IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16080 of 2014

K.Nachimuthu ... Petitioner

vs.

1.The District Registrar (Audit)
Tiruppur District,
Tiruppur

2.The Sub-Registrar
Dharapuram Sub-Registrar Office
Dharapuram
Tiruppur District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to remove the entry of Section 47 A (Indian Stamp Act) proceedings from the encumbrance certificate for the property at S.No.497/2, Plot No.53, Lakshmi Nagar, Chitharavuthanpalayam Village, Dharapuram Taluk, Tiruppur District to an extent of 3249 ½ sq.ft by considering my representation 05.12.2013 and 10.02.2014.

For Petitioner : Mr.M.Guruprasad
For Respondents : Mr.S.Gunasekarn, Govt.Advocate

O R D E R

In this writ petition, the petitioner seeks a mandamus to direct the respondent to remove the entry of Section 47A (Indian Stamp Act) proceedings from the encumbrance certificate by considering the petitioners representation.

2. Petitioner is a resident in Chitharavuthanpalayam Village, Dharapuram Taluk, Tiruppur District and he purchased a property in S.No. 497/2, Plot No.53, Lakshmi nagar, in the said village by registered sale deed bearing document No.4628/05. According to the petitioner, the first respondent during the course of audit has stated that the petitioner property would fall within Dharapuram Town

limit and directed the petitioner to pay a sum of Rs.48,555/- as stamp duty by proceedings dated 22.06.2006. Thereafter, the petitioner has produced a certificate from the Revenue Authority as well as the Panchayat President stating that the property falls within the limits of Kavundachipudhur Village. However, the second respondent was not inclined to believe the certificate and he himself conducted a personal inspection on 29.06.2006, and found that the property does not fall within the Dharapuram limit and it lies within our village as per the certificate. Accordingly, the second respondent sent a report to the first respondent on 05.07.2006. Subsequently, during November 2013, when the petitioner applied for encumbrance certificate it is shown as if that petitioner has to pay a deficit stamp duty of Rs.48,555/-.

3. The petitioner has now sought for deletion of entry stating that entry is an outcome of total non-application of mind without even verifying the records. In the counter affidavit filed by the second respondent, it is stated that it is false to state that a report was sent to the first respondent on 05.07.2006. However, the counter does not specifically states as to what basis the entry was made. Assuming that there is a deficit stamp duty payable, and a proceeding to the said effect was issued, that could not have been done without issuing notice to the petitioner and without affording an opportunity to the petitioner. Though, the writ petition was adjourned twice for production of records to justify the stand taken in the counter affidavit no records are forth coming. Further, from the typed set of papers it is seen that the second respondent has submitted a report of his inspection on 29.06.2006. Except for a vague denial about the report in the counter affidavit, there is no contrary records produced to disprove the said report. Based on that inspection the second respondent has also communicated to the first respondent on 05.07.2006. Copy of the said report has also been filed in the typed set of papers, even this report has not been properly controverted except for stating that the said report is wrong. When the petitioner is able to produce the copies of the same, prima facie it is shown that report has been prepared and sent to the first respondent. Mere denial by the respondent by itself will not extinguish such report.

4. In the light of the above, the writ petition is allowed and the respondents are directed to consider the petitioner's representation dated 05.12.2013 and 10.02.2014 and remove the entry which is reflected in the encumbrance certificate stating as if that the petitioner is liable to pay deficit stamp duty and the entry shall be deleted within a period of three weeks from the date of receipt of a copy of this order.

5. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The District Registrar (Audit)
Tiruppur District, Tiruppur

2.The Sub-Registrar
Dharapuram Sub-Registrar Office
Dharapuram,Tiruppur District.

1 cc to Mr.M.Guruprasad ,Advocate, SR.No.16303
1 cc to Government Pleader,Sr.No16354

W.P.No.16080 of 2014

mg(co)
pmk.1.4.2015