(2002) 01 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 10785 of 1997 and W.M.P. No. 17226 of 1997

Mrs. T. Meenakshi APPELLANT

Vs

The State of Tamilnadu RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:
Registration Act, 1908 — Section 28
Stamp Act, 1899 — Section 19A, 19B, 2(14), 3, 47A

Citation : (2002) 01 MAD CK 0031

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : R. Muthulingam, for the Appellant; S. Manoharan Sundaram, GA (T), for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The petitioner praying to issue a writ of certiorari calling for the records of the second respondent culminating in the

passing of the impugned order of the second respondent in Lr.No.30/C/97 (3) dated 30.4.1997 pertaining to document No.216/94 of S.R.O.,

Ganapathi (Kulathur) and quash the same and also strike down Section 19-B of the Stamp Act as ultravires, has filed the above writ petition.

2. Tracing the history of the case as pleaded in the affidavit filed in support of the writ petition, the petitioner would state that he purchased a house

property situate within Coimbatore Corporation as well as a `Pujai'' situate at Kulathur village of Thiruvananthapuram District of Kerala and as the

sale deed was executed by the vendor in Kerala State and in view of Section 28 of the Registration Act,1908, the said sale deed was presented

for registration at the office of the Sub Registrar, Kulathur and stamp duty amounting to Rs.39,020/- beside the Registration Fee was paid in respect of the document and the sale deed was registered as Document No.216 of 1994.

3. The petitioner would further state that the second respondent has issued impugned notice to the petitioner asking her to pay a deficit stamp duty

of Rs.2,27,233/- and the said notice holds out that with the threat that if the said sum is not paid, the same would be collected invoking the

provisions of the Revenue Recovery act; that it is ascertained that the said demand has been raised on the District Copy of the said document sent

by the Registering Officer, Kulathur, Kerala State, to his counter-parts of Tamilnadu and the claim is sought to be justified on the basis of Section

19-B inserted by the State of Tamilnadu in the Stamp Act,1899 (Central Act II of 1989).

4. Quoting the above amended Section 19-B of the Stamp Act, the petitioner would further submit that the same has been made without any

regard to the limitation imposed by the Constitution as well as the scheme of the Stamp Act and without regard to the distinction between tax and

duty; that entry in item No.63 in the State list clearly contemplates that the stamp duty is leviable on the document or instrument executed; that to

treat, a copy of document as a document and levying stamp duty is beyond the jurisdiction of the State Legislature and therefore illegal and not

enforceable; that further section 3 of the Stamp Act clearly says that the instrument on its execution becomes liable for stamp duty; that Section 19

of the Stamp Act makes the instrument liable for additional stamp duty and Section 19-A of the Stamp Act contemplates levy of additional stamp

duty only on the instrument; that however, Section 19-B of the Act permits levy of stamp duty not on the instrument but on its copy known as

District copy sent by the Registering Officers under the provision of the Registration Act,1908; that it is significant that this new provision contains

no non-abstant clause; that Section 19-B is contrary to the law laid down by the Apex court holding that copies of documents are not liable to

stamp duty; that the second respondent, who had set in motion, the process of determination of market value at the instance of the Registering

Officer while issuing impugned notice has not followed the procedure laid down u/s 47-A of the Stamp Act read with the rules framed there under.

On such grounds, the petitioner would pray for the relief extracted supra.

5. During the course of arguments, learned counsel appearing on behalf of the writ petitioner besides having traced the facts of the petition would

exhort that the respondents cannot levy stamp duty on the copy of the document and that they could only levy duty on the original document; that

the respondents on receipt of a copy of the document that was registered at Kerala and therefore, collection of difference of stamp duty on the

copy of the document is impermissible in law. In consummation of his arguments, the learned counsel would also cite the judgment of the

Honourable Apex Court delivered in AIR 1971 1070 (SC) wherein the Honourable Apex Court has held that ''definition of ""instrument"" u/s 2(14)

of the Indian Stamp Act 1899 does not cover copy of document for purposes of Stamp Act''. Based on such conclusions arrived at by the Apex

Court, the learned counsel would point out that the amendment section of the Act in Section 19-B of the Stamp Act has been made without any

regard to the limitation imposed by the Constitution as well as the scheme of the Stamp Act and the distinction between tax and duty; that to treat

the copy of the document as a document and levying stamp duty is beyond the jurisdiction of the State Legislature and therefore illegal and not

enforceable.

6. On the contrary, the learned Government Advocate appearing on behalf of the respondents would strenuously argue to the effect that the

amended Section 19-B of the Stamp Act is quite proper and the same has been done with the legislative competence by the State Legislature; that

in order to curb the evasion of stamp duty with all good intentions, this amendment has been brought-forth and therefore the old theory that such

stamp duty could be collected only on the original instrument is no longer a good law. The learned counsel would further point out that the

judgment of the Apex court reported in AIR 1971 1070 (SC) since being earlier to the amendment, that cannot be applied to the present situation

and would pray to dismiss the writ petition with costs.

7. In this context, it is relevant to reproduce the amended Section 19-B of the Stamp Act (Tamilnadu Amendment) Act, 1992. I extract Section

19-B of the Stamp Act:-

19-B(13-A): payment of duty on copies, counter parts or duplicates when that duty has not been paid on the principal or original instrument -

(1) where any instrument is registered in any part of India other than the State of Tamilnadu and such instrument relates, wholly or partly to any

property situate in the State of Tamilnadu, the copy of such instrument shall, when received in the State of Tamilnadu under the registration Act,

1908 (Central Act XVI of 1908), be liable to be charged with the difference of duty as on the original instrument.

