(2003) 03 MAD CK 0119

In the Madras High Court

Case No : Writ Petition No. 11086 of 1998

Suresh Bafna, Proprietor, Mansi Mercantile Co. APPELLANT

Vs

Inspector General of Registration, District Registrar and Sub Registrar RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2004 Mad 355

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : S. Rama Narayanan, for the Appellant; N.R. Chandran, AG, assisted by V. Velumani, AGP, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The writ petitioner herein has prayed for the issue of a writ of mandamus directing the 3rd respondent to refund the excess stamp duty collected at the rate of 26% from the petitioner for registration of document Nos. 535 to 539 of 1998 with interest at 18% per annum.

2. With the consent of either side, the writ petition itself is taken up for final disposal. Heard Mr. S. Rama Narayanan, learned counsel appearing for the petitioner and Mr. N.R. Chandran, learned Advocate General assisted by Ms. V. Velumani, learned Additional Government Pleader appearing for the respondents.

3. The petitioner purchased agricultural lands measuring 10 acres and 58 cents comprised in survey Nos.1638/1, 1642/3, 1642/1, 1642/4, 1642/2 and 1639/6 of Vilpatti Village in Kodaikanal Taluk. The sale deeds were presented for registration before the 3rd respondent on 16.3.98 and they were assigned pending numbers 23 to 27 of 1998 respectively. It is claimed that the documents were kept pending since M/s. Mansi Mercantile Company is a company and, hence, the stamp duty and registration charges should be paid at 24% and 2%

respectively.

4. It is contended that the stamp duty payable for the lands in terms of The Indian Stamp Act is only 12% and registration fee being 1% irrespective or the legal status of the purchaser. This was pointed out to the 3rd respondent, but the 3rd respondent insisted that it is a direction from the first respondent and, therefore, twice the ordinary charges, namely, 24% stamp duty and 2% registration fees has to be remitted. Such a levy is illegal and unconstitutional. There could be neither a circular nor a direction in this respect nor such a circular is valid.

5. A notice was sent to the respondents on 25.3.98 and 17.4.98 objecting to the levy. The 3rd respondent pressurised the petitioner to pay 26% and the 3rd respondent went to the extent of saying that if the documents are not released, there is likelihood of losing those documents. The documents were released. On 5.5.98 and 19.5.98, the petitioner sent notices claiming refund of extra stamp duty and registration fee illegally levied and collected by the 3rd respondent. By a reply dated 22.8.98, the request of the petitioner was refused. Hence, the present writ petition.

6. On behalf of the respondents, the first respondent filed a counter. According to the respondents, the sale deeds were admitted by the 3rd respondent on 16.3.98 and kept pending. Pending the registration, the documents referred to the District Registrar, Dindigul, on 18.3.98. The 3rd respondent submitted his report that the purchase is in favour of M/s. Mansi Mercantile Company, a firm and whether stamp duty is leviable double the rate taking its consent as a firm as per the first respondent''s order dated 26.7.93 and 13.9.96.

7. The District Registrar by his letter dated 30.3.98 ordered that the documents of purchase being in favour of a firm, stamp duty for the documents should be levied at double the rate as per the orders of the Inspector General of Registration. On that basis, the 3rd respondent issued a notice to the petitioner to remit deficit stamp duty of Rs.34,311/= and registration fee of Rs.2,650/=.

8. The petitioner remitted the deficit stamp duty u/s 41 and registration fees as well. It is contended that the deficit stamp duty has not been collected under protest. It is the writ petitioner who came forward to remit the deficit stamp duty and fees. The deficit stamp duty has been remitted u/s 41 of The Stamp Act and a certificate has been affixed accordingly.

9. The following are the relevant paragraphs in the counter, where the respondents admit collection of stamp duty at the rate of 24% and registration fees of 2% :-

"8) It is submitted that the petitioner consented that the actual stamp duty should be levied only 12% and 1% Registration fees. But the Sub-Registrar, Kodaikanal levied 24% Stamp Duty and 2% Registration fee is much against the Constitution of India.

