(2015) 01 MAD CK 0239

In the Madras High Court

Case No : W.A. No. 1748 of 2014 and M.P. No. 1 of 2014

Inspector General of Registration and Others APPELLANT

Vs

L. Narayana Reddy RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:
Stamp Act, 1899 — Section 17, 3

Citation : (2015) 2 MLJ 257

Hon'ble Judges : M. Venugopal, J.;Satish K. Agnihotri, J.

Bench : Division Bench

Advocate : N. Sakthivel, Government Advocate, for the Appellant; R. Jayaprakash, Advocates for the Respondent

Judgement

M. Venugopal, J.—The Appellants/Respondents have preferred the instant Writ Appeal before this Court as against the order dated 17.04.2014 in W.P. No. 22345 of 2005. The learned Single Judge while passing the impugned order dated 17.04.2014 in W.P. No. 22345 of 2005 in para 4 had observed the following:

"4. Here is the case, wherein the registration of the document was made during 1991, whereas the final order came to be passed by the competent authority/ Special Deputy Collector (Stamps), Salem during 2002 i.e., after 10 years, as such, the proceedings shall stand lapsed in view of the full bench decision of our High Court. As the authority concerned has no jurisdiction to proceed further after five years, the order passed after ten years is without jurisdiction and is legally impermissible and stands vitiated. On this score alone, the impugned order is liable to be quashed." Further, the Learned Single Judge had referred to para 18 of the judgment of this Court in KK Flats (P) Ltd., rep. by its Managing Director, D. Muthukumar, 1K, No. 6, Mandapam Cross Road, Kilpauk, Chennai-10 v. 1. The Inspector General of Registration, Chennai-28 and Another at page 35 and at special page 42 : LNIND 2010 MAD 2922 : (2011) 1 MLJ 1240 wherein, it was held that ''onus of proving the allegation that the value had not been truly disclosed and that the instrument had been undervalued rests on the respondents and when the same has not been discharged, the appeal has to be allowed and the order has to be set aside''.

2. That apart, the Learned Single Judge in para 6 of the impugned order dated 17.04.2014 in W.P. No. 22345/2005 had inter-alia observed that"... as a matter of act that there is absolutely no finding in the order that the market value of the property has not been truly set forth in the document, which alone can enable the registering authority to refer the document for determination of the market value of the property" and consequently, quashed the impugned order dated 30.07.2003 passed by the First Respondent holding that the same was arbitrary and contrary to the procedure laid down under law and the same was legally unsustainable. Furthermore, directed the Third Respondent/Sub Registrar, Kelamangalam, Krishnagiri District to return the documents in No. 238/92 dated 06.02.1992 and No. 1677/2004 dated 12.04.2004.

3. The Learned Government Advocate appearing for the Appellants submit that the order of the Learned Single Judge in allowing the Writ Petition by holding that the order dated 30.04.2002 passed by the Second Appellant/Second Respondent was not sustainable in the eye of law, since the same was passed after 10 years from the date of registration of the related sale deed, is contrary to the facts and circumstances of the case.

4. It is represented on behalf of the Appellants that the Learned Single Judge while allowing the Writ Petition filed by the Respondent/Petitioner in the order had relied on the judgment of this Court reported in Tata Coffee Limited, 57, Railway Parallel Road, Kumara Park West, Bangalore-560 020 v. 1. The State of Tamil Nadu, by the Secretary to Government, Commercial Taxes and Registration, Government of Tamil Nadu, Fort St. George, Chennai-9 and Others 2008 (3) CTC 614 : LNIND 2008 MAD 1137 by holding that the proceedings should be lapsed, since it was belatedly issued.

5. Advancing his argument, the Learned Government Advocate appearing for the Appellants forcefully contends that decision of this Court in Dakshina Mara Nadar Sangam, registered No. 6/48, Tirunelveli, through its Secretary cum Commissioner, Sabapathi Nadar v. 1. The Special Deputy Collector (Stamps), Kokir-akulam, Tirunelveli and Another, 2008 (1) LW 715 : LNIND 2007 BMM 683 was not brought to the notice of the Learned Single Judge at the time of allowing the Writ Petition.

