IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17..04..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.5074 of 2024

K.Karunakaran Chettiar

..... Petitioner

-Versus-

1.The Inspector General of Registration,
Registration Department,
Government of Tamil Nadu,
Santhome High Road,
Mylapore, Chennai 600 028.

2.The District Registrar,
South Chennai Registration District,
Nandanam, Chennai 600035.

3.The Sub-Registrar,
Velachery,
Chennai 600 042.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Declaration, declaring the action of the 3rd respondent in directing the petitioner and other purchasers under the Sale Deed executed by the the learned XXV Assistant Judge, City Civil Court, Chennai, in E.P.No.2259 of 2018 in O.S.No.1235 of 1986 on the file of the District Munsif, Poonamallee, insisting to annex 1-A Form and also insisting to pay stamp duty and registration fees as per the present guideline value, as on the date of presentation of the said document, that is., on 22.11.2023, as illegal, unsustainable and consequently directing the 3rd respondent to register the sale deed, sso executed by the XXV Assistant Judge, City Civil Court, Chennai, with regard to the subject matter of the Execution Petition in E.P.No.2259 of 2018 in O.S.No.1235 of 1986 dated 21.03.2023 without insisting for enclosure of 1-A Form and also without insisting for payment of stamp duty and registration charges, as on 22.11.2023.

For Petitioner : Mr.Krishnasamy R.

For Respondent (s) : Mr.B.Vijay, AGP for RR1 to 3

ORDER

This present writ petition has been filed seeking a writ in the nature of declaration that the action of the 3rd respondent refusing to register the document by issuing a check slip dated 22.11.2023 on the ground that payment of stamp duty and registration fees were not paid on the present guideline value of the property covered under the documents and for a consequential direction for registration of document without insisting on payment of stamp duty and registration fees on the guideline value as on 22.11.2023.

2. It is the case of the petitioner that his father obtained a judgement and

decree in a suit for execution of contract of allotment dated 25.08.1984 in respect of the subject matter of property on 20.09.1996 in O.S.No.1235 of 1986 on the file of the District Munsif at Poonamallee against the Executive Officer of Arulmigu Yoga Narasimhar Devasthanam and also against the Commissioner, Hindu Religious and Charitable Endowment Board, Chennai 600 034. The HR & CE department lost in the first appellate court as well as in the second appellate court. There was no further appeal preferred by the defendant department. The judgement and decree of the trial court had become final. Pursuant to the above said decree, an execution petition was filed and the executing court executed the sale deed in execution of the decree for specific performance. The grievance of the petitioner is that when the document executed by the court was presented for registration, the 3rd respondent registering authority insisted for enclosure of Form 1-A and also for payment of stamp duty and registration fees as on 22.11.2023. It is this check slip which is now under challenge in the present writ petition.

3. Heard both sides.

4. Mr.Krishnasamy R, learned counsel for the petitioner would submit that the market value as on the date of agreement alone has to be considered for payment of stamp duty. Merely because of the fact that there is a time gap between the agreement of sale and the execution of the document by itself is not

sufficient for the registering authority to invoke Section 47-A of the Stamp Act, unless there are reasons to believe that there is an attempt on the part of the parties to the document to undervalue with a view to evade payment of property stamp duty.

5. In support of this contention, the learned counsel for the petitioner placed reliance upon a judgement of a Division Bench of this Court in the case of **Padmavathi S.P. v. State of Tamil Nadu reported as [1997 (II) CTC 617].**

6. The learned counsel for the petitioner would further submit that the 3rd respondent registering authority has no power to refuse to register the document in question which was presented for registration. Even if the registering authority had reason to believe that the property covered and the document was undervalued, it should have referred the document to the Collector under Section 47A of the Stamp Act, 1899. Without doing so, it ought not to have demanded deficit stamp duty and registration fees on the market value of the property as on 22.11.2023.

7. In support of his above submission that even if the registering authority is satisfied that an instrument is undervalued, he is obliged to register the instrument and then only make a reference to the Collector for action under

Section 47-A of the Stamp Act, the learned counsel for the petitioner would place reliance upon a judgement of the Hon'ble Supreme Court in **State of Punjab v. Mohabir Singh reported as [(1996) 1 SCC 609];** and **Government of Tamil Nadu v. Park View Enterprises reported as [(2001) 1 SCC 742]**.

8. Mr.B.Vijay, learned Additional Government Pleader would on the other hand placing reliance heavily upon a recent judgement of the Hon'ble Supreme Court in **Shanti Bhushan (Dead) through Lrs v. State of Uttar Pradesh reported as [2023 SCC OnLine SC489]** contend that now the law has been well-settled that stamp duty payable on subject property covered under the document will be in accordance with the market value of the subject property on the date of conveyance unless the consideration shown therein is more than the prevailing market value.

