

MBI Metalloys Pvt. Ltd. Vs The Inspector General of Registration, The Sub Registrar and The Special Deputy Collector (Stamps)

Court: Madras High Court

Date of Decision: Feb. 1, 2010

Acts Referred: Stamp Act, 1899 " Section 47A

Citation: (2010) 2 LW 660

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: P.G. Perumal Pandian, for Shobana Ramasubramaniam, for the Appellant; Anitha Government, for R1 to R3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The Petitioner has filed this writ petition for issuance of a writ of Certiorarified mandamus in calling for the records of the first Respondent in Letter No. 500/B1/2003 dated 04.03.2003 and the third Respondent's Demand Letter No. 380 dated Nil (Form No. 1) and

to quash the same and further to direct the second and third Respondents to return the sale deed dated 26.08.2002 (registered under Document

No. 3201/2002) on the file of the second Respondent to the Petitioner without insisting upon the payment of deficit stamp duty and registration fee

thereto.

2. The Petitioner was allotted an industrial developed Plot No. 84/8 situated at Ambattur Industrial Estate by an order in Letter No.

DP2/AMB/48/75-SIPCOT dated 17.12.1975. Later the Tamil Nadu Small Industries Development Corporation Limited sent a revised order to

the Petitioner by his letter dated 31.08.1977 containing change of extent with cost of plot and total remittance particulars of 50% amount and

subsequently a deed of Assignment was made to in favour of the Petitioner on 05.09.1977 which was registered as Document No. 2752/1977.

The details of 50% out of the total cost paid to TANSIDCO in instalments was mentioned as below:

S. No.	Date of Payment	Amount Paid
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Rs.	P.
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1. 22.02.1975 500.00
2. 27.03.1976 2000.00
3. 21.04.1976 5000.00
4. 19.07.1977 3900.00

Total 11400.00

3. The balance 50% was to be paid in two equal instalments by the Petitioner apart from the other conditions mentioned therein. A sum of Rs.

5,700/- being 25% cost was paid to the TANSIDCO after two years from taking possession of the plot, etc.,. The TANSIDCO executed a sale

deed on 26.08.2002 in favour of the Petitioner after satisfying the formalities and the said sale deed was duly registered as per Document No.

3201/2002 before the second Respondent for a sale consideration of Rs. 22,800/- (which was determined by the TANSIDCO).

4. The second Respondent/the Sub Registrar, Konnur, Villivakkam, Chennai had not accepted the value specified in the said sale deed and

referred the document to the third Respondent/Special Deputy Collector (Stamps), Chennai-1 for re-determining the market value as per Section

47A of the Indian Stamp Act, notwithstanding the fact that the Petitioner mentioned about the applicability of G.O. Ms. No. 48 Commercial Taxes

and Religious Endowments Department dated 13.01.1989. However, the third Respondent/Special Deputy Collector (Stamps) Chennai has

confirmed the value even without taking into account the G.O. Ms. No. 48, Commercial Taxes and Religious Endowments Department dated

13.01.1989 and not provided a reasonable opportunity to the Petitioner.

5. The main contention put forward on the side of the Petitioner is to the effect that the second Respondent/Sub Registrar, Konnur, Villivakkam,

Chennai had not referred to the sale deed Document No. 3201/2002 dated 26.08.2002 to the third Respondent/Special Deputy Collector

(stamps) Chennai as per Section 47A of the Indian Stamp Act for the purpose of redetermining the market value of the property inasmuch as the

market value of the property was covered by the sale deed was already fixed at Rs. 22,800/- by Tamil Nadu Small Industries Development

Corporation Limited and the said amount was already paid by the Petitioner and as a matter of fact, the second and third Respondents could not

enhance the property value which was already determined by the Tamil Nadu Small Industries Development Corporation Limited at the time of

allotment of plot to the Petitioner/allotee and moreover the first Respondent should have considered the appeal/representation of the Petitioner and

direct the third Respondent to return the document to the Petitioner because of the fact that the sale deed executed by TANSIDCO, in pursuance

of the allotment order dated 17.12.1975 and 31.08.1977 and the transaction was nothing but a Hire purchase Lease cum Sale but these aspects

of the matter have not been adverted to by the Authorities concerned in a real perspective which ultimately resulted in miscarriage of justice and

therefore prays for allowing the writ petition.

