**(2011) 01 MAD CK 0083**

**In the Madras High Court**

**Case No :** Writ Petition No. 29226 of 2010 and M.P. No. 1 of 2010

K.K. Thirumurugan APPELLANT

Vs

The Inspector General of Registration, The Assistant Inspector General of Registration and The Sub-Registrar RESPONDENT

**Date of Decision :** 06-01-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 2(10), 47A, 54

**Citation :** (2011) 01 MAD CK 0083

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

**Advocate :** M. Muthappan, for the Appellant; S. Sivashanmugam, Government Advocate for R1 to R3, for the Respondent

**Final Decision :** Allowed

# Judgement

T. Raja, J.—The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus

to direct the Respondents to accept the value of the sale certificate dated 28.10.2010 issued in favour of the Petitioner presented on 4.11.2010

and register the document and return the same with respect to property comprised in S. No. 166/3B3 part in plot No. 16 to 23 of PMD Nagar

admeasuring 18,349 sq.ft of land with structures constructed thereon in 122, Kovilambakkam village,Vadakkupatti Road, Said pet Taluk now

Sholinganallur Taluk,Kancheepuram District.

2. The Petitioner K.K. Thirumurugan, by participating in a public auction held on 11.6.2009, was declared as the highest bidder for the amount of

Rs. 1,76,40,000/-. After he was declared as the highest bidder, he has paid 25% of the bid amount, which comes to Rs. 44,10,000/-on

 

11.6.2010itself. In the meanwhile, it was contended by the learned Counsel for the Petitioner that a writ petition was filed by the borrower

challenging the invocation of the SARFAESI Act by the Ind Bank Housing Ltd., and the same was dismissed by this Court in W.P. No.

10594/2008 on 1.10.2010. In the said order a direction was given by this Court to the authorised officer of the said Ind Bank Housing Limited for

collecting the balance amount from the Petitioner. Accordingly, the Petitioner has also paid the balance bid amount on 23.10.2010. After the

payment of the entire amount by the Petitioner, the authorised officer also issued a Sale Certificate on 28.10.2010. Thereafter, the said Sale

certificate was presented before the second Respondent for registration of the document with necessary stamp duty, namely, Rs. 14,11,200/-

besides registration charges of a sum of Rs. 1,76,400/-on 14.11.2010. The second Respondent without registering the document presented by the

Petitioner kept it as pending Document No. 360/2010 and declined to register the same and also refused to release the document on the ground

that the value of the property is less than the market value. The Petitioner has made a representation on 01.12.2010requesting the third

Respondent to register and release the document. But there was no response. Therefore, the Petitioner filed the present writ petition.

3. The learned Counsel appearing for the Petitioner brought to the notice of this Court the judgment of the Supreme Court rendered in V.N.

Devadoss V. Chief Revenuecontrol Officer-Cum-Inspector wherein it is held that the registration shall be done at the price disclosed in the

document of conveyance. He has further referred to an order wherein this Court by considering a similar issue inW.P. No. 6260/2008 dated

18.11.2008 directed the Sub-Registrar to register the said certificate stating that between a willing purchaser and a willing seller, certain amount

might be agreeable as sale consideration. The sale consideration mentioned in the sale certificate shall betaken into account by the registering

officer and only after accepting the price disclosed in the document of conveyance, the registration shall be done.

4. The learned Government Advocate states that at the time of registration the registering authority is entitled to look into the fact whether the

property is carrying any charge or not.

 

5. The Hon''ble Apex Court in the V.N. Devadoss''s case has occasioned to consider the similar issued as follows:

15. The stand of the State is that what has been disclosed is clearly a sale value and the same cannot be termed as market value. There is fallacy in

this argument.

16. Market value is a changing concept. The Explanation to Sub-rule (5) makes the position clear that (sic market) value would be such as would

have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered

for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the revenue or non-disclosure of

the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AAIFR

and that too on the basis of value fixed by Assets Sales Committee. The view was expressed by the Assets Sales Committee which consisted of

members such as representatives of IDBI, debenture-holders, Government of West Bengal and Special Director of BIFR. That being so, there is

no possibility of any undervaluation and therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that

BIFR was only a mediator.

17. Sale has been defined u/s 54 of the Transfer of Property Act, 1882( in short ""the TP Act""). Although the Act has not included the definition of

sale, Section 2(10) of the Act defines ""conveyance"" as including a conveyance on sale, every instrument and every decree or final order of any civil

court by which property whether immovable or movable or any estate or interest in any property is transferred to,or vested in or declared to be of

any other person, inter vivos, and which is not otherwise specifically, provided for by Schedule I or Schedule I-A, as the case maybe.

The observations of the Apex Court in the above said case is squarely applicable to the case of the Petitioner, for the reason that the property was

offered for sale in the open market and bids were invited. Hence, there is no question of any intention to defraud the revenue or non disclosure of

the correct price. That being so, there is no possibility of any undervaluation and therefore, Section 47-A of the Act has no application. Since the

observation as well as the ratio laid down by the Apex Court in the abovementioned judgment is clearly applicable to the present case, this Court

is of the view that the Petitioner being the highest bidder in a public auction held by the officer of the Ind Bank Housing Limited on 11.6.2010 and

hewas also issued with a sale certificate by the authorized officer mentioning the price of the property, the third Respondent is directed to register

the sale deed and release the document in accordance with law.

6. This writ petition is allowed. No costs. Consequently, connected M.P. No. 1/2010 is disposed of.

 