(2010) 09 KL CK 0133

In the High Court Of Kerala

Case No : C.R.P. No. 500 of 2010

Renga Swamy Chettiar APPELLANT

Vs

Marl Chettiyar RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34, Order 21 Rule 34(4), Order 21 Rule 34(6)
Kerala Stamp Act, 1959 — Section 28A, 28A(1), 28A(3), 45A(1), 45A(2)

Citation : (2010) 4 ILR (Ker) 521 : (2010) 4 KLT 367

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : K.B. Mohandas and Lellulal T.G. Thundathil, T. Krishnanunni, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—Question raised for a decision in this revision is whether a document of sale executed pursuant to an agreement for sale and a decree for its specific performance passed before Section 28A of the Kerala Stamp Act, 1959 (for short, "the Act") as amended by the Kerala Finance Act, 2009 came into force is liable for stamp duty based on fair value of the land as on the date of registration if the document is presented for registration after Section 28A of the Act came into force?

2. Petitioner before me entered into an agreement to purchase the suit property from Respondent No. 1 as per an agreement dated 04.03.1995 for a total consideration of Rs. 60,000/- and paid Rs. 10,000/- as advance at the time of agreement. Though Petitioner was ready and willing to perform his part of the contract and get the sale deed executed, Respondent No. 1 was not agreeable and that led to Petitioner filing O. S. No. 1243 of 1995 in the court of learned Principal Munsiff, Thrissur. That resulted in Annexure-III judgment dated 11.2.2000 and a decree for specific performance of the agreement for sale was

granted permitting Petitioner to get the sale deed executed on deposit of the balance sale consideration of Rs. 50,000/- in court with notice to the Respondents. It was also directed in the decree that Respondent No. 1 shall execute the sale deed in favour of Petitioner on receipt/deposit of balance sale consideration within three months from the date of decree (11.2.2000) and in case Respondent No. 1 failed to do so, Petitioner could get the sale deed executed through court. Respondent No. 1 did not execute the sale deed and hence Petitioner got the sale deed executed through court on 26.7.2010 (admittedly after Section 28A relating to fair value of the land was introduced in the Act). That document was presented for registration before the Sub Registrar, Pazhayannor. The Sub Registrar as per Annexure-9, letter dated 7.8.2010 intimated the court that Petitioner is liable to pay stamp duty in accordance with fair value for the land fixed as per Notification No. 2435/2008dated 17.11.2009. According to the Sub Registrar fair value of the land fixed as per the said Notification is Rs. 3,61,900/-and hence Petitioner is to pay stamp duty of Rs. 25,333/-. Petitioner filed Annexure-A7, application before learned Sub Judge contending that he is liable to pay stamp duty only for the sum of Rs. 60,000/- stated in the sale deed which is the real consideration since the sale deed was executed pursuant to the agreement for sale dated 4.3.1995. Learned Sub Judge directed Petitioner to produce non-judicial stamp paper for the deficit amount. That order is under challenge in this revision. Learned Counsel for Petitioner contends that though the sale deed was executed through court on 26.7.2010 it was due to the failure of Respondent No. 1 to execute the sale deed pursuant to the agreement for sale dated 4.3.1995 and hence liability of Petitioner to pay stamp duty has to be fixed as on the date fixed for performance of the agreement dated 04.03.1995.

3. On the above question I have heard learned Government Pleader to whom notice of this revision was given. I have also heard learned Senior Advocate, Shri T. Krishnanunni who appeared as Amicus Curie. Learned Government Pleader and Learned Senior Advocate submitted that the liability to pay stamp duty has to be decided as on the day the document is presented for registration and in the present case since before that, Section 28A was introduced in the Act Petitioner is liable to pay stamp duty based on the fair value under the said provision. Reliance is placed on the decision in State of Rajasthan and Others Vs. Khandaka Jain Jewellers, , Abid Vs. Revenue Divisional Officer, and State of Haryana and Others Vs. Manoj Kumar, .

