(2002) 09 MAD CK 0186

In the Madras High Court

Case No : Writ Petition No. 15275 of 2001, W.M.P. No. 22673 of 2001 and W.P.M.P. No. 31455 of 2002

Maraimalai Nagar Welfare Association APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) WritLR 873

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S. Elamurugan, for the Appellant; N.G. Kalaiselvi, Special Govt. Pleader for R1, R4 and R5 and N. Sampath, for R2 and R3, for the Respondent

Judgement

P.K. Misra, J.—Heard learned counsel appearing for the petitioner and the respondents.

2. In this writ petition, the prayer has been made for issuing a writ of certiorarified mandamus to quash the letter No.5267/J1/99-20 dated 04.04.2001 and to forbear the respondents from levying and collecting the stamp duty for executing and registering the sale deeds in respect of the houses allotted in favour of the members of the petitioner''s Association.

3. The second respondent namely the Chenni Metropolitan Development Authority has been constituted under the State of Tamil Nadu Town and Country Planning Act. There is no dispute that it is the "State" within the meaning of Act 12 of the Constitution of India and also it is a statutory Authority amenable under Article 226 of the Constitution of India.

4. The second respondent allotted several completed buildings to various members of petitioner''s association. The sale price, which was paid in suitable instalments, has been fixed by the second respondent. It is the grievance of the present petitioner that when the individual purchasers, who are the members of

the petitioner''s association, had called upon the second respondent to execute the sale deeds formalising the transaction, the third respondent, the Chief Executive Officer of the second respondent has informed that the purchasers are required to pay stamp duty on the basis of the guideline value.

5. It is not disputed that such intimation has been given by the third respondent on the basis of the communication received from the State Government. It is also not disputed that the second and third respondents had written to the Government stating that such purchasers should not be directed to pay stamp duty on the basis of guideline value but they should be allowed to pay on the basis of the State value of the fully completed house sold.

6. It is the further grievance of the petitioner that the respondents 4 and 5 are refusing to register any document of sale between the purchasers and the C.M.D.A. unless the stamp duty is paid on the basis of the guideline value.

7. It is profitable to refer to the earlier Division Bench decision reported in S.P. Padmavathi Vs. State of Tamil Nadu and Others, wherein it was held that at the time of fixing the sale consideration, the Statutory Authority is taking into account the market value and fixed the instalments. Following the aforesaid decision, another Division Bench in W.A. Nos.1467 and 1468 of 1998 observed as follows:-

" (i) The matter is covered by a Division Bench judgment of this Court in S.P. Padmavathi Vs. State of Tamil Nadu and Others, . Nothing has been pointed out to take a different view from that. We are unable to add to the said decision.

(ii) It was secondly contended that the market value of the property has been taken into consideration on the date of agreement of sale. It is well settled that registration relates back to the date of sale. The Housing Board has constructed the house and handed over the same under hire purchase agreement. When the conditions of hire purchase agreement are complied with, the properties have to be transferred to the hirer, we find no ground to asse4ss the market value for the purpose of registration on the date of the actual transfer of the property, as it is well settled that at the time of agreement itself the parties have agreed to the price or sale consideration. There is no legislation or settled legal position which has been pointed out by the counsel for the State that they can charge stamp duty on market value as on the date of the registration of the document when there is no material on record to show that there was a concealment or suppression of the parties have agreed to a different or higher consideration that then is recited in the market value. Otherwise too, it is a transfer from a Government institution to an individual based on hire purchase agreement. We see no ground to interfere with the order of the Hon''ble single Judge. Accordingly, the writ appeals are dismissed. No costs. Consequently, CMPs are dismissed."

8. Following the aforesaid two Division Bench decisions, E. PADMANABHAN, J., observed in SUKUMARAN, R. v. STATE OF TAMIL NADU 2002 (2) CTC 329 as

follows:-

" 17. The above two Division Bench judgments have reached finality and they have not been challenged either by the State Government or by the Registrar or by the Inspector General of Registration. The legal position as laid down by the Division Benches as far as this State is concerned is well settled and it is binding on everyone. Thereafter, it is rather extraordinary for the Registering Authorities or for the concerned Special Deputy Collector (Stamp Duty) to assess the market value and insist for payment of stamp duty on the basis of market value that prevails on the date of presentation of the documents.

18. It is nobody''s case that the transferee has paid consideration more than what has been recited in the deed of conveyance executed by the Housing Board. It is beyond one''s comprehension that the Housing Board, a statutory body, would receive excess amount than what has been actually paid and recited as sale consideration in the deed of conveyance executed by it in favour of the allottee. It may be that in the lease-cum-sale agreement, while depositing a substantial portion, the remaining portion was agreed to be paid in instalments so that the allottee could acquire a house from the Housing Board by making payments, in easy instalments, with low rate of interest. Therefore, without contradiction it could be taken that what has been agreed to between the Housing Board and the allottee is the actual consideration agreed and paid as sale consideration for the conveyance and not a pie more."

9. The aforesaid decisions make it clear that there cannot be any scope for the Registering Authority to refuse to register a document merely because the consideration indicated in such sale deed does not tally with the guideline value. It has to be kept in view that the transaction is between a Statutory Authority and private citizen and it is not even suggested that such Statutory Authority had deliberately under valued or had deliberately reflected less value than the market value while fixing the consideration.

10. It is further to be kept in mind that in such transaction, the instalments shall be fixed by the Statutory Authority and in all practical purpose, the transactions are completed but only a formal sale deed is to be executed subsequently. Merely because there is subsequent increase in the market value due to passage of time it cannot be assumed that the Statutory authority such as C.M.D.A. had deliberately undervalued the consideration.

11. In short, the observations made in 2002 (2) C.T.C. 329 in respect of the Housing Board is equally applicable to the Statutory authority like C.M.D.A. The submission of the learned counsel for the State to the effect that the aforesaid decision in respect of the Housing Board cannot be made applicable to transaction made by C.M.D.A. does not merit any consideration.

12. For the aforesaid reasons, the writ petition is allowed. The respondents 2 and 3 are directed to execute the sale deed on the basis of the stamp duty payable on the consideration indicated by them. However, it is made clear that if any

other due is payable by the individual person before execution of sale deeds, such due shall be paid to the respective second and third respondents. The fifth respondent is directed to register the sale deed. This process may be completed by the respondents 2, 3 and 5 within a period of three months from today. This order shall enure to the benefit of members of the Association as indicated in Annexure-1. Consequently, the connected W.M.P. and W.P.M.P. are closed. No costs.