10) Regarding para 2 of the affidavit, it is submitted that the Sub-Registrar, Kodaikanal has admitted the five sale deeds executed in favour of Thiruvalargal Mansi Mercantile Co., Chennai 790 and kept the document pending on the ground that double value of the guideline rates should be adopted for the above documents of valuation.

11) Regarding paras 3 and 4 of the affidavit, it is submitted that the guideline value has been separately noted in guideline register for agricultural and non-agricultural lands (i.e., house sites, etc.,). Past experience revealed that agricultural lands are purchased for non-agricultural purposes and put to commercial, industrial and housing use. Since these is conversion of agricultural land to residential, commercial and industrial purpose the value of that property tend to appreciate. Hence, the State would lose its revenue if the guideline value meant for agricultural land is adopted for non-agricultural use.

12) It is further submitted that in view of this parties who are proprietors of some priorietorship, institutions, firms, companies are given the option to adopt double the value and pay the stamp duty without reference u/s 47-A of the Indian Stamp Act, 1899.

14) Regarding para 5 and 6 of the affidavit, it is submitted that the purchaser having given his name as "Mansi Mercantile Co., having its Office at No.22, Mulla Sahib Street, Sowcarpet, Chennai 79leads to a conclusion that the property is purchased not by an individual and use of land will be either commercial or industrial. In these circumstances the respondents 2 and 3 acted as per Inspector General''s order No.22317/L1/93 dated 26.7.93. Since the deficit stamp duty has been paid voluntarily and registration fees collected accordingly the question of refund of stamp duty and registration fees does not arise."

10. It was sought to be contended by the respondents that the petitioner voluntarily remitted the differential stamp duty as well as registration fee and, therefore, he cannot maintain a writ petition. It is also contended that the petitioner having remitted the stamp duty is not entitled to seek for refund.

11. The following points arise for consideration in this writ petition :-

"i) What is the rate of stamp duty and registration fee payable on a deed of conveyance in respect of lands located in Vilpatti village, Kodaikanal Taluk ?

ii) Whether there could be a levy of stamp duty and registration fee at twice the rate merely because the purchaser is a firm or a company ?

iii) Whether the respondent has the authority to collect stamp duty at the rate of 24% and registration fee of 2% on the sale deeds merely because the purchaser is a firm or a company ?

iv) Whether a writ of mandamus could be maintained for refund of stamp duty and registration fee levied and collected illegally ?

v) Whether the petitioner could maintain a single writ petition for mandamus to refund the excess stamp duty paid in respect of five different documents ?

vi) To what relief, if any, the petitioner is entitled to ?"

12. There is no quarrel that M/s.Mansi Mercantile Company by its proprietor Suresh Bafna purchased various extent of lands under five different sale deeds and presented the same for registration on 16.3.98. The five documents being document Nos. 535, 536, 537, 538 and 539 of 1998. The sale consideration paid to the vendor, market value as estimated by the purchaser in the deeds of conveyance, the deficit stamp duty paid u/s 42 of The Indian Stamp Act as per the endorsement on the reverse side of the page are as set out as hereunder :-

Sl. No. Doc. No. Sale Consideration

Rs. Market Value

Rs. Stamp Duty

Rs. Deficit Stamp duty paid in I Page (ie reverse side) Rs. 1. 535/1998 26,200 30,261 2,900 735 2. 536/1998 49,400 57,057 5,440 1,410 3. 537/1998 22,600 26,103 2,500 640 4. 538/1998 57,400 66,297 6,320 1,636 5. 539/1998 56,000 84,000 6,150 3,930

13. The documents, despite payment of duty as demanded, have been kept pending. Hence on 25.3.97, the petitioner represented to the 3rd respondent for release of the documents and followed it with the same with notice through his Advocate on 17.4.98. On 4.5.98, the 3rd respondent on the directions of the 2nd respondent, the District Registrar, required the petitioner to pay stamp duty and registration fee at double the rate since the purchaser is M/s.Mansi Mercantile Co., and not being a purchase in the name of individual and required the petitioner to pay the difference.

