(2002) 11 MAD CK 0104

In the Madras High Court

Case No : Writ Petition No''s. 13664, 13665, 13998 to 14000, 14083, 14084, 14188 to 14191, 14078 to 14081, 14748, 15180 to 15183, 18839 to 18842, 18849 to 18852, 19380 to 19383, 19485 to 19494, 19495 to 19504, 19855 to 19864, 21187 to 21191, 21231 to 21239, 21240 t

S. Jayalakshmi APPELLANT

Vs

The Government of Tamilnadu RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2003 Mad 142 : (2003) 1 LW 562

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : R. Krishnaswami, S.C. For C. Ramesh, for the Appellant; D. Krishna Kumar, Spl. G.P., for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—Heard.

2. Aggrieved by the demand of additional stamp duty on the document of sale executed by the Tamil Nadu Police Housing Corporation Limited (hereinafter referred to as the "Corporation"), a Government of Tamil Nadu undertaking, in favour of the petitioners herein and the consequential refusal to release the respective sale deeds of the petitioners already registered before the concerned Sub Registrar of Registration, for non payment of the additional stamp duty, the petitioners, individually, seek a writ of Mandamus to forbear the third respondent from demanding the additional stamp duty for the respective sale deeds of the petitioners and to direct the respondents to deliver them the said sale deeds registered before the third respondent.

3. Since the grievance of the petitioners in these writ petitions and the relief sought for are common in nature, all these writ petitions were heard jointly with the consent of both parties.

4.1. Concedingly, the petitioners were allotted respective flats by the Corporation, a Government of Tamil Nadu undertaking, in the year 1985, on lease cum sale agreement basis and the petitioners have paid their respective entire sale consideration in instalments and also got their sale deed duly executed by the Corporation before the concerned Sub Registrar Office as early as 1999, 2000 and 2001. But, instead of returning the respective sale deeds to the petitioners, the respondents served notice on them, demanding additional stamp duty on the basis of the market value of the property at the time of registration, initiating action against them u/s 47-A(1) of the Indian Stamp Act (hereinafter referred to as the "Act").

4.2. The petitioners and the similarly placed allottees formed an association as Tiruchy Navalpattu Police Colony Owners and Occupants Association and registered the same under the provisions of the Societies Registration Act. Placing reliance on the decision of this Court dated 19.3.1998 made in W.P. Nos. 15873 and 16833 of 1995, the said association represented to the third respondent on 29.8.2002 that the levy of additional stamp duty on the basis of market value of the property at the time of registration is incorrect, illegal, improper, and contrary to the decision in S.P. Padmavathi Vs. State of Tamil Nadu and Others, . However, the respondents, by letter dated 9.11.2001 informed the Association that the request made on behalf of the petitioners cannot be complied with. Hence the above writ petitions.

5. Mr. R. Krishnaswami, learned senior counsel appearing for the petitioners contends that

(a) the impugned demand of additional stamp duty on the respective sale deeds is contrary to various decisions of this Court, viz.

(i) the order dated 19.3.1998 made in W.P. Nos. 15873 and 16833 of 1995;

(ii) District Collector, Erode District Erode v. M. Ponnusamy reported in 2001 (2) CTC 449 confirming the order dated 6.11.1997 made in W.P. Nos. 11952 of 1997 batch, reported in 1999 (2) LW 231; and

(iii) Sukumaran, R. v. State of Tamil Nadu reported in 2002 (2) CTC 329.

(b) the respondents have no jurisdiction to invoke Section 47-A(1) of the Act, unless they have reason to believe that the market value of the property, which is a subject matter of conveyance has not been duly set forth in the document, with a view to fraudulently evade the payment of proper stamp duty; and

(c) since the impugned sale deeds were executed by the Corporation, a Government of Tamil Nadu undertaking, there cannot be any room for under valuation of the property conveyed by the Corporation nor any fraudulent evasion or mala fide attached to such transaction.

