IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **15.04.2024**

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.9123 of 2024 &

WMP.No.10149 of 2024

1. R.K.Jalan
2. J.K.Iron & Steels Manufacturing Co.,
   Represented by its Partner B.K.Jalan
   having office at No.218, Linghi Chetty Street,
   Chennai – 600 001. .. Petitioners

Versus

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Commercial Taxes and Registration Department,
   Fort St. George, Chennai – 600 009.

2. The Inspector General of Registration,
   Office of the Inspector General of Registration,
   Santhome, Chennai – 600 004.

3. The Sub Registrar,
   Office of the Sub Registrar Adyar,
   No.51, Kamaraj Avenue, 2nd Street,
   Adyar, Chennai – 600 020. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in refusal Cheque Slip No.RFL/ Adyar/ 25/ 2023 dated 09.11.2023 and quash the same and consequently direct the third respondent to register the deed of conveyance pursuant to the decree for specific performance dated 30.11.2005 made in O.S No.6686 of 1996 passed by the Additional District and Fast Tract Court-I Chennai without insisting for the payment of stamp duty on the market value of the property as on the date of the document is executed and presented for registration.

For Petitioners :Mr.Abudu Kumar Rjarathinam, Senior Counsel for Mr.G.Krishnakumar

For Respondents :Mr.Yogesh Kannadasan Special Government Pleader – R1 to R3

ORDER

With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed to quash the refusal Cheque Slip No.RFL/ Adyar/ 25/ 2023 dated 09.11.2023 of the third respondent and consequently direct the third respondent to register the deed of conveyance pursuant to the decree for specific performance dated 30.11.2005 made in O.S No.6686 of 1996 passed by the Additional District and Fast Tract Court-I Chennai without insisting for the payment of stamp duty on the market value of the property as on the date of the document is executed and presented for registration.

3. Heard learned counsel for the petitioners and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

4. The case of the writ petitioners is that pursuant to the decree of specific performance in O.S.No.6686 of 1996 which has been confirmed in favour of the writ petitioners, when the document was presented for registration, the same has been refused on the ground that the stamp duty has not been paid on the basis of the market value which is contrary to law. Hence, the present Writ Petition.

5. The law is well settled in this regard and the Apex Court has also held that the stamp duty has to be paid on the basis of the date of contract. This aspect has also been followed by this Court in **CMA.Nos.168 and 169 of 2016 on 22.08.2017 [Mrs.G.Mary Chellathal and another Vs. Tamilnadu Inspector General of Registration & Principal Revenue Authority and two others]** wherein it has been held as follows :

> "21. While doing so, it could be seen from the above extract that the judgment of the Division Bench of this Court S.P.Padmavathi v. State of Tamil Nadu and others, cited surpa,

was accepted and affirmed by the Hon'ble Supreme Court. No doubt, the learned Special Government Pleader would rely upon the judgment of another two-Judge Bench of Supreme Court in State of Rajasthan and others v. Khandaka Jain Jewellers, cited supra, wherein the Hon'ble Supreme Court had held that the date of presentation of the document alone should be taken into account. While deciding the question, the Hon'ble Supreme Court had held that the being a fiscal statue, it should be interpreted in favour of the Revenue and therefore, it is the date of the presentation of the document that should be taken into account for fixing the market value for the purpose of the determination of Stamp duty. Though the decision in State of Rajasthan and others v. Khandaka Jain Jewellers, cited supra, is dated 16.11.2007, the same does not appear to have been brought to the notice of the Hon'ble Supreme Court in Residents Welfare Association, Noida v. State of Uttar Pradesh and Ors., cited supra, case which was decided on 15.04.2009. Thus, we are faced with a situation where there are conflicting decisions, of coequal benches of the Hon'ble Supreme Court on the same point of law. The question as to what is the duty of the High

Court when it is faced with a situation like the present one, is no longer a res integra.

22. I had an occasion to deal with the similar situation in M.Krishnamurthi v. K.Pondeepankar & others, reported in 2017 (2) LW 818, wherein I had concluded that it will be open to the High Court to follow the judgment which appears to state the law more elaborately and accurately and therefore, with due respect to the learned Judges who decided Khandaka Jain Jewellers case. I would prefer to follow the judgment in Residents Welfare Association, Noida v. State of Uttar Pradesh and Ors., (cited supra) which in my considered opinion, states the law more elaborately and the same is also in tune with that of the three-Judge Bench decision of the Hon'ble Supreme Court in V.N.Devadoss v. Chief Revenue Control Officer-cum-Ins. and Ors., case (cited supra). In the light of the above, the third point is also answered in favour of the appellants."

6. In such view of the matter, considering the above settled position of law that as the stamp duty should be paid based on the contract entered between the parties, refusing to register the document citing the earlier

judgment which also considered by this Court and as per the dictum laid down by this Court in the above judgment, stamp duty has to be paid on the basis of the contract. Hence, the Order impugned cannot be sustained in the eye of law.

7. Accordingly, this Writ Petition is allowed and the impugned Order dated 09.11.2023 is set aside and the third respondent is directed to register the document within a period of one month from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

vrc
Index :Yes/No
Internet :Yes/No
Neutral Citation : Yes/No

To,

1. The Secretary,
   Commercial Taxes and Registration Department,
   Fort St. George, Chennai – 600 009.

2. The Inspector General of Registration,
   Office of the Inspector General of Registration,
   Santhome, Chennai – 600 004.

3. The Sub Registrar,
   Office of the Sub Registrar Adyar,
   No.51, Kamaraj Avenue, 2nd Street,
   Adyar, Chennai – 600 020.

N. SATHISH KUMAR, J.

vrc

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