IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.6623 of 2015
and M.P.No.1 of 2015

Hindustan Petroleum Corporation Limited
Rep. by Chief Installation Manager & Duly-Constituted Attorney
Chennai New Terminal
NCTPS Main Road, Attipattu Pudu Nagar (RS)
Vallur Village, Chennai 600 120 ... Petitioner

Vs.

1.District Revenue Officer (Stamps)
5th Floor, Singaravelar Maligai
32, Rajaji Salai, Chennai 600 001

2.The Sub Registrar
Thiruvottiyur
Chennai 600 019 ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the file of the 1st respondent leading to the impugned order Na.Ka.No.8177/14/A4/2015 dated 27.01.2015 and quash the same.

For Petitioner : Mr.M.Vijayan
for M/s.King & Partridge

For Respondents : Mr.K.Tippusulthan
Govt. Advocate

ORDER

The Writ Petition is filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the file of the 1st respondent leading to the impugned order Na.Ka.No.8177/14/A4/2015 dated 27.01.2015 and quash the same.

2.It is the case of the writ petitioner that it is a petroleum company carrying on its oil storage and distribution activities from its Tondiarpet terminal and they have decided to shift its operation by purchasing an extent of 108.07 acres of land from the Government of India, Department of Industrial Policy and Promotion, Salt Division. The request of the company was accepted by the Government of India, vide order dated 12.03.2009, they have transferred 108.07 acres of land in survey numbers 1556-B, 1556-C and 354/1 in Athipattu Village and Vallur Village in Ennore Area near Chennai at a price of Rs.18 lakhs per acre and also informed that the total sale consideration for 108.07 acres would be Rs.19,45,26,000/-. The Government of India also ordered the Salt Commissioner to transfer of the lands based on the ground realities as adopted in other cases and directed the petitioner company to make payment to the Deputy Salt Commissioner, Chennai for necessary action.

3.As directed by the Government of India, the petitioner paid the entire sale consideration of Rs.19,45,26,000/- by way of cheque dated 13.03.2009. Thereby, the land to an extent of 108.07 acres was handed over to the petitioner on 14.05.2009 and from that date onwards the land has been in actual possession and enjoyment of the petitioner herein. The document was registered on 27.02.2014 vide document No.3268 of 2014. However, the respondents instead of releasing the document, vide letter dated 08.08.2014 demanded a sum of Rs.15,12,98,000/- towards alleged difference in stamp duty and a sum of Rs.2,16,14,000/- towards alleged difference in registration fees, totally Rs.17,29,12,000/-.

4.It is the contention of the learned counsel for the petitioner that the entire sale consideration is only Rs.19,45,26,000/-, whereas the respondents in impugned notice demanded Rs.16,49,14,820/- towards stamp duty itself adding registration fees to the tune of Rs.2,35,59,260/- on the alleged valuation which works out to Rs.18,84,74,080/- and the same is contrary to various provisions of law and judgments of this Court. Hence the writ petition.

5.Learned counsel for the petitioner submitted that in similar case in W.P.No.16834 of 2017, this Court had set aside the demand made by the respondents under Section 47A(1) & (3) of the Indian Stamps Act, 1899. He added that the Government itself is a party to the sale deed and also received the entire sale consideration.

6.It is the contention of the learned counsel for the respondents that true market value has not been reflected in the sale deed. The guideline value is more than the value that has been set out in the document. Therefore, the authorities have impounded the document and had passed the impugned order.

7.This Court perused the entire materials. The sale deed was executed by the Government of India on 27.02.2014 for a total sale consideration of Rs.19,45,26,000/-. The terms of the deed also indicate the nature of payment received by the Government of India and the sale deed has been executed only after receiving the entire sale consideration by the Government of India. Now, the respondents have initiated proceedings under Section 47(A) of the Indian Stamps Act 1899, merely on the ground that the guideline value is Rs.500/- per sq. ft. which is more than the market value. Whereas the sale was registered for a sale consideration of Rs.18 lakhs per acre.

8. It is relevant to note that it is not the case of the respondents that apart from the true market value set out by them, the petitioner has paid the lesser value to the Government of India. In similar issue in W.P.No.16834 of 2017 (Bharath Petroleum Corporation Limited V. The

District Revenue Officer (Stamps) and another), this Court has set aside the impugned order passed under Section 47A of the Indian Stamps Act, 1899. The relevant portion is extracted hereunder;

> "*9. While making the reference, the Registrar should satisfy the provisions contained in Section 47A of the Indian Stamp Act, 1899. It makes it clear that, if the Registrar has reason to believe that the market value of the property 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.*
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> *10. The Hon'ble Supreme Court also in* ***(2009) 7 SCC 438*** *in the case of* ***V.N.Devadoss vs. Chief Revenue Control Officer Cum Inspector and Others****, has held as follows :*
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> *".... 13. Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to*

undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty."

11. It is to note that the sale consideration has been paid to the Government of India. It is nobody case is that apart from the sale consideration, other amount is also to be paid which has not been reflected in the transfer deed. It is also to note that when the actual sale consideration was paid to the Government, the question of suppressing the real market value and referring the document for differential value does not arise at all and such interference are not permissible under law.

