(2014) 04 MAD CK 0163

In the Madras High Court

Case No : Writ Petition No. 22345 of 2005 and W.P. MP No. 24359 of 2005

L. Narayana Reddy APPELLANT

Vs

Inspector General of Registration RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Citation : (2014) 7 MLJ 481

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Judgement

K.B.K. Vasuki, J.—The main grounds on which the entire proceedings initiated under section 47-A of the Stamp Act was challenged by the petitioner herein, are as follows: (i) the proceedings stand lapsed as per the decision of this Court reported in Tata Coffee Limited v. State of Tamil Nadu and Others, (2008) 3 CTC 614 : LNIND 2008 MAD 1137 and (ii) the final order passed by the first respondent is bad in law for want of any specific finding regarding evasion of stamp duty payment as laid down in the judgment of this court reported in K.K. Flats (P) Ltd. Vs. Inspector General of Registration and Another, . Few facts, which are relevant for consideration herein are as follows:

"The petitioner herein purchased the property in question under sale deed dated 12.4.2004. The petitioner''s vendor admittedly purchased the property by registered sale deed dated 6.9.1991. The sale deed was executed in favour of the petitioner''s vendor and his son Annaiahchari and Basavaraj through the court proceedings. After execution of the sale deed, the proceedings under section 47A(1) of the stamp Act was initiated and the document was impounded and the owner was issued with notice under Form-II during 1992. After issuance of Form-II notice, the final order came to be passed only on 30.4.2002 thereby determining the value of the property at Rs. 41,86,900/- and the stamp duty payable at Rs. 5,01,566/- and directing the petitioner to make deficit stamp duty payment within 60 days. Aggrieved against the same, appeal was filed before the appellate authority and the same was dismissed on 30.7.2003 as time barred.

Hence, the present writ petition came to be filed before this court against the order of the Appellate Authority/first respondent confirming the order of the second respondent, Special Deputy Collector (Stamps), Salem."

2. The dates and events referred to above would reveal that after issuance of Form-II notice, there was absolutely no further progress in the proceedings till 2002 and the final order came to be passed only in 2002 by the second respondent. If that is so, the proceedings are, as rightly argued by the learned counsel for the petitioner, covered under the principles laid down by our High court in Tata Coffee Limited v. State of Tamil Nadu and Others (supra), wherein, the learned brother Judge has, by following the full bench decision of this Court reported in G. Karmegam, Mrs. Meenalochiniammal and K.G. Ramana Vs. The Joint Sub-Registrar, IV Gowri Plaza, Bye Pass Road, Madurai-10, The Special Deputy Collector, Stamps, Collectorate, Madurai-20 and The Revenue Divisional Officer, Madurai held that in the event of the Registering Authority failing to refer any document on the basis that the properties have been undervalued within a reasonable time or not in any event of non completion of the entire proceedings culminating to the passing of final order by the Collector within a period of five years from the date of presentation of document for registration, the same should be deemed to be lapsed and the Registering Authority or the Collector thereafter has no jurisdiction to either initiate any proceedings afresh or to proceed further and the documents are to be returned forthwith without any endorsement. As rightly argued by the learned counsel for the petitioner, the principles laid down by the full bench in the decision as followed by the leaned brother judge referred to above, would be applicable to the case in hand.

3. 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.

4. The other ground raised on the side of the petitioner is on the strength of the principles laid down by the learned single Judge of this Court in the judgment reported in KK Flats (P) Ltd. v. Inspector General of Registration, Chennai and Another (supra), wherein it is held that mere fact of difference in value stated in instrument and market value, does not justify invoking of Section 47-A and such invocation would make Section 47-A proceedings automatic and ritualistic opposed to scheme for which Section 47-A was inserted and law requires that there must be prima facie materials with Registering Authority to form an opinion as to market value of property being understated and mere fact that appellant is in field of real estate or that land in question has potential for further development or that it is adjacent to multi-storeyed building, by itself cannot be

stated as reason to come to conclusion that value of the property has been understated. Only if and when the authorities have a reasonable belief that the market value of the property has not been truly set forth in the document that the Registering Officer, after registration the department may refer the same to the Collector for determination of the market value of the property. It is further held in para 18 that the 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 had not been discharged, the appeal has to be allowed and the order has to be set aside.

5. In the present case also, the second respondent has not adhered to the principles laid down in the decision of the learned single judge. The impugned order does not reflect due application of mind into the relevant factors to arrive at the conclusion that the property was undervalued. As a matter of fact, 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.

6. Viewing from any angle, the impugned order is arbitrary and is contrary to the procedure laid down under law and the same is legally unsustainable and is liable to be quashed. In the result, the writ petition is allowed and the impugned order dated 30.7.2003 passed by the first respondent. The third respondent Sub Registrar, Kelamangalam, Krishnagiri District is directed to return the documents in No. 238/1992 dated 6.2.1992 and No. 1677/2004 dated 12.4.2004. No costs. Consequently, connected Miscellaneous Petition is closed.