IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 10.11.2023

ORDERS PRONOUNCED ON : 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.4151 of 2023
and
W.M.P.No.4196 of 2023

1.Mrs.Tamanna Deepak
2.Mr.Akshay Deepak
3.Mrs.Manjula Sankecha ...Petitioners

-Vs-

1.The Chief controlling Revenue Authority
cum Inspector of General of Registration,
No.110, Santhome High Road,
Chennai - 600 028.

2.The Sub Registrar,
Triplicane Sub Register Office,
(In the cadre of District Registrar),
No.182, Bharati Salai,
(Pycrafts Road),
Royapettah, Chennai - 600 014. ...Respondents

(C.M.A.No.1964 of 2022 converted into writ petition as per order dated 24.01.2023)

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records from the 1st respondent and quashing the impugned order of the 1st respondent dated 26.04.2022 in proceedings Pa.Mu.25641/P1/2020 making false and vexatious demand of Rs.6,26,444/- as penalty under the impounded final order in I.No.01/2020 dated 02.09.2020 of the 2nd respondent as the same is arbitrary, unconstitutional, biased, illegal and unlawful and against all principles of law and natural justice in respect of sale deed in pending Doc.No.3 of 2020 on the file of the 2nd respondent herein and further direct the respondents to release and handover the pending Doc.No.3 of 2020 on the file of the 2nd respondent to the petitioner and pass such order.

For Petitioners : Mr.S.L.Sudarasanam

For Respondents : Mr.P.Gurunathan
Additional Government Pleader

ORDER

This Writ Petition is filed for issuance of a writ of certiorarified mandamus by quashing the impugned order of the 1st respondent dated 26.04.2022 in proceedings Pa.Mu.25641/P1/2020, making false and vexatious demand of Rs.6,26,444/- as penalty under the impounded final order in I.No.01/2020 dated 02.09.2020 of the 2nd respondent, as the same is arbitrary, in respect of sale deed in pending Doc.No.3 of 2020 on the file of the 2nd respondent herein and further direct the respondents to release and handover the pending Doc.No.3 of 2020 on the file of the 2nd respondent to the petitioner.

2. The case of the petitioners is that the said property is multi-storied complex, which was promoted by one M/s.The Union Company (Motors) Private Limited, which covered under the subject sale deed. On 27.07.2002, the petitioners entered into a sale agreement and construction covered under the sale deed and the entire consideration paid by the petitioners in the said possession was also handed over to the petitioners pursuant to the said agreement. Thereafter, the petitioner also obtained property tax, water tax from the Corporation of Chennai and Electricity connection in their names and the petitioners continued to be in absolute possession and enjoyment of the said property. Further, the petitioners have also entered into the registered lease deed with Ms.ABN AMRO Bank on 05.10.2005. The same was registered on the file of the SRO, Triplicane. The mutation of records of petitioners 1 and 2 made them the absolute owners of the said property and intended to sell the property to the 3rd petitioner herein, and they approached M/s.The Union Company (Motors) Private Limited to join the sale as confirming party, since the undivided share in the land vested with the said Company on the date of the sale without receipt of any sale consideration.

3. The owners of the property in respect of the building and the above said Company, as owner of the undivided share in the land, had jointly executed and registered the sale deed in the name of the 3rd petitioner. The entire sale consideration covered under the sale deed was received by petitioners 1 and 2 from the 3rd petitioner. In order to convey the title, the said Company joined the sale in favour of the 3rd petitioner. When the document was presented for registration, they received the letter from the 2nd respondent regarding the duty chargeable in respect of undivided share (UDS) by the said Company in favour of petitioners 1 and 3 under Article 23 of Schedule -1 of the Indian Stamp Act is a sum of Rs.6,26,444/-, which is unsustainable and the duty cannot be levied by the 2nd respondent for the reason that in the present sale deed pending Doc.No.3, the petitioners along with M/s.The Union Company (Motors) Private Limited, joined together to convey the undivided share in the land and the building in favour of the 3rd petitioner. There cannot be double duty for the sale deed. As per the common order dated 04.12.2014 passed by this Court in W.P.No.13355 of 2012 and W.P.No.31274 of 2014 and judgment dated 23.09.2015 in W.A.Nos.303, 304 and 474 of 2015 and later on by order dated 16.05.2016, the 1st respondent had clearly

withdrawn the circular regarding the charging of double stamp duty and in case of confirming parties joining the sale, it is construed that the stamp duty chargeable is only single and not double. Time and again, the Courts have held that the confirming parties joining the sale will only amount to single transaction and the stamp duty would be charged only single. Therefore, the letter issued by the 2nd respondent is not valid and the same is liable to be set aside.

4. The case of the respondents in the counter affidavit is that the three items of property, each shown in the sale deed in question, which is kept pending registration as P.No.3/2020, are owned by different Companies, viz item No.1 - the M/s.The Union Company (Motors) Private Limited, item No.2 – M/s.Carburettos Limited and item No.3 – M/s.Minica Real Estates Ltd. All three have jointly engaged the promoter, namely, M/s.Asiatic Private Limited, to develop the lands to construct commercial buildings. The owner of the land, M/s.The Union Company (Motors) Private Limited, entered into an unregistered sale agreement with petitioners 1 and 2 herein on 27.07.2002, to sell the property, which is 703 Sq.ft. Undivided share in land and handed over the possession of the said land to petitioners 1 and 2 herein, and as such, the mutations were effected

in their names in the property tax records of the Corporation of Chennai and other Governmental agencies without any sale deed in their favour. Thus, petitioners 1 and 2 herein, without any proper sale deed in their favour, with regard to undivided share in the land, stating as owners of the land and building, numbered as Unit No.00212 in the second floor, executed a sale deed dated 09.01.2020, in favour of the 3rd petitioner herein for a sale consideration of Rs.1,13,50,000/- and presented the same for registration before the 2nd respondent. The 2nd respondent kept the sale deed in question as pending Document No.3/2020 and impounded the same under Section 33 read with Section 40 of the Indian Stamp Act, 1899, treating the sale deed that, since the Union Company (Motors) Private Limited joined in execution of the sale deed as "confirming party/3rd vendor" in order to give better title to the purchaser, 3rd petitioner herein.

