IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.02.2024	Orders Pronounced on : 19.06.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.32407 of 2023

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Ranvir R Shah .. Petitioner

Vs.

1. The Inspector General of Registration,
   Santhome, Chennai-600 004.

2. The Deputy Inspector General of Registration,
   Registration Department,
   Santhome, Chennai-600 004.

3. The District Registrar-South, Chennai.

4. The Sub-Registrar,
   Sub-Registrar Office,
   Thiruporur. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the fourth respondent herein to intimate to the petitioner the differential registration fee that is payable in respect of the release deed, dated 12.03.2021 in Doc.No.4415 of 2021 in the office of the Sub-Registrar, Thiruporur and on remittance of the same by the petitioner to forthwith return the said release deed to the petitioner.

For petitioner : Mr.AR.L.Sundaresan, Senior Counsel,
assisted by Mr.L.Palanimuthu

For respondents: Mr.Yogesh Kannadasan, Spl.G.P.

ORDER

The petitioner has filed the present Writ Petition seeking to issue a Writ of Mandamus to direct the fourth respondent herein to intimate to the petitioner the differential registration fee that is payable in respect of the release deed, dated 12.03.2021 in Doc.No.4415 of 2021 in the office of the Sub-Registrar, Thiruporur and on remittance of the same by the petitioner to forthwith return the said release deed to the petitioner.

2. The case of the petitioner in a nut-shell is as follows:

(i) The lands of an extent of 20 acres 70 cents, forming part of 23.82 acres in Survey Nos.12, 13/1, 13/2 and 13/3 of Puupakkam Village, Vandalur Taluk, Chengalpet District, originally belonged to a Company, called M/s.Bokiyu Tanneries Limited, which had become a 'sick industrial company' and proceedings were initiated under the provisions of the Sick Industrial Companies (Special Provision) Act, 1985. In a public auction which was conducted by the Asset Sale Committee of BIFR, the said property of 23.82 acres of land(s) was conveyed for a sale consideration of Rs.3,75,00,000/- in favour of a partnership firm, viz., M/s.R.K.Textiles (India), a firm registered under Registration No.599/1996 in the office of the Registrar of Firms, Madras South and the petitioner was one of the partners of the said partnership firm.

(ii) On 13.12.2022, in pursuance of the public auction, a sale deed was executed by the Indian Bank, and from then, the said firm was the absolute owner of the said property. On 31.03.2011, the partnership firm came to be re-constituted with the petitioner herein who had exit from the frim as retiring partner and the assets and liabilities of the firm was duly recorded in the balance sheet. Further, on 14.06.2011, a deed of retirement was entered into between the continuing partners and the retiring partners. The petitioner was allotted the aforementioned land(s). On 07.06.2012, the petitioner entered into a joint development with M/s.Bennet Property Holdings Company Limited and M/s.Green Avenue Homes Pvt. Ltd. On 03.04.2013, the partnership firm executed a general power of attorney in favour of the petitioner, authorising to deal with the said properties. On 08.05.2013, exclusive possession of the land(s), was handed over to the petitioner and Patta was also transferred in his name.

(iii) The petitioner executed a Power of Attorney on 23.01.2014 in favour of M/s.Bennett Property Holdings Company Limited to deal with the said property(ies). M/s.Bennett Property Holdings Company Limited, as the Power

Agent, executed two gift feeds on 20.02.2014 in favour of the Panchayat President, Pudupakkam Panchayat, gifting 3637 Sq.Mts. and 361 Sq.Mts. of th said land(s) towards open space reservation land and for road widening purpose, respectively. Thereafter, M/s.Bennett Property Holdings Company Limited started to develop the property(ies). M/s.Bennett Holdings Company Limited, by business transfer agreement, dated 16.08.2014, transferred all their right, title, claims and interest over the said property(ies) to their wholly owned subsidiary company, namely M/s.Artha Real Estate Corporation Limited. The petitioner and M/s.Artha Real Estate Corporation Limited entered into sharing agreement with M/s.Bennett Holdings Company Limited on 24.10.2016. 80 Villas were proposed to be constructed and the petitioner herein was allotted 40% share. Thereafter, the property(ies) was developed and registered construction agreement was entered by the said Artha Real Estate between prospective purchasers.

