IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.NO.29840 OF 2016

M/s.Olympia Tech Park (Chennai) Pvt. Ltd.,
Being the amalgamated comany of
M/s.KSM Housing (P) Ltd.,
No.1, SIDCO Industrial Estate,
Guindy, Chennai - 600 032.

.. Petitioner

Vs.

1. The Inspector General of Registration /
The Chief Controlling Revenue Authority,
No.100, Santhome High Road,
Santhome, Chennai - 600 028.

2. The District Registrar,
Chennai (Central),
No.182, Pycrofts Road,
Royapettah, Chennai - 600 014.

3. The Joint Sub Registrar - I,
No.182, Pycrofts Road,
Royapettah, Chennai - 600 014.

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorrified Mandamus calling for the records pertaining to the order of the 2nd respondent dated 23.05.2016 in No.12300/B1/2015 and quash the same and consequentially direct the respondents to refund the sum of Rupees Sixty lakhs excessively collected from the petitioner as registration charges.

For Petitioner : Mr.K.J.Parthasarathy

For Respondents : Mr.S.Ramkumar
Special Government Pleader

O R D E R

This writ petition has been filed seeking refund of the registration charges paid by the petitioner.

2. The grievance of the petitioner is that the petitioner purchased a property measuring an extent of 19 grounds land with 66992 sq.ft. superstructure at No.3, Cenatoph Road, Chennai. The total sale consideration is for Rs.80 crores. Earlier, the petitioner entered into a sale agreement with his vendor on 10.02.2014 and paid a sum of Rs.20 crores as advance amount and it is agreed between the parties that the remaining sale consideration should be paid on various installments. However, at the time of registering the sale agreement, the respondent demanded the petitioner to pay registration charge for the entire sale consideration at the rate of 1% on the ground that the sale agreement has mentioned about the future payment of sale consideration and hence the petitioner should pay the registration charges for the entire sale consideration. Under protest, the petitioner paid the registration charges as demanded by the respondents, thereafter, he filed an application for refund of the excess amount on the ground that the petitioner paid only Rs.20 crores as advance sale consideration and hence he is not entitled to pay registration charges for the remaining amount. That request has been rejected by the second respondent. Now challenging the same, the present writ petition has been filed.

3. The respondents filed a counter affidavit inter alia contended that the covenants in the sale agreement clearly shows that the balance sale consideration is Rs.60,20,00,000/- prior to the execution of the sale deed by settling the creditors of the vendors etc., hence the intended sale consideration amount of Rs.80 crores is to be construed as advance amount and as such the registration fee should be levied on the said amount of Rs.80 crores. It is further stated that Article 1(1) of the Table of Fees under Section 78 of the Registration Act, states that in case of sale agreement registration fee shall be levied on the advance amount and if no advance is mentioned, fee shall be levied on the intended sale consideration. In the instant case, the covenants to the sale agreement contains payment of Rs.80 crores and therefore, the petitioner is liable to pay the registration charge for the entire sale consideration. Hence, the petitioner is not entitled for refund.

4. Mr.K.J.Parthasarathy, learned counsel appearing for the petitioner would contend that as per the sale agreement out of Rs.80 crores of total sale consideration only Rs.20 crores has been paid as advance sale consideration. The covenant to the

sale agreement only say future payment of remaining sale consideration, at any rate, cannot be construed as the payment of registration charges for the entire sale consideration. That apart, for registering the sale agreement he paid registration charge for the entire amount of Rs.80 crores and this amounts to total payment of registration charges.

5. The learned Special Government Pleader appearing for the respondents contended that even though in the sale agreement it is mentioned as Rs.20 crores, the covenants clearly shows that the petitioner intend to pay the entire sale consideration before registration of sale deed, hence it can only be presumed that the petitioner has paid the entire sale consideration. Hence, he is liable to pay the entire registration charges.

