In the High Court of Judicature at Madras

Dated : 24.4.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2260 of 2022

Shri.Harichandana Estates
Private Limited rep.by its
Director Mr.K.Karthikeyan ...Appellant

Vs

1.The Inspector General of
Registration, Registration
Department, No.100,
Santhome High Road,
Chennai-28.

2.The Chennai District Revenue
Officer (Stamps), District
Collector Office, Chennai-1.

3.The Joint I Sub-Registrar,
Central Chennai, Chennai. ...Respondents

APPEAL under Section 47-A(10) of the Indian Stamp Act against the order passed by the Inspector General of Registration, Chennai-28 in Na.Ka.No.35225/N1/2016 dated 23.9.2019 and the order of the second respondent - Chennai District Revenue Officer (Stamps) in Na.Ka.Cpa.No.3/15/A1 dated 24.6.2019.

For Appellant : Mr.B.Kumar, SC for Mr.A.Ashokan

For Respondents : Mr.R.Ramanlal, AAG assisted by Mr.B.Tamil Nidhi, AGP

JUDGMENT

This is an appeal filed by the appellant under Section 47-A(10) of the Indian Stamp Act (for short, the Act) aggrieved by the order passed by the first respondent in Na.Ka.No.35225/N1/2016 dated 23.9.2019 confirming the order of the second respondent in Na.Ka. Cpa.No.3/15/A1 dated 24.6.2019, directing the appellant to pay the deficit stamp duty and the additional registration charges.

2. The brief facts leading to filing of this appeal are as follows :

(i) The subject property was originally owned by a trust called as Sathyanarayana Charitable Trust. The said trust approached this Court earlier by filing O.P.No.314 of 2004 seeking for sanction of sale of the subject property. During the pendency of the said original petition, a paper publication was effected by order dated 25.6.2004 and no offer was forthcoming.

(ii) Therefore, when the said original petition came up for hearing on 01.7.2011, this Court directed fresh paper publication to be effected so as to enable the interested parties to inspect the subject property and make their offer. Accordingly, the paper publication was effected on 15.7.2011. Consequent upon the same, two offers came to be submitted before this Court and the matter was listed for hearing on 02.8.2011. The two offers that were submitted in sealed covers were opened in the open court, in which, the first offerer was the appellant in this case. Yet another person also made an offer. However, the second offerer withdrew the offer and as a result, this Court directed the appellant to get instructions and to improve the offer made by them.

(iii) In the meantime, some of the legal heirs of the founder of the said trust started claiming right and interest over the subject property and applications were filed on the Original Side of this Court. Ultimately, the matter reached the Division Bench of this Court in O.S.A.No.201 of 2012 filed by the said trust. The said original side appeal was allowed by a Division Bench of this Court by judgment dated 16.8.2012 by making it clear that there was no impediment to proceed with the sale of the subject property.

(iv) Pursuant to the said developments, a final order came to be passed in O.P.No.314 of 2004 on 18.2.2013. It will be relevant to extract the relevant portions of the order dated 18.2.2013, which dealt with the value that was fixed by this Court, as hereunder :

> *"<u>Issue (ii):</u>*
>
> *16.1. Insofar as valuation is concerned, Ex.P3 is the original valuation report submitted by P.W.1. In the said report, while stating that the property is situated in a posh residential locality, it is also stated that the building is 75 year old structure. The guideline value for the land was taken from internet at Rs.8,400/- per Sq.Ft. and the fair market rate was fixed at Rs.12,450/- per Sq.Ft. For determining the fair market rate, reference is made to the sale document No.2289 of 2009, dated 12.11.2009 on the file of the Sub Registrar Office, Mylapore, which is relating to a property situated at 9th Street, R.K.Salai. It is stated that the said property is a short distance away from the main thoroughfare. No doubt, insofar as location of the property is concerned, the same may be comparable, but in the present case the valuation report does not take into consideration the size of the road, which is only 30 Ft. Moreover, the land is locked in a high security zone not easily accessible. It is also to be noted that the property is situate in a*

*residential area and therefore valuation on commercial lines cannot be resorted to.*

*16.2. The Registered Architect, who has given a report on 11.2.2013 as per the direction of the Court, has clearly stated that certain provisions of the Development Regulations for Chennai Metropolitan Area make it difficult for using the property for commercial purposes. He also states that the property can be partially utilized for construction of an ordinary type of building. It is also to be noticed that access to the property is only from one side and all other roads surrounding it are dead ends. It is evident from the above that the land is not economically viable for residential use as well, compared to other residential areas with better access.*

