(2016) 02 MAD CK 0086

In the Madras High Court

Case No : Writ Petition Nos. 38363 and 38887 of 2015

P. Ramiah and Others — APPELLANT

Vs

The Inspector General of Registration and Others — RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Registration Act, 1908 — Section 32, Section 78, Section 80
Transfer of Property Act, 1882 — Section 53-A

Citation : (2016) 02 MAD CK 0086

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : T.V. Ramanujun, Senior Advocate for G. Jagadish, for the Appellant; V. Jayaprakash Narayan, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J.—1. The issue involved in both the writ petitions are inter-connected and interrelated to each other. The petitioners as well as the respondents in both the writ petitions are one and the same. Therefore, both the writ petitions are taken up together and are disposed of by this common order.

2. The facts which are necessary for disposal of the writ petitions are as follows:-

"(i) The petitioners herein have executed a registered power of attorney deed dated 23.05.2012 registered as document No. 202 of 2012 in the office of the Joint Sub-Registrar, South Chennai, Saidapet, Chennai appointing M/s. Dugar Housing Limited, represented by the deponent of the affidavits filed in support of the writ petitions. As per the covenants in the power of attorney deed, the petitioners have authorised their agent to promote the properties owned by them. As per clause 2 of the power of attorney deed, the agent was also authorised to obtain approvals from the government departments like Chennai Metropolitan Development Authority, to apply for conversion of lands from agricultural to mixed residential use, sub-division of plots etc. According to the petitioners, even though the power of attorney was executed in favour of their agent to do various acts on their behalf, possession of the lands in question has not been handed over to their agent. Further, on the same day namely 23.05.2012, the petitioners have also executed a registered agreement of sale agreeing to sell their respective property covered in the agreement of sale in favour of M/s. Dugar Housing Limited. In that agreement, each of the petitioners have categorically indicated their respective percentage of undivided share of lands owned by them and agreed to sell the lands for a total sale consideration of Rs. 1,30,00,00,000/- (Rupees One hundred thirteen crores only). On the date of execution of the sale agreement, the petitioners have received a sum of Rs. 4,00,00,001/- (Rupees Four Crores and One Only) however, they have not parted with possession of the property in favour of the promoter. The petitioners further stated that clause 5 of the agreement of sale would make it clear that the advance amount received by them is only Rs. 4,00,00,001/- therefore, the petitioners have paid 1% of the advance amount received by them towards registration fee. The third respondent also registered the agreement of sale vide document No. 1099 of 2012 in Book I in the office of third respondent herein.

(ii) After registration of the agreement of sale, the third respondent sent a letter dated 12.09.2013 intimating that the stamp duty for registration for the agreement of sale dated 23.05.2012 should have been paid on the total sale consideration of Rs. 1,13,00,00,000/- and not on the advance amount of Rs. 4,00,00,001/- received by the petitioners on the ground that possession of the property has been handed over to the promoter/power agent. Therefore the third respondent demanded payment of stamp duty of Rs. 1,09,00,000/- apart from Rs. 4,00,105/- already paid by the petitioners for registration of the agreement of sale dated 23.05.2012. The third respondent also demanded a sum of Rs. 20,00,000/- towards registration of the power of attorney deed. Pursuant to the order dated 12.09.2013, the third respondent issued a Certificate dated 30.09.2013 under Section 80-A (1) of the Registration Act, 1908 stating as if petitioners have handed over possession of the property to the promoter/agent even on the date of registration of the agreement of sale dated 23.05.2012. Aggrieved by the demand for payment of stamp duty made by the third respondent covered under the Certificate dated 30.09.2013, the petitioners have preferred an appeal before the Second respondent on 20.11.2013. The second respondent also, without considering any of the plea raised by the petitioners have rejected the appeal on 06.04.2015 and confirmed the order passed by the third respondent. Challenging the same, petitioners have filed WP No. 38363 of 2015.

(iii) During the pendency of WP No. 38363 of 2015, the petitions have presented 11 documents for registration before the Joint Sub-Registrar-II, No. 9, Jennis Road, Saidapet, Chennai - 600 015, however, the documents were returned by way of Check Slip No. 3 of 2015 dated 27.11.2015 on the ground that petitioners are liable to pay the arrears of stamp duty in connection with the registration of power of attorney and agreement of sale, both dated 23.05.2012 and therefore, the documents presented for registration cannot be entertained. Challenging the order dated 27.11.2015, the petitioners have WP No. 38887 of 2015."