(iv) At the time of retirement, no release deed was executed in favour of the petitioner by the partnership firm over the said property. However, Patta was transferred in the petitioner's name. M/s.R.K.Textiles India and the petitioner's name, were reflected as the owners of the land(s) of an extent of the shares which were allotted to the respective parties. In order to easily facilitate the conveyance in favour of the prospective purchasers, a release deed was executed on 12.03.2021 by the partnership firm in respect of the balance 20.70

acres of land in favour of the petitioner. However, the Sub-Registrar's Office (SRO) had not released the said release deed, but insisted to show the constructions put on the said land(s) in the schedule therein and pay the requisite stamp duty in respect of the construction as well. Though the SRO had been explained about the history of the transaction, the SRO refused to return the release deed, even after registration was over. In the meanwhile, the home buyers initiated proceedings against the petitioner and the developer under the Real Estate (Regulation and Development) Act before the Tamil Nadu Real Estate Regulatory Authority, as undivided share of land (UDS) was not registered.

(v) The petitioner thereafter sent a representation on 27.05.2022 to the respondents explaining the history of transaction and requested to release the release deed. However, no action was taken by the respondents. Hence, the petitioner earlier filed W.P.No.28268 of 2022 before this Court seeking to direct the respondents to release the said release deed, dated 12.03.2021. On 25.11.2022, the learned Additional Government Pleader informed the Court that proceedings under Section 47-A of the Indian Stamp Act, were pending and Form-III therein had been issued and therefore, the document in question was not released. Based on the above statement made by the learned Additional Government Pleader, this Court disposed of the said Writ Petition, directing the respondents therein to forthwith issue Form-1 notice and complete the proceedings under Section 47-A of the Indian Stamp Act, within six weeks.

(vi) It is the grievance of the petitioner that the above statement of the learned Additional Government Pleader was incorrect and the proceedings under Section 47-A of the Indian Stamp Act, were initiated for the difference in value of the land(s), which was the subject matter of the release deed. The differential stamp duty which was raised by the respondents, was paid by the petitioner on 19.06.2021. Thereafter, the document in question was sent by the District Revenue Officer to the fourth respondent/Sub.Registrar, for completing the registration and releasing the same to the petitioner. Now, only the registration fee is to be computed, which has to be collected and the document(s) in question had to be released to the petitioner.

(vii) Thereafter, the petitioner sent a representation dated 16.12.2022 to the fourth respondent requesting to intimate the amount of registration fee to be paid, so as to enable the petitioner to remit the same and requested the respondents to release the document(s). Since no action was taken by the respondents, the petitioner gave another representation on 22.12.2022 to all the respondents herein, stating that there was no Section 47-A proceedings pending in respect of the document(s) in question. Despite the repeated representations, the respondents have not intimated the amount of registration fee to be paid and have not returned the registered document(s) to the petitioner. Hence, the present Writ Petition is filed for the relief stated supra.

3. The respondents have filed counter affidavit stating as follows:

(a) A deed of release dated 12.03.2021, executed by M/s.R.K.Textiles (India) in favour of Ranvir R Shah (petitioner) releasing 9,01,692 Sq.Ft. of land comprised in Survey Nos.12, 13/1, 13/2 and 13/3 of Pudupakkam Village, valued at Rs.3,14,05,322.70, was presented for registration on 12.03.2021. The stamp duty of Rs.21,98,373/- at 7% towards the stamp duty and Rs.12,56,212/- towards registration fee, have been paid by the petitioner. As the petitioner retired from the Partnership on 14.10.2011, he is not a partner on the date of execution of the release deed.

(b) Article 55-D(ii) of Schedule-I to the Indian Stamp Act, as applicable to the State of Tamil Nadu, is not applicable to this release deed, as the release deed mentioned in Article 55-D(ii) will apply only when the release is made between the partners of a Partnership Firm. The petitioner being the releasee, is not a partner and hence, they are not co-owners on the date of execution of the release deed and hence, the fourth respondent/Sub.Registrar has considered the release deed as a conveyance, chargeable under Article 23 of the Indian Stamp Act and the value set-forth in the release deed, was verified with the market value guideline and the fourth respondent has reason to believe that the market value had not been truly set-forth in the release deed.