14. The material portion of the reply reads thus :-

"bghUs;fspy; fz;l ,dk; Fwpj;J epYit Mtzq;fs; bkrh;]; kd;rp bkh;f;f;d;ily;]; nfh vd;w bgahpy; fpuak; thq;fg;gl;ljhy; jdp egh; my;yhj epWtdq;fs; bgahpy; thq;fg;gLk; brhj;Jf;fSf;F tHpfhl;o kjpg;gpy; ,uz;L klq;F Kj;jpiuj; jPh;it kw;Wk; gjpt[fl;lzk; brYj;jg; gl ntz;Lk; vd cs;sJ. ghh;itapy; fz;l jpz;Lf;fy; khtl;lg; gjpthshpd; Mizapd;go fpiuak; bgw;w egh; xU epWtdk; vd mwptpf;f;gl;Ls;sJ."

15. The petitioner once again addressed the respondents stating that it is his individual purchase and he is the sole proprietor and he is not liable to pay stamp duty at double the rate and so also the registration fee. By letter dated 12.5.98, the 3rd respondent once again reiterated the contents of his letter dated 4.5.98. The 2nd respondent by reply dated 13.5.98 explained its stand that M/s.Mansi Mercantile Co., is a firm or a company and, therefore, the stamp duty should be double the rate.

16. The petitioner followed it with further reminders for refund and there was no reply from respondents 2 and 3. The first respondent by reply dated 22.6.98

informed the petitioner that stamp duty and registration fee for purchase of properties in the name of partnership firm or a company is levied at the rate of 12% and fees at 1% on the guideline value of property has to be paid. In the circumstances, the petitioner has filed the present writ petition.

17. At the time of hearing, a letter from the Secretary to Government addressed to the first respondent was also produced whereby the Government has instructed that levy of stamp duty on the basis of proposed user or on the basis that the purchaser is a firm or other institutions shall not be different from that of a purchase by an individual. Thus practically the respondents admit that levy of stamp duty and registration fee at double the normal rate is illegal and unauthorised. However, we have to examine the legal position as the respondents sought to contend that the petitioner is not entitled for refund.

18. In this case, concedingly, further demand of stamp duty and registration fee has been collected, namely at 24% and 2% in respect of which sale deed was executed and they are as hereunder :-

Sl. No. Doc. No. Sale Consideration

Rs. Market Value

Rs. Stamp Duty

Rs. Deficit Stamp duty paid in I Page (ie reverse side)

Rs. Further Deficit Stamp Duty Paid (i.e.) 12%+1% Regn.)

Rs.

Colln. By the Sub-Reg. Double Stamp Duty & Regn. II Page Rs. 1. 535/1998 26,200 30,261 2,900 735 2,635 + 305 3,940 2. 536/1998 49,400 57,057 5,440 1,410 6,580+575+270 7,425 3. 537/1998 22,600 26,103 2,500 640 3,140+265 3,405 4. 538/1998 57,400 66,297 6,320 1,636 7,956+665 8,621 5. 539/1998 56,000 84,000 6,150 3,930 10,080 + 840 10,920

Total 34,311 The total sum for which refund is sought for is Rs.34,311/=.

19. The Indian Stamp Act, 1899 has been engrafted in the statute book to consolidate and amend the law relating to stamps. Its applicability thus stands restricted to the scheme of the Act. The enactment of The Indian Stamp Act is a true fiscal statute in nature and, therefore, a strict construction is required to be effected and elaborate interpretation is impermissible. The object of the Act is to make certain levy and to collect revenue.

20. Section 3 of The Stamp Act stipulates that instrument shall be chargeable with duty of amount indicated in the schedule, is the appropriate duty therefor. Section 2(10) defines the expression "conveyance". Chapter III provides for adjudication as to stamps. Chapter IV relates to instrument not duly stamped. Chapter VI provides for reference and refund. Chapter VIII provides for supplemental provisions such as power to make rules, publication of rules,

delegation of certain powers.

