
(2013) 02 KL CK 0111

In the High Court Of Kerala

Case No : C.A. No. 86 of 2013 in Report No. 46 in C.P. No. 53 of 2000

Shafi

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Kerala Stamp Act, 1959 — Section 28A

Citation : (2013) 2 KHC 602 : (2013) 3 KLJ 62 : (2013) 2 KLT 988

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Vakkom N. Vijayan, V. Renju, P. Aniyar and Rameetha, for the Appellant; K. Moni and Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

Antony Dominic, J.—The Official Liquidator invited tenders for the sale of 8.13 acres of land comprised in Sy. No. 125/4, Block No. 25 of Mundakkal Village of Kollam Taluk. The applicant herein quoted Rs. 17,77,37,511/-. Along with the offer, the applicant also deposited Rs. 25,00,000/- towards Earnest Money Deposit. The offers received were placed before this Court and in Report 46 filed by the Official Liquidator, this Court passed order dated 27.11.2012, accepting the tender submitted by the applicant and confirming sale in his favour. As per clause (g) of the tender conditions, the tenderer whose offer is accepted shall deposit the balance amount payable in two monthly installments from the date of intimation of acceptance of his offer by the High Court. According to the applicant, the first installment is payable on 7.2.2013 and second, on 7.3.2013. In this application, the first prayer sought for is that the applicant shall be permitted to pay the installment payable on 7.2.2013 along with the second installment, which is payable on 7.3.2013.

2. Heard learned counsel for the Official Liquidator.

3. As per the tender conditions which are binding on the applicant, 50% of the

amount due from him is payable on 7.2.2013. Therefore, the applicant has no right to demand enlargement of time and any enlargement of time for payment of the amount due from him can be only subject to payment of interest. Accordingly, I direct that the time for payment of the amount payable on 7.2.2013 will stand extended till 7.3.2013 subject to the condition that the first installment due will carry interest at 10% from 7.2.2013 till payment on the due date.

4. The second relief sought for by the applicant is to direct the State of Kerala to levy stamp duty and registration fee only on Rs. 9,83,73,000/-. According to the applicant, fair value in respect of the property has been fixed by the second respondent in terms of S. 28A of the Kerala Stamp Act at Rs. 1,21,000/- per cent. Based on the fair value, the applicant has quantified the value of the entire property at Rs. 9,83,73,000/-. On this basis, learned counsel for the applicant contends that fair value is fixed under S. 28A of the Kerala Stamp Act, 1959 for the purpose of determining duty chargeable at the time of registration of the instrument. Therefore, according to him, irrespective of the actual value for which the property is sold, stamp duty is chargeable only on fair value. Although I have considered this submission, I am unable to accept this contention. S. 3 of the Stamp Act provides that subject to the provisions in the Act and the exemptions contained in the Schedule, the instrument mentioned therein shall be chargeable with duty of the amount indicated in the Schedule. Fair value is fixed as provided in S. 28A of the Stamp Act, which reads thus:

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.

5. In item No. 22 of the Schedule, duty chargeable on conveyance is specified and this entry is extracted below for reference:

22. Conveyance as defined by Section 2(d), not being a transfer charged or exempted under No. 55 of immovable property situated-

6. Reading of the proper stamp duty indicated in column (3) of item No. 22 indicates that stamp duty at the rate prescribed therein is payable on the fair value of the land or the amount or value of the consideration for such conveyance, whichever is higher. Therefore, a combined reading of S. 28A along with entry No. 22 of the Schedule to the Act shows that the fair value that is fixed under S. 28A only indicates the minimum of the value of the property for the purposes of stamp duty that is payable for the registration of conveyance. This does not, therefore, mean that irrespective of the value paid, document of conveyance can be presented showing fair value as the value of the property or by paying stamp duty on fair value.

7. Relying on the judgments of this Court in Pareekkutty Vs. Sub Registrar, and State of Kerala and Others Vs. Jino Joseph, learned counsel for the applicant contended that even if the applicant presents the document indicating the value at Rs. 9,83,73,000/-, the only course open to the Registrar is to get the matter adjudicated in terms of S. 45A. Insofar as this case is concerned, sale deed is to be executed by the Official Liquidator and stamp paper is to be produced by the applicant. The Liquidator cannot be expected to do anything contrary to the provisions of the Stamp Act. Therefore, unless the applicant produces the required stamp paper on the entire sale consideration, the Liquidator cannot engross the conveyance on the stamp paper or present an inadequately stamped document for registration. Therefore, the contingency canvassed by the counsel cannot arise. For the aforesaid reasons, while I allow the request of the applicant for enlargement of time for payment of the installment payable on 7.2.2013 as indicated above, I decline the prayer in so far as the stamp duty payable by the applicant is concerned.

The application is disposed of as above.