9. I have carefully considered the rival submissions and perused the records carefully.

10. In the case of **Shanti Bhushan v. State of U.P. [2023 SCC OnLine SC 489],** the law has been crystallized by the Hon'ble Supreme Court wherein in para 23 it has been held as follows:-

> “21. In view of Article 23 of Schedule I of the Stamp Act, the stamp duty payable on a conveyance will be in accordance with the market value of the subject property on the date of the conveyance unless

the consideration shown therein is more than the prevailing market value. A useful reference can be made to a decision of this Court in the case of the *State of Rajasthan* v. *Khandaka Jain Jewellers [(2007) 14 SCC 339*. Paragraphs 18 and 19 of the said decision read thus:

> "18. The contention of the learned counsel for the State that as per Section 17 of the Act, the market value has to be taken into consideration because Section 17 stipulates that all the instruments chargeable with duty and executed by person of India shall be stamped before or "at the time of execution". The word "execution" has been defined in Section 2(12) of the Act which says that "execution" used with reference to the instruments, mean "signed" and "signature". Therefore, it shows that the document which is sought to be registered has to be signed by both the parties. Till that time the document does not become an instrument for registration. A reading of Section 2(12) with Section 17 clearly contemplates that the document should be complete in all

respects when both the parties should have signed it with regard to the transfer of the immovable property. It is irrelevant whether the matter had gone in for litigation.

19. It may be mentioned that there is a difference between an agreement to sell and a sale. Stamp duty on a sale has to be assessed on the market value of the property at the time of the sale, and not at the time of the prior agreement to sell, nor at the time of filing of the suit. This is evident from Section 17 of the Act. It is true that as per Section 3, the instrument is to be registered on the basis of the valuation disclosed therein. But Section 47-A of the Rajasthan (Amendment) Stamp Duty Act contemplates that in case it is found that properties are undervalued then it is open for the Collector (Stamps) to assess the correct market value. Therefore, in the present case when the registering authority found that valuation of the property was not correct as mentioned in the instrument, it sent the document to the Collector for

ascertaining the correct market value of the property."

[emphasis added]

22. Ultimately in paragraph 22, this Court held thus:

"22. In this background, if we construe Section 17 read with Section 2(12) then there is no manner of doubt that at the time of registration, the registering authority is under an obligation to ascertain the correct market value at that time, and should not go by the value mentioned in the instrument."

(emphasis added)

23. Hence, when a sale deed is presented for registration, the registering authority must ascertain the correct market value of the property subject matter of the document on the date of execution of the document. The stamp duty is payable on the basis of such market value and not on the consideration mentioned in the document. If the consideration mentioned is more than the market value, the stamp duty will be payable on the consideration shown. Moreover, the market value mentioned in

> the agreement for sale or the market value prevailing on the date of the agreement or the market value prevailing on the date on which the bargain was struck is of no relevance for deciding the stamp duty. The relevant market value is the one which prevails on the date of execution of the conveyance. Therefore, we have no manner of doubt that the appellants were under an obligation to pay stamp duty calculated on the market value of the sale deed property on the date of execution of the sale deed."

23. Hence, when a sale deed is presented for registration, the registering authority must ascertain the correct market value of the property subject matter of the document on the date of execution of the document. The stamp duty is payable on the basis of such market value and not on the consideration mentioned in the document. If the consideration mentioned is more than the market value, the stamp duty will be payable on the consideration shown. Moreover, the market value mentioned in the agreement for sale or the market value prevailing on the date of the agreement or the market value prevailing on the date on which the bargain was struck is of no relevance for deciding the stamp duty.

> The relevant market value is the one which prevails on the date of execution of the conveyance. Therefore, we have no manner of doubt that the appellants were under an obligation to pay stamp duty calculated on the market value of the sale deed property on the date of execution of the sale deed."

11. In the light of the law settled by the Hon'ble Supreme Court in **Shanti Bhushan's case (cited supra),** the stamp duty is payable on the market value of the subject property and the relevant market value is the one which prevails on the date of execution of the document and not on the consideration mentioned in the document. If the consideration mentioned is more than the market value, the stamp duty will be payable on the consideration shown. Therefore, petitioner is under an obligation to pay stamp duty to be calculated on the market value of the sale deed property on the date of execution of the sale deed.

12. The document in question was executed by the civil court pursuant to the order in an execution proceedings in execution of the decree for specific performance of contract. The said document was refused to be registered by the registering authority, the 3rd respondent herein mainly on the ground that it was undervalued and the stamp duty payable on the conveyance will be in accordance with the market value of the subject property on the date of

registration of the document.

13. The questions as to what is the market value of the property covered under the document on the date of presentation? and whether the subject property covered under the document is undervalued? have to be seen by the Collector under Section 47-A of the Stamp Act. If the registering authority has reason to believe that the market value of the subject property has not been truly set forth in the document, he shall first register the document and thereafter, he shall make a reference to the Collector for inquiry under Section 47-A of the Stamp Act and it is for the Collector to determine the nature of the stamp duty payable. Without even making a proper inquiry, even before registering the document so presented for registration, the 3rd respondent registering authority has insisted for Form 1-A deficit stamp duty and registration fees on the market value of the subject property as on the date of presentation of document which calls for interference at the hands of this court.

14. In view of the foregoing discussions, the impugned refusal check slip is set aside the and the 3rd respondent is directed to register the document presented by the petitioner for registration, if it is otherwise in accordance with law and if the registering authority is not satisfied that the market value is not truly set forth in the document, he may refer the same to the Collector for action under Section 47-A of the Stamp Act.

In the result, the writ petition is allowed to the extent indicated above. No costs.

Index : yes / no 17..04..2024
Neutral Citation : yes / no
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To

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N.SATHISH KUMAR.J.,

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