(c) Hence, the fourth respondent-Sub.Registrar registered the said release deed as No.4415 of 2021 and referred the same to the Collector under Section 47-A(1) of the Stamp Act for determination of the market value and collection of difference in stamp duty, if any, based on such determination. The Collector has determined the market value at Rs.200/- per Sq.Ft., which worked out to Rs.18,03,38,400/- and collected difference in stamp duty of Rs.1,04,37,000/-. The Collector has also informed the fourth respondent-Sub.Registrar that the difference in stamp duty in respect of the land(s) alone, had been collected and directed the fourth respondent to collect the difference in stamp duty in respect of the buildings by causing the building to be valued by the Assistant Executive Engineer (PWD). Hence, the Assistant Executive Engineer (PWD) was addressed to fix the value of the buildings standing on the said land(s) as on the date of execution of the release deed. The Assistant Executive Engineer (PWD) expressed that the building could not be measured and valued, as the owner of the property is not co-operating. Hence, the fourth respondent is considering to inspect the property in question with the Assistant Executive Engineer (PWD) with the protection of Police. Therefore, the document is not yet released to the petitioner.

(d) Further, it has to be decided as to whether the building constructed on the land(s) of the petitioner, belongs to the petitioner or not. When once the building is inspected by the Assistant Executive Engineer (PWD) and based on the valuation report of the Assistant Executive Engineer (PWD) to be perused for the additional stamp duty for the value of building, the fourth respondent could decide the issue by getting instructions from the higher authorities. While so, the Accountant General who inspected the fourth respondent's office, had observed that the document should not have been referred under Section 47-A(1) of the Indian Stamp Act and demand should have been made based on the guideline value of Rs.60,41,33,640/-. The Accountant General further stated that by not issuing demand directly on the value of Rs.60,41,33,640/-, there is a short levy of Rs.5,25,63,675/-. Whether any action based on the observations of the Accountant General is required or not, has to be decided.

(e) Orders on the representation dated 27.05.2022 of the petitioner will be passed after referring the matter to the higher authority, as it is a complicate issue and the petitioner earlier filed W.P.No.28268 of 2022 before this Court for issuance of a Writ of Mandamus to direct the respondents to release the said registered release deed in Doc.No.4415 of 2021, dated 12.03.2021, and this Court, by order dated 25.11.2022, while disposing of the said W.P.No.28268 of 2022, observed that, "7. Since already the fourth respondent has forwarded Form-A notice dated 19.03.2021 to the District Revenue Officer (Stamps), for initiation of proceedings under Section 47-A of the Indian Stamp Act, this Court, without expressing any opinion on the merits of the case, directs the District Revenue Officer (Stamps), Office of the Special Deputy Collector, Singaravelar Maaligai, Chennai-600 001, though the District Revenue Officer (Stamps) is not arrayed as a party in this writ petition, to conclude the proceedings under Section 47-A of the Indian Stamp Act, after issuing Form-I notice and providing opportunity to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order."

(f) Section 47-A proceedings had been initiated for the difference in value of the land which was the subject matter of the release deed and the differential stamp duty which was raised by the respondents in the Notices in Form-III and Form-I, had been duly paid by the petitioner on 19.06.2021 and the District Revenue Officer has also informed the fourth respondent that the difference in stamp duty in respect of the land alone, has been collected and directed the fourth respondent to collect the difference in stamp duty in respect of the buildings by causing the building to be valued by the Assistant Executive Engineer (PWD) and hence, the Assistant Executive Engineer (PWD) was addressed to fix the value of the buildings standing on the said land(s) as on the date of execution of the release deed. The Assistant Executive Engineer (PWD) has expressed that the building could not be measured and valued, as the owner of the property, is not co-operating. Hence, the fourth respondent is considering to inspect the property with the Assistant Executive Engineer (PWD) with the protection of Police. Therefore, the document is not yet released to the petitioner and the release deed not returned to the petitioner, until fixation of valuation of building for additional stamp duty to be collected from the petitioner, and the petitioner has shown the land alone in the release deed and he has suppressed the truth of superstructure which had been constructed in property of the petitioner in the release deed and the petitioner will have to pay the differential amount for stamp duty and registration for valuation of the building. Hence, for the above reasons, the Writ Petition may be dismissed.

