IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.10.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.No.14321 of 2016
and WMP.No.12507 of 2016

S.Ali Asgar
.. Petitioner

Versus

1.The Government of Tamilnadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai 600 009.

2.The Inspector General of Registration and
Chief Revenue Authority,
No.100, Santhome High Road,
Pattinapakkam, Chennai 600 028.

3.The Sub Registrar,
Periamet, Chennai 600 003. ..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records from the third respondent in his proceedings in Notice No.2 of 2014 U/s.33-A of the Indian Stamp Act 1899 and quash the said notice and directing the third respondent to register and return the settlement deed presented for registration on 19.06.2014 and assigned P.No.58 of 2014, without imposing any condition or demand, within a time frame to be fixed by the Court.

For petitioner : Mr.J.Rajakalifulla, SC for
M/s. Munuruddian Sheriff

For Respondents : Mr.A.Kumar
Special Govt.Pleader

ORDER

This writ petition has been filed challenging the notice issued by the third respondent under Section 33-A of the Indian Stamp Act 1899 and consequently directing the third respondent to register and return the settlement deed presented for registration on 19.06.2014 in P.No.58 of 2014, without imposing any condition or demand, within a time frame.

2. The case of the petitioner is that the petitioner is one of the Partners of M/s.Saleh Estates, an Association of persons belonging to the family of Mr.Abdul Hussain Salebhai. The petitioner along with his brothers and sisters purchased a property comprised in R.S.No.1625/14, land and building situated at New Door Nos.146 to 149, Old Door No.15, Montieth Road, Egmore, Chennai 600 008 by a sale deed dated 18.11.1989, which was registered as Document No.1544 of 1989 by the third respondent. Thereafter, they have been in joint possession and enjoyment of the said property in R.S.No.1625/2014, Egmore Village. Thereafter, by a settlement deed dated 14.06.2014 the petitioner's mother settled undivided 15% of share out of love and affection in favour of the petitioner and also undivided 238/10000 shares out of 48828 sq.ft. The said settlement deed was presented for regisration before the third respondent on 19.06.2014. The third respondent without registering the document assigned P.No.58 of 2014 and kept it as pending document. Inspite of several reminders, the third respondent did not register and return the document. In the mean while, the petitioner received a notice from the third respondent in Notice No.2 of 2014, under Section 33-A of the Indian Stamp Act, wherein it is stated that the settlement deed is chargeable under Article 58(a)(ii) of Scheduled-1 of the Indian Stamp Act and the stamp duty payable for the settlement deed computed on the difference value at Rs.1,75,000/-. Accordingly, the third respondent directed the petitioner to pay the deficit stamp duty of Rs.1,75,000/- on or before 25.07.2014. Pursuant to the same, the petitioner appeared before the third respondent on 30.07.2014 and gave his written objection. However, the third respondent neither conducted any enquiry nor registered and returned the document till date. Hence, the petitioner has come forward with the present writ petition.

3. The learned Senior counsel appearing for the petitioner assailed the impugned order mainly on the ground that without following due procedure laid down under the Act, the third respondent has sent the notice, under section 33-A of the Indian Stamp Act In this connection, he relied upon the Judgment of this Court reported in i) 1994-2 LW 547, R.M.Ebrahim vs. The District Registrar, Office of the District Registrar, Kancheepuram ii) 2011-4 LW 910, K.N.Thangavel,

Kannudaiyanpalayam Punchaikalamangalam Village, Erode Taluk and District vs. The Registrar, Registration Department, Erode Taluk & District and 3 Others to contend that the impugned notice of the third respondent without certificate of the Registrar of the District, for recovery is illegal. Therefore, he submitted that the impugned notice issued against the petitioner for recovery of the deficit stamp duty under Section 33 A(1) of the Act cannot be allowed to sustain and is liable to be set aside.

4. The learned counsel appearing for the respondents submitted that as the property in question is not belonging to the individual and it belong to the partnership firm, the settlement deed in respect of the said property, cannot be excuted. Therefore, the third respondent rightly kept the document as pending and issued the impugned notice under Section 33 (A) of the Indian Stamp Act.