6. Advancing his arguments, the learned Counsel for the Petitioner brings it to the notice of this Court that the decision R. Sukumaran and seven

Ors. v. State Of Tamilnadu 2002 (2) CTC 329 : 2003 4 L.W. 312, wherein it is mentioned among other things observed that"" the Registering

Authority insisting on payment of stamp duty according to prevailing market value as on date of registration of document and in earlier judgments of

Division Bench of this Court in S.P. Padmavathi Vs. State of Tamil Nadu and Others, and State of Tamil Nadu and Ors. v. P. Thulasi Lakshmi

and Anr. in W.A. Nos. 1467 and 1468 of 1998 laid down the legal position holding that the demand of stamp duty on market value as on date of

presentation of document for registration was not justified and the insistence on payment of stamp duty on market value on such market value that

prevails on the presentation of document was not correct as earlier judgments are binding and Statutory body like Housing Board would not

receive excess amount than what has been actually recited as sale consideration in the Deed of conveyance executed by the Board in favour of

Allottee and no discretion is available to registering authority to entertain any doubt regarding payment of consideration when document is executed

by statutory body like Housing Board and in such cases Registrar has to register document without raising any query regarding consideration

recited or paid and merely because there has been increase in Market value due to passage of time registering authority cannot assume that

Housing Board has received more consideration than what has been recited in document and the Registrar cannot have any ground or reason or

basis to entertain doubt about sale consideration and hence the claim of Registrar has been rejected and also the Registering Authority has been

directed to release the documents without insisting on further payment of stamp duty even if such instalments had already been referred to Special

Deputy Collector (Stamp Duty) for proper valuation or verification and that the Inspector General of Registration was directed to issue a circular in

this regard to all the Registrars in the state and the delay or deviation to be viewed very seriously and inspite of earlier pronouncements action of

Registrars demanding higher stamp duty was held to be reprehensible and the contempt proceedings was not initiated and cost not awarded in the

light of fair stand taken by the Advocate General."" Added further, in the aforesaid judgment at paragraph No. 21, it is also observed that "....the

same is the legal position even in respect of commercial plot/flat as well and there could be no difference in that behalf nor there could be any

discrimination."

7. At this stage, it is useful for this Court to refer to G.O. Ms. No. 48, Commercial Taxes and Religious Endowments dated 13.01.1989 wherein it

is mentioned as follows:

1. G.O. Ms. No. 383 Industries Dt. 19.3.1982 Read also:

(Various letters and representations)

ORDER

In the reference read above the Tamil Nadu Small Industries Corporation Madras, State Industries Promotion Corporation of Tamil Nadu Ltd.,

Madras and other entrepreneurs have requested the Government to permit them to pay Stamp Duty at the value fixed by Small Industries

Development Corporation/State Industries Development Corporation/State Industries Promotion Corporation of Tamil Nadu for the properties

like developed plots and sheds allotted on lease-cum-Sale Deed basis irrespective of the market value prevailing at the time of registration of the

documents.

2. The Inspector General of Registration who was consulted in the matter, has reported that as Small Industries Development Corporation/State

Industries Promotion Corporation is also Government undertaking, special concession may be granted to it as in the case of Co-operative

Societies and Housing Board.

3. The Government accept the recommendation of the Inspector General of Registration Madras and permit the Industrialists, who have purchased

the developed plots/sheds on Hire Purchase (Lease-cum-Sale Deed) basis from Small Industries Development Corporation/State Industries

Promotion Corporation of Tamil Nadu to pay stamp Duty at the value fixed by Small Industries Development Corporation/State Industries

Promotion Corporation of Tamil nadu irrespective of the market value prevailing at the time of registration.

8. From the above tenor and spirit of the Government order, it is quite evident that the Government has accepted the recommendation of the

Inspector General of Registration (Madras) and permitted the industrialists who have purchased the developed plots/sheds or hire purchase

(Lease-cum-Sale deed) basis from Small Industries Development Corporation/State Industries Promotion Corporation of Tamil Nadu to pay

stamp duty at the market value fixed by the Small Industries Development Corporation/State Industries Promotion Corporation of Tamil Nadu

irrespective of the prevalent market value at the time of registration.

9. A perusal of the sale deed in respect of the land dated 26.08.2002 executed by the Tamil Nadu Small Industries Development Corporation (a

Company incorporated under the Companies Act 1956) and as undertaking of the Government of Tamilnadu, Madras 16 represented by the

Branch Manager (duly authorised by the Chairman and Managing Director, SIDCO) in favour of the Petitioner shows that the Petitioner had

applied for the allotment of the plot and that the plot No. 84/8 at Ambattur Industrial Estate was allotted to the Petitioner as per Letter No.

