for the purpose of registration of the same. Therefore, this court is of the considered view that the learned Executing Court could not have issued a direction upon the concerned ADSR to reassess the valuation of the decretal property as per the market value prevalent in the year 1984 i.e., the date when the agreement was entered into. The said direction passed by the Executing Court

to reassess the valuation of the property was without jurisdiction and therefore a nullity and the said order is nothing but a void order. Furthermore, neither the State nor the registration authorities were parties before the Civil Court. The said decision cannot, therefore, bind the State and the registration authorities.

33. In *Shivshankar Gurgar* (supra) the Hon'ble Supreme Court of India held that a void order can create neither legal rights nor obligations and it also does not matter that such a void order has not been challenged. By applying the ratio of the aforesaid decision and also for the reasons as aforesaid this court is of the considered view that the right of the registration authorities to ascertain the market value of the property which is the subject matter of the deed of conveyance in accordance with law and to compute the proper stamp duty chargeable on the market value so ascertained cannot be curbed on the ground that the Executing Court passed an order directing reassessment of the valuation of the said property as per the market value prevalent in the year 1984 and the same has not been challenged.

34. Therefore, this Court holds that the Memo No. 217 dated 01.08.2018, which was issued pursuant to the order of the learned Executing Court shall have no legal effect and will not be binding upon the registering authorities while reassessing the market value of the property in terms of this order.

35. For all the aforesaid reasons this Court therefore, holds that for the purpose of registration the relevant date for the market value of the property should be the date of execution of the deed of conveyance and not the date when the agreement was entered into.

36. The Hon'ble Supreme Court in the case of *Residents Welfare Association* (supra) was dealing with the case of an assignment of a lease. It was held therein that the question of determination of the market value does not arise at all in the case of assignment of lease and an enquiry under Section 47A is not also contemplated under the Act in the case of an assignment of a lease unlike Article 23 of Schedule 1-B of the Act which deals with stamp duty to be levied on the deed of sale. It was further clarified by the Hon'ble Supreme Court in the said decision that the said case did not deal with a case of an outright sale wherein the market value can be truly determined. On such factual background the Hon'ble Supreme Court held that the consideration to be mentioned in that document would be the market value of the property on the date when the agreement was entered into and not when it was presented for registration. The said decision is clearly distinguishable with the facts of the case on hand.

37. The Hon'ble Single Judge directed the concerned ADSR to register the deed of conveyance taking into consideration the market value of 1984 as already mentioned in the letter dated August 1, 2018 by being swayed with the fact that the writ petitioner could have the conveyance executed in 1984 itself but had to wait for a long

litigation to end. The aforesaid interpretation sought to be given by the learned Single Judge to the Stamp Act, which is a taxing statute, is against the settled rules of interpretation of a taxing statute which is not contingent on the inconvenience of the parties as observed by the Hon'ble Supreme Court in *Khandaka Jain Jewellers* (Supra).

38. The learned Single Judge followed the proposition of law laid down in the case of *State of West Bengal Vs. Parbati Ghosh* reported in 2016(5) CHN (Cal) 75 wherein another learned Single Judge was pleased to hold that for the purpose of registration, the stamp duty is chargeable on the market value of the property prevalent at the time of the agreement for sale. The said proposition runs counter to the decision in *Khandaka Jain Jewellers* (supra) and was delivered in ignorance of the decision of the Hon'ble Supreme Court and, therefore, the decision in *Parbati Ghosh* (supra) is per incuriam.

39. For the reasons as aforesaid the instant appeal being MAT No. 48 of 2020 is allowed. The order dated November 25, 2019 passed by the learned Single Judge in WP 93(W) of 2019 is set aside. The authorities under the 1899 Act are left free to take all steps in accordance with law including ascertaining the market value of the property which is the subject matter of the deed of conveyance, prevalent on the date of execution of the deed of conveyance in the prescribed manner and to compute the proper stamp duty chargeable thereon without being influenced by the memo no. 217

dated August 1, 2018 issued by the Additional District Sub-Registrar, Alipore, 24 Parganas (South).

40. Before parting, this Court makes it clear that the stamp duty already paid by the writ petitioner/respondent and the registration of the document in terms of the interim order passed by this Court shall be subject to the final decision of the authorities under the 1899 Act. It will also be open to the writ petitioner to take appropriate steps in accordance with the provisions of the relevant statutes excepting reopening the issue of the relevant date for assessment of the market value of the property for the purpose of registration which has been settled by this order.

41. The application being CAN 1 of 2022 stands disposed of.

42. There shall be, however, no order as to costs.

43. Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, J.) **(Hiranmay Bhattacharyya, J.)**

(P.A.-Sanchita)