4. Learned Senior Counsel appearing for the petitioner submitted that the subject land(s) belong to partnership. On 14.06.2011, a deed of retirement was entered into between the continuing partners and retiring partners. The petitioner was allotted the subject land(s) on 07.06.2012. Subsequently, on 07.06.2012, the petitioner entered into a joint development agreement with M/s.Bennet Property Holdings Company Limited and M/s.Green Avenue Homes Pvt. Ltd. On 03.04.2013, the partnership firm executed a General Power of Attorney in favour of the petitioner, authorizing to deal with the said properties in question. On 08.05.2013, exclusive possession of the land(s), was handed

over to the petitioner and Patta was also transferred in his name. Subsequently, on 23.01.2024, the petitioner executed a Power of Attorney in favour of M/s.Bennett Property Holdings Company Limited, to deal with the said properties. The above-said M/s.Benett Property Holdings Limited, as a Power Agent, executed two gift deeds on 20.02.2014 in favour of Panchayat President, Pudupakkam Panchayat, gifting 3637 Sq.Mts. and 361 Sq.Mts. of the said land(s) towards open space reservation land and for road widening purpose, respectively. Thereafter, the above-said Company started to develop the properties by business transfer agreement, dated 16.08.2014, transferring all their right, title, claims and interest over the said properties to their wholly owned subsidiary company, namely M/s. Artha Real Estate Corporation Limited. Further, on 24.10.2016, the petitioner and the above-said M/s.Artha Real Estate Corporation Limited entered into a sharing agreement with M/s.Benett Holdings Company Limited, based on which, 80 Villas were proposed to be constructed and the petitioner herein was allotted 40% share. Thereafter, the properties were developed and registered construction agreement was entered into by the said Artha Real Estate between the prospective purchasers.

5. The learned Senior Counsel further contended that during retirement, no release deed was executed in favour of the petitioner by the partnership firm over the said property(ies), however, the Patta was transferred in the name of

the petitioner. M/s.R.K.Textiles India and the petitioner's name were reflected as the owners of the land(s) of an extent of shares which were allotted to the respective parties. In order to easily facilitate the conveyance in favour of the prospective purchasers, a release deed was executed on 12.03.2021 by the partnership firm in respect of the balance 20.70 acres of land in favour of the petitioner. However, the Sub-Registrar Office (SRO) had not released the said release deed, but insisted to show the construction put up on the said land(s) in the schedule therein and pay the requisite stamp duty in respect of the construction as well. Though the fourth respondent was explained about the history of the transaction, the fourth respondent refused to return the release deed even after registration was over. In the meanwhile, the purchasers initiated proceedings against the petitioner and the developer under the Real Estate (Regulation and Development) Act (i.e. shortly called as RERA) before the Tamil Nadu Real Estate Regulatory Authority, as undivided share of land (UDS) was not registered.

6. It is further contended by the learned Senior Counsel that, immediately, the petitioner sent a representation on 27.05.2022 to the respondents explaining the history of the transaction and requested to release the release deed. Since no action was taken by the respondents, the petitioner had filed W.P.No.28268 of 2022 before this Court to direct the respondents therein to release the release

deed, dated 12.03.2021. Since the learned Additional Government Pleader appearing for the respondents in the said Writ Petition in W.P.No.28268 of 2022, informed the Court that on 25.11.2022 that the proceedings under Section 47-A of the Indian Stamp Act, were pending and Form-III therein had been issued and hence, the document in question was not released. Further, based on the statement made by the learned Additional Government Pleader, this Court disposed of the said W.P.No.28268 of 2022 and directed the respondents therein to forthwith issue Form-1 notice and complete the proceedings under Section 47-A of the Indian Stamp Act, within six weeks.

