(2011) 11 MAD CK 0264

In the Madras High Court

Case No : Writ Petition No. 12372 of 2005 and W.P.M.P. No. 13532 of 2005

Nicholas Piramal India Private Limited — APPELLANT

Vs

The Inspector General of Registration, Santhome, Chennai-4, The Special Deputy Collector (Stamps), Rajaji Salai, Chennai-1 and The Sub-Registrar, Sub-Registar's Office, Tiruvottiyur, Chennai-19 — RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Citation : (2012) 1 CTC 561

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : K.V. Babu, for the Appellant; Velumani, Special Government Pleader for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to impugned letter No. 10041/02/2005 dated 23.3.2005 passed by the First Respondent herein, quash the same and consequently direct the Third Respondent herein to accept the Stamp Duty and Registration Fee under the "Samadhan Scheme" as per the guideline value at Rs. 52,15,05,384/- after deducting the stamp duty and registration fee paid already. The case of the Petitioner as given in the Affidavit filed in support of the Writ Petition is as follows:

The Petitioner-Company purchased the property namely, the land, building and machinery situated at No. 2, Ernavoor Village, Thiruvallur District comprised in Survey Nos. 44/2, 45/2, 46, 8H/2B, 47/5B2 & 89/2 measuring a total extent of 61.91 acres or thereabouts from M/s. ICI India Limited under a registered Sale Deed dated 28.6.2002. Originally a Sale and Purchase Agreement was entered into by the Petitioner on 25.1.2002 for the purchase of pharmaceutical business of the said M/s. ICI India Limited comprising of land, building, machineries, stocks, raw materials, crash, bank balance and other receivables, brands and technical know how at slump sale basis and for the purpose of the said agreement, a sum of Rs. 70 Crores have been fixed towards over all sate consideration. The said agreement dated 25.1.2002 was duly forwarded to the Appropriate Authority in the Income Tax Department and a No Objection Certificate was issued on 15.3.2002 by the said authorities, wherein the sale consideration was noted as Rs. 70 Crores, which is the composite slump price for the entire undertaking as a whole of all the above referred assets. Subsequent to the issue of No Objection Certificate, the valuation of various items as mentioned in the said certificate has been worked out and after a detailed valuation, the valuation of the property was determined as Rs. 6,72,86,076/- for the purpose of registration. Therefore, a fresh Application was made for issuance of No Objection Certificate to the Appropriate Authority in the Income Tax Department on 29.4.2002. The Appropriate Authority accordingly issued a fresh No Objection Certificate on 1.3.6.2002 and the sale consideration was determined as Rs. 6,12,86,076/- for the purpose of registration in the said No Objection Certificate. It is also clearly mentioned in the said No Objection Certificate that previous No Objection Certificate dated 15.3.2002 has been duly cancelled in view of the fresh No Objection Certificate issued (i.e. No Objection Certificate dated 13.6.2002). The said order has been communicated to the Sub-Registrar, Tiruvottiyur/the Third Respondent herein by the Income Tax Department for the purpose of registration.

2. Subsequent to the issuance of the fresh No Objection Certificate dated 13.6.2002, the property was registered on the file of the Third Respondent/Sub-Registrar, Tiruvottiyur as document No. 3814/2002. Subsequent to the registration of the said property, the superstructure and the machineries were inspected by the Assistant Engineer, Public Works Department and a report has been filed on 12.8.2002 with the Third Respondent. The value determined under the Inspection Report for the superstructure and machineries is Rs. 5,91,74,982/-. When the Petitioner thereafter approached the Third Respondent for release or the document, the Third Respondent refused to release the same stating that the value of the property has been fixed at Rs. 70 Crores and because of undervaluation they referred the document for further adjudication to the office of the Second Respondent/the Special Deputy Collector (Stamps). It is learnt that the Third Respondent came to the conclusion of undervaluation only on relying the earlier No Objection Certificate dated 15.3.2002 issued by the Appropriate Authority, wherein the sale consideration is shown as Rs. 70 Crores, without knowing that the same was cancelled by the subsequent fresh No Objection Certificate dated 13.6.2002. The Petitioner''s case is that taking the guideline value at Rs. 171 per sq.ft., the value of the property works out to Rs. 46,23,20,402/- and the value of the superstructure and the machineries as per the inspection Report/Valuation Report of the Registration Department is Rs. 5,91,74,982/- and put together the total value of the property as per the guideline value is Rs. 52,15,05,384/-. But the Third Respondent arbitrarily fixed

the value at Rs. 70 Crores and referred the document to Second Respondent where the same is pending for adjudication till date.

3. Further, during the course of the proceedings, the First Respondent introduced a scheme called Samadhan Scheme, under which a notice has been issued from the office of the Third Respondent calling upon the Petitioner-Company to pay a sum of Rs. 4,93,51,680/- towards stamp duty and Rs. 37,96,285/- towards Registration Fee and in total a sum of Rs. 5,31,47,985/- being the 60% Stamp Duty and the Registration Fee after deducting the Stamp Duty and the Registration Fee already paid. In the said calculation the value has been worked out at Rs. 70 Crores and by letter dated 4.1.2005 the Third Respondent called upon the Petitioner to pay the said amount. But the Petitioner gave a representation through their Counsel to the First Respondent on 17.2.2005 requesting the First Respondent to permit the Petitioner-Company to pay the Stamp Duty and the Registration Fee under the Samadhan Scheme on the strength of the guideline value at Rs. 52,15,03,384/-, which includes land, building and machineries. But the same has not been accepted by the First Respondent. Hence, the above Writ Petition has been filed for the aforesaid prayer.