6. Per contra, learned Special Government Pleader appearing on behalf of the respondents contends that

(a) the price fixed by the Corporation at the time of allotment is only a tentative cost and the same is not final, and therefore, the registering authority is entitled to charge stamp duty based on the market value of the property at the time of registration, but not based on the price fixed by the Corporation in the sale deeds;

(b) if the petitioner relies upon the cost price fixed at the time of allotment and as a result, the market value of the property conveyed has not been truly set forth in the document, the Registering Officer, after consideration of the document, shall refer the same to the Collector for determination of the market value of the property conveyed and the stamp duty payable thereon, exercising the powers conferred u/s 47-A(1) of the Act; and

(c) once the Registering Officer is empowered to initiate action u/s 47-A(1) of the Act as above, it is further contended that as per Sub rule 3 of Rule 3 of the Tamil Nadu Stamp (Prevention of Under-valuation of Instruments) Rules, 1968, (hereinafter referred to as the "Rules"), the Registering Officer may, for the purpose of finding out whether the market value has been correctly furnished in the instrument, make such enquiries as deemed fit and he may elicit from the parties concerned any information bearing on the subject and call for and examine any records kept with the public officer or the authority; and Sub rule (4) of Rule 3 of the Rules, further empowers the Registering Officer to look into the Guidelines Register containing the value of the properties supplied to them for the purpose of verifying the market value, and therefore, the respondents are within the jurisdiction to initiate action against the petitioners u/s 47-A of the Act and consequently to demand additional stamp duty from the petitioners for releasing their respective documents.

7. I have given careful consideration to the submissions of both sides.

8. The vital point that arises for my consideration in this batch of writ petitions is whether the demand of additional stamp duty from the petitioners on the deed of sale, which is admittedly executed by the Corporation, a Government of Tamil Nadu undertaking, by the respondents, based on the alleged market value, is valid and justified in law or not?

9.1. It is not in dispute that the petitioners were allotted respective flats by the Corporation, a Government of Tamil Nadu undertaking. The allotment of the plots were made as early as 1985, when the cost of the respective plots were arrived at, determined and settled conclusively between the parties to the sale. Therefore, there is no material on record either to suspect or to hold that the impugned conveyance is either attracted by alleged under valuation or fraudulent evasion of stamp duty. On the other hand, since the sale has been executed by a Government of Tamil Nadu undertaking in favour of the petitioners, it is presumed to be a bona fide transaction.

9.2. No doubt, the market value of any property in the matter is a changing factor and the same will depend upon various circumstances and matters relevant for consideration, viz. requirement of the property by the purchaser, urgent requirement of funds by the vendor etc. Unless there is any substantial and material evidence and reasons to believe that the market value of the property conveyed has not been truly set forth in the instrument, with an object to commit a fraudulent evasion of the stamp duty to cause loss to the revenue, it cannot be presumed that the powers conferred u/s 47-A(1) of the Act is a routine procedure to be followed, in respect of each and every transaction and respective document presented for registration.

9.3. The powers conferred u/s 47-A(1) of the Act is not meant to work as an engine of oppression, but is a machinery to check fraudulent evasion of the stamp duty payable on the instrument, while registering any instrument of conveyance, etc. Therefore, the powers conferred u/s 47-A(1) of the Act should be exercised with great caution and care should be taken to ensure that it does not work as an engine of oppression nor as a matter of routine mechanically, without any application of mind as to the existence of any material or reason to believe the fraudulent evasion of stamp duty. The above view is supported by the ratio laid down by a Division Bench of this Court in S.P. Padmavathi Vs. State of Tamil Nadu and Others, , which reads as under.

" ... Power under Sec. 47-A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth, with a view to fraudulently evade payment of stamp duty. Mere lapse of time between the date of agreement and the execution of the document and the execution of the document will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power under Sec.47-A of the Act, unless there is lack of bona fies and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty ..."

10.1. Even though the learned Special Government Pleader would contend that Sub rule (3) and (4) of Rule 3 of the Rules, empower the respondents to demand additional stamp duty based on the guidelines prescribed in the Guidelines Register maintained by the revenue authorities in this regard, if the market value of the property conveyed has not been truly set forth in the instrument, in my considered opinion, Sub rules (3) and (4) of Rule 3 of the Rules themselves are not applicable to the instant case, in view of my earlier finding that Section 47-A(1) of the Act itself is not attracted to the case of the petitioners, for want of sufficient materials or reasons to believe that the petitioners have fraudulently evaded the stamp duty while registering their respective sale deeds.

10.2. This Court in Collector of Nilgiris at Ootacamund Vs. Mahavir Plantations Pvt. Ltd., , held as under.

" The valuation guidelines prepared by the Revenue Officials at the instance of the Board of Revenue were avowedly intended merely to assist the Sub-

Registrars to find out, prima facie, whether the market value set out in the instruments had been set forth correctly. The guidelines were not intended as a substitute for market value or to foreclose the inquiry by the Collector which he is under a duty to make under Sec. 47-A. The valuation guidelines were not prepared on the basis of any open hearing of the parties concerned or of any documents. They were based on data gathered broadly with reference to classification of lands, grouping of lands and the like. This being so, the Collector acting under Sec.47-A cannot regard the valuation guidelines as the last word on the subject of market value. To do so would be to surrender his statutory obligation to determine market value on the basis of evidence, which is a judicial or a quasi judicial function which he has to perform."