12. The main ground on which, the document was referred under Section 47A is that it does not contain the guideline value. It is relevant to note that the guideline value is prepared by the Revenue Officials, for that, the same cannot be equated with market value. In this regard, this Court in ***Collector of Nilgiris vs. M/s. Mahavir Plantations Pvt. Ltd., (A.I.R. 1982 Mad. 138)****, has held as follows :*

"The valuation guidelines prepared by the Revenue Officials at the instance of the Board of Revenue were avowedly intended merely to assist the Sub-Registrars to find out, prima facie, whether the market value set out in the instruments had been set forth correctly. The guidelines were not intended as a substitute for market value or to foreclose the inquiry by the Collector which he is under a duty to make under Sec. 47-A. The valuation guidelines were not prepared on the basis of any open hearing of the parties concerned or of any documents. They were based on data gathered broadly with reference to classification of lands, grouping of lands and the like. This being so, the Collector acting under Sec.47-A cannot regard the valuation guidelines as the last word on the subject of market value. To do so would be to surrender his statutory obligation to determine market value on the basis of evidence, which is a judicial or a quasi judicial function which he has to perform."

13. Therefore, merely because the guideline value is higher than the market value, it cannot be said that the differential stamp duty also to be paid. The purpose of the guideline value is to have a prima facie idea about the value of the land by the Registrar. When the Government has sold the property and received the sale consideration, at no strech of imagination it could be inferred that the property value has been *undervalued only to avoid the stamp duty. Therefore, this Court is of the view that invoking provision under Section 47A for reference itself is not according to law and it is not the case of the respondents that undervaluation has been done for the purpose of avoiding the stamp duty.*

14. In the absence of any evidence in material to suggest under valuation, as a matter of right proceedings under Section 47A cannot be invoked. Therefore, this Court is of the view that the Government of India has sold the property and received the sale consideration. Merely because the sale consideration is not on par with the guideline value fixed by the authorities, the reference cannot be made under Section 47A of the Indian Stamp Act, 1899.

15. In a similar case, reported by this Court in ***2002 (2) CTC 329*** *in the case of* ***R.Sukumaran and Seven Others v. State of Tamil Nadu****, the Tamil Nadu Housing Board entered into a lease cum sale agreement. On payment of all monthly installments, sale deed was executed by the Housing Board conveying the allotted properties. However, the Registration Department Authorities had demanded stamp duty on the basis of the market value. The Court has held that the statutory body like housing board could not receive consideration more than* *what has been recited in the document executed by the board in favour of the authorities, and no discretion at all is available to the Registering Authority to entertain any doubt regarding the payment of consideration for the deed of conveyance which is being executed by the statutory body like Housing Board.*

9.Similarly in W.P.No.23097of 2001, when the proceedings initiated under Section 47A of the Indian Stamp Act 1899, despite the plot sold by the Tamil Nadu Housing Board, this Court observed that the Tamil Nadu Housing Board has received the true sale consideration, allowed the petition. The relevant paragraphs are extracted hereunder;

"22.In the circumstances, while following the two earlier Division Bench Judgment in The State of Tamil Nadu & Others v. T.Thulasi Lakshmi & another, in W.A.Nos.1467 and 1468 of 1998 and S.P.Padmavathi v. State of Tamil Nadu Etc., 1997 (2) CTC 617:1997 (2) LW 579, as well as the judgment of the Division Bench in The District Collector, Erode District & others v. M.Ponnusamy, 2001 (2) CTC 449; 2001 (2) MLJ 458, all these writ petitioners are allowed. This Court further directs that within ten days from the date of receipt of a copy of this order or production of a copy of this order, the respective Registrars shall

see that the documents are released without insisting for further payment of stamp duty even if such instruments have already been referred to the Special Deputy Collector (Stamp Duty) for the purpose of valuation / verification.

23.The Inspector General of Registration is directed to issue a circular in this respect within ten days from the date of communication of this order to all the Registrars in the State. Besides making it clear that any delay or deviation in this respect by the Registering Authorities will be viewed very seriously and all the Registering officers are expected to follow the law laid down by the High Court. Such a direction has to be issued since inspite of repeated pronouncements of this Court, the Registrars have acted with scant respect, such a conduct is highly reprehensible.

24.This is a fit case where costs should be awarded against the concerned Registrars, besides contempt proceedings. However, in the light of the fair stand taken by the learned Advocate General, this Court is not awarding costs and not initiating contempt action. These writ petitions are allowed, but without costs. Consequently, connected W.M.Ps. are closed."

10.This Court in the above case observed and insisted for issuance of circular. Despite the above judgment, no circulars have been issued. Particularly, the transfer of land by the Government and the sale is mechanically done and the documents have been impounded in the pretext of reference under Section 47(A) of the Indian Stamps Act.

11.Therefore, this Court is of the view that the Inspector General (Registration) shall follow the guidelines as stated above and issue a circular forthwith.

12.In view of the above and the nature of issue involved in this case and also the fact that the Government of India is a party to the sale deed and the entire sale consideration has been paid by the petitioner, the question of suppressing the real value does not arise at all. Merely because the guideline value is fixed for collection of revenue by the Government, it cannot be said that the market value has been suppressed.

13.Such view of the matter, this Writ Petition stands allowed. The impugned order passed by the 1st respondent in Na.Ka.No.8177/14/A4/2015 dated 27.01.2015 is set aside. Consequently, connected miscellaneous petition is closed. No costs.

16.11.2022

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Index: yes / no
Internet: yes / no
Speaking / Non speaking

To

1.The Inspector General
Registration

2.District Revenue Officer (Stamps)
5th Floor, Singaravelar Maligai
32, Rajaji Salai, Chennai 600 001

3.The Sub Registrar
Thiruvottiyur
Chennai 600 019

N.SATHISH KUMAR, J.

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