5.Heard both sides and perused the documents. The challenge made in the writ petition is to the notice dated 22.07.2014 issued by the third respondent, on the ground that the third respondents before issuing such notice, has to comply with the following conditions stipulated in Section 33(A) of the Indian Stamp Act which reads as follows:-

i) it should be registered document;
ii) there is a certificate from the Registrar of the District under the Registration Act, 1908, to recover the arrears of stamp duty from the person, who is liable to pay.
iii) such certificate should be issued after due enquiry.
Admittedly in this case, no enquiry has been conducted and no opportunity of personal hearing has been provided to the petitioner before issuing the impugned notice.

6. At this juncture, it is useful to refer the decisions relied upon by the learned Senior counsel for the petitioner. In the Judgment reported in 1994-2 LW 547 cited supra, this Court has held as follows:

> 3. Section 33 -A of the Stamp Act reads as follows:
> " Recovery of Deficit Stamp Duty - (1) Notwithstanding anything contained in Section 33 or in any other provisions of this act, if, after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the District under the Registration Act, 1908 (Central Act XVI of

1908) be recovered from the person liable to pay the duty, as an arrear of land revene.

Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard;

Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument;

2) The certificate of the Registrar of the District under sub-section (1) shall, subject only to appeal under sub-section (3) be final and shall not be called in question in any court or before any authority.

(3) Any person aggrieved by a certificate of the Registrar of the District under Sub-section (1) may appeal to the Chief Controlling Revenue Authority. Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed".

Section 33-A provides for recovery of deficit stamp duty. What is stated therein is that the deficit stamp duty may, "on a certificate from the Registrar of the District under the Registration Act, 1908 be recovered from the person laible to pay the duty, as an arrear of land revenue". The first proviso further says that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard.

(3A) The submission by learned counsel is that no such certificate from the Registrar of the District has been given at all in the present case nor the prescribed enquiry has been held. If that is so, according to the learned counsel for the petitioner, the impugned order is absolutely without jurisdiction.

4. In the counter-affidavit that has been filed by the respondent it is inter alia stated as follows:-

"I submit that suitable action as enumerated under Section 47(B) of the Amended Act (Act No.38/87) has been taken to recover the deficit stamp duty from the petitioner"

Now, the learned Government Advocate states that the reference to Section 47-B in the abovesaid passage is a typing mistake and that it should read as Section 33-A. So, according to him 33-A proceeding has been initiated but, the learned counsel for the petitioner states that to his knowledge no such proceeding has been initiated because no notice has come so far, to the petitioner for the enquiry contemplated as per the first proviso to Section 33-A.

5. Anyway, it is clear that without a certificate as contemplated under Section 33-A no recovery action can be taken by the respondent for recovering any alleged deficit stamp duty. Now, the Government Advocate also states that the respondent would take necessary proceeding under Section 33-A and that recovery would be taken only after the certificate contemplated under Section 33-A. Therefore, it is clear that the present order is without jurisdiction. Accordingly, it is quashed and the writ petition is allowed with cost."

In another decision reported in 2011-4 LW 910, cited supra. It has been observed thus :

'' 13. When the Act contemplates that recovery of the amount of any deficit stamp duty is to be done in the manner as prescribed by initiation of the proceedings by the competent authority and that too after giving notice to the person aggrieved and after hearing the person by giving an opportunity of hearing to him within the time frame, it is incumbent on the respondents to proceed and initiate action only in accordance with law as provided for. They cannot take advantage of the mentioning of the provision by stating that it is inadvertently made. As of now, this action which they contemplate to take against the petitioner cannot be sustained as they are not following the procedure contemplated under the provisions of the Act and also in violation of the principles of natural justice in sofar as the petitioner is concerned and therefore, the impugned proceedings in so far as the petitioner is concerned cannot be sustained."

7. Considering the facts and circumstances of the case and also in the light of the decisions referred to above, the impugned notice is liable to be set aside as it was issued, without follwing due procedure as contemplated under the Act.

Accordingly, the impugned notice dated 22.07.2014 issued by the third respondent is set aside. However, liberty is given to the respondents if it is in time to issue a fresh notice to the petitioner after following due procedure as contemplated under Section 33(A) of the Indian Stamp Act.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kkd

To

1.The Secretary,
The Government of Tamilnadu,
Commercial Taxes Department,
Fort St.George, Chennai 600 009.

2.The Inspector General of Registration and
Chief Revenue Authority,
No.100, Santhome High Road,
Pattinapakkam, Chennai 600 028.

3.The Sub Registrar,
Periamet, Chennai 600 003.

+1cc to M/s.Muuniruddin Sheff, Advocate sr.56811

+1cc to Government Pleader sr.56947

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