THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.19965 of 2003

Dated : 24.03.2015

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Between:

Smt B.V.S. Vani W/o.B.S.N. Raju,

Aged about 31 yrs, Hindu, Housewife,

C/o.Dr.P.N.Raju, Veluturuvari Street,

Vizianagaram.

.. Petitioner

And

District Registrar of Assurances,

Vizianagaram & another

.. Respondents

This Court made the following :

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ORDER :

This Writ Petition is directed against demand to pay deficit stamp duty and registration fee on the property registered vide document No.3787/94 dated 31.08.1994.

2. The facts necessary for consideration of the issue in the Writ Petition are as under. The petitioner purchased house bearing D.No.17-5-13 situated in Vizianagaram town valued at Rs.10 Lakhs under registered sale deed bearing

document No.3787/94 dated 31.08.1994. In May, 1996, the Joint Sub-Registrar, Vizianagaram-2nd respondent issued notice informing the petitioner that in the course of local audit, the auditor has pointed out that there was under valuation of the property purchased by her and demanded the petitioner to pay deficit stamp duty of Rs.94,560/-. The 2nd respondent also issued another notice dated 20.06.1996 with the same demand. Thereafter, the District Registrar of Assurances, Vizianagaram-1st respondent issued demand notice dated 08.01.1997 directing the petitioner to pay deficit stamp duty and registration fee of Rs.94,560/-, with further direction that, failing to deposit the said amount within ten days from the date of receipt of the said notice, procedure for compulsory recovery would be resorted.

3. Aggrieved by the said notice, the petitioner earlier filed W.P.No.1039 of 1997. The said writ petition was disposed of by order dated 27.12.1999 holding that the writ petition is not maintainable since it is only a show cause notice. In pursuance to the orders of this court, petitioner filed explanation. The District Registrar passed orders dated
11-2-2000 confirming his provisional decision. Aggrieved there by, the petitioner preferred appeal before the Chief Controlling Revenue Authority and Inspector General of Registration and Stamps, Andhra Pradesh. The said appeal was dismissed by order dated 21.06.2003 affirming the decision of the District Registrar. Aggrieved thereby, this writ petition is instituted.

4. Learned Counsel for the petitioner contends that the notice issued by the 1st respondent is without competence and jurisdiction. According to Section 41-A of the Indian Stamp Act, 1899 (for short 'the Stamp Act') the power to recover the deficit stamp duty is vested in the Collector and the word 'Collector' as defined in Section 2(9) of the Stamp Act is the 'District Collector' whereas, the notice was issued by the 1st respondent and therefore, is not valid in law.

5. Learned counsel further contends that even assuming that the 1st respondent is competent to issue notice of demand, he ought to have followed the procedure mandated by Section 41-A of the Stamp Act before quantifying and demanding the amount payable by the petitioner and could not have passed an order of demand directing the petitioner to pay the amount quantified therein, which amounts to violation of provisions of Section 41-A of the Stamp Act and the principle of natural justice and on that ground alone, it is liable to be set aside.

6. Learned counsel further contended that the genesis for initiation of action of demanding higher stamp duty is internal audit objection. But a copy of the same is not furnished to the petitioner and therefore, the notice dated 08.01.1997 is liable to be set aside on that ground alone. In support of the said contention, learned counsel placed reliance on the decision of this Court reported in ***Gade Jogi Reddy Vs Commissioner, Survey, Settlement & Land Records, Andhra Pradesh, Hyderabad and others***.