4. This Court on 26.4.2005 by way of an interim order, directed the Third Respondent to return the original documents to the Petitioner on the Petitioner filing an Affidavit of undertaking that they would not alienate the property and produce the document as and when required by this Court. The Respondents were further directed by this Court to release the documents with an endorsement of the pendency of the proceedings under the Indian Stamp Act. Pursuant to the directions of this Court, the original documents were handed over to the Petitioner and it is admitted by the Petitioner''s Counsel that the Petitioner is in possession of the original documents.

5. I have heard the learned Counsel appearing for the Petitioner and the learned Special Government Pleader appearing for the Respondents. I have also gone through the documents available on record.

6. Admittedly the Petitioner purchased the entire business of M/s. ICI India Limited under a Sale Deed dated 28.6.2002. Initially the sale consideration was determined at Rs. 70 Crores and thereafter it was reduced to Rs. 6,72,86,076/- for the purpose of registration. A fresh No Objection Certificate was also obtained from the Appropriate Authority of Income Tax Department on 13.6.2002, wherein the sale consideration has been shown as Rs. 6,72,86,076/-.

7. Further, in that No Objection Certificate dated 13.6.2002, it is clearly mentioned by the Appropriate Authority of the Income Tax Department that the No Objection Certificate issued in order dated 15.3.2002 is hereby cancelled. The schedule of property to be transferred has been correctly stated in the No Objection Certificate, as given in the Sale Deed executed in favour of the Petitioner. This No Objection Certificate dated 13.6.2002 was duly forwarded to

the Third Respondent also by the Appropriate Authority for registration purposes.

8. In the meantime Samadhan Scheme was introduced by the Government during the pendency of the proceedings under which 60% of the total value has to be considered for calculation of Stamp Duty for registration and Registration Fee and 40% remission should be given in favour of the purchasers. The case of the Petitioner is that they are entitled to have the benefits under the Samadhan Scheme thereby they have to pay only 60% of the Stamp Duty, after adjusting the payment already made by them in the total value. But the same has not been considered toy the Third Respondent and the Stamp Duty is being insisted upon the original value arrived at Rs. 70 Crores without any basis.

9. Considering the totality of facts and circumstances of the case, I am of the view that the demand of the Third Respondent is contrary to the decision taken by the Appropriate Authority as per No Objection Certificate dated 13.6.2002. What is being sold under the Sale Deed is only registrable. Under the subject Sale Deed, the land, building and machineries embedded to the land are only sold, which value has already been determined. Therefore, only for these claims the Petitioner should be called upon to pay the Stamp Duty.

10. Further, the learned Counsel, appearing for the Petitioner submits that the guideline value of that property relating to that period, when they submitted their Application to the Appropriate Authority, was at Rs. 189 per sq.ft. and therefore, the Petitioner would pay at this rate. Whereas the learned Special Government Pleader, on instructions would submit that the guideline value as per their records is Rs. 190/- per sq.ft. and the Petitioner has to pay only at this rate. She further adds that under the Samadhan Scheme the Petitioner is liable to pay 2/3rd of value towards the Stamp Duty and not 60% as claimed by the Petitioner. When that objection was raised by the learned Special Government Pleader regarding the value of the land, the learned Counsel appearing for the Petitioner, to resolve the dispute early, would submit that the Petitioner would pay the land value at the rate of Rs. 190/- per sq.ft. as submitted by the learned Special Government Pleader.

11. In the result the Writ Petition is allowed with the following directions: 1. For the total extant of land measuring an extent of 61.96 acres (27,13,941 sq.ft.), the value to be worked out at Rs. 190/- per sq.ft. As per the calculation sheet submitted by the Petitioner, the value of the subject land comes to Rs. 51,56,48,790/- (27,13,941 x 190).

2. The value of the building, machineries as per the report of the Respondents, as admitted by the learned Special Government Pleader is Rs. 5,91,74,902/-.

3. The total registration value works out to Rs. 57,48,23,772/- (Rs. 51,56, 48,790+ Rs. 5,91,74,982).

4. Applying the benefit of the Samadhan Scheme to the Petitioner, which was introduced during the pendency of the proceedings before the Respondent

Authorities, the Second Respondent shall collect 60% towards the Stamp Duty and Registration Fee, on the total value arrived at, after deducting the Stamp Duty and Registration Fee paid already. That is, the Petitioner is liable to pay 60% on the remaining balance payable by them i.e., after deducting the amount, already paid in the total value.

5. The Second Respondent shall collect the Stamp Duty and the Registration Fee on the value arrived at as above. This exercise shall be completed by the Second Respondent within three weeks from today and the Petitioner shall pay the amount as directed above at the earliest to enable the Second Respondent to complete the process within the time limit fixed by this Court.

The Writ Petition is disposed of in the above terms. No cost. Consequently, connected Miscellaneous Petition is closed.