4. Rule 34 of Order XXI of the CPC (for short, "the Code") provides the procedure for execution of document as per a decree. Sub-rule (4) states:

(4) The decree holder shall deliver to the court a copy of the draft with such alterations (if any) as the court may have directed upon the proper stamp paper if a stamp is required by the law for the time being in force: and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

Sub-rule (6)(a) states:

Where the registration of the document is required under any law for the time being in force, the court; or such officer of the court as may be authorised in this behalf by the court, shall cause the document to be registered in accordance with such law.

(emphasis supplied)

Reading the above provisions the decree holder, where the document were to be registered as per the law for the time being in force, is to produce the proper stamp paper.

5. Section 28A of the Act is as under:

28A. Fixation of fair value of land.- (1) Every Revenue Divisional Officer shall, subject to such rules as may be made by the Government in this behalf, fix the fair value of the lands situate within the area of his jurisdiction, for the purpose of determining the duty chargeable at the time of registration of instruments involving lands.

(2) The Revenue Divisional Officer shall, in fixing the fair value of a land under Sub-section (1), have regard inter alia to the following matters, namely:

(a) development of the area in which the land is situate such as the commercial importance, facilities for water supply, electricity, transport and communication;

(b) proximity of the land to markets, bus stations, railway stations, factories, educational institutions or other institutions;

(c) the geographical lie of the land, the nature of the land such as dry, waste, wet or garden land, fertility, nature of crop, yielding capacity and cost of cultivation; and

(d) such other matters as may be provided in the rules made under this Act.

(3) The fair value of land fixed under Sub-section (1) shall be published in such manner as may be provided in the rules made under this Act.

(4) Any person aggrieved by the fixation of fair value under Sub-section (1) may, within thirty days of its publication under Sub-section (3), appeal to the Collector.

(emphasis supplied)

6. Thus fixation of fair value is for the purpose of determining the duty chargeable at the time of registration of instruments involving lands.

7. Section 45A of the Act deals with instrument not bearing stamp of sufficient amount as per fair value of the land and states how such documents are to be dealt with. Under Sub-section (1), notwithstanding anything contained in the Act the registering officer shall while registering an instrument transfer any land, other than an instrument of partition, settlement or gift among the members of a

family, chargeable with duty verify whether the value of land or the consideration set forth in the instrument is the fair value of that land/Under Sub-section (2) if on such verification, the registering officer is satisfied that value of the land or consideration set forth in the instrument is not less than fair value of the land, he shall duly register the instrument. Under Sub-section (3) if on such verification the registering officer finds that value of the land or consideration set forth in the instrument is less than fair value of the land (fixed u/s 28A of the Act) he shall by order direct payment of proper stamp duty on the fair value of the land within a period of seven days from the date of the order and on payment of deficit stamp duty the instrument shall be duly registered. Thus reading Sections 28A and 45A of the Act it leaves me in no doubt that the instrument is liable to stamp duty based on fair value of the land in respect of which the instrument is executed and that can only be the fair value as on the day the instrument is presented for registration. The Supreme Court in State of Rajasthan v. M/s. Khandaka Jain Jewellers (supra) dealing with the Stamp Act (Act 2 of 1899) and referring to the relevant provisions of the Rajasthan Stamp Law (Adaptation) Act has held that the relevant date for determining market value and stamp duty payable on the sale deed was the current market value on the date when the document was tendered for registration. The fact that purchaser had to litigate for getting a sale deed was held to be immaterial. The Supreme Court observed,

...An agreement to sell is not a sale. An agreement to sell becomes a sale after both the parties signed the sale deed. A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasise that a taxing statute has to be construed strictly, and considerations of hardship or equity have no role to play in its construction...

It was further observed,

...The expression "execution" read with Section 17 of the Rajasthan Stamp Law (Adaptation Act) leaves no manner of doubt that the current valuation is to be seen when the instrument is sought to he registered. The Stamp Act is in the nature of a taxing statute, and a taxing statute is not dependent on any contingency...

(emphasis supplied)

The Supreme Court quoted a passage from Rowlatt J., quoted with approval by Viscount Simon as under:

In a taxing Act one has to took merely at which at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

Bhagwati, J., said in A.V. Fernandez Vs. The State of Kerala, ,

In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law the subject can be taxed. If on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intention of the Legislature and by considering what was the substance of the matter.