*16.3. It is to be kept in mind that the valuation is also dependent on the price which is offered by a willing purchaser to the seller in a given circumstance considering the nature of the property, the ability to use the property or exploit it in the manner that he desires. Given the fact that the property in question is situated in a high security zone with restricted access and in a primary residential area; the road access is only from one side; there are not many takers even for ordinary residential use; and the non use of the property for a long period, the* *valuation can be based only on the best offer available, if it is reasonable. Furthermore, the offer in this case will be of benefit to the trust, as the said Sri Harichandana Estates Private Limited have offered to complete the sale by paying the entire sale consideration within two weeks from the date of the order of this Court. For some reason or the other, this petition has been languishing for a number of years and the trust did not have the funds to achieve its objectives.*

*16.4. Taking into consideration the consent given by the Trust for the best offer now available; the architect's valuation report; and all other parameters pointed out above, the price offered appears to be reasonable. The Court is inclined to fix the value for the purpose of sale of the schedule mentioned property at Rs.20,21,00,000/- (Rupees Twenty Crores and Twenty One Lakhs only).*

*16.5. Issue (ii) is answered accordingly.*

*17. In view of the foregoing conclusions, the Court is inclined to pass the following order:*

*(i) permission is granted for the sale of the schedule mentioned property by the petitioner/ trust in favour of Sri Harichandana Estates Private Limited for a sum of Rs.20,21,00,000/- (Rupees Twenty Crores and Twenty One Lakhs only);*

*(ii) the sale is to be executed by the petitioner/trust in favour of Sri Harichandana Estates Private Limited immediately on deposit of the sale consideration as above;*

*(iii) the sale consideration should be deposited by way of fixed deposit in the Indian Bank, High Court Branch, Madras – 600 104 in the name of the petitioner/trust and the trust is entitled to utilize the interest that would accrue on such deposit after a period of six months to further the objects of the trust; and*

*(iv) after the period of six months, the petitioner/trust is entitled to move this Court for investing the money lying in deposit in the Indian Bank, High Court Branch, as above, for purchase of any other property or for investment in any government securities, which may fetch better interest or income for the trust, as provided in clause 9 of the Trust Deed dated 5.6.1968."*

(v) Pursuant to the said order dated 18.2.2013, the sale deed dated 13.3.2013 came to be executed in favour of the appellant and it was registered on the file of Joint I Sub-Registrar, District Registrar Cadre, Central Chennai as Doc.No.254 of 2013. Thus, the appellant paid a total sale consideration of Rs.20,21,00,000/- and the stamp duty was collected based on this valuation. The registration charges were also paid.

(vi) Nearly after two years from the registration of the said document, a notice came to be issued to the appellant by the Registration Authority on the ground that the subject property has been undervalued. Further, proceedings were initiated under Section 47-A of the Act. Ultimately, the Deputy Inspector General of Registration, vide order dated 24.4.2015, directed the appellant to pay the deficit stamp duty and the additional registration charges.

(vii) Aggrieved by the said order dated 24.4.2015, the appellant filed an appeal before the second respondent on 19.6.2019. However, the second respondent, by order dated 24.6.2019, passed an order concluding that there was a deficit stamp duty to the tune of Rs.49,02,250/- and directed the appellant to pay this deficit stamp duty within a period of two months from the date of receipt of a copy of the said order, failing which, the amount would carry interest.

(viii) Challenging the said order dated 24.6.2019 passed by the second respondent, the appellant filed the further appeal before the first respondent. But, the first respondent, through the impugned order dated 23.9.2019, dismissed the appeal and confirmed the order passed by the second respondent. Aggrieved by that, the appellant is before this Court under Section 47-A(10) of the Act.

3. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record. This Court has also carefully gone through the respective impugned orders passed by respondents 1 and 2.

4. The main issue that arises for consideration is as to whether the Registration Authorities can exercise their jurisdiction under Section 47-A of the Act on a value fixed/determined by this Court in O.P.No.314 of 2004 and take a contrary view on the valuation arrived at by this Court and direct the appellant to pay the deficit stamp duty.

5. The facts are not in serious dispute. Therefore, this Court can straight away go into the issue that has been flagged supra.