10.3. Similarly, it is held in Sagar Cements Ltd. v. State of A.P. reported in 1989 (3) Andhra Law Times 677 that the Government has unilaterally fixed the value of the lands in the Basic Valuation Register and the same had no statutory foundation and therefore it does not bind the parties. 10.4. The view with regard to the statutory force of basic value in the Basic Valuation Register has no statutory foundation and therefore, it does not bind the parties of the conveyance, has been confirmed by the Apex Court in Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, . 10.5. Following the above basic principles laid down in various decisions of this Court as well as the Apex Court, K.Govindarajan, J, in W.P.No.15873 and 16833 of 1995, by order dated 19.3.1998, quashed the proceedings of the Registering Officer demanding additional stamp duty by exercising the powers conferred u/s 47-A of the Act and directed to refund the stamp duty paid by the petitioner under protest. 10.6. In identical circumstances, where the Registering Officer, after duly registering the deed of conveyance, referred the matter to the Collector u/s 47-A of the Act holding that the market value of the property conveyed are not truly set forth in the deed of conveyance and consequently refused to release the original documents of conveyance, E. Padmanabhan, J, by order dated 6.11.1997 made in W.P. Nos. 11952 of 1997 batch case, (Ponnusamy, M. & Others v. The District Collector, Erode & others) reported in 1999 (2) LW 231, following the ratio laid down in the decisions referred to above, held as follows. " .. The language of Section 47-A of the Indian Stamp Act is very clear. The condition precedent for making a reference is, there must be reason for the Registering Authority to believe that the market value of the property has not been truly set forth in the document presented for registration. Hence, it follows that the reasons must be recorded, however short it may be. It is the duty of the Registering Authority to record reasons for his belief that true market value has not been set out in the document, complete registration and thereafter refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon. ... It is essential to point out that before registration, the Registering Authority has to record that he has reasons to believe that the value of the property has not been duly set forth in the instrument. Only after recording such reasons the Registering Authority has to complete registration of the instrument in question and thereafter alone, he could refer the same to the Collector under Sub-Section (1) of Section 47-A of the Indian Stamp Act." 10.7. The above decision in Ponnusamy, M. & Others v. The District Collector, Erode & others reported in 1999 (2) LW 231 has also been confirmed by a Division Bench of this Court by order dated 30.4.2001 made in W.A.Nos.26 to 32 and 110 to 143 of 1998, reported in 2001 (2) CTC 449, reiterating the ratio laid down in the earlier decisions of this Court that unless the Registering Officer has reason to believe that the documents have been under valued based on sufficient materials in that regard, he has no jurisdiction to initiate any action u/s 47-A of the Act to refer the document to the Collector for adjudication and in any event, the Registering Officer himself cannot hold an enquiry regarding under valuation, once the document is registered and such enquiry should precede the registration. 10.8. In one another identical case, where a document was executed and registered by the Tamil Nadu Housing Board in favour of the allottee, based on a lease cum sale agreement, E. Padmanabhan, J, by order dated 5.4.2002 in W.P.Nos.23097 of 2001 batch (Sukumaran, R. v. State of Tamil Nadu) reported in 2002 (2) CTC 329, held that the sale deed executed by the Tamil Nadu Housing Board and presented for registration is held to be bona fide and therefore, the Registrar cannot have any ground or reason or basis to entertain doubt about sale consideration or the market value of the property conveyed nor can claim any additional stamp duty from the allottee and consequently directed the Registrar of registration to release the documents without insisting any further payment of stamp duty. 11. In the instant case, as the respondents failed to place any material before this Court to distrust that the market value of the property conveyed under the respective sale deeds of the petitioners has not been truly set forth in the respective sale deeds, nor given any reason to believe that the petitioners have fraudulently evaded the stamp duty, I am obliged to hold that the market value of the flats set forth in the sale deeds executed by the Corporation in favour of the respective petitioners are truly set forth and as a result, respondents have no jurisdiction to initiate any action u/s 47-A(1) of the Act, either to refer the matter to the Collector to hold an enquiry in this regard or to withhold the respective sale deeds of the petitioners any further. The writ petitions are allowed as prayed for. Consequently, respondents are directed to release the respective sale deeds of the petitioners within two weeks from the date of receipt of a copy of this order, without demanding any additional stamp duty. No costs. Connected WPMPs are closed.

