(2010) 04 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 48617 of 2006 and M.P. No. 1 of 2006

M. Abubackar Siddiq — APPELLANT

Vs

Inspector General of Registration, Sub-Registrar and Assistant Commissioner of Commercial Tax — RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:
Registration Act, 1908 — Section 17, 17(2), 18, 51(2), 52
Stamp Act, 1899 — Article 18

Citation : (2010) 04 MAD CK 0071

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : V.R. Rajasekaran, for the Appellant; R. Anitha, AGP, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The writ petition is directed against the impugned order passed by the 1st respondent, Inspector General of Registration, in Lr.

No. 42868/C3/2005 dated 01.08.2005 and quash the same and direct the respondents 1 and 2 herein to forthwith refund a sum of Rs. 3,15,000/-

paid towards stamp duty with due interest to the petitioner herein.

2. The petitioner, M. Abubackar Siddiq, purchased the land and building in S. No. 335/1, Chinna Salem in the public auction held on 04.11.2004

by the 3rd respondent herein, the Assistant Commissioner of Commercial Tax, Villupuram. Thereafter, the Sale Certificate was certified in favour

of the petitioner and the same was also published in Villupuram District Gazette No. 2, dated 16.02.2005. But, the Sub-Registrar/2nd respondent

refused to file the Sale Certificate in Book No. 1 u/s 89 of the Registration Act. As the petitioner was badly in need of funds, he was compelled to pay the stamp duty as claimed by the 2nd respondent and paid a sum of Rs. 3,15,000/- under protest towards stamp duty for filing the Sale

Certificate in Book No. 1. Only after the payment of stamp duty, the Sub-Registrar/2nd respondent filed the Sale Certificate in Book No. 1. u/s

89(4) of the Registration Act, 1908, the Registering Officer shall file the copy of the Sale Certificate received from the Revenue Officer in the

Book No. 1 maintained in the office. Since the Sub-Registrar/2nd respondent refused to file the Sale Certificate, which is also against the

provisions of the Act, the petitioner made a representation on 07.07.2005 to the Inspector General of Registration/1st respondent requesting to

refund the stamp duty paid by the petitioner with due interest. But, unfortunately, the Sub-Registrar/2nd respondent, without looking into the

relevant provisions of the Registration Act, erroneously rejected the representation made by the petitioner, vide proceedings in Lr. No.

42868/C3/2005 dated 01.08.2005, stating that the stamp duty collected is in order. As per Section 89(4) of the Act, the Sub-Registrar/2nd

respondent is under an obligation to file the Sale Certificate in Book No. 1. However, the Inspector General of Registration/1st respondent without

looking into the relevant provisions of the Act, rejected the request of the petitioner for refund of stamp duty. Therefore, the petitioner was

constrained to approach this Court challenging the impugned order dated 01.08.2005 passed by the 1st respondent to refund the stamp duty

already paid by the petitioner.

3. Learned Counsel appearing for the respondents filed a detailed counter opposing the prayer raised by the petitioner for refund of the stamp duty

paid by him on his own, on the ground that the payment of stamp duty by the petitioner at the time of execution of the document is in order as per

Article 18(c) of the Indian Stamp Act, in as much as any document, whether registrable or not under Article 18(c) of the India Stamp Act, stamp

duty shall be paid before or at the time of execution. Therefore, it was not correct to say that coercive steps were taken by the respondents for the

payment of stamp duty. The petitioner has voluntarily come forward to pay the stamp duty, knowing the provisions of the Act and, therefore, the

petitioner is not aggrieved in any way and, above all, the same duty has been paid to the exchequer, as it is lawfully due to the State Government as per the Act and hence, the petitioner is not prejudiced in any way. Therefore, the learned Counsel appearing for the respondents submits that the

amount so collected from the petitioner was according to the Indian Stamp Act and thus, the petitioner is not eligible for any relief.

4. Heard the learned Counsel appearing on either side and perused the materials available on record.

5. The question raised in the present writ petition is whether the stamp duty collected from the petitioner/auction purchaser of immovable property,

sold in the sales tax recovery proceedings for the purpose of filing a copy of the Sale Certificate in Book No. 1 as stipulated u/s 89(4) of the Indian

Registration Act, 1908, is sustainable in law or not?.

Article 18 of the Indian Stamp Act deals with stamp duty for registration of Sale Certificate. Let me have a plain look at Article 18 of the India

Stamp Act, which is extracted hereunder:

18. CERTIFICATE OF SALE (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by

public auction by a Civil or Revenue Court, or Collector or other Revenue Officer--

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Description of Instrument Proper Stamp-duty

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a) where the purchase-money Two annas

does not exceed Rs. 10;

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b) where the purchase-money Four annas

exceeds Rs. 10 but does not

exceed Rs. 25;

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c) in any other case... The same duty as a Conveyance

(No. 23) for a consideration equal

to the amount of the purchase-money

only.