6. The contingency will arise to exercise powers under Section 47-A of the Act only in a case where the Registering Officer has reasons to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set forth in the instrument. In such a case, the Registering Officer can refer the same

to the Collector for determination of the market value of such property and the proper stamp duty that is payable thereon. Section 47-A(2) of the Act provides for the procedure to be followed by the Collector for determination of the market value, which has to be read along with the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

7. It is, therefore, clear that the Registering Officer must first come to a prima facie conclusion that the market value of the property has not been truly set forth in the instrument, which is the subject matter of conveyance.

8. The question is as to whether the value that is fixed by this Court can also be brought within the meaning of the expression 'not being truly set forth in the instrument'. Some of the judgments that are cited before this Court will have relevance to understand the scope of such power.

9. In the decision of this Court in the case of ***G.B.Adhilakshmi Ammal Vs. Special Deputy Collector (Stamps) [reported in***

***2002 (3) CTC 490],*** a case arose out of a property that was sold after the court had determined the sale price in exercise of its powers under the City Tenants Protection Act. The Sub-Registrar in that case came to the conclusion that the rate that was determined by the court was not correct and hence, exercised his jurisdiction under Section 47-A(1) of the Act. While deciding this issue, this Court held as follows :

> *"The order of the Court fixing the valuation in the year 1985 had not been challenged by the Devasthanam and had become final. As a matter of fact, since the Devasthanam had not complied with the direction for execution of the sale deed, the sale deed had to be executed by the Court and the stamp duty as per the consideration fixed by the Court had been paid. The demand for payment of additional stamp duty is on the basis of alleged market value of the land in question. However, when the market value had been fixed by the court and it had not been challenged, it was improper on the part of the respondent to call upon the petitioner to pay additional stamp duty. The Court had exercised statutory power contemplated under the City Rent Control Act and the sale deed had been executed by the Court itself in compliance with such direction. It is not*

*the case of the respondent that the present petitioner and the Devasthanam, which was a party to the judicial proceeding, had colluded with each other and had deliberately undervalued the sale deed and even the Court was a party to such collusion. In the absence of any such allegation or finding, the respondent should not have arbitrarily called upon the petitioner to pay additional stamp duty."*

10. In the decision of the Supreme Court in the case of ***V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Inspector [reported in 2009 (7) SCC 438],*** the Court was dealing with a transaction that had taken place before the Board for Industrial and Financial Reconstruction constituted under the Sick Industrial Companies (Special Provisions) Act, 1985. The subject property in that case came to be sold in an auction sale and this became the subject matter of proceedings under Section 47-A of the Act. The relevant portions in this judgment read as hereunder :

*"15. The said stand of the State is that what has been disclosed is clearly a sale value and the same cannot be termed as market value. There is fallacy in this argument.*

*16. Market value is a changing concept.*

*The explanation to Sub-Rule (5) makes the position clear that the (sic market) value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the revenue or non disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AIFR and that too on the basis of value fixed by ASG. The view expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, Debenture Holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any undervaluation and, therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that BIFR was only a mediator."*

11. The next judgment that can be taken into consideration is the decision of a Division Bench of this Court in the case of ***The Inspector General of Registration, Chennai Vs. K.P.Kadar Hussain [reported in 2014 (3) LW 865].*** This is a case where the

subject property came to be sold in a public auction by the Official Liquidator. The valuation/sale price that was fixed was found to be undervalued and therefore, proceedings were initiated under Section 47-A of the Act. While dealing with this issue, this Court held as follows:

> *"37. This Court aptly points out the decision in Devi Narayanan Housing Development Pvt. Ltd., rep. By its Managing Director, N. Nandakumar, Chennai V. The Inspector General of Registration, Department of Registration, Government of Tamil Nadu, Santhome High Road, Chennai 4 and others, 2007 (5) MLJ 1337 at page 1338, wherein it is observed as follows:*
>
> *'When a property is purchased in Court auction sale, if any value other than the value fixed by the Court, is taken into consideration for the purpose of determining the stamp duty, it tantamounts to exceeding the jurisdiction made under the law.*
>
> *A harmonious construction and interpretation of the provisions of Section 47-A of the Indian Stamp Act and the rules make it clear that the value of property fixed by the Court cannot be deviated from.'*
>
> *38. It is to be pertinently pointed out by this Court that in the decision of the Hon'ble*