It is apposite to refer to the observations made by Shah, J. (quoted in State of Rajasthan v. M/s. Khandaka Jain Jewellers (supra),

In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.

The Supreme Court in Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, pointed out,

...It has been said and said on numerous occasions that fiscal laws must be strictly construed, words must say what they mean, nothing should be presumed or implied, these say so. The true test must always be the language used.

Hence Section 28A of the Act has to be read and interpreted in the way it is enacted making liability for stamp duty as on "the time of registration of the instruments involving lands".

8. Profitable reference can also be made to the decision of the Supreme Court in State of Haryana v. Manoj Kumar (supra) as well. That was a case where a decree for specific performance of an agreement to sell was granted in favour of the Plaintiff and registration was done on the basis of the sale price given in the transfer deed (carried forward from the agreement for sale). Question arose whether stamp duty paid was proper. The Supreme court observed in para.29 that the view of the High Court that stamp duty paid was proper is wrong and that finding of the High Court would have far reaching ramification and consequences. If genuineness of the sale price entered into by the buyer and seller cannot be questioned, then in majority of the cases it is likely that the State would ever receive stamp duty according to the circle rate or the Collector rate. The Supreme Court held that no sale deed can be registered for an amount less than the amount notified by the Collector. The Supreme Court in State of Rajsthan v. M/s. Khandaka Jain Jewellers (supra) directed the Collector to determine valuation of the instrument on the basis of market value of the property at the date when the document was tendered for registration. It follows that the mere fact that agreement for sale was executed fixing time for performance of the agreement which Respondent No. 1 did not comply, Petitioner had to engage in a litigation with Respondent No. 1 and the decree for execution of sale deed was passed or even the document itself was executed before Section

28A of the Act was brought into force do not exonerate Petitioner from payment of stamp duty based on fair value fixed as per Section 28A of the Act as on the day the document was presented for registration after Section 28A of the Act came into force.

9. This Court in Abid v. Revenue Divisional Officer (supra) referring to Sections 28A and 45B of the Act held that if stamp duty based on the fair value is not paid it is within the power of the registering authority to proceed u/s 45A(1) and (3) of the Act. It was also held that the registering authority is entitled to verify whether consideration mentioned in the document is in accordance with the fair value fixed for the land. In the light of the above decisions the inescapable conclusion is that notwithstanding that the sale deed was executed pursuant to an agreement for sale, a decree for specific performance was passed and the document of sale was executed before Section 28A of the Act came into force, the sale deed if presented for registration after the said provision came into force is liable to stamp duty in accordance with fair value of the land fixed u/s 28A of the Act and in force on the day the document is presented for registration.

10. True, in this case as against the procedure of registering authority directing payment of additional stamp duty within the period stipulated u/s 45A(3) of the Act and in case of failure to comply, refusing to register the document the registering authority has informed the court wherefrom the document was send up for registration that the document requires additional stamp duty in accordance with fair value of the land. I do not find anything illegal or improper in that procedure. Petitioner in, the circumstances is liable to pay additional stamp duty as stated by the registering authority and ordered by the court, u/s 28A of the Act.

In the light of my above discussion I answer the question raised as follows:

A document of sale, notwithstanding that it is executed pursuant to an agreement for sale and a decree for its specific performance passed before Section 28A of the Act came into force is liable to stamp duty if presented for registration after Section 28A of the Act came into force in accordance with the fair value of the land fixed under that provision and in force on the date the document is presented far registration if consideration mentioned in the document is less than such fair value. It makes no difference that the litigation (for specific enforcement of the agreement for sale) was pending in court for long and the statute was enacted in the meantime. The taxing statute has to be construed as it is. That the value of the property soared up in the meantime is also no reason not to apply the taxing statute.

The principle, "Actus curiae neminem gravabit" cannot affect the principles of interpretation of a taxing statute (See State of Rajasthan v. M/s. Khandaka Jain Jewellers (supra)).

Revision is devoid of merit. Petition is dismissed.