3. The learned Senior counsel appearing for the petitioners would vehemently contend that the order, which is impugned in WP No. 38363 of 2015 is legally not sustainable. According to the learned senior counsel for the petitioners, 15 months after registration of the power of attorney as well as the agreement of sale on 23.05.2012 presented by the petitioners, the third respondent has demanded additional stamp duty payable on the instruments on the sole ground that possession of the property has been handed over by the petitioners to the promoter/power agent. Such a conclusion arrived at by the third respondent is contrary to the covenants contained in the instruments. In the power of attorney deed as well as agreement of sale, it was clearly mentioned that possession of the property has not been handed over to the promoter/power agent and therefore the stamp duty was paid on the advance amount received by the petitioners. In other words, according to the learned senior counsel for the petitioners, by virtue of the instruments, title of the property has not been transferred or conveyed to the promoter/power agent by the petitioners. In any event, the third respondent has not conducted an enquiry as contemplated under Section 80-A (1) of The Registration Act. When the covenants in the power of attorney deed as well as the agreement of sale are specific, the third respondent is not justified in concluding that possession of the property has been delivered by the petitioners.

4. As regards the order impugned in WP No. 38887 of 2015, the learned Senior counsel for the petitioners would contend that the respondent assumed and presumed that the demand made in the order dated 30.09.2013, which is challenged in WP No. 38363 of 2015, is a bar for registration of documents presented by the petitioners thereafter. In any event, non-payment of the demand made in the order dated 30.09.2013 is not a bar for registration of a document presented by the petitioner with respect to different property. As per the Registration Act, registration of a document can be refused only in the circumstances enumerated in Rule 55 and 162 (A) of The Registration Rules. Therefore, according to the learned senior counsel for the petitioners, the respondent has no jurisdiction to refuse registration of the instruments presented by the petitioners for presentation and he prayed for allowing both the writ petitions.

5. Per contra, the Special Government Pleader, appearing for the respondents in both the writ petitions, relying on the counter affidavit filed by the third respondent, would contend that in the sale agreement dated 23.05.2012, there were interpolations. In the agreement of sale, it was manually written that "at present possession of the property has not been handed over to the purchaser". As per para No. 5 of the agreement of sale dated 23.05.2012, even though it is stated that possession is not handed over to the intending purchaser, it has been agreed to give possession of the property and to pay the entire sale consideration to the purchaser before registration of the sale deed. Therefore, as

per Article 1 (1) of Table of fees contained in Section 78 of the Registration Act, the registration fee leviable on an agreement to sell or re-sell shall be on the advance or earnest money. If no advance or earnest money is mentioned, the fee leviable shall be on the intended sale or the resale amount as the case may be. According to the learned Special Government Pleader, when it has been agreed to hand over possession of the property either to the purchaser or it''s nominee before execution of the sale deed, the sale agreement in question shall be treated as one which falls within the purview of Section 53-A of the Transfer of Property Act. In the instant case, general power of attorney deed was executed in favour of agreement holder to develop the property at his own expenses, while so, possession would have been handed over to the developer/agent without which he cannot develop the property. When there is permissive possession, the sale agreement in question is liable to be charged for payment of stamp duty on the total sale consideration.

6. As regards WP No. 38887 of 2015, it is stated by the learned Special Government Pleader that the registration fee of Rs. 1,09,00,000/- is due and payable by the petitioners under the Certificate of recovery issued under Section 80-A of the Registration Act. When the registration fee is due and payable by the petitioners in connection with a document presented by them for registration, the registration of further documents with regard to any other property presented by the petitioners cannot be entertained. Therefore, the learned Special Government Pleader would contend that the respondent is justified in refusing to register the documents presented by the petitioners for registration by citing the non-payment of registration fee due and payable by them. The learned Special Government Pleader therefore prays this Court for dismissal of both the writ petitions.

7. I heard the learned Senior counsel appearing for the petitioners as well as the learned Special Government Pleader appearing for the respondents. I had gone through the materials placed on record, including the counter affidavits filed on behalf of the respondents.

8. The issue arise for consideration in Writ petition No. 18363 of 2015 is whether the registering authority can arrive at a conclusion to demand deficit or additional registration charges on an instrument presented for registration, without conducting an enquiry as contemplated under Section 80-A (1) of the Registration Act, 1908. In this context, Section 80-A (1) of the Registration Act has to be looked into, which reads as follows:-

"80-A. Recovery of deficit registration fee:- (1) Notwithstanding anything contained in section 80, if after the registration of a document, it is found that the fee payable under this Act in relation to that document has not been paid or has been insufficiently paid, such fee or the deficit, as the case may be, may, on a certificate of the registering officer, be recovered from the person who presented such document for registration under Section 32, as arrears of land revenue.

Provided that no such certificate shall be granted unless inquiry is made and such person is given an opportunity of hearing.

Provided further that no such inquiry shall be commenced after the expiry of such period, after the date of registration of the document, as may be prescribed."