*Supreme Court in U.P. Jal Nigam, Lucknow through its Chairman and another V. M/s. Kalra Properties (P) Ltd. Lucknow and others, AIR 1996 Supreme Court 1170, it is observed that 'The basic valuation is only for purposes of collecting stamp duty and cannot be foundation to determine market value'.*

*39. It cannot be forgotten that as per Section 17 of the Indian Stamp Act, 1899, the liability to pay stamp duty arises before law or at the time of execution of an instrument. Indeed, Section 47-A of the Indian Stamp Act, 1899 speaks of 'under valuation of the instrument'.*

*40. As far as the present cases are concerned, the Respondents have purchased the concerned properties under Court Auction sale conducted by the Company Court and they were declared as the successful bidders and they paid the full sale consideration. Furthermore, the sale deeds were executed by the Official Liquidator in their favour. The bona fides of the Respondents in purchasing the concerned properties under Company Court Auction cannot be doubted. Further, nothing can be treated against the Respondents that they made an endeavour fraudulently to undervalue the subject of conveyance with a prime view to evade and avoid payment of proper/requisite stamp duty and* *thereby cause loss to the revenue.*

*41. Also that, a perusal of the order dated 08.03.2012 in C.A.No.3013 of 2007 clearly shows that the sealed tender forms were opened before this Court and totally 24 tenders were received from the intending purchasers willing to participate in the public auction for purchasing the properties in question and the sale was confirmed in favour of the Respondents. As such, when the Respondents had purchased the properties in question by way of sale deeds executed by the Official Liquidator for the sale value mentioned in the sale deeds, the said value cannot be questioned by the Appellants at a later point of time merely on the premise that the sale value mentioned in the sale deeds purchased by the Respondents cannot be termed as 'Market Value', in the considered opinion of this Court.*

*42. Furthermore, the Appellants cannot seek umbrage in regard to the guideline value of the properties being revised on 01.04.2012, as opined by this Court.*

*43. As a matter of fact, the valuer who submitted the valuation report and fixed the upset price of the land and building of the Company liquidation in C.A. No. 3013 of 2007 in Company Petition No. 125 of 1988, engaging by the Official Liquidator, cannot be found fault with* *because of the simple reason that in the said Company Application, the Official Liquidator was directed to execute the sale deeds in favour of the respective successful bidders after following due procedures.*

*44. In regard to the plea taken on behalf of the Appellants that the valuer engaged by the Official Liquidator was not a Government valuer and only a private valuer, it is to be pointed out that the valuer appointed, in C.A. No. 3013 of 2007, by order dated 22.02.2011, was authorised by Authority viz., ITCOT Industrial and Technical Corporation of Tamil Nadu, which is authorised by Government to the Banks and Financial Corporations for valuation of property. That apart, the Respondents had purchased the properties under Court Auction in Company Court and their sales were confirmed and the Official Liquidator had executed the sale deeds. As such, the contra plea taken on behalf of the Appellants is not acceded to by this Court."*

12. This Court also had an occasion to deal with a sale that was done by a Governmental organization namely Small Industries Development Corporation (SIDCO) in the case of ***M/s.Southern Ceramics Pvt. Ltd. Vs. The Sub-Registration, Registration***

***Department, Ambattur [reported in 2014 (5) LW 599]*** wherein it has been held that the Governmental organization had sold the property, that there could not be any reason to disbelieve the value that was fixed by the SIDCO and that the same could never be made the subject matter of undervaluation under Section 47-A of the Act.

13. The same was the case in the decision of a Division Bench of this Court in the case of ***The Inspector General of Registration Vs. K.K.Thirumurugan [reported in 2015 (1) CTC 526]*** where such an auction had taken place under the Secruitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the same was put to question on the ground of undervaluation. Ultimately, this Court held that the invocation of Section 47-A of the Act would not arise in such a case.

14. The common thread that runs in all the above judgments is that where a competent authority or a Governmental organization or the court fixes the value/sale price of a property, that cannot be made a subject matter of undervaluation under Section 47-A of the Act. If this is entertained, it would tantamount to questioning the

authority of the court as if it had undervalued the property deliberately. Such interference by exercising powers under Section 47-A of the Act on the value fixed by the court will virtually undermine the authority of the court and it will even tantamount to interfering with the independence of Judiciary by an Executive Authority.

