
(2017) 06 MAD CK 0052
In the Madras High Court
Case No : 2531 of 2016

J SUSIN

APPELLANT

Vs

JOINT-I SUB REGISTRAR & ORS.

RESPONDENT

Date of Decision : 01-06-2017

Acts Referred:

[Stamp Act, 1899](#), [Section 47A](#), [Section 47A\(10\)](#)

Citation : (2017) 06 MAD CK 0052

Hon'ble Judges : S Vimala

Bench : SINGLE BENCH

Advocate : S Vimala

Final Decision : Allowed

Judgement

1. The impugned order, dated 02.07.2014, passed by the third respondent (Inspector General of Registration/Chief Revenue Control Officer), a) giving a finding that the sale deed dated 07.03.2012 executed in favour of the appellant is a double sale transaction and that the document ought to have been impounded for non-payment of double stamp duty; b) rejecting the appeal filed by the appellant without providing opportunity of hearing.

2. Brief facts: a) The property situated in T.S.No.1 Block No.9, Ward No.A in Namakkal Town, measuring an extent of 15350 sq. Metre, originally belonged to one G.S.Rajendiran (Son of Sundaram) (Guardian of Jenagan R.Shelu), Vasantha (wife of Sundaram), Rajeswaran (son of G.S.Rajendiran). The appellant's mother negotiated with them to purchase the property and the sale consideration was fixed at Rs.63 lakhs. The family of Rajendiran executed a power of attorney in favour of the appellant's mother. Based on the power of attorney, a registered agreement of sale was executed by the appellant's mother in favour of the appellant's sister J.Nithya, on 04.10.2010 (Power of attorney by the original title holder in favour of the appellant's mother).

3. Since the agreement of sale and the power of attorney were in favour of two different persons, both of them joined in the execution of sale deed in favour of the appellant and it was Registered as Document No.780/2009. The first respondent, after registering the document, referred the same under Section 47-A of the Stamp Act to the second respondent for determination of market value of the property.

4. The second respondent issued Form-I notice on 29.03.2012 fixing the market value of the property as Rs.1,11,96,300/- and demanding Rs.12,87,408/- towards stamp duty. The appellant gave a detailed reply, setting forth his objections. Thereafter, the market value was refixed at Rs.1,00,77,134/- and the stamp duty payable was Rs.16,12,353/- even the refixation was not correct and explaining the ground that the appellant demanded refund of Rs.63,460/-. The first respondent directed the appellant to file the appeal before the third respondent.

5. Accordingly, an appeal was filed under Section 47-A (10) of the Indian Stamp Act, 1882, to the third respondent, on 04.06.2013.

6. The third respondent, who is expected to determine the market value, without giving an opportunity of hearing to the appellant, gave a finding that the Sub-Registrar should have impounded the document on the ground that the sale deed amount to a double sale and stamp duty should have been collected for double the sale consideration. 6.1. The order passed by the second respondent has been set-aside, not on the grounds raised by the appellant, but on the basis of his own finding that the document ought to have been registered for double the value of sale consideration treating the sale as double sale; as the order of the second respondent had been set aside, there are no grounds to consider this appeal and therefore, the appeal is liable to be dismissed. This order is being challenged in this civil Miscellaneous Appeal.

7. In order to appreciate the contention raised, it is necessary to consider the provisions of Section 47-A of the Indian Stamp Act:- "47-A. Instruments of conveyance etc., under valued how to be dealt with: --

(1) If the Registering Officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, (exchange, gift, release of benami right or settlement), has reason to believe that the market value of the property which is the subject matter of conveyance, (exchange, gift, release of benami right or settlement) has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector, for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of reference under sub-sec. (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by Rules made under this Act, determine the value of the property which is the subject matter of conveyance, (exchange,

gift, release of benami right or settlement) and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu or otherwise, within five years from the date of registration of any instrument of conveyance, (exchange, gift, release of benami right or settlement) not already referred to him under sub-sec. (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, (exchange, gift, release of benami right or settlement) and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-sec. (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty : Provided that nothing in this sub-section shall apply to any instrument registered before the date of the commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

(4) Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall, pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, interest at two per cent per month on such amount for the entire period of default."

7.1. It has been observed, in the case of *The State Of Tamil Nadu vs T.N. Chandrasekharan*, reported in AIR 1974 Mad 117, giving a direction that the provision should not be used as an engine of oppression. The relevant observation reads as under.

"5. In working the Act great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion."

7.2. Guidelines to determine the market value has been given in the Full Bench of Gujarat High Court as under:

"The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value.

It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be pre-determined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated:

It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration.

The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court, as provided under-subsection (4) of section 47A.

It would thus be seen that the aforesaid guidelines would inhabit the Registering Authority to exercise his quasi-Judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the sub-Registrar is required to satisfy himself, before registering the document, whether the true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under subsection (1) of section 47-A, he registers the document. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of section 47A....."

7.3. The learned counsel for the respondent relied upon the circular issued by the third respondent, in Circular No.30196/P1/2011-1, dated 13.09.2011, in which, direction has been issued to the registering authorities that the sale deed executed by the agreement holder as one of the vendor or as confirming party has to be treated as an instrument which brings the deemed conveyance, which happened in favour of the agreement holder by virtue of the execution of the sale agreement in his favour and hence, such instrument is to be treated as instrument comprising two sales. It is necessary to extract the circular as such for better appreciation.