6. I have considered the rival submissions and also perused the materials.

7. The dispute that arise in this writ petition is as to whether the petitioner is liable to pay the entire registration charges for the sale agreement merely because the covenants contained in the sale agreement deals with future payment of sale consideration. It will be useful to refer to the relevant covenant in the sale agreement relating to payment of sale consideration:

> "5. The PURCHASER agrees to pay and the VENDOR agrees to receive the sale consideration in the following manner:
>
> a) Rs.20,00,00,000/- (Rupees twenty crore only) to be paid at the time of execution of this Agreement for Sale.
>
> The VENDOR hereby acknowledges receipt of the sum of Rs.19,80,00,000/- (Rupees nineteen crore eighty lakh only) through RTGS to the VENDOR's Bank Account with IDBI Bank Limited, Saidapet Branch, Chennai 600 015 vide UTR Nos.(i)HDFCH14041847229 & (ii) HDFCH14041847334 each for Rs.9,90,00,000/- towards the above payment, being the net amount after deduction of tax at source.
>
> b) Rs.20,00,00,000 (Rupees twenty crore only) to be paid as follows by 31st May 2014:
>
> (i) Rs.17,00,00,000/- (Rupees Seventeen Crore) or thereabouts as may be intimated by the VENDOR to be paid directly to the said Creditor towards settlement of the balance outstanding by the VENDOR to the Creditor as on the date of intimation.
>
> (ii) Rs.3,00,00,000/- (Rupees Three Crore) or thereabout being the balance amount out of

Rs.20,00,00,000/- under this clause remaining after payment to the Creditor as stated above. Payment of this amount shall be simultaneous to the deposit of the original documents received from the Creditors with M/s.Ar.L.Sundaresan, Advocate, 3rd Main Road, Gandhi Nagar, Adyar, Chennai 600 020, as the mutually accepted Escrow Agent, which shall be completed within 21 working days of the payment by the PURCHASERS to the Creditor.

c. Rs.10,00,00,000/- (Rupees ten crore only) on proving vacant possession of at least 30% of the premises, before 31st August 2014.

d. Rs.10,00,00,000/- (Rupees ten crore only) on proving vacant possession of at least 60% of the premises, before 31st December 2014.

e. Rs.20,00,00,000/- (Rupees twenty crore only) on handing over of vacant possession of the property and execution of sale deed, by 30th June 2015.

It is hereby agreed that for the purpose of proving the vacant possession under sub-clause (c) and (d) above, the area occupied by the VENDOR in the SCHEDULE PROPERTY for its own use shall be deemed to be vacant and that the VENDOR shall be entitled to occupy and use the said area till handing over the vacant possession to the PURCHASER as per Sub-clause (e) above."

8. Perusal of the above, it could be seen that on the date of the sale agreement a sum of Rs.20 crores has been paid as a part of sale consideration and the remaining amount has to be paid by way of various installments. Section 78 of the Registration Act deals with the fees fixed by the State Government for registration of documents. As per the Table of Fees fixed under Section 78 of the Registration Act, Schedule 'L' speaks about registration fee leviable on agreement to sale or resale which reads as follows:

> "L. The registration fee leviable on an agreement to sale or resale shall be on the advance or earnest money. If no advance or earnest money is mentioned, the fee leviable shall be on the intended sale or the resale amount, as the case may be:
>
> Provided that in the case of an agreement to sell where possession is handed over or is to be handed over, the fee leviable shall be on the intended sale consideration."

9. As per Schedule 'L' to the Act, the registration fee is leviable only on the advance or earnest money, further possession is handed over or is to be handed over on the date of agreement the registration charge shall be leviable on the intended sale consideration. In the instant case, admittedly, possession has not been handed over to the petitioner, further on a reading of the covenant of the sale agreement, it could be clearly seen that the petitioner has paid only a sum of Rs.20 crores as advance sale consideration and the remaining sale consideration was not paid on the date of registration and the mention has been made about the future payment of the balance of sale consideration. In the said circumstances, the respondents can levy registration charges only on the advance amount paid by the petitioner and they cannot collect registration charges on the future installments to be paid. In such circumstances, the impugned order passed by the second respondent is only liable to be set aside and accordingly set aside. The respondents are directed to refund the registration charges paid by the petitioner over and above the advance amount within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

kk

To

1. The Inspector General of Registration /
The Chief Controlling Revenue Authority,
No.100, Santhome High Road,
Santhome, Chennai - 600 028.
2. The District Registrar,
Chennai (Central),
No.182, Pycrofts Road,
Royapettah, Chennai - 600 014.
3. The Joint Sub Registrar - I,
No.182, Pycrofts Road,
Royapettah, Chennai - 600 014.

+2ccs to Mr.C.T.Murugappan, Advocate, S.R.No.22572
+1cc to the Special Government Pleader, S.R.No.23238

W.P.No.29840 of 2016

SKM(CO)
PR(13/05/2022)