7. Now, the grievance of the petitioner is that the above statement of the learned Addl.G.P. was not correct and the proceedings under Section 47-A of the Indian Stamp Act, were not initiated for the difference in value of the lands, which is the subject matter of the release deed. The differential stamp duty which was raised by the respondents, was paid by the petitioner on 19.06.2021 and thereafter, the documents in question, were sent by the District Revenue Officer to the fourth respondent-Sub-Registrar, for completing the registration and releasing the same to the petitioner. Now, only the registration fees had to be computed, which has to be collected and the documents in question are to be released to the petitioner. Thereafter, the petitioner sent a representation, dated 16.12.2022 to the fourth respondent, requesting to initiate the amount of

registration fee to be paid so as to enable the petitioner to remit the same and requested the respondents to release the documents. Since no action was taken by the respondents, the petitioner gave representation dated 22.12.2022 to all the respondents therein, stating that there were no proceedings pending against Section 47-A of the Indian Stamp Act. Despite the repeated representations, the respondents have not intimated the amount of registration fee to be paid and for returning the registered document to the petitioner. Therefore, the petitioner has approached this Court by way of this Writ Petition.

8. Learned Special Government Pleader appearing for the respondents submitted that the petitioner was not a partner on the date of execution of the release deed. Article 55-D(ii) of Schedule-I to the Indian Stamp Act, as applicable to the State of Tamil Nadu, is not applicable to the present release deed, as it is mentioned in Article 55-D(ii) that it will apply only when the release deed is made between the partners of the partnership firm. The petitioner being a releasee, is not a partner, and hence, they are the co-owner on the date of execution of the release deed, and hence, the fourth respondent considered the release deed as a conveyance, chargeable under Article 23 of the Indian Stamp Act.

9. Learned Special Government Pleader further submitted that the value set forth for the release deed, was variable with the market value guidelines and

the fourth respondents has reasons to believe that the market value has not been truly set forth in the release deed. Hence, the fourth respondents registered the release deed under Document No.4415 of 2021 and referred the same to the District Collector under Section 47-A(I) of the Indian Stamp Act, for determination of the market value and the collectio of the difference in stamp duty, if any, based on such determination. The Collector also determined the market value at Rs.200/- per Sq.ft. and collected the difference in stamp duty and the Collector also informed the fourth respondent the difference in stamp duty in respect of the land alone, was collected and directed the fourth respondents to collect the difference in stamp duty in respect of the building by causing the building to be valued by the Assistant Executive Engineer, PWD, and hence, the Assistant Executive Engineer, PWD was addressed to fix the value of the building standing on the said land(s) as on the date of execution of the release deed. The Assistant Executive Engiener expressed that the building could not be measured and valued, as the owner of the property is not co-operating. Since the value of the building was not assessed for collection of stamp duty, the release deed is yet to be released to the petitioner.

10. The learned Additional Government Pleader further contended that the release deed was not properly stamped and therefore, the release deed, after registration, was referred to the Collector under Section 47-A(1) of the Indian

Stamp Act. Though subsequently it was valued and collected, however, the Collector gave a direction to the fourth respondents that the superstructure built up on the said land covered under the release deed, was not valued and therefore, it has to be valued and the stamp duty be collected, for which, the learned Senior Counsel appearing for the petitioner has placed reliance on the decision of a Division Bench of this Court in the case of M/s.Park View Enterprises Vs. State Government of Tamil Nadu, reported in 1989 (2) LW 593, held as follows:

> "64. ... ... Whether the superstructure is of a temporary or permanent character, it is immaterial relating to its ownership and merely because it gets erected on the land of another, automatically the owner of the land does not become the owner of the superstructure; if the intention of the parties is otherwise. Section 8 of the Transfer of Property Act only deals with a right which the transferor had and then capable of passing in the property on the date of transfer which would get transferred to the transferee, if no contra intention is expressed or necessarily implied. When the owner of the land is not the owner of the building, this section cannot be relied upon. With these conclusions, this point is decided against the respondent."