6. The Learned Government Advocate for the Appellants submit that in para 25 of the Full Bench decision of this Court in G. Karmegam and Others v. 1. The Joint Sub-Registrar, IV, Gowri Plaza, Bye Pass Road, Madurai and Others, 2007 (5) CTC 737 : LNIND 2007 BMM 1376 : (2008) 1 MLJ 789 it was observed as follows:

"25. Sub-section (3) to Section 47-A provides for a limitation of five years from the date of registration of any instrument of conveyance for the Collector to initiate either suo motu action or otherwise to determine the market value of the property. Earlier, the provision contained a time limit of two years and by means of a subsequent amendment, the said time limit was enlarged as five years. At the two stages viz., the time of passing the Act and of passing of the Amending Act, the legislature was more conscious about prescribing the time limit for exercise of powers by the Collector and on both the occasions, the provision i.e., sub-section (1) was left untouched. Hence, it cannot be stated that there was inadvertence on the part of the legislature to provide time limit in sub-section (1). The intention of the legislature was to clothe the Collector with ample powers in two ways viz., firstly, allowing five year period for him to exercise his power to initiate action and nextly, to determine the market value of the property after holding an enquiry as per the procedures stipulated in sub-section (2)" and as such, no time limit is fixed for the Second Appellant (Special Deputy Collector, Stamp Duty, Salem) who is appointed as Collector in regard to the determination of the market value of the property." 7. The Learned Government Advocate for the Appellants projects an argument that it should have been brought to the notice of the Learned Single Judge that the time limit and five years prescribed in Section 47(A)(3) r/w. Section 47(A)(1) of the Indian Stamp Act, 1899 is meant only initialisation of action and not for finalisation such proceedings.

8. Finally, it is the contention of the Learned Government Advocate that the time limit prescribed under Sub-section (2) of Section 47(A) of the Indian Stamp Act, 1899 is to be treated only as directory and not mandatory one.

9. The Learned Government Advocate for the Appellants cites the following decisions:

1) In the decision State of Rajasthan and Others Vs. Khandaka Jain Jewellers, , it is observed and held that "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."

2) In the decision G. Karmegam and Others v. 1. The Joint Sub-Registrar, Iv, Gowri Plaza, Bye Pass Road, Madurai and Others (supra), wherein the Full Bench of this Court at special page 750, held as under:

"(i) The Court cannot fix or suggest a time frame to a statute in the normal course, if the statute is silent with regard to it.

(ii) No guideline, in this regard, shall be introduced by the Court. However, it is mandatory on the part of the statutory authority, namely, Registering Officer, to perform his statutory obligations within a reasonable time, which should not be viewed as a one, that has deprived the rights of the parties to the document, causing injustice."

3) In the decision reported in Dakshina Mara Nadar Sangam, registered No. 6/48, Tirunelveli, through its Secretary cum Commissioner, Sabapathi Nadar v. 1. The Special Deputy Collector (Stamps), Kokirakulam, Tirunelveli and Another (supra), wherein at Special Page 742 and 743 in para 62 it is held as follows:

"To conclude, I hold that the jurisdiction of the Collector under Section 47-A(2) is not nullified by reason of a time limit prescribed under Rule 7 to pass an order for final determination of the market value and the deficit stamp duty payable on an instrument. The use of the term "shall" does not make the time frame given as one for mandatory compliance and hence, the same has to be read as directory. The "first notice" referred to in Rule 7 has relevance and reference to the notice issued in Form-II indicating the provisional determination of the market value as given under Rule 6 to pass an order in terms of Section 47-A(2) of the Indian Stamp Act, 1899. In the above circumstances, except for the orders passed on the individual merits of the writ petitions referred to above, I dismiss the writ petitions. No costs."

4) In the decision Tata Coffee Limited, 57, Railway Parallel Road, Kumara Park West, Bangalore-560020 v. I. The State of Tamil Nadu, by the Secretary to Government, Commercial Taxes and Registration, Government of Tamil Nadu, Fort St. George, Chennai-9 and Others (supra) at special page 654 in para 23(j) it is observed and held as under:

"23(j). In such circumstances, on the facts of the case, in these writ petitions where there has been no communication either from the Registering Authority or from the Collector for more than eight years from the registration, it can never be said that there has been an enquiry conducted and final orders passed in the manner provided in law. In view of the same, the entire proceedings stated to have been initiated by the respondents under Section 47-A of the Act in respect of these Writ Petitions stand lapsed and the writ Petitions stand allowed with direction to the Registering Authority to return the documents forthwith."