21. The object of The Indian Stamp Act, as has been held by the Supreme Court in Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, : is to collect appropriate stamp duty on an instrument or conveyance on which such duty is payable. The Supreme Court in the above pronouncement held thus :-

"5. The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is a matter of common knowledge that in order to escape such duty by unfair practice, many a time under valuation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds is on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on the authority to property ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, the Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village, from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is the likely value of such property in that area. In its absence it would be very difficult for such registering authority to assess the valuation of such instrument."

22. Section 47-A has been introduced in this State, which provides that when the Registering Authority has reason to believe that the market value of the property, which is the subject matter of conveyance, exchange, gift, lease of interim right or settlement has not been truly set forth in the instrument, the Registering Authority may, for registering such instrument refer the same to the Collector for determination of market value of such property and appropriate duty payable thereon. Sub-section (10) of Section 47-A prescribes the procedure to be adopted and preferring of appeal thereof. Section 47-A provides the methods to be taken recourse to in the event of instrument of conveyance or other instrument referred to in that Section stands undervalued. Schedule I Entry 23 prescribes the rate of levy of stamp duty on a conveyance as defined by Section 2(10).

23. There is no quarrel that in respect of the lands located in Vilpatti village in Kodaikanal Taluk, Dindigul District, the instrument of conveyance is chargeable with duty of 12%. There is no dispute that the registration fee payable under The Indian Registration Act is 1% on such instrument of conveyance.

24. In terms of Article 265 of The Constitution, no tax shall be levied or collected except by authority of law. Article 265 provides that not only levy, but also the collection of tax must be under the authority of law and authority of law means a valid law. The tax in question must be authorised by such valid law. Authority of

law means a valid law. The tax in question must be authorised by such valid law. Schedule I Entry 23 authorise levy of 12% stamp duty on the market value of the property delivered under the instrument and not 24%.

25. Neither the State nor the first respondent herein could direct imposition of stamp duty at 24% in respect of instruments or deeds of conveyance executed in favour of firm or company. There is no such provision or entry in the Schedule, which would enable different rate of advalorem stamp duty chargeable in respect of conveyance executed in favour of a firm or a company.

26. The directions issued by the State Government or the first respondent, which is relied upon by the first respondent in the counter affidavit cannot be a law and by such a direction or circular no tax shall be levied or collected in excess of 12% advalorem in respect of conveyance as seen from Schedule I Entry 23 read with Section 3 of The Indian Stamp Act. The counter affidavit filed by the first respondent discloses an illegal attempt on the part of the first respondent to levy stamp duty at 24% on purchase by firms or companies, which is not authorised by law. Such a circular is per se illegal and the respondents cannot seek to enforce the same. The levy of 24% stamp duty on instrument of conveyance in favour of the petitioner not being authorised by law, is illegal arbitrary and offends Article 265 of The Constitution.

27. Law, in the context of Article 265 means an act of the Legislature and cannot comprise an executive order or a rule without express statutory authority. Article 265 embodies the principle of "No taxation without representation". By an executive instruction, there cannot be a levy, much less at different rate in respect of conveyance, which falls under Entry 23 of Schedule I and that too by the very entry the stamp duty is levied only at 12% and the same cannot be varied or altered by an executive order or executive instruction and respondents 2 and 3 cannot justify such imposition of stamp duty at 24% and registration fee at 2%.

28. Article 265 includes any impost, which includes not only tax, but also duties and they cannot be levied without specific statutory authority and at any rate not in excess of the rate of levy authorised by the Legislature. What Article 265 enjoins is that every stage in the process of levy must be authorised by law. The increase in rate of duty or levying different duty or levy of impost at different rates must equally be made under the authority of law in the manner prescribed by legislative enactment.

29. The learned counsel appearing for the respondents is unable to point any statutory provision, which authorise levy of stamp duty in respect of conveyance in favour of firm or companies at 24% advalorem. Therefore, it is clear that levy at 24% advalorem on the five instruments under which the petitioner purchased different extent of lands is illegal. The levy at 24% advalorem has been made on the basis of certain circulars, reference to which are set out in the counter affidavit filed by the first respondent, but not placed before the Court. At any

rate, in the light of the statutory provision there could not be a levy of stamp duty in excess of 12% in respect of the five sale deeds and any levy or collection of duty in excess of 12% towards stamp duty is illegal.