11. As far as the case on hand is concerned, admittedly, the petitioner got the release deed from the partnership firm and Patta was also transferred in his name. Admittedly, the joint venture agreement and also the construction agreement between M/s.Artha Real Estate and prospective purchasers in order to easily facilitate the conveyance in favour of the prospective purchasers and the release deed was entered into on 12.03.2021 by the partnership firm in respect of the balance 20.70 acres of land(s) in favour of the petitioner. The said release deed was presented for registration. Though the same was registered and referred to the Collector under Section 47-A of the Indian Stamp Act. Admittedly, based on the recommendation of the Collector, they have fixed the market value and the stamp duty was also paid to the release deed. Though the Collector has fixed the market value for the land and based on the market rate fixed by the Collector, the market value was fixed for the land(s) and the stamp duty was paid for the land(s).

12. Now, the only dispute is that since, on the date of registration of the sale deed, there is a building construction over the land(s), the superstructure of the building has also got to be valued and the same has to be registered and stamp duty has also to be paid for superstructure also. Therefore, now the only question is as to whether the superstructure has to be valued and paid the Court fee, in the absence of the release deed in respect of the building also.

13. Admittedly, on 24.10.2016, a sharing agreement was entered into by the petitioner and the said M/s.Artha Real Estate Corporation Limited, with M/s.Bennett Property Holdings Company Limited and 80 Villas were proposed to be constructed and the petitoner herein was allotted 40% of share. It is not in dispute that the property(ies) were developed and registered construction agreement was entered into between the Artha Real Estate in favour of prospective purchasers. Though at the time of the retirement, no release deed was executed in favour of the petitioner by the partership firm, the Registration Department has not considered the documents which are not between the partners. They have also stated that the release deed was not properly stamped. Though, earlier Writ Petition filed by the petitioner in W.P.No.28268 of 2022 was to issue a Mandamus to the respondents therein to forthwith release the registered release deed, dated 12.03.2021, registered as Document No.4415 of 2021 executed by M/s.R.K.Textiles (India), represented by Mr.Ajay Agarwal in favour of the petitioner without insisting on payment of stamp duty or registration charges for the buildings which are standing in the land(s) in Survey Nos.13/1, 13/2 and 13/3 of Pudupakkam Village, as the buildings are not the subject matter of the release deed, this Court, by order dated 25.11.2022, observed/directed as follows in the said Writ Petition:

> "6. The facts in the present case is not in dispute. The petitioner is the beneficiary and the land is released in favour

of him vide release deed dated 12.03.2021 registered as Document No.4415 of 2021. The grievance of the petitioner is that the land alone is released in favour of the petitioner and not the building, however, the respondents has forwarded Form-A notice dated 19.03.2021 to the District Revenue Officer (Stamps), for initiation of proceedings under Section 47-A of the Indian Stamp Act.

7. Since already the fourth respondents has forwarded Form-A notice dated 19.03.2021to the District Revenue Officer (Stamps), for initiation of proceedings under Section 47 A of the Indian Stamp Act, this Court, without expressing any opinion on the merits of the case, directs the District Revenue Officer (Stamps), Office of the Special Deputy Collector, Singaravelar Maaligai, Chennai-600 001, though the District Revenue Officer (Stamps) is not arrayed as a party in this Writ petiton, to conclude the proceedings under Section 47 A of the Indian Stamp Act, after issuing Form-I notice and providing opportunity to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

8. The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition is closed."

14. Accordingly, as directed by the Collector (Stamps), necessary stamp duty was paid by the petitioner for the land(s) which is/are covered under the

release deed.

15. Admittedly, the release deed between the petitioner and the partnership firm, covered only the land(s) alone and subsequently, there was a joint venture agreement and the construction agreement was also entered into between the said M/s.Artha Real Estate Corporation Limited and the prospective purchasers and not with the petitoner. Since already the correct market value was fixed by the Collector (Stamps) for the land(s) and the release deed was also already registered and the same has also been retained only for the purpose of paying the stamp duty for the building constructed on the land(s) and since the petitioner is not a party to the construction agreement, the construction agreement was entered into only between the said M/s.Artha Real Estate Corporation Limited and the prospective purchasers. Since already the release deed was also registered and the stamp duty was also paid for the correct value of the land(s), the learned Senior Counsel appearing for the petitioner relied on the decision of the Division Bench of this Court in 1989 (2) LW 593 (supra), wherein it has been elaborately discussed and held as follows in paragraphs 61 and 64:

> "61. The fourth point which is of considerable importance is, thing fixed to the soil/earth becomes automatically the property of the owner of the land or the superstructure could be owned by a different person ? This point has taken counsel appearing for both the parties to decisions of antiquity. It is strenuously pleaded by learned Advocate-General that, if any superstructure is erected over the land belonging to a person, then, in the eye of law, the owner of land becomes the the superstructure. The petitioners' counsel

contend that the maxim relied upon by the learned Advocate-General is one of antiquity and obsolete in law and has no application in India and that ownership in land could be with one person and that the superstructure could be owned by another, provided there is a legal relationship between them. It may originate by granting him a permission, which, in law, means licence, or may be the resultant effect of a long lease granted by the owner for putting up the superstructure, etc. Learned Advocate-General relies upon very old decisions of the English courts as in Annada Mohan Roy Vs. Gour Mohan Mullick, AIR 1923 PC 189, Aveline Scott Ditcham Vs. James J. Miller, AIR 1931 PC 203, but no attempt is made to refer to any decision of the English courts, on this side of the century. No decision of the letter half of this century had been produced to show that such a maxim any longer survives in England. When statutory provisions have been made relating to rights over properties, goods and the like in this country, and when parties to transactions have the right to stipulate legally, enforceable terms and conditions as between them, a doctrine of this nature is inapplicable in this country. The Tamil Nadu City Tenants' Protection Act confers right upon the tenant who had put up the superstructure at his own cost to demand of the owner of the land to sell it to him, in the event of an filed against him. Section 4 therein enables a landlord, who succeeds, to take the superstructure by paying its cost. The lessee who acquires only an interest to enjoy the land as found in section 105 of the Transfer of property Act is thus enabled to put up a structure over the lands of the lessor. By the construction coming up the lessor cannot claim ownership in the building. What is required is only the existence of certain legal relationship between the parties and no more. Hence, all counsel appearing for the petitioners have vehemently opposed the reliance placed by the learned Advocate-General on the maxim : "quic quid inaedificatur solo solo cedit."

It means that, whatever is affixed to the soil belongs to the soil, i.e. if A builds on B's land, the building becomes the property of B. Claiming that this maxim will have to apply in the instant case, in relation to the agreements entered into between the parties when high rise buildings are constructed, the learned Advocate-General would refer to Narayan Das Khetry v. Jatindra Nath Roy Chowdhry, AIR 1927 PC 135; 54 IA 218. It was a case in which the respondent's father was the proprietor of a parcel of land on which he had put up a house at his cost. The land was sold for arrears of revenue and the appellant as auction purchaser secured a sale certificate. The land was acquired under the Land Acquisition Act and compensation for the superstructure was fixed and this amount was claimed by the auction purchaser and he was referred to the civil court to get a decision. It was held that the Government's sale for arrears of land revenue was limited and, therefore, the ownership of the building did not pass to the auction-purchaser by reason of the revenue sale. In arriving at the said conclusion, it was held as follows (at p. 137) :

> "... having special regard to the view held in India respecting the separation of the ownership of buildings from the ownership of the land, and to the recognition by the courts in India that there is no rule of law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself ......"

In the previous three paragraphs, a reference was made to the aforesaid English maxim and it was stated that there was a concession by counsel that this maxim has at the most only a limited application in India. It is this concession found therein that the learned Advocate-General relied upon to claim that once such a maxim is applicable and specific provisions having been made in sections 63A and 108(h) and section 8 of the Transfer of Property Act relating to passing of ownership in properties erected on somebody else's land under certain circumstances like mortgages and leases, wherever a building is put up on land belonging to another pursuant to an application made to the concerned authority under the Tamil Nadu Country and Town Planning Act, claiming to be the owner, whatever be the terms agreed to between the parties, irrespective of those terms, in law, the owner of the land becomes the "owner of the building".