15. In the case in hand, while passing orders in the said original petition, this Court was taking into account the interest of a trust. While exercising such jurisdiction, this Court ensured that the best rate was fixed for the property and that the property was not sold for a mere asking at a throw away price. The final order passed by this Court in O.P.No.314 of 2004 dated 18.2.2013 clearly demonstrates the various efforts that were taken by this Court to ensure that the best offer was made and that the sale price was fixed based on the same. While undertaking this exercise, this Court had also considered the report that was submitted by the registered architect, whose services were engaged by this Court. Ultimately, this Court held that fair market value of the property could be fixed at Rs.20.21 Crores and that on payment of the said value, the sale deed

must be executed by the trust in favour of the appellant. The above exercise that was undertaken by this Court cannot be undermined by an Executive Authority exercising powers under the Act.

16. As already held by this Court, the power under Section 47-A of the Act can be exercised only when the Registering Authority has reasons to believe that the market value of the property, which was the subject matter of conveyance, has not been truly set forth in the instrument and thereby a party is attempting to fraudulently evade payment of proper stamp duty. When the High Court fixed the value of the subject property by taking into consideration various factors, it will be too much on the part of the Registering Authority to initiate proceedings under Section 47-A of the Act on the ground that there was an undervaluation. If such proceedings are permitted, it will amount to the Authority telling this Court that the Court did not truly set forth the value of the subject property and as a result, the parties are fraudulently evading payment of proper stamp duty.

17. The consequence of the same will be that the Registering Authority will virtually sit upon the judgment of this Court fixing the

value of the property and will be reviewing the value that was fixed by this Court. This will amount to over-stepping the authority given under Section 47-A of the Act and the said provision is not meant to be used or exercised in cases of this nature.

18. A specific ground was, in fact, raised before the first respondent in this regard and the first respondent has completely disregarded this ground and has given a finding that the value that has been fixed by this Court is not the correct value. Rather, the first respondent has proceeded to comment upon the report that was submitted by the registered architect, which was relied upon by this Court.

19. A Quasi Judicial Authority can never be permitted to review or reverse the order passed by the Court by doubting the valuation fixed by the Court. That would clearly amount to transgression of the powers vested with the Authority under the Act. Even though other grounds were raised by the learned Senior Counsel appearing on behalf of the appellant, it is not necessary for this Court to go into the same, as this Court is inclined to interfere with the orders passed

by both respondents 1 and 2, based on lack of authority and jurisdiction, while passing the impugned orders.

20. In the light of the above discussions, this Court holds that respondents 1 and 2 are not having the power or jurisdiction either to initiate proceedings under Section 47-A of the Act for undervaluation and for collection of deficit stamp duty in a case where the value of the subject property was determined by this Court in O.P.No.314 of 2004 by order dated 18.2.2013 or take a contrary view on the valuation that was arrived at by this Court. The impugned orders passed by both respondents 1 and 2 are illegal and the same require interference of this Court in exercise of its jurisdiction under Section 47-A(10) of the Act.

21. Accordingly, the impugned orders passed by (i) the first respondent in Na.Ka.No.35225/N1/2016 dated 23.9.2019 and (ii) the second respondent in Na.Ka.Cpa.No.3/15/A1 dated 24.6.2019 are hereby set aside. It is brought to the notice of this Court that the appellant, without prejudice to their rights, had paid the deficit stamp duty determined by respondents 1 and 2. In view of the setting aside

of the impugned orders passed by both respondents 1 and 2 in this judgment, there shall be a direction to the respondents to refund the entire deficit stamp duty paid and the additional registration charges collected, if any, within a period of six weeks from the date of receipt of a copy of this judgment. It is needless to point out that any delay in the refund of the deficit stamp duty paid and the additional registration charges collected, if any, will carry interest at 9% from the date of payment that was made by the appellant till the date of refund.

22. In the result, the above civil miscellaneous appeal is allowed in the above terms. No costs.

24.4.2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

To
1.The Inspector General of Registration, Registration Department, No.100, Santhome High Road, Chennai-28.
2.The Chennai District Revenue Officer (Stamps), District Collector Office, Chennai-1.
3.The Joint I Sub-Registrar, Central Chennai, Chennai.

RS

N.ANAND VENKATESH,J

RS

C.M.A.No.2260 of 2022

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