(2) The difference of duty shall be calculated having regard to -

(a)the extent of property situate in the State of Tamilnadu; and

(b)the proportionate consideration or value or market value of such extent of property.

(3) The party liable to pay duty on the original instrument shall, upon the receipt of notice form the registering officer, pay the difference in duty

within the time allowed by such registering officer.

(4) where deficiency in duty paid is noticed from the copy of any instrument, the Collector may suo motu or on a reference from any court or any

registering officer require the production of the original instrument before him within the period specified by him for the purpose of satisfying himself

as in the adequacy of duty paid thereon and the instrument so produced before the Collector shall be deemed to have been produced or come

before him in the performance of his function and the provision of Section 47-A shall mutatis mutandis apply.

Provided that no action under this sub section shall be taken after a period of four years from the date of registration of such instrument.

(5) In case the original instrument is not produced within the period specified by the Collector, he may require the payment of deficit duty if any

together with penalty u/s 40 on the copy of the instrument, within such time as may be prescribed.

8. The main contention of the petitioner in the writ petition is that Section 19-B of the Stamp Act has been made without any regard to the

limitations imposed by the Constitution as well as the scheme of the Stamp Act and the distinction between the tax and the duty. However, neither

the affidavit nor the arguments of the learned counsel for the writ petitioner would clarify as to what constitutional limitations have been imposed in

this regard nor how such imposition of stamp duty could be given the colour of tax so as to make a distinction in between the tax and the duty. The admitted case of the petitioner himself, as could be seen from the writ petition and the ground No.(a), is that Section 19-B of the Stamp Act

introduced by the State of Tamil Nadu seeks to levy stamp duty on copies of document. Therefore, the only distinction that could be made in the

context of the facts of the case is the levy of stamp duty on the original instrument and the same on copies of the documents for which purpose

alone the amended Section is meant for.

9. It is not the same case with any instrument registered within the State of Tamil Nadu of the properties lying within the State, but this amended

Section deals with only those instruments which were registered in any part of India other than the State of Tamil Nadu and if such instruments

relate wholly or partly to any property situate in the State of Tamil Nadu, only then the levy of stamp duty on the copy of such instrument, when

received in the State of Tamil Nadu, becomes liable to be charged that too with the difference of stamp duty as though it is on the original

instrument. Therefore, there is no necessity to entertain any confusion regarding the stamp duty charged on the original instrument registered inside

Tamil Nadu regarding a property lying within the territory of Tamil Nadu which in the usual course is done only on the instrument registered.

10. The very purpose of the introduction of the amended Section 19-B of the Stamp Act by the Tamil Nadu amended Act No.43/1992 is for

making the payment of duty on copies of counterparts or duplicates when that duty has not been paid on the principal or original instrument and not

otherwise. Therefore, a clear distinction is made in the amended Section itself pertaining to the stamp duty imposed on the original instrument and

the stamp duty imposed on the copies of the documents, which is meant only to bring into the mainstream the escaped stamp duty by means other

than legal. Therefore, such introduction of the amendment cannot in any manner be branded as bad in law or an infringement into the law laid down

by the Apex Court since no other device is provided for to trap or patch-up escape route of the proper levy of stamp duty on the properties which

are lying inside the State of Tamil Nadu but getting registered in a different State thus causing enormous revenue loss to the State exchequer.

11. While such being the conditions, it cannot be said that it is condition precedent to execute the document for levy of stamp duty, which is

absent, since the District copies are not executed by any executant. This argument applies only to those documents which are executed within the

State pertaining to the properties lying within the territory of the State and not otherwise. There is no doubt that all these arguments are very well

applicable in the normal course wherein the registration of any property lying in the State of Tamil Nadu takes place within the State itself and the

petitioner need not be under the impression that the course adopted hitherto has been either discontinued or shifted to the stance of the new

amended provision of the law. Whatever is advocated to be legal barring only the amended Section 19-B are still applicable in letter and spirit

barring only those cases which are falling under the special category morefully explained by the amended Section 19-B which has been extracted

supra. Therefore, for the petitioner there is nothing to loiter about the amended Section 19-B of the Stamp Act as though the introduction of this

Section has made its inroads into the normal registration of instrument in Tamil Nadu pertaining to the properties lying therein.

12. From the Section 19-B(1) of the above amendment, not only it is made clear that any instrument registered in any part of India other than

Tamilnadu and if that instrument relates wholly or partly to any property situate in the State of Tamilnadu, the copy of such instrument be liable to

be charged with a difference of duty as on the original instrument, which shall be calculated in accordance with law with Section 19-B(2).

13. While the legislation is such and in the event that the earlier judgments of the Apex court have not been rendered in consideration of the latest

amendment, this Court expresses its inability to follow the judgment cited above. This court would only say that on the part of the petitioner, no

valid or tangible reasons have been assigned as to why the amended Section 19-B of the Stamp Act should be struck down. There is no merit in

the petition and the petition only becomes liable to be dismissed and it is dismissed accordingly.

No costs. Consequently, W.M.P. No. 17226 of 1997 is also dismissed.