5) In the decision State of Haryana and Others Vs. Manoj Kumar, wherein the Hon''ble Supreme Court at special page 357 in para 32 among other things it is held that "... it may be pertinent to mention that, in order to ensure that there is no evasion of stamp duty, circle rates are fixed from time to time and the notification is issued to that effect. The issuance of the said notification has become imperative to arrest the tendency of evading the payment of actual stamp duty. It is a matter of common knowledge that usually the circle rate or the Collector rate is lower than the prevalent actual market rate but to ensure registration of sale deeds at least at the circle rates or the Collector rates such notifications are issued from time to time by the appellants."

6) In the judgment dated 06.07.2010 of this Court in KK Flats (P) Ltd., rep. by its Managing Director, D. Muthukumar, 1K, No. 6, Mandapam Cross Road, Kilpauk, Chennai-10 v. 1. The Inspector General of Registration, Chennai-28 and Another (supra), in CMA. Nos. 1551 to 1554/2010 in para 16 among other things it is observed that "... Thus in all cases of Section 47-A proceedings, law requires that there are prima facie materials at the hands of the registering authority to form an opinion as to the market value not truly set forth in the instrument and this leads to an enquiry and a final order passed depending on the outcome of the enquiry. The invoking of the jurisdiction on a sheer difference in price stated in the instrument with the market price, would only make the exercise an automatic and ritualistic exercise opposed to the very scheme of the provisions of Section 47-A of the Indian Stamp Act."

10. At this stage, this Court relevantly points out that the Respondent/Writ Petitioner in the affidavit in para 11 sought for passing of an order by this Court to call for the records on the file of the First Respondent (First Appellant) in proceedings Mu. Mu. 46807/N-3/2003 dated 30.07.2003 and further, sought for passing of an order to quash the same as illegal, incompetent one and without jurisdiction. Added further, he has prayed for passing of an order by this Court in directing the Third Respondent to return the document No. 1677/2004 dated 16.06.2004.

11. It is to be noted that the Second Appellant/Special Deputy Collector, Stamp Duty, Salem, Namakkal, Dharmapuri) on 30.04.2002 passed a final order in regard to fixation of value under Section 47(A) of the Indian Stamp Act, 1899 in paras 4 and 5 it is observed as follows:

"4. The report of Krishnagiri Special Deputy Collector (Stamps) was considered. The site was inspected by Special Deputy Collector. After inspection the location of the property taking into account and nature, surrounding areas, the prevailing Market Value and other infrastructure facilities the value of the property was arrived at Rs. 41,86,900/- provisionally at the rate of Rs. 14.29 per sq.ft. After deducting the Stamp Duty already borne by the document the party was issued notice to pay Rs. 5,01,566/- as the difference amount of Stamp Duty and if the party wanted to raise any objection he may do so in writing or in person on a specified date. As the party neither paid the difference Stamp Duty nor filed any objection even after receiving the notice it is deemed that he has no objection to lodge in respect of Form II it is hereby ordered to fix the Market value of the above mentioned at Rs. 41,86,900/- and the deficit Stamp Duty to be paid by him is Rs. 5,01,566/-.

5. Hence, the purchaser of the property is hereby ordered to the sum of Rs. 5,01,566/- into Government Sub Treasury or State Bank of India within 60 days of receipt of this order failing which he shall have to pay 2% interest per month, after deducting the above said grace period of 60 days, until he pays the entire amount. Moreover, if he fails to pay the said amount action under R.R. Act shall be initiated to recover the amount. If the parts wants to raise any objection in

respect of this Final order he may prefer his appeal to Chief Controlling Revenue Authority Cum Inspector General of Registration, 100, Santhome High Road, Chennai-28 within 60 days of receipt of this Final Order."

12. It comes to be known that the First Appellant in K. Dis. 46807/N-3/2003 dated 30.07.2003 had passed the following order:

"As the applicant has failed to produce any evidence claiming that the final order issued by Special Deputy Collector (Stamps) Salem dated 30.04.2002 was received by him only on 25.07.2002 and also his appeal was received after the expiry of time limit prescribed under Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules his appeal application could not be considered and hence, it is ordered to be rejected." 13. It is not in dispute that the Respondent/Writ Petitioner presented the sale deed for registration and it was executed by the Learned Subordinate Judge, Hosur on 12.04.2004. But the case of the Respondent/Writ Petitioner is that after presentation of the Sale Deed, the Third Appellant/Sub Registrar, Kelamangalam, Krishnagiri District had declined to register the document on the ground that the Sale deed presented by his vendors and the stamp duty payable therein was yet to be resolved. In fact, the Third Appellant/Sub Registrar, Kelamangalam, Krishnagiri District by means of proceedings No. 87/2005 dated 02.03.2005 had informed the Respondent/ Petitioner that they had assessed the value at Rs. 57,63,157/- and a sum of Rs. was to be paid as stamp duty.