30. In respect of registration fee also, the schedule of rates provides 1% registration fee as seen from the table of rates provided u/s 78 of The Registration Act, 1908. Therefore, levy of 2% registration fee also, which has been collected under threat is also unauthorised and such a levy has to be declared as illegal.

31. Though there is an attempt to contend that the petitioner has voluntarily paid 24% stamp duty and 2% registration fee, this Court is unable to sustain the said contention advanced by the learned Advocate General as seen from the proceedings of respondents 2 and 3, where they have made it clear that the petitioner has to pay stamp duty at 24% and registration fee at 2% on the market value of the subject matter of conveyance. There is no quarrel with respect to the market value of immovable property conveyed under each instrument of conveyance. On the very date of presentation of the document itself deficit stamp duty has been collected and endorsement has been made on the reverse of page-1, on the date of conveyance itself endorsing that remittance has been made and a certificate has been issued to this effect. Thereafter only, the respondents 2 and 3 insisted that the petitioner has to pay stamp duty at 24% advalorem and registration fee at 2% advalorem and deficit stamp duty has to be paid at that rate. This is clear from the reply sent by respondents 2 and 3 as well as it is also clear from the contents of the counter affidavit. Respondents 2 and 3 rely upon certain circular issued by the first respondent and the State Government. As already pointed out, such a circular cannot be relied upon as it is invalid in law in terms of Article 265 of The Constitution.

32. In the circumstances, the plea that the petitioner has voluntarily paid the stamp duty at 24% advalorem and registration fee at 2% advalorem cannot be sustained and at any rate there cannot be any plea of estoppel with respect to illegal levy of duty and fees. Not being authorised by law, levy of 24% of stamp duty and 2% registration fee not being authorised by law, such impost is illegal, unconstitutional and such an illegal collection has been extracted from the petitioner.

33. On the first point this Court holds that stamp duty leviable in respect of deed of conveyance is only 12% advalorem and registration fee being 1% advalorem irrespective of as to who is a purchaser, be it a company or a firm or a corporate body or individual. Hence, the first question is answered accordingly.

34. On the second point, this Court holds that levy of stamp duty in excess of 12% and registration fee in excess of 1% advalorem is illegal and unconstitutional.

35. The third point also has to be answered against the respondents and in favour of the petitioner as no statutory provision of law has been show by the

respondents authorising levy of stamp duty at 24% and registration fee at 2% advalorem and the point is answered in favour of the writ petitioner.

36. On the fifth point, the levy being illegal and not being authorised by law, the respondents are bound to refund the excess collection of stamp duty and registration fee, as has been held by the Supreme Court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, : and the same pronouncement is the authority for granting of a writ of mandamus.

37. The last point, which remains to be considered is the petitioner has filed a single writ petition claiming refund in respect of five different documents. The levy being in respect of five independent documents, the petitioner should have normally filed five different writ petitions, as each individual document is the subject matter of separate assessment and levy of stamp duty. The petitioner should have filed five separate writ petitions. However, on that score, this Court will not be justified in denying the relief as the impost of stamp duty at 24% and registration fee at 2% is per se illegal and unconstitutional. However, the petitioner is directed to pay a deficit Court fee of Rs.400/= in addition to Rs.100/= already paid by the petitioner in the above writ petition before getting a copy of this order.

38. The petitioner shall remit the additional court fee of Rs.400/= in the writ petition and the Registry shall insist for remittance of additional court fee of Rs.400/= before releasing a copy of the order to the petitioner.

39. The respondents are directed to refund the sum of Rs.34,311/= being the excess stamp duty and registration fee collected on 21.4.98 within eight weeks from today. If the respondents fail to refund the amount of Rs.34,311/= within eight weeks from today, the respondents will be liable to pay interest at the rate of 12% from 21.4.98 till date of payment. In the result, this writ petition is allowed with a cost of Rs.3,000/=.