(2007) 11 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 35034 of 2007

Cottage Industries Exposition Limited — APPELLANT

Vs

The Chief Controlling Revenue Authority (Inspector General of Registrations), The District Revenue Officer (Stamps) and The Sub Registrar — RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Income Tax Act, 1961 — Section 269UD(1), 269UE(2), 269UH(1), 269UH(2)
Stamp Act, 1899 — Section 47A, 47A(1), 47A(10), 47A(5), 47A(6)
Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 — Rule 10

Citation : (2007) 11 MAD CK 0079

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : Meera Gupta, for the Appellant; K. Balu, AGP, for the Respondent

Judgement

P. Jyothimani, J.—Heard the learned Counsel appearing for the petitioner as well as the learned Additional Government Pleader who has

taken notice on behalf of the respondents.

2. It is the case of the petitioner that the property located at Plot No.1429, 17th Main Road, Anna Nagar, Chennai originally belonged to one

Mrs. Gokila Ramakrishnan under whom the petitioner was a lessee from 1987 onwards. Subsequently, an agreement of sale was entered on

22.03.1995 between Mrs. Gokila Ramakrishnan and Cottage Industries Exposition Limited, the petitioner herein fixing the sale consideration at

Rs. 26,50,000/-. A sum of Rs.10,00,000/- was paid as an advance and the balance sum of Rs. 16,50,000/- has to be paid at the time of

execution of the sale deed.

3. Since the amount is more than Rs. 10,00,000/- it requires no objection certificate from the Income Tax department. When the petitioner as well

as their vendor approached the Income Tax department, the department found fault with the sale consideration as agreed between the parties as

much lower than the market value and an order was passed u/s 269UD(1) of the Income Tax Act. Against which, the petitioner has filed W.P.

No. 9062 of 1995. The said writ petition was partly allowed upholding the pre-emptive vesting of the said property in the Central Government

with effect from the date of the order i.e. on 26.06.1995. However, in respect of the portion of the order directing delivery of possession of the

property and consequential action of taking forcible possession was quashed.

4. By invoking Section 269UE(2), the department directed the petitioner and its vendor to deliver vacant possession of the property. Against

which, the petitioner has moved another writ petition in W.P. No. 15711 of 1995 to quash the impugned direction and also for a direction that the

petitioner is entitled to continue in possession. The vendor of the petitioner also filed a writ petition in W.P.No.2258 of 1996 questioning the action

of the Income Tax department initiating u/s 269UH(1) of the Income Tax Act. Writ Appeals were filed in respect of the portion regarding pre

emptive vesting of the said property in W.A.Nos.107 of 1996 and 1347 of 1995. Writ Petition and Writ Appeals were heard together and a

common judgment was passed on 12.12.2000 directing the appropriate authority to issue direction in terms of Section 269UH(2) of Income Tax

Act. Pursuant to the said direction of the Division Bench, the appropriate authorities issued ""no objection certificate"" permitting the vendor to sell

the property in question to the petitioner for a sale consideration of Rs.26,50,000/-. Subsequently, the sale deed came to be registered on

04.02.2002 as Document No.350 of 2002 in the office of the Sub Registrar, Anna Nagar, namely the third respondent herein subject to Section

47(A) Reference. The matter was referred to Stamp Collector u/s 47(A)(1)Stamp Act. The second respondent, who is the authority to decide the

valuation after hearing the objections of either parties, by order dated 13.02.2003, fixed the value of the property at Rs.97,67,232/- and after

deducting the stamp duty already paid, the Stamp Collector directed the petitioner herein to pay a sum of Rs.9,25,249/- being the deficit stamp duty. It was as against the order of the second respondent, the petitioner has preferred an appeal to the first respondent u/s 47(A)(10) of the

Stamp Act and the said appeal was numbered as No.18573/NI/03.

5. According to the petitioner, the first respondent heard the objections raised by the petitioner on various grounds. Against the order of the

District Revenue Officer, namely the second respondent, appeal was heard as early as 2004 and according to the petitioner, the first respondent,

the appellate authority, has not passed any order till date. In these circumstances, the petitioner has filed the present writ petition for a direction

against the first respondent to transfer the records in Appeal No. 18573/N1/03 to the third respondent and direct the third respondent to declare

that the petitioner is entitled to the benefits of the Samadhan Scheme under G.O.Ms.No.95/2007 dated 23.04.2007 and G.O.Ms. No. 142/2007

dated 30.07.2007 and consequently to release the document No. 350/2002 to the petitioner on compliance of the requirements of the

Government Orders.

6. Mr. K. Balu, Additional Government Pleader, submits that based on the appeal filed by the petitioner dated 16.04.2003 which is a statutory

appeal filed u/s 47(A)(10) of the Stamp Act, the first respondent has passed an order dated 02.03.2004 in No.18573/N1/03. Further the

petitioner has categorically stated in the affidavit filed in support of the petition that no such order has been passed and no such order has been

communicated to the petitioner by the first respondent, even though it is admitted that in the year 2004 itself an enquiry was conducted.

7. Section 47(A)(10)of the Indian Stamp Act, 1899 reads as follows:

Any person aggrieved by an order of the authority prescribed under Sub-section (5) or the Chief Controlling Revenue Authority under Sub-section

(6) may, within such time and in such manner, as may be prescribed by rules made under this Act, appeal to the High Court.

Explanation: For the purpose of this Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or

the Chief Controlling Revenue Authority or the High Court, as the case may be, such property would have fetched or would fetch, if sold in the

open market on the date of execution of the instrument of conveyance, exchange, gift, release of benami right or settlement.

The Rules u/s (9)(5)(a) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules provides appeal against the order of the

authority passed u/s 47-A (10) of the Act and that appeal has to be filed within a period of two months from the date of final order passed by the

authority.

8. The said rule provides various procedures to be followed for the purpose of filing an appeal and Rule 10 provides the procedure for disposal of

the said appeal by the High Court. Even though the learned Additional Government Pleader is able to produce the order of the first respondent

dated 02.03.2004, there is no evidence to show that the said order has been communicated by the first respondent to the petitioner especially in

the light of the categorical stand taken by the petitioner in the affidavit filed in support of this petition that no such appellate authorities order has

been communicated to the petitioner. In view of the same, the learned Additional Government Pleader would fairly submit that the first respondent

would communicate the appeal order dated 02.03.2004 to the petitioner within the specified time and thereafter the petitioner may be directed to

approach the appellate authority as per the provision of the Stamp Act especially 47(A)(10) of the Act. In view of the same, the writ petition is

disposed of with a direction to the first respondent to communicate the order of the first respondent dated 02.03.2004 passed in No.

18573/N1/03 u/s 47(A)(5) of the Indian Stamp Act to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

Thereafter, the petitioner is entitled to file an appeal as contemplated u/s 47(A)(10) of the Indian Stamp Act within the time stipulated by the Rules.

No costs.