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W.P.No.25324 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.25324 of 2018
and
W.M.P.No.29462 of 2018

V.Premkumar

...Petitioner

-Vs-

1.The Sub-Registrar,
Oulgaret,
Government of Puducherry,
Puducherry.

2.The Tahsildar,
Taluk Office, Oulgaret,
ECR Road (Opp. to Latha Steel House),
Lawspet, Puducherry.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari, calling for the records of the first respondent dated 15.06.2018 in No.251/SRO/Oulgaret/Audit/2018/1140 and the consequential notice issued by the second respondent dated 14.09.2018 in No.2008/TOO/D/RR/47A/2018/1097 proposing to recover under RR Act in regard to Registration of Sale Deed and quash the same and pass such further orders.



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For Petitioner : Mr.M.Krishnappan,
Senior Counsel
for M/s.R.Swarnalatha

For R1 & R2 : M/s.G.Djearany
Government Advocate (Pondicherry)

ORDER

This writ petition is filed for issuance of a Writ of Certiorari, calling for the records of the first respondent dated 15.06.2018 in No.251/SRO/Oulgaret/Audit/2018/1140 and the consequential notice issued by the second respondent dated 14.09.2018 in No.2008/TOO/D/RR/47A/2018/1097 proposing to recover under RR Act in regard to Registration of Sale Deed and quash the same.

2. Learned senior counsel for the petitioner submitted that the Petitioner entered into a registered agreement with (1) Saint Paul Marie Saturin and (2) Saint Paul Aroquimarie to purchase the house property, registered by the 2nd respondent in Doc.No.3934 of 94 on 09.12.1994 for an extent of 295 sq.mts situated in Reddiarpalayam within the jurisdiction of the 2nd respondent herein. The sale consideration agreed between the parties was fixed at Rs.11 lakhs, an advance amount of Rs.4 lakhs was paid and balance of Rs.7 lakhs had to be paid at the time of execution of Sale deed to be



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executed within 3 years from date of Agreement. The petitioner has been requesting the above mentioned sellers to execute the sale deed on receiving the balance consideration. The sellers were not willing to execute the Sale Deed and consequently, the Petitioner was compelled to file O.S.No.315 of 2003 on 27.08.2003. Even though notice was issued to the owners of the property, they remained *ex parte* and the learned Principal Sub Judge at Puducherry rendered a judgment and decree for specific performance on 31.03.2005.

3. Learned senior counsel further submitted that the Petitioner filed E.P.No.261 of 2005 for execution of the decree and also deposited in Lower Court the balance sale amount of Rs.7 lakhs on 14.07.2005. The learned Principal Sub Judge at Puducherry executed the Sale Deed on 30.10.2006 in favour of the Petitioner. The said Sale Deed was registered by the 1st respondent in Doc.No.1296 of 2009 on 27.04.2009. The petitioner has paid Rs.1,10,000/- as Stamp Duty in respect of the total Sale consideration of Rs.11 lakhs. The 2nd respondent after satisfying himself that the stamp duty has been properly paid on the basis of the guideline value registered the document. The 2nd respondent has not entertained any doubt as regards the value of the property and therefore he was not obliged to refer under Section



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47 A of the Stamp Act to the Collector for adjudication of proper stamp duty payable.

4. Learned senior counsel further submitted that the 2nd respondent forwarded the Sale Deed to the learned Principal Sub Judge at Puducherry, who executed the sale deed and the Petitioner received the Sale Deed from the Court thereafter. The Petitioner was put in possession of the property and he is in possession and enjoyment of the same. All of a sudden the respondent by order dated 15.06.2018 directed the petitioner to pay a sum of Rs.1,84,058/- with interest at 12% p.a. within 15 days from date of receipt of the letter on the ground that on account of Audit by the AG Audit, the Sale Certificate is a conveyance and Stamp Duty and registration fees are to collected on the market value of the property conveyed.

5. Learned senior counsel further submitted that the Petitioner sent a reply on 06.09.2018 denying the liability and also requested an opportunity to appear before the respondent. The 2nd respondent without passing any order in the representation has forwarded to the District Registrar Puducherry for recovering the amounts under the RR Act. The 2nd respondent based on the communication from the District registrar Puducherry, issued the



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impugned order dated 14.09.2018 directing the Petitioner to pay the deficit

Stamp Duty of Rs.1,84,058/- along with interest at 12% p.a. within 15 days.

Aggrieved by the same, the present petition is filed.

6. Learned senior counsel appearing for the petitioner relied upon the judgment of the Division Bench of this Court reported in **1997-2-L.W.579** in the case of ***S.P.Padmavathi Vs. The State of Tamil Nadu rep. by its Secretary to Government, Commercial Taxes and Religious Endowment Department, Fort St.George, Madras-9 and Another*** in **W.A.No.1205 of 1991 dated 15.10.1996**, which held as follows:

“7. In the light of these contentions, the points that arise for consideration are:-

(1) What is the scope of Sec. 47-A of the Act?

(2) Whether, in the case of deed of convey- ance presented for registration, pursuant to the decree for specific performance passed in the suit, in the absence of any material or circumstance to show that there is an attempt to fraudulently evade payment of proper stamp duty or lack of bona fides, is it open to the Registrar, registering the documents, in exercise of his power under Sec. 47- A of the Act, to direct payment of stamp duty on the market value of the property, as on the date the document is executed and presented for registra- Lion?



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(3) *Whether the order of the learned Single Judge requires to be interfered with?*

28. *For all the above reasons, we answer point No.2 as follows:*

In the case of instrument of conveyance executed pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of deliberate undervaluation or lack of bona fides in valuing the subject of transfer with a view to evade payment of proper stamp duty, the mere 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 Officer to invoke his power under Sec. 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 instrument to undervalue, with a view to evade payment of proper stamp duty.”

7. Learned senior counsel further relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2009) 14 Supreme Court Cases 716** in the case of ***Residents Welfare Association, Noida Vs. State of Uttar Pradesh and Others***, which held as follows:

“56. *For this, a reference can be made to S.P. Padmavathi v. State of T.N. [AIR 1997 Mad 296] which is similar to the present case and to which we are in respectful agreement where the property could not be registered due to*



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no fault of the transferee and where the consideration was frozen earlier, as in the current case. The Madras High Court held that the relevant date for calculation of market value and the stamp duty is the date on which the consideration was frozen.”

8. Heard both sides and perused the materials placed on record.

In view of the above ratio laid down by the Hon'ble Supreme Court of India and the Division Bench of this Court, **this writ petition stands allowed**. No costs. Consequently, connected miscellaneous petition is closed.

09.07.2024

cda

Index : Yes/No

Speaking/Non Speaking order

J.SATHYA NARAYANA PRASAD, J.

cda

To

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Oulgaret,
Government of Puducherry,



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Puducherry.

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