IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.13510 and 13511 of 2016

P.Renganayagi ... Petitioner in W.P.13510/2016

V.Palanivelu ... Petitioner in W.P.13511/2016

Vs.

1. The Joint I Sub Registrar,
   Mayiladuthurai,
   Nagapattinam District.

2. The Special Deputy Collector (Stamps)
   Collectorate Building,
   Thanjavur.

3. The Deputy Inspector General of Registration,
   Thanjavur.

4. The Inspector General of Registration,
   Chennai-600 028. ...Respondents in both W.Ps.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Sl.Nos.330 and 331 of 2015 respectively dated 4.3.2016 and quash the same and direct the second respondent to remand back the matter for fresh and independent adjudication of the matter by the 2nd respondent after considering the above material points raised thereon by the petitioner's objection dated 01.06.2015, 21.01.2016 and 23.02.2016 within a stipulated period.

For Petitioner in both W.Ps. : Mr.K.Shanmugam

For Respondents : Mr.R.Govindasamy, Special Government Pleader

C O M M O N   O R D E R

By consent, these writ petitions are taken up for final disposal.

2. The petitioners would state that they purchased wet lands in RS.No.502/1 (Old No.92) and R.S.Nos.498 and 501/2 (Old No.94 and 92) respectively of Pattamangalam Village, Mayiladuthurai Town, Ward No.4, Block No.11 measuring 334.44 sq.mtr. and 441.81 sq.mtr, vide registered Doc.Nos.558 and 559 of 2014 respectively registered at the Joint I Sub Registrar, Mayiladuthurai, Nagapattinam District. The petitioners would further state that the first respondent is having powers to make a reference under Section 47A(1) of the Indian Stamp Act in the event of undervaluation and though the first respondent withheld the said documents without making a reference after a lapse of nearly one year, issued a notice dated 28.11.2013, calling upon the petitioners to remit the deficit stamp duty of Rs.61,235/- and Rs.81,115/- and registration fee of Rs.9,005/- and 11,975/- respectively towards Doc.Nos.558 and 559 of 2014, for which the petitioners had sent a reply dated 04.05.2015 to the respondents 1 and 2 seeking to return the registered documents and since it was not done, the petitioner filed W.P.No.509 of 2016, wherein this Court has passed certain directions for release of the documents and despite that the first respondent did not do so. However, the second respondent, vide impugned communication dated 04.03.2016 has called upon the petitioners to remit the deficit stamp duty of Rs.61,200/- and Rs.81,096/- respectively and also indicated that if the petitioners are aggrieved, they shall file an appeal before the fourth respondent. Challenging the legality of the said orders, the petitioners came forward with these writ petitions.

3. The learned counsel appearing for the petitioners would submit that the impugned orders are per se unsustainable for the reason that before adjudicating the issue, the petitioners have not been put on notice and no reason whatsoever has been assigned and prays for interference.

4. Per contra, the learned Special Government Pleader appearing for the respondents would submit that the petitioners are having effective alternative remedy in the form of appeal before the fourth respondent and therefore, these writ petitions are not maintainable.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. It is relevant to extract Section 47A(2) of the Indian Stamp Act:

"47-A. Under-Valuation of the Instrument:
(1).....

(2) On receipt of a reference under sub-section (1), the Collector shall after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of such instrument and the proper duty payable thereon.
3................"

7. A perusal of the impugned proceedings of the second respondent would disclose that before passing the impugned orders, the petitioners were not put on notice and no opportunity of personal hearing whatsoever has been afforded to the petitioners to put forth their defence and therefore, the impugned orders warrant interference.

8. In the result, these Writ Petitions are partly allowed and the impugned orders of the second respondent in Sl.Nos.330 and 331 of 2015 respectively dated 4.3.2016 are set aside and the matter is once again remanded to the second respondent, who shall give an opportunity of personal hearing to the petitioners to put forth their defence and thereafter decide the issue on merits and in accordance with law as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Joint I Sub Registrar,
   Mayiladuthurai,
   Nagapattinam District.

2. The Special Deputy Collector (Stamps)
   Collectorate Building,
   Thanjavur.

3. The Deputy Inspector General of Registration,
   Thanjavur.

4. The Inspector General of Registration,
Chennai-600 028.

+2cc's to Mr.K.Shanmugam, Advocate, S.R.Nos.36565 & 36566
+1cc to the Government Pleader, S.R.No.36671

W.P.Nos.13510 and 13511 of 2016

RP(CO)
CA(19/07/2016)