(2006) 04 MAD CK 0077

In the Madras High Court

Case No : Writ Petition (MD) No. 5065 of 2005 and WPMP (MD) No. 5487 of 2005

Smt. S. Ulagammal APPELLANT

Vs

Inspector General of Registration and Others RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 47A, 47A(1), 47A(3), 47A(4), 47A(5)
Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 — Rule 4, 4(4), 9

Citation : AIR 2006 Mad 284

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : M. Saravankumar, for the Appellant; J. Viswanathan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—The petitioner seeks for Writ of Certiorarified Mandamus to call for the records of the second respondent in Proc. Tha.

PA. No. 621/95, dated 11-4-2005 and to quash the same and consequently to direct the respondents to deliver the Sale Deed, dated 6-11-1995

registered as document No. 1253/1995.

2. Facts in nutshell:

The petitioner has purchased wet lands in S. Nos. 134/1A2, 314/1A5 total extent of 0.76 cents in Seithur Village, Rajapalayam Taluk,

Virudhunagar District and the same was registered as document No. 1253/95 (6-11-1995, at Sub-Registrar''s Office, Seithur. The guideline value

of the land was Rs. 7.60/- per square feet, but the petitioner registered the land at Rs. 200/- per cent. In view of the difference of the market value, the document was referred by the Sub-Registrar to the Special Deputy Collector (Stamps), Virudhunagar to fix the market value of the land in

question u/s 47-A(1) of the Indian Stamp Act. Form I notice was also issued to the petitioner on 30-11-1995 with direction to remit the stamp

duty fixed by the Sub-Registrar. The Petitioner filed the objection.

3. In the meantime, the petitioner was given an opportunity to pay half of the total stamp duty under Samadhan Scheme during March 1999, but

the Petitioner did not avail the concessions given under Samadhan Scheme. The land in question was inspected by the Second Respondent, who

confirmed the Market Value at Rs, 7.60/- per square feet. Form II was issued to the petitioner on 20-6-2002 giving all the details and with a

direction to remit the deficit stamp duty. The petitioner sent an objection dated 9-8-2002, but did not pay the amount. Since the petitioner did not

pay the amount, the impugned Notice was sent to the petitioner calling upon her to pay the deficit stamp duty along with interest at the rate of 2%

per month, which the Petitioner now seeks to quash.

4. The Second Respondent has filed elaborate Counter Affidavit referring to the issuance of Notice, Form I notice and the filing of the objection by

the petitioner. According to the Respondents, the land in question was inspected by the Second Respondent on 18-6-2002 and the market value

was confirmed and hence, the Petitioner is bound to pay the deficit stamp duty. If the petitioner is aggrieved, she ought to have preferred an

Appeal before the Inspector General of Registration within a period of two months of final order. As per Section 47-A(4) of the Indian Stamp

Act, any amount remaining unpaid is to be paid with interest at the rate of 2% per months. Notice issued on 11-4-2005 is in accordance with the

provisions of the Indian Stamp Act and the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

5. Challenging the Impugned Order, learned Counsel for the petitioner has submitted that the impugned Order was passed on 28-6-2002 nearly

seven years after the presentation of the document. Placing reliance upon the decision reported in 2001 (2) CTC 449, it is contended that the

document ought to have been referred for adjudication within the period of two years and the action of the Registering Officer passing the

impugned Order seven years after the document is arbitrary and is liable to be quashed. Learned Counsel for the petitioner has further submitted

that the land in question is an Agricultural land and the Respondents have grossly erred in fixing the market value at Rs. 7,60 per square feet, which

is arbitrary exercise of power and the decision of the Registering Officer is violative of the provisions of the Indian Stamp Act and the same is liable

to be quashed.

6. Drawing the attention of the Court to the various proceedings, learned Government Advocate has submitted that the Petitioner herself having

filed objections before the Second Respondent cannot contend that reference was not made within the stipulated time from the date of the

presentation of the document. Learned Government Advocate has further submitted that the petitioner was given the benefit under Samadhan

Scheme, which also the petitioner has not availed and failed to pay the deficit stamp duty. Learned Government Advocate has further submitted

that the order was passed u/s 47-A of the Indian Stamp Act on 28-6-2002 after elaborate enquiry and if the petitioner is aggrieved, she ought to

have preferred appeal before the authority as per Section 47-A(5) of the Indian Stamp Act. Learned Government Advocate also submitted that in

case of default, the deficit stamp duty is payable with interest as per Section 47-A(4) of the Indian Stamp Act and the Petitioner cannot challenge

the impugned Notice called upon the petitioner to pay the deficit stamp duty with interest at the rate of 2% per month. In support of his contention,

learned Government Advocate has relied upon an unreported decision of this Court in W.P. No. 37860 of 2003, wherein this Court upheld the

levy of interest.