5. The 2nd respondent treated the sale deed as one falling within Section 5 of the Indian Stamp Act, 1899, as dual nature i.e. sale of undivided share in land by the confirming party/3rd vendor to petitioners 1 and 2 herein as vendors of the sale deed in question and in turn the petitioners 1 and 2 herein as vendors to the purchaser, the 3rd petitioner

herein of the undivided share in land together with commercial building and covered car park area and issued final order under Section 40(b) demanding the stamp duty and penalty of Rs.6,26,444/- for the sale of undivided share in land by M/s.The Union Company (Motors) Private Limited as vendor to the petitioners 1 and 2 herein as purchaser in proceedings No.1/2020 dated 02.09.2020. The petitioners herein filed Revision Petition before the 1st respondent, and the 1st respondent herein, after hearing of the parties, dismissed the said Petition, by order dated 26.04.2022, in proceedings D.Dis.No.25641/P1/2021. Aggrieved by both the orders, the petitioners have filed this writ petition.

6. Mere entering into a sale agreement and handing over possession of the property is only a part of the performance of the contract under Section 53-A of the Transfer of Property Act and the sale agreement does not confer any ownership to the agreement holder, but with limited right of enforcing the said contract for specific performance. The mutation in the public records will not confer any ownership over the property and the mutation makes the person whose name is found in the record liable to pay the rates and tax.

7. It is seen that in the operative portion of the sale deed in question containing terms and conditions, the word “vendor” denotes not only the petitioners 1 and 2 herein, but also the said Union Company (Motors) Private Limited, shown as 3rd vendor, without conveyance of undivided share in land by the Union Company (Motors) Private Limited in favour of the petitioners 1 and 2 herein, and to avoid the payment of stamp duty, the said Union Company (Motors) Private Limited joined in execution of the sale deed. Hence, the sale deed in question attracts Section 5 of the Indian Stamp Act, resulting that the petitioners herein have to pay stamp duty for the undivided share in land also.

8. The Union Company (Motors) Private Limited also joined as vendor in the subjected document and it falls under Section 5 of the Indian Stamp Act, 1899, and therefore, it attracts stamp duty. The contention of the petitioners is that the petitioners 1 and 2 had not executed the sale deed in favour of the 3rd petitioner herein, in which the Union Company (Motors) Private Limited has joined as a confirming party for one year and therefore, the documents falls under Section 5 of the Indian Stamp Act, 1899, and therefore, the demand made by the 2nd respondent is illegal, and

therefore the consequential orders passed by the 1st respondent is also not valid and therefore, without demanding any further amount, Doc.No.3 of 2020 has to be registered.

9. The specific case of the respondents is that the Union Company (Motors) Private Limited joined as a vendor and not only merely as a confining party, but also joined as one of the vendors of the said document and therefore, the subject document only falls under Section 5 of the Indian Stamp Act, 1899. Therefore, it attracts the stamp duty in demand. Now the Court proceeds only on the basis that mere agreement will not convey the title. Further, if the persons who entered into the agreement, in case, the purchaser does not want to purchase the land or in case, the purchaser assigns the sale to the 3rd party, if the vendor sold the property to the assignee or the third party, it can be treated as only a single document, and if third party supported it at the time of the agreement, the possession was handed over and the vendor passed the title for mutations and all these things, and subsequently, the said sale further conveyed the earlier document, since it was not registered and the stamp duty was not paid, and it was further conveyed to other. If the document was registered, then it has to pay stamp duty for both. Though in this case, the respondents have

clearly stated that the Union Company (Motors) Private Limited joined in execution of the sale deed and not as mere confirming party and to avoid the further complications, petitioners 1 and 2 impleaded the Union Company (Motors) Private Limited as a witness and the document could not fall under Section 5 of the Indian Stamp Act, 1899. Whereas, the petitioners have stated in their writ petition affidavit itself that the subject property is a multi-storied complex, which was promoted by the Union Company (Motors) Private Limited. On 27.07.2002, they entered into the agreement for sale cum construction agreement regarding the property covered under the sale and the entire consideration was paid by them and paid to the Union Company (Motors) Private Limited. The Possession was also taken over by them in the said agreement and petitioners 1 and 2 obtained property tax and electricity connection and they continued to be in possession, which means without registering the document and paying the stamp duty, they conveyed the property. The agreement was not registered. Now, petitioners 1 and 2 sold the property to the 3rd petitioner, but in which the Union Company (Motors) Private Limited was also shown as an executor, who is one of the joined vendor of the sale deed. Therefore, under these circumstances, the subject sale deed falls under Section 5 of the Indian Stamp Act, 1899.

10. Considering the facts and circumstances of the case, the actual transaction had taken place in this case and passed the order. There is no merit in the writ petition.

11. In the result, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2023

cda
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No

To

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P.VELMURUGAN, J.,

cda

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W.P.No.4151 of 2023

Order pronounced on 27.11.2023