7. Learned Assistant Government Pleader submits that prior to issuance of notice on 08.01.1997 by the 1st respondent, the petitioner was served with two notices informing that there is a deficit stamp duty to be paid by her and to pay the balance amount. But the petitioner did not respond to those notices. He further submits that the 1st respondent is competent to exercise power under Section 41-A of the Stamp Act. According to Section 41-A of the Stamp Act, the power of demand to pay the deficit stamp duty can be exercised by the District Collector or any other officer specified by the State Government and the State Government has issued gazette notification to empower the District Registrar to exercise such power and therefore, power was validly exercised. He also submits that in terms of Section 41-A of the Stamp Act, determination was made and demand is made on the petitioner to pay the balance amount after calling for explanation and consideration of explanation. He also submits that admittedly, the value of the property for the purpose of determination of stamp duty and registration charges payable was Rs.18 Lakhs, whereas deliberately petitioner has assessed the stamp duty by treating the value of the property as Rs.10 Lakhs. Therefore, even if the audit objection is furnished at this stage, it would be an empty formality and thus no mandamus can be issued.

8. Section 41-A of the Stamp Act vests power in the ‘Collector’ to demand and collect deficit stamp duty. Section 2(9) defines ‘Collector’ to mean as the ‘District Collector’ or any other officer specifically designated. It is not in dispute that the ‘District Registrar’ is designated as authority competent to exercise powers either to vests in the ‘District Collector’ under the Stamp Act.

9. A bare reading of Section 41-A of the Stamp Act, it is clear that a demand for payment of deficit stamp duty and the registration charges can be made only after tentative assessment is made on such deficit payment; notice caused on the person

calling him to submit his explanation; and after considering the explanation filed by the individual, a final determination is made. The order under Section 41-A has penal consequences. It requires the party concerned to pay money to the state as demanded and failing to pay the amount demanded would invite proceedings for compulsory recovery and also initiation of criminal proceedings. No such mandate can be issued without following due process. The principle of natural justice is engrafted into Section 41-A of the Stamp Act.

10. Reliance is placed on an audit report/objection on the collection of deficit stamp duty when the property was registered. This report is not enclosed to the notice dated 08.01.1997. To submit an effective explanation to the notice, the objection pointed out by the audit is an important aspect to deal with and unless the audit objection is furnished, no effective explanation can be submitted. Concerning the same provision, similar issue was considered in **Gade Jogi Reddy's case (supra)**. In the said case, action was initiated by the District Registrar, for re-determination of the value of the property based on a report prepared by the District Vigilance and Enforcement Officer and copy thereof was not supplied to the party. This Court held that such action of the respondent-authorities has seriously prejudiced the petitioner and the petitioner is denied of effective opportunity to controvert the proposed revision of the valuation of the property. This Court also held that it amounts to violation of principles of natural justice.

11. Calling for explanation and consideration of the explanation is built into Section 41-A of the Stamp Act. While considering such explanation, it is but imperative that all the relevant documents relied upon by the Revenue should be circulated to the party concerned to enable him to submit an effective explanation on the demand. Therefore, the District Registrar ought to have furnished copy of the audit objection and call for her explanation and not following the said procedure vitiated the entire action. Even though specific objection was raised, the appellate authority failed to consider the same objectively and erred in upholding the decision of the original authority.

12. The order of the District Registrar is vitiated as there was no compliance of the mandate of Section 41-A of the Stamp Act. The appellate authority also erred in not appreciating this serious flaw. Thus, the order of the District Registrar as affirmed by the Appellate Authority is liable to be set aside on this ground alone.

13. Having regard to the above, the Writ Petition is allowed. The orders impugned in this writ petition are set aside and the matter is remitted to the District Registrar of Assurances, Vizianagaram (1st respondent). He shall issue fresh notice to the petitioner by enclosing copy of the audit objection/report which was the basis for issuing notice dated 08.01.1997 calling for her explanation and consider the explanation submitted by the individual and pass appropriate reasoned order as warranted by law. If a request is made, an opportunity of personal hearing may also be accorded to the petitioner. In view of the long pendency of the issue, the respondent-authorities shall complete the entire process within a period of three (3) months from the date of receipt of a copy of this order. The petitioner shall also cooperate with the respondent-authorities. It is open to the 1st respondent to finalize the issue, if the petitioner fails to cooperate after duly recording the nature of opportunity afforded. There shall be no order as to costs.

14. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

__________________ **P.NAVEEN RAO,J**

24th March, 2015

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