

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/09/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.1548 of 2001

Narasingapuram Extension
Welfare Association
rep. by its Vice-President Petitioner

-Vs-

1. The Inspector General of
Registration
Santhome High Road
Madras 28

2.The Special Deputy Collector
(Stamps)
Madras 1

3. The Sub Registrar
Velacherry
Vijaya Nagar
Madras 42

4. Pa. Periyaswamy
5. S.Kolappapillai
6. S.Natarajapillai
7. S.Bose
8. M.Devarajan
9. K.Arjunan
10.S.Abubaker
11.C.Valliammal
12.G.Elangovan
13.M.P.Govindaswamy
14.A.Santhakumari
15.O.S.Kamalanathan
16.K.Natarajan
17.M.Natarajan
18.M.Sekar
19.P.A.Madhavan
20.K.Divakaran
21.U.Malleshwari
22.K.Babu
23.P.Krishnan

24.S.Arumugam
25.G.Sundaramoorthy
26.V.Krishnaveni
27.V.Nithiyandam
28.K.Babu
29.U.Rajagopal
30.L.Parvathy Ammal
31.K.Suseela Respondents

RR 4 to 31 impleaded as per the
order dated 01.07.2002 in WPMP 14089/2002

Prayer: Petition filed under Article 226 of the Constitution of
India, praying to issue a writ of Certiorarified Mandamus , as stated therein.

!For Petitioner : Mr.V.Raghavachari

^For Respondents : ----

:ORDER

This writ petition has been filed for the issuance of a writ of
certiorarified mandamus, to call for the records on the file of the 2nd and
1st respondents in proceedings No.A1/114/99 dated 08.12.2000 and in
Proceedings No.29166/E2/2000 dated 13.11.2000 and to quash the same.

2. The brief facts that are necessary for the disposal of this writ
petition are as follows:

The petitioners Association entered into an agreement of sale on 21
.10.1989 to purchase the land at the rate of Rs.33,000/- per ground. At that
time, the market value of the ground was only Rs.23,000/-. Thereafter, due to
various reasons the petitioner could not comply with the agreement of
purchase. Hence, C.S.No.381 of 1990 has been filed by the owners of the
property against these petitioners. In that, orders were passed on
21.04.1998. On 11.04.1997, the prayer for eviction of the petitioner from the
property was dismissed. Immediately after sale agreement the petitioners were
put in possession of the suit property. Thereafter, on 29.04.1998, the
petitioners presented the documents for registration. But documents were not
handed over to the members of the petitioners' association. A notice under
Form-1 was issued on 04.01.1999. Thereafter the writ petition has been filed
to quash the notice issued under Form-1 on 04.01.1999.

3. A counter has been filed on behalf of the respondents denying all
the allegations. Further it is averred that the property in question was
encroached by some people and later they formed an association. There is a
dispute between the encroachers and the actual owner and C.S.No.381 of 1990
was filed. Ultimately a compromise was entered into and the actual owners
agreed to execute the sale deed and to that effect entered into an agreement
to sell the property on 21.10.1989. As the value set forth in the sale deed
was lesser than the guideline value in the year 1992, the same was referred
under Section 47(A) of the Stamp Act. The petitioner association filed an
application in the above suit against the action of the Sub-Registrar. The
Court held that it cannot file such a petition. The agreement of the sale was

entered between the parties on 21.10.1989 and the guideline value has been revised each year giving effect on every 1st of April of that year. The petitioner has failed to present the sale deeds before 31.03.1990. As per Section 47(1)(A) of the Stamp Act, they have got a right to question the value. Therefore, the respondents can invoke the provisions of 47(A) of the Stamp Act and there is nothing wrong in issuing the notice and it is perfectly valid. Therefore, the writ petition deserves to be dismissed.

4. Mr.V.Raghavachari, learned counsel appearing for the petitioner submitted that from the documents filed along with the typed set it is seen that the agreement for sale was entered into on 21.10.1989. Subsequently, a dispute arose between the parties which resulted in a Civil Suit and the compromise decree was passed in C.S.No.381 of 1990 on 11.04.1997. In that decree it has been specifically stated that the owners of the property shall execute a sale deed for a sum of Rs.36 lakhs. Subsequently, all the members of the petitioners' association filed sale deeds for the purpose of registration after paying Rs.36 lakhs to the owners of the property. In such circumstances, the impugned order has been passed.

5. The learned counsel referred to the Judgment of this Court in G. B.Adhilakshmi Ammal Vs. The Special Deputy Collector (Stamps) reported in (2002(3) CTC 490), wherein this Court has held in a case to which City Tenants Protection Act applied and a decree was passed by the Court to execute the sale deed to the tenant for the value fixed by the Court, the Sub-Registrar cannot ask for higher Stamp duty, on the ground that the market value of the land was more. In the above case it has been held that the sale consideration had been fixed by the order of the Court exercising the statutory power, and there was no allegation that the tenant and the landlord have colluded. In those circumstance, demand of higher stamp duty was not valid and hence it was set aside.

6. The learned counsel also relied upon a judgment of the Division Bench of this Court in the case of The District Collector, Erode Vs. M.Ponnusamy reported in (2001(2)CTC 449) where the Division Bench has held that when the matter is referred to the Collector, the registering authority, it should be done within the period of limitation fixed by the Act, namely three weeks from the date of completion of registration of documents. If the reference was not made immediately within a period of three weeks, it is hit by the Limitation Act and thereafter it cannot be referred. In this case, the documents were registered on 29.4.1998, but notice under Form-I was issued only on 04.01.1999. This has been issued only after three weeks. On this ground, i.e., the period of limitation, the order is liable to be set aside.

7. The learned Government Advocate appearing for the respondents referred to the judgment in S.P.Goel Vs. Collector of Stamp reported in (JT.1996(9) SC 545), wherein it has been held that Section 86 of the Registration Act provides complete protection to the Registering Officers for things done "bona-fide" by him under the Act. Relying upon this judgment, the counsel submitted that the action of the Registering authority is bona-fide and hence it cannot be quashed.

8. The action on the part of the registering authority is not contended as mala fide. But, on the other hand, the contention is against the demand of stamp duty for a higher value. It is to be seen that the sale consideration has been fixed by the Court, taking into account the date of agreement for sale and other aspects; the value of the property has been fixed

by the Court as Rs.36 lakhs by a decree in a suit. Therefore, it can not be alleged that a lesser amount is shown as the sale price in the documents. The decision of this Court in G.B.Adhilakshmi Ammal Vs. The Special Deputy Collector (Stamps) reported in (2002(3) CTC 490), squarely applies to the facts of this case. In such circumstances, the impugned order is liable to be quashed and hence it is quashed.

9. The Writ petition is allowed as prayed for. The respondents are directed to return the documents to the purchasers.

Index:Yes

Internet:Yes

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To

1. The Inspector General of

Registration

Santhome High Road

Madras 28.

2.The Special Deputy Collector

(Stamps)

Madras 1.

3. The Sub Registrar

Velacherry

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Madras 42.