DP2/AMB/48/75-SIPCOT dated 17.01.1975 on assignment basis to the Petitioner/purchaser and the cost of the plot Rs. 22,800/- was already

paid by the Petitioner/purchaser to the vendor viz., Tamil Nadu Small Industries Development Corporation Limited and the Petitioner/purchaser

had also executed and registered Assignment deed dated 05.09.1997 bearing Document No. 2752/77 in the office of the Sub Registrar.

10. Suffice it for this Court to point out that the Petitioner is the owner of the piece and parcel of land bearing Plot No. 84/8 (North phase)

Ambattur Industrial Estate in Tiruvallur District admeasuring about 28800 sq. ft. (or) 0.66 acre comprised in Survey No. 152 pt. and 153 pt in

Patravakkam Village and 826/3-B of Korattur Village and more fully described in the schedule of the said sale deed.

11. On going through the typedset of papers, it is clear that the Branch Manager of the Petitioner's vendor viz., Tamil Nadu Small Industries

Development Corporation Limited (the Government of Tamilnadu undertaking) in Letter No. 1277/A7/2000 dated 26.08.2002 addressed a

communication to the second Respondent/Sub Registrar, Konnur, Villivakkam, Chennai by mentioning that the Government has ordered to take

the value of the land cost fixed by SIDCO for the payment of stamp duty (enclosing a G.O. Copy) as per G.O. Ms. No. 48 dated 13.01.1989

and further the Government has ordered to take the value of the land and building cost fixed by SIDCO for payment of registration as per G.O.

Ms. No. 64 dated 19.02.19% and as such requested him to register the sale deed as and when the allottee presents the sale deed for registration.

12. When the G.O. Ms. No. 48, Commercial Taxes and Religious Endowments Department dated 13.01.1989 speaks of the Government

accepting the recommendation of the first Respondent and has permitted the Industrialists, who purchased the developed plots/sheds on Hire

Purchase (Lease-cum-Sale Deed) basis from Small Industries Development Corporation/State Industries Promotion Corporation of Tamil Nadu

to pay stamp Duty at the value fixed by Small Industries Development Corporation/State Industries Promotion Corporation of Tamil nadu

irrespective of the market value prevailing at the time of registration and when the vendor of the Petitioner viz., Tamil Nadu Small Industries

Development Corporation Limited by Letter No. 1277/A7/2000 dated 26.08.2002 has requested the second Respondent to register the sale

deed as and when the writ Petitioner/allottee presents the sale deed for registration making specific mention of G.O. Ms. No. 866 dated

28.7.1987, G.O. Ms. No. 48 dated 13.01.1989, G.O. Ms. No. 64 dated 19.02.1996 and in view of the decision of this Court in R. Sukumaran

and seven Ors. v. State of Tamilnadu 2002 (2) CTC 329 which inter alia speaks of the Registration cannot have any ground or basis to entertain

doubt about sale consideration, etc., and moreover when the Petitioner in his representation dated 30.12.2002 has brought to the notice of the first

Respondent that invoking of Section 47A by the Registering Officer is not proper, etc., this Court is of the considered view that it is not prudent on

the part of the first Respondent in his Letter No. 500/B1/2003 dated 04.03.2003 to state that G.O. Ms. No. 48, Commercial Taxes and Religious

Endowments Department dated 13.01.1989 of the State Government is not applicable to the present sale deed in question pertaining to the

Petitioner and equally the demand of the third Respondent in Form 1 notice dated Nil requiring the Petitioner to pay the difference in stamp duty of

Rs. 14,82,768/- is not proper and in short, both the orders of the Authorities concerned are clearly in violation of the G.O. Ms. No. 48,

Commercial Taxes and Religious Endowments Department dated 13.01.1989 and also to the spirit and tenure of the decision R. Sukumaran and

seven Ors. v. State of Tamilnadu 2002 (2) CTC 329 and viewed in that perspective, the writ petition deserves to be allowed and accordingly the

same is allowed by setting aside the Letter No. 500/B1/2003 dated 04.03.2003 of the first Respondent and Demand Letter No. 380 dated Nil

(Form No. 1) of the third Respondent.

13. In the result, the writ petition is allowed leaving the parties to bear their own costs. Resultantly, the orders of the Authorities viz., Letter No.

500/B1/2003 dated 04.03.2003 of the first Respondent and the Demand Letter No. 380 dated Nil (Form No. 1) of the third Respondent are

quashed. The Registering Authority/second Respondent and the third Respondent are directed to release the sale deed registered under Document

No. 3201/2002 dated 26.08.2002 to the Petitioner without insisting on further payment of stamp duty, etc., within a period of two weeks from the

date of receipt of a copy of this order