64. Before parting with this point, it will be necessary to refer to the under-mentioned decisions, relied upon by learned counsel for petitioners, as to how far the sections in the Transfer of Property Act relied upon by the State cannot be understood in the manner in which it is put forth by it. The Division Bench in C. V. Gokulapathy v. K. R. Venkatarama Sarma (84 LW 649 = AIR 1972 Madras 54) , in dealing with section 51 of the said Act, had pointed out the rights of the lessee under section 108, and that section 51 relates to improvements made by a bona fide holder under a defective title, and a lessee cannot rely upon it, and his right under section 108 is circumscribed by what is contained therein, and unless there is a contract or local usage to the contrary, he could claim ownership in the superstructure if he exercises his rights when he is in its occupation. Hence, the defendants therein were given three months' time to remove the superstructure and hand over vacant possession to the plaintiff. This decision shows that ownership could be with different parties relating to superstructure and land. In dealing with section 108(h), a learned judge of this court in K. Arumugham Naicker v. Tiruvalluva Nainar Temple (67 LW 489 = ILR 1955 Madras 774), held that, when a decree is passed for vacant possession of land, it will be made effective by directing

removal of superstructure, because such a power of removal is incidental, necessary and ancillary to the power to direct delivery of possession of the property under the Presidency Small Cause Courts Act. Deokinandan Prosad Vs. A. Aghorenath Banerji, (ILR 24 Patna 268 (DB) = AIR 1945 Patna 400, held that, in the absence of any reservation found in the document on partition, as the mortgagors were allotted the land on which the house then stood, the security or mortgage created would include both the house and the land. This decision also thus recognises that the parties even to a mortgage transaction could differently deal with rights in the land separately from the rights over the superstructure, if their intention is made clear in the instrument. Relying on this decision, the petitioners succeed in showing that, even in the case of a mortgage or a lease or any transaction relating to transfer of interest in property, it is open to the parties to convey only such of those rights or interests which they choose to transfer and that, when an owner of land only intends to transfer his rights therein, either as a whole or in part, he cannot be compelled to part with his rights in the superstructure, if any, if he intends to deal with it separately. They also succeed in their contention that, ownership in land and ownership in superstructure could he with different persons provided there is a legal relationship existing between them as parties to a contract. Entry into the property by the owner of the superstructure must be after obtaining the lawful consent of the owner of the land. Whether the superstructure is of a temporary or permanent character, it is immaterial relating to its ownership and merely because it gets erected on the land of another, automatically, the owner of the land does not become the owner of the superstructure, if the intention of the parties is otherwise. Section 8 of the Transfer of Property Act only deals with a right which the transferor had and when capable of passing in the property on the date of transfer which would get transferred to the transferee, if no contra intention is expressed or necessarily implied. When the owner of the land is not the owner of the building, this section cannot be relied upon. With these conclusions, this point is decided against the respondent."

16. Therefore, on a careful perusal of the release deed, which has not covered the superstructure and however, as per the construction agreement entered into between the proposed purchaser(s) and as per the above said

decision of the Division Bench of this Court, the superstructure does not require any separate stamp duty, and hence, the building constructed on the land(s) of the petitioner, does not belong to the petitioner.

17. In the above facts and circumstances of the case, and in view of the above referred to decision of the Division Bench of this Court, the present Writ Petition is allowed. The fourth respondent is directed to release the release deed in question, within a period of two weeks from the date of receipt of a copy of this order, without insisting on any stamp duty for the superstructure built on the land(s)/building in question, if the release deed in question is otherwise in order and however, as the petitioner has already paid the correct stamp duty for the land(s) in question. There shall be no order as to costs.

19.06.2024

Index:Yes/no
Speaking Order: Yes/no
Neutral Citation case: Yes/no
cs

To

1. The Inspector General of Registration, Santhome, Chennai-600 004.

2. The Deputy Inspector General of Registration,
 Registration Department, Santhome, Chennai-600 004.
3. The District Registrar-South, Chennai.

4. The Sub-Registrar, Sub-Registrar Office, Thiruporur.

P.VELMLURUGAN, J

cs

Pre-delivery order in
W.P.No.32407 of 2023

Order Pronounced on
19.06.2024