7. In case where the document insufficiently stamped, u/s 47-A of the Indian Stamp Act, the Registering Officer shall refer the same to the

Collector for determination of the Market Value of such property and the stamp duty payable thereon. As per Section 47-A(3) of the Indian

Stamp Act, the time limit for the reference of the document to the Collector either suo motu or otherwise is two years prior to 6-3-2000 (after 6-

3-2000 - five years as per T.N. Act 1/2000). Section 47-A(3) of the India Stamp Act prior to 6-3-2000 reads:

The collector may, suo motu or otherwise, within two years from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement, not already referred to him under Sub-section (1), call for and examine the instrument for the purpose of satisfying

himself as to the correctness of the market value of the property which is the subject-matter of conveyance, exchange, gift, release of benami right

or settlement, and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not

been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the

procedure provided for in Sub-section (2). The difference, if any, in the amount of duty, shall be payable by the persons liable to pay the duty....

8. As stated earlier, the document was presented for Registration on 6-11-1995. The Second Respondent has passed a final order to the

petitioner in S.R. No. 621/95 on 28-6-2002. The main contention urged by the petitioner is that the final order had been passed nearly seven

years after the presentation of the document and the same cannot be sustained since the reference was not made within the time limit of two years.

Finding that the Registering Officer cannot make reference to the Collector at any point of time and the reference should be made immediately

within a period of two years after registration in The District Collector, Erode District v. M. Ponnusamy 2001 (2) CTC 449, a Division Bench has

held ""Reference should be made immediately after registration and the Registering Officer cannot use Section 47-A(1) as engine of oppression on

plea of under-valuation"". In the said case, the Registered Officer registered the document for conveying the undivided share in the property

presented for Registration (by way of Sale Deed), but failed to return the document despite lapse of one year and 11 months. When Legal Notice

was issued by the Party''s lawyer, thereafter the Registering Officer referred the matter u/s 47-A of the Indian Stamp Act for adjudication after two

years on receipt of notice issued by the lawyer. In such factual matrix of the case, the Division Bench has observed that the action of the

Registering Officer is not only misuse, but also arbitrary exercise of power.

9. The above decision cannot be applied to the case in hand in view of the compliance of the provisions of Section 47-A of the Indian Stamp Act

and the Tamil Nadu Stamp Manual and the Rules. The petitioner has presented the document for registration on 6-11-1995 and the same was registered as Document No. 1253 of 1995. The guideline value of the land was Rs. 7.60 per square feet. The petitioner registered the document

for the value at Rs, 200 per cent. Due to the difference of the market value, the document, was referred to the Second Respondent u/s 47-A(1) of

the Indian Stamp Act. Form I notice was issued to the petitioner on 30-11-1995 with a direction to remit the Stamp Duty fixed at Rs. 28,783/- by

the Sub-Registrar. The Petitioner had also filed her objection on 10-1-1996 and on 12-1-1996 and the adjudication was pending before the

Second Respondent.

10. In the meantime, Samadhan Scheme was available from 1-3-1999 to 30-6-1999. Opportunity was given to the petitioner to avail concession

under Samadhan Scheme and she was directed to pay Rs. 14,400/-, but the petitioner has not availed that opportunity to pay half of the total

stamp duty. In fact, even in her representation, the petitioner has stated that since she was having financial difficulties, and she could not pay the

amount of Rs. 14,400/- under Samadhan Scheme. In her representation, the petitioner had stated thus:

(Vernacular text omitted.-Ed.)

11. While so, now the petitioner cannot contend that there was no reference within the stipulated time limit of two years and the final order was

passed in 2002 beyond seven years of the Registration of the Document. Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of

Instruments) Rules, 1968 deals with Procedure on receipt of reference u/s 47-A, which reads:

...(1) On receipt of a reference under

sub-section (1) of Section 47-A, from a registering officer, the Collector shall issue a Notice in Form I.

(a) to every person by whom, and

(b) to every person in whose favour the instrument has been executed,

informing him of the receipt of the reference and asking him to submit to him his representations, if any, in writing to show that the market value of

the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days

from the date of service of the notice....

In compliance with Rule 4, Form I Notice was issued to the petitioner. In response to Form 1 notice issued to the petitioner on 30-11-1995, the

petitioner also filed objection on 10-1-1996 and 12-1-1996. Since the petitioner has not paid the stamp duty, the Second Respondent inspected

the land on 18-6-2002 and confirmed the market value at Rs. 7.60 per square feet. The Second Respondent determined the market value at Rs.