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Section 51(2) of the Registration Act, 1908 deals with register-books to be kept in several offices, which is also extracted hereunder:

51. Register-books to be kept in the several offices:

(1) The following books shall be kept in the several offices hereinafter named, namely,--

A--In all registration offices--

Book 1, ""Register of non-testamentary documents relating to immovable property"";

Book 2, ""Record of reasons for refusal to register"";

Book 3, ""Register of wills and authorities to adopt""; and

Book 4, ""Miscellaneous Register"";

B--In the offices of Registrars--

Book 5, ""Register of deposits of wills.

(2) In book 1 shall be entered or filed all documents or memoranda registered under Sections 17, 18 and 89 which relate to immovable property,

and are not wills.

(3) In Book 4 shall be entered all documents registered under Clauses (d) and (f) of Section 18 which do not relate to immovable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the

office of a Sub-Registrar.

6. This Court had an occasion to consider a similar question in Shree Vijayalakshmi Charitable Trust v. The Sub-Registrar reported in 2009 (5)

CTC 15, wherein it is held that the documents mentioned in 17(1)(b)(c) are to be registered by the Registrar as per procedures mentioned in

Section 52 - 67 of Part XI of the Registration Act. While holding so, this Court further found that the procedure for filing copy of the Sale

Certificate can be seen u/s 89 of the Act and, therefore, both procedures were found different, namely, for registration, stamp duty has to be paid,

whereas for filing any document, no stamp duty is required to be paid, because when the purchaser goes for registration of Sale Certificate issued

by the Court Officer, Article 18 of the Indian Stamp Act would be attracted and stamp duty is to be paid as per Article 23 of the Registration Act treating it as conveyance i.e., market value of the property. When the instrument is not submitted for registration and it is being sent to the Registrar

only for the purpose of filing in Book No. 1 u/s 89 of the Act, it does not attract any stamp duty. Useful reference can be seen from the judgment

of the Apex Court in B. Arvind Kumar Vs. Government of India and Others, , which states that:-

when a property is sold by public auction in pursuance of the order of the Court and the bid is accepted and the sale is confirmed by the Court in

favour of the purchaser, the sale becomes the absolute and the title vests in the purchaser. A Sale Certificate is merely evidence of such title, no

further deed of transfer from the Court is contemplated. In this case, the Sale Certificate itself was registered, though such a Sale Certificate issued

by a Court or an officer authorised by the Court, does not require registration.

Therefore, in view of the ratio laid down by the Apex Court in B. Arvindkumar''s case (supra) and exemption granted u/s 17(2), the copy of the

document is only required to be filed in Book I under the special procedure u/s 89 of the Act. If stamp duty is required even for filing of the copy

of the instrument u/s 89 of the Act, the exemption given u/s 17(2) of the Act would become meaningless. In that event, there is no necessity and it

would amount to violation of the Act. Indeed, as per Section 89 of the Act, the registering officer has to file a copy of the such certificate in Book

No. 1 and it is the bounden duty of the officer to file the copy in Book No. 1 or get it scanned. Finally, this Court, in the above said case, has held

that Court auction Sale Certificate sent to the Registration Department for filing in Book-I would not attract stamp duty. Therefore, the Sub

Registrar or Registrar has got no power or jurisdiction to issue the impugned order in view of Sections 17(2)(xii) and 89(2) of the Registration Act

by demanding stamp duty.

7. In the case on hand also, the petitioner has purchased the land and buildings in the public auction held on 04.11.2004 by the Assistant

Commissioner of Commercial Tax, Villupuram. Subsequently, the Sale Certificate issued in favour of the petitioner was also published in the

Villupuram District Gazette No. 2 dated 16.12.2005 and, thereafter, a copy of the Sale Certificate was also duly forwarded to the Sub Registrar in

his proceedings in R.C. No. A8/5046/2002 dated 09.02.2005. In such circumstances, the judgment of this Court reported in Shree Vijayalakshmi

Charitable Trust''s case (supra), is squarely applicable to the case of the petitioner herein. Therefore, the Sub-Registrar/2nd respondent herein,

refusing to file the Sale Certificate being contravention of Section 89(4) of the Registration Act, 1908, cannot be sustained, and, hence, the

petitioner is entitled for the refund of the stamp duty. Accordingly, the respondents are directed to refund a sum of Rs. 3,15,000/- within 4 weeks

from the date of receipt of a copy of this order, failing, which, the respondents are liable to pay the interest at the rate of 10% from date of

payment made by the petitioner.

8. With the above observations, the writ petition is allowed by quashing the impugned order. No Costs. Consequently, connected M.P. No. 1 of

2006 is closed.

