IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 26737 of 2015

Siddhartha Ghoshal
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Udayan Dutta Mr. Swarup Banerjee Mr. Arindom Chatterjee Mr. Subham Biswas
For the State	:	Mr. Suman Ghosh Mr. Parikhit Goswami
Heard on	:	11.09.2024
Judgment on	:	11.09.2024

PARTHA SARATHI SEN, J.:

1. By filing the instant writ petition the writ petitioner has prayed for issuance of a writ of mandamus upon the respondent authorities more specifically respondent no. 5 to deliver the original deed of conveyance dated 20.08.2014 registered with Additional District Sub-Registrar, Dum Dum, North 24 Parganas vide Book No. 1,

Volume No. 34, Page Nos. 3760 to 3777 Being No. 09142 for the year 2014 in respect of a garage at holding No. 221 (227), School Road, District – North 24 Parganas in Dag (Plot) No. 85 at Mouja – Sultanpur under Police Station – Dum Dum.

2. It is the case of the writ petitioner that from the schedule of the aforementioned deed of conveyance it would reveal that 175 sq. ft. of garage on the ground floor of the aforementioned building was purchased by the writ petitioner for a valuable consideration from the owner of the said property and at the time of registration of the said garage in question the requisite amount of stamp duty and registration fee were paid and IGR receipt was issued to the writ petitioner.

3. It is the further case of the writ petitioner that when the writ petitioner approached the ADSR, Dum Dum, i.e., respondent no. 5 for taking delivery of the said registered deed of conveyance to his utter surprise, he came to learn that the DIGR, Range-II reassessed the valuation aforementioned scheduled mentioned property on July 16, 2024 holding the schedule mentioned property as a 'shop room' but not as a 'garage'.

4. Mr. Dutta, learned Advocate for the writ petitioner in course of his submission draws attention of this Court to page Nos. 17 and 18 of the affidavit-in-opposition being the order-sheet dated 15.05.2015

of DIG of Registration, Range – II, Barasat. It is submitted from the said order-sheet dated 15.05.2015 it would clearly reveal that the scheduled mentioned property has been described as garage in the subject deed and the same is being used as garage. It is thus submitted that such being the position DIG of Registration, Range – II being respondent No. 2 herein cannot blow hot and cold in the same breath while increasing the valuation of the property under a pre-conceived notion that it might be used as a shop.

5. In course of hearing on 20.08.2024 this Court requested learned Advocate for the respondent authorities to apprise this Court under which provision of law and/or rule the registering authority can treat a property as otherwise which has not been shown in the schedule of the deed of conveyance.

6. In course of his argument Mr. Ghosh, learned Advocate for the respondent authorities places his reliance upon Section 47A of the Indian Stamp Act. It is submitted by Mr. Ghosh that it is the intention of the legislature that in the event the registering authority has reason to believe that the market value of the property which is the subject matter of any instrument has not been truly set forth in the instrument presented for registration, the registering authority has every authority to ascertain the actual

market value of the property and reassess the same on the basis of such ascertainment.

7. It is submitted by Mr. Ghosh that the respondent authorities acted within the purview of Section 47A of the Indian Stamp Act and, therefore, by no stretch of imagination it can be said that the deficit stamp duty and the registration fee as reassessed by the respondent No. 2 authority on 11.12.2015 and as uploaded on 16.07.2024 is arbitrary.

8. For effective adjudication of the instant lis the schedule of the subject deed is required to be looked into and same is as under:

> *"<u>THE SECOND SCHEDULE ABOVE REFERRED TO:</u>*
> *<u>(The shop hereby conveyed)</u>*
>
> *ALL THAT a Garage on the Ground Floor, East Side, measuring a super built up area of 175 sq. ft. more or less, at Mouza – Sultanpur, J.L. No. 10, R.S. No. 148, Touzi No. 173, Khatian No. 269, Dag No. 85, with in the Jurisdiction of Police station Dum Dum under North Dum Dum Municipality, Ward No. 21 (27), Holding No. 221 (227), School Road, District – 24 Parganas North, TOGETHER WITH common parts and portions together with proportionate share or interest in the land described in the First Schedule."*

9. From the recitals of the subject deed dated 20.08.2014 it reveals that the vendors of the said deed practically conveyed the garage to the purchaser who is the writ petitioner before this Court.

10. As rightly pointed out by Mr. Dutta the relevant portion of the order-sheet dated 15.05.2015 which has been annexed with the affidavit-in-opposition is also required to be looked into and the same is also quoted hereinbelow in verbatim:

> *"…………………………………………*
> *It is a covered unit described as garage in the document and also is being used as the same. But the prospect of utility of the unit is better than the garage as seen by inspection. It may be considered commercial as the most of the uses of on road unit are seen as commercial type on this part of the School Road. It is observed in this site plan annexed with the document that there are units on either side of the unit in question are mentioned as shop in the site place. Moreover, the unit is mentioned as shop in the heading of the second schedule part. So the unit in question may be assessed as shop."*

11. In course of his argument Mr. Ghosh, learned Advocate for the respondent authorities submits before this Court that from the heading of the second schedule of the subject deed the intention of the writ petitioner with regard to the user of the alleged garage is clear and the same has been duly reflected in the note-sheet dated

15.05.2015 of the respondent No. 2 authority which is, however, disputed by Mr. Dutta, learned Advocate for the writ petitioner.

12. On perusal of the relevant provisions of the Stamp Act as cited from the side of the respondent authorities this Court has no hesitation to hold that the registering authority has every power to assess the actual market value of the property so as to realize the actual stamp duty and the registration charges keeping in mind the fiscal policy of the State. However, the relevant provisions of the said Stamp Act in considered view of this Court does not permit the registering authority to consider a property as otherwise with regard to the mode of user.

13. In further considered view of this Court, the same falls under the domain of the local authorities which grants sanction plan and for the purpose of assessing actual stamp duty and the registration charge, the registering authority has no power to treat a 'garage' as a 'prospective shop room' as has been done in the present case. From the order dated 15.05.2015 it appears to this Court that the respondent No. 2 authority acted beyond its authority to assess the valuation and registration fee of the property in question treating the same as a 'prospective shop room' instead of a 'garage' holding that in the heading of the second schedule of the subject deed the same is mentioned of 'shop room'.

14. In further considered view of this Court, the registering authority should not go by caption but it ought to have gone through the contents of the deed.

15. In view of the discussion made hereinabove this Court thus finds no justification on the part of the respondent authorities to enhance the valuation of the property in question and accordingly they are not entitled to charge any further registration fee and further stamp duty from the writ petitioner who is the vendee of the aforementioned deed.

16. In view of such, while allowing the instant writ petition this Court directs the respondent authorities more specifically; respondent No. 5 to deliver the aforementioned registered deed of conveyance to the writ petitioner on production of the duly executed IGR within a month from today without insisting for payment of any additional stamp duty and registration charges.

17. Accordingly, the writ petition being WPA 26737 of 2015 is disposed of.

18. The respondent No. 5 authority is directed to act on the server copy of this order duly downloaded from the official website of this Court.

19. Before parting with, it is, however, made clear that while disposing the instant writ petition this Court has not made any observation regarding the mode of user of the garage in question and, therefore, this judgment may not be used as a precedent against the jurisdictional local body from taking any action in the event it is found that the present writ petitioner is using the said property not as a garage.

20. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(**PARTHA SARATHI SEN, J.**)

Suvayan Ghosh
A.R. (Court)