2,58,676/- and the Stamp Duty payable at Rs. 28,783/-. Thus, in compliance with Section 47-A(3) of the Indian Stamp Act read with Rule 4(4)

of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the Second Respondent has passed the order on 28-6-

2002.

12. u/s 47-A(5) of the Indian Stamp Act, any person aggrieved by an order of Collector u/s 47-A(2) or 47-A(3) of the Act, may appeal to

Special Authority/Inspector General (Registration), Chennai within two months from the date of final order. Rule 9 of the Tamil Nadu Stamp

(Prevention of Undervaluation of Instruments) Rules, 1968 deals with preferring of Appeals for the purpose of Section 47-A(5) of the Indian

Stamp Act.

13. As against the final order dated 28-6-2002 in Proc. Tha. Pa. No. 621/95, the petitioner has not preferred any Appeal to the Inspector

General of Registration u/s 47-A(5) of the Indian Stamp Act read with Rule 9 of the Tamil Nadu Stamp (Prevention of Undervaluation of

Instruments) Rules, 1968. If the petitioner is aggrieved over the order passed by the Second Respondent, she ought to have preferred appeal

within two months from the date of passing of the final order on 28-6-2002. Only as against the order passed by the Chief Controlling Revenue

Authority/Inspector General of Registration, Appeal may lie to the High Court. Having not preferred any Appeal u/s 47-A(5) of the Indian Stamp

Act, final order passed on 28-6-2002 has become conclusive.

14. u/s 47-A(4) of the Indian Stamp Act, any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty

shall pay in addition to the amount due, interest at two per cent per month on such amount for the entire period of default. Accordingly, the

impugned Notice was issued on 11 -4-2005 calling upon the petitioner to pay the deficit stamp duty along with interest at the rate of two per cent per month. In the Notice, the petitioner was also informed that if the amount is not paid, the amount would be realised by resorting to the Revenue

Recovery Act. u/s 48 of the Indian Stamp Act, all duties, penalties and other sums required to be paid may be recovered by the Collector by

distress and sale of the movable property of the person from whom the same are due, or by other process for the time being in force for the

recovery of arrears of land revenue. Thus, the Notice in Proc.Tha.Pa. No. 621/95 dated 11-4-2005 is well in accordance with the provisions of

the Stamp Act and the rules under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

15. In response to the impugned Notice, the Petitioner had also sent her representation, wherein she has agreed to pay the stamp duty of Rs.

28,783/- and she only prayed for waiver of interest. Having agreed to pay the deficit stamp duty, now it is not open to the petitioner to raise the

contention that there was no reference within the stipulated time of two years. In view of the mandatory provision of Section 47-A(4), the

Petitioner''s claim for waiver of interest cannot be succeeded to. In the unreported decision in W.P. No. 37860 of 2003, learned single Judge has

declined to interfere with the levy of interest in view of Section 47-A(4) of the Indian Stamp Act.

16. The market value has been fixed at Rs. 7.60 per square feet. Learned Counsel for the petitioner has advanced elaborate arguments contending

that the land conveyed is wet agricultural lands and the Respondents have erroneously fixed the market value calculating the square feet value. As

noted earlier, the petitioner has not challenged the final order dated 28-6-2002. Having not challenged the final order before the competent

authority/Chief Controlling Revenue Authority - Inspector General of Registration, the petitioner cannot raise the point now. Further, this Court

exercising the jurisdiction under Article 226 of the Constitution of India cannot go into those factual aspects.

17. Before parting with the matter, the conduct of the petitioner has to be pointed out. The averments in the Affidavit are as if for the first time she

has received the letter from the Respondent on 28-6-2002 calling upon her to pay the additional stamp duty. The petitioner has suppressed the

issuance of Form I notice and the notice sent and the objections filed by her before the Second Respondent. Likewise, the petitioner also suppressed the Issuance of Notice to her Informing her to avail the benefit under Samadhan Scheme. The petitioner challenges the impugned

Notice on the ground of delay in passing the final order suppressing all the previous proceedings, which was pending mainly because of the

objections raised by her. Having not challenged the final order, the petitioner cannot successfully challenge the impugned Notice dated 11-4-2005,

which is only consequential to the final order dated 28-6-2002.

18. For the foregoing reasons, the Petitioner is not entitled to the relief sought for and the writ petition is dismissed. Consequently, the connected

W.P.M.P. (MD) No. 5487 of 2005 is also dismissed.