9. In this case, the petitioners have presented an agreement of sale as well as power of attorney deed, both dated 23.05.2012 for registration before the third respondent in WP No. 38363 of 2015, who is the sole respondent in WP No. 38887 of 2015. The said respondent has entertained the instruments and registered it. However, 15 months after registration, on the basis of an alleged audit objection, the said respondent has passed an order dated 12.09.2013 demanding payment of additional registration fee purportedly on the reasoning that the petitioners have handed over possession of the property in question to the promoter, without which the promoter could not promote the lands in question. This is objected to by the petitioners by relying on the covenants in the agreement of sale dated 23.05.2012 and contend that there is a clear and specific clause in the agreement that the petitioners have not parted with possession or title of the lands in question to the promoter/agent, while so, the respondent is not justified in demanding additional registration fee or deficit stamp duty, as the case may be, as if possession of the property has been handed over to the promoter/agent.

10. According to the registering authority, there is an interpolation in the agreement of sale and certain words have been written manually to the effect that "at present possession of the property has not been handed over to the purchaser" which only gives an impression that the possession of the property has been handed over by the petitioners to the promoter/power agent. Therefore, the learned Special Government Pleader for respondents contend that the demand for payment of additional registration fee on the entire sale consideration is justified and interference of this Court is not warranted.

11. The contentions advanced on behalf of the respondents cannot be accepted. If the registering authority entertained any doubt as to whether really possession has been handed over or retained by the petitioners as per the covenants contained in the agreement of sale, he ought to have conducted appropriate inquiry after giving an opportunity of hearing to the executants to clarify such aspect as contemplated under Section 80-A (1) of the Registration Act. In the absence of any such inquiry, the demand for payment of additional or deficit stamp duty made by the registering authority is clearly without jurisdiction.

12. In my considered opinion, the registering authority has powers to demand for or take steps to recover deficit registration fee, however, before preceding to either demand or recover such fee, it is incumbent on the part of the registering authority to conduct an inquiry in which opportunity has to be given to the person who presented the instrument for registration. In the present case,

admittedly, the registering authority has not conducted any enquiry. The registering authority, on the basis of surmises, assumed and presumed that possession of the property would have been handed over to the promoter/power agent and therefore, the petitioners have to pay the registration fee on the entire sale consideration. Such a conclusion arrived at by the registering authority, without conducting any inquiry as contemplated under the first proviso to Section 80-A (1) of the Registration Act, is legally not sustainable. Therefore, in my considered opinion, the order which is impugned in WP No. 38363 of 2015 is contrary to the proviso to Section 80-A (1) of the Registration Act and on that ground it is liable to be set aside.

13. By citing the orders which are impugned in WP No. 38363 of 2015, the respondent in WP No. 38887 of 2015 refused to register certain documents presented by the petitioners. In my considered view, the order, which is impugned in WP No. 38363 of 2015, is not a bar for the respondent in WP No. 38887 of 2015 to refuse registration of the documents presented by the petitioners. The circumstances under which registration authority can refuse registration of documents is clearly enunciated in Rule 55. Rule 55 reads as follows:-

"55. It forms no part of a registering officer''s duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic."

14. A reading of the said Rule would show that it is not the duty of the registering officer to enquire into the validity of the document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document and he has to consider the objections raised on any one of the grounds stated in Rule 55. The said rule further would reveal that if there is any impersonation on the part of the executants to the document or there is any element of fraud, then only the Sub Registrar is entitled to enquire into the matter. But here, it is not the case of the respondent that there is impersonation on the part of the executants. On the other hand, the impugned order was

passed on the ground that the petitioners are due and payable certain amount towards registration fee. In my considered opinion, on this reasoning, the respondent is not justified in refusing registration of the documents presented by the petitioners.

15. At any rate, by citing the alleged non-payment of registration fee payable by the petitioners in connection with an instrument presented and registered by them earlier, the respondent cannot refuse to register documents that are presented either in connection with the same property or relating to some other property. The circumstances under which a registering authority can refuse to register documents is clearly enunciated in Rule 162 of the Registration Rules. In the present case, none of the grounds mentioned in Rule 162 of The Registration Rules are attracted and therefore, in my considered view, the order which is impugned in WP No. 38887 of 2015 is legally not sustainable and it is liable to be set aside.

16. In the result

"(i) WP No. 38363 of 2015 is allowed by setting aside the orders impugned therein and the matter is remanded back to the third respondent to conduct appropriate inquiry as contemplated under the first proviso to Section 80-A (1) of the Registration Act after giving adequate opportunity to the petitioners. After conducting such inquiry, the third respondent shall pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

(ii) WP No. 38887 of 2015 is allowed as prayed for.

(iii) No costs. Consequently, connected miscellaneous petitions are closed."