"In the sale deeds, inclusion of the agreement holders as executants, while the earlier sale agreement is subsisting, is made only to release his right over the property in favour of the nominee/purchaser. Further, when nominee has no relationship with agreement holder, the recital to include such agreement holder in the sale deed is being done with the intention/motive to extinguish his right to obtain a sale deed in respect of the property, which is the subject matter of the sale deed, even though the same may not be explicitly stated in the sale deed. Otherwise, there would be no necessity to include agreement holder as an executant even as a matter of abundant caution or as a confirming party, when he has no title. Actually, if the vendor wants to execute sale deed in favour of the purchaser, he can simply cancel earlier sale in favour of the agreement holder on the grounds of default on the part of the sale agreement holder or by mutual consent. But, while doing so, the agreement holder would lose his right to nominate a person as purchaser, for execution of sale deed in favour of that person by the vendor. The power to nominate a person in whose favour sale has to be executed and who is not a principal/agent of the agreement holder itself is

a right. In view of the above reasons, the sale deed executed by the agreement holder as one of the vendors or as confirming party has to be treated as an instrument which brings to the fore the deemed conveyance which happened in favour of the agreement holder by virtue of execution of sale agreement in his favour and hence, such instrument is to be treated as instrument, comprising two sales. The above order comes into effect from 14.9.2011 for all documents to be presented for registration as well as for all documents pending for registration, other than those for which final orders havenot been passed under Section 40 of the Indian Stamp Act, 1899."

7.4. The validity of the circular was challenged before this Court and this Court quashed the circular, in the decision reported in S.Mahalakshmi vs. The State of Tamil Nadu Rep. By its Chief Secretary, Fort St. George, Chennai ? 600 009. In the same decision, there was a direction to the Sub Registrar concerned to treat the document as comprising of only one sale, charge stamp duty and registration fee and thereafter to release the document within a period of four weeks from the date of receipt of a copy of the order.

8. From the impugned order, several things are evident - a) issue raised by the appellant is not at all answered;

b) the appellant was not heard;

c) the authority himself has raised a question and has answered the same.

8.1. The agreement of sale does not confer any title. Therefore, the agreement holder, joining as an executor may at the most be construed as relinquishment of the right as agreement holder and not as relinquishment of title in favour of the purchaser, as the executant as agreement holder did not have any title over the property.

8.2. The order passed by the third respondent reveals that the order has been passed without discussion, without reasons, without materials and without providing an opportunity of hearing to the appellant. Hence, the order is liable to be set-aside.

8.3. The second respondent is directed to provide opportunity of hearing to the appellant and to decide the issue raised objectively, in the light of the order passed by this Court that the document should be treated as a single conveyance and to pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, this Civil Miscellaneous Appeal is partly-allowed and the matter is remanded to the third respondent. No costs.

This contention takes us to the issue regarding what is the scope and the ambit of judicial review with special reference between appeal and judicial review.

Judicial review:

The constitutional role of judicial review

Judicial review represents the means by which the courts control the exercise of governmental power. Government departments, local authorities, tribunals, State agencies and agencies exercising powers which are governmental in nature, and tribunals must exercise their powers in a lawful manner, and judicial review is designed to ensure that public bodies which exercise law-making power or adjudicatory powers are kept within the confines of the power conferred. Judicial review is concerned with the legality of the decision made, not with the merits of the particular decision. Accordingly the task of the judges is to ensure that the exercise of any power which has been delegated to Ministers, administrative and adjudicatory bodies has been lawful according to the power given to that body by Act of Parliament.

Review and appeal Judicial review must be distinguished from an appeal against a decision. The court and tribunal structure provides a more or less rational appeal structure for those aggrieved by a judicial decision. The appellate court will have the power to review the case and to substitute its own decision for that of the lower court. An appeal may be made on both the law and the facts of the case so that a full re-hearing may take place. Judicial review by contrast is concerned solely with the manner in which the decision-maker has applied the relevant rules: it is thus procedural in nature. It is not for the court in judicial review proceedings to substitute its judgment for that of the decision-making body to which powers have been delegated, but rather to ensure that the adjudicator has kept within the rules laid down by statute and the common law. In short, the role of the courts in judicial review is to exercise a supervisory not an appellate jurisdiction. "Judicial review" is not an appeal from a decision, but a review of the manner in which the decision was made. (Per Lord Brightman in *Chief Constable of the North Wales Police v. Evans*, *op cit* at p.1174.)

The grounds for judicial review

Two principal classes of action may be pursued: those which allege that there has been a breach of statutory requirements, and those alleging that a decision has been reached in an unreasonable manner or in disregard of the rules of natural justice. These broad headings have traditionally been divided into a number of subheadings. In *Council for Civil Service Unions v. Minister of State for Civil Service* (the GCHQ case) (The House of Lords has upheld the decision of the Court of Appeal; (1995) 2 All ER 244. See pp 192, 193), the House of Lords took the opportunity to offer a rationalisation of the grounds for judicial review and ruled that the bases for judicial review could be subsumed under three principal heads, namely, illegality, irrationality and procedural impropriety. It was accepted that further grounds for review, such as "proportionality" might emerge. Lord Diplock elucidated the concepts. By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and give effect to it. Whether he had or not is *par excellence* a justiciable question to be decided, in the event of dispute, by those

persons, the judges, by whom the judicial power of the State is exercisable.

By "irrationality" I mean that can now be succinctly referred to as "Wednesbury" unreasonableness (*Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation* (1948) 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer....

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe the procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even there such failure does not involve any denial of natural justice.

That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European (Economic) Community ... (at p.410-411) (*Constitutional and Administrative Law* ? Hilaire Barnett).

The decision of the third respondent, in so far as directing the appellant to pay double the amount of sale consideration treating it as two sales has to be tested in the light of the contentions raised on the side of respondent that it is an administrative action and therefore, no opportunity of hearing need to be given.