14. At this juncture, the core contention advanced on behalf of the Respondent/ Writ Petitioner is that the Third Appellant/Sub Registrar, Kelamangalam, Krishnagiri District cannot seek a reference without bearing in mind the ingredients of Section 47(A) of the Indian Stamp Act, 1899. Also in so far as the Respondent/Writ Petitioner is concerned, there is inordinate delay of over 13 years on the part of the registering authorities in returning the document and in short, the reference was made casually beyond the period of limitation.

15. It is to be borne in mind that in the final order of the Second Appellant dated 30.04.2002, it was mentioned by the Second Appellant that a reference was made by the Third Appellant/Sub Registrar, Kelamangalam, Krishnagiri District that the property value in respect of Doc. 238/92 was undervalued and had informed to collect the difference stamp duty of Rs. 6,27,169/- from the purchaser as per Section 47A(1)/(3) of the Indian Stamp Act, 1899 and Rule 4 of Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules 1968 and he had fixed the guideline value for the property at Rs. 52,33,569/- etc. Further, after deducting the stamp duty already borne by the document, the party was issued with a notice to pay Rs. 5,01,566/- as difference amount of stamp duty etc. Ultimately, since the party neither paid stamp duty nor filed any objection even after receiving the notice it was deemed that he has no objection to lodge in respect of Form II and it was ordered to fix the market value of the property at Rs. 41,86,900/- and the deficit stamp duty to be paid by him was Rs. 5,01,566/- hence, the purchaser of the property was ordered to pay the said sum of Rs.

5,01,566/- into the Government Sub Treasury or in State Bank of India within 60 days from the receipt of order, failing which he was to pay 2% interest per month, after deducting the aforesaid grace period of 60 days, until he pays the entire amount.

16. It is to be remembered that the document No. 238/92 was undervalued. According to the Respondent/Petitioner, one Annaiachari expressed his willingness to purchase the property in question and hence, they entered into an agreement of sale on 30.10.1995 of valuable consideration of Rs. 7,145/- since the vendor evaded to execute the sale deed, the Respondent/Petitioner filed a suit for Specific Performance in O.S. 10/1976 on the file of the District Court, Krishnagiri and the said suit was transferred to Sub Court and renumbered as O.S. 347/1977 and finally, it was decreed on 24.02.1979. Even after obtaining the decree, vendor protracted the execution of sale deed which compelled the decree holder to file an execution petition and ultimately, the sale deed was executed by the Court etc. Also that, the judgment debtor filed an application to set aside the decree and ultimately, this Court had refused to condone the delay in filing of the application in Civil Revision Petition and only thereafter, sale deed was presented for registration and it was executed by the Learned Sub-ordinate Judge, Hosur for and on behalf of the judgment debtor. Indeed, the sale consideration was deposited in the Court. Only after registration of the sale deed, the matter was referred to the Second Appellant/Special Deputy Collector, Stamp duty, Salem who assessed the property on the prevailing market value.

17. In view of the above factual background, it is quite clear that the final order was passed by the Second Appellant (Special Deputy Collector, Stamp duty, Salem) on 30.04.2002 after long lapse of nearly 10 years from the date of sale deed in respect of document No. 238/92. After five years, the concerned authority under Section 47(A)(2) of the Indian Stamp Act, 1899 has no authority or jurisdiction to proceed further in the subject matter in issue.

18. Viewed in that perspective, the view taken by the Learned Single Judge in allowing the Writ Petition dated 17.04.2014 by quashing the impugned order dated 30.07.2003 of the First Appellant/First Respondent does not suffer from any material infirmity or patent illegality in the eye of law. Likewise, a direction issued by the Learned Single Judge to the Third Appellant/Sub Registrar, Kelamangalam, Krishnagiri District to return the documents in No. 238/92 dated 06.02.1992 and No. 1677/20041 dated 12.04.2004 is quite legal. Consequently, Writ Appeal fails. In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is also closed.

