IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2016

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.19380 of 2015
And
M.P.Nos.1 and 2 of 2015

Sriram Educational trust
Rep. by its Secretary,
M.D.Balaji ... Petitioner

Vs.

1 The Inspector General of Registration/
Chief Revenue Controlling Authority,
No.100, Santhome High Road,
Raja Annamalaipuram,
Chennai-28.

2 The Special Deputy Collector (Stamps)
Singaravelar Maaligai
Rajaji Salai, Chennai-1.

3 The Sub Registrar
Purasailwalkam Registration Office,
Perambur Baracks Road, Chennai-112.
... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the record of the 1st respondent to the petitioner in letter No.64555/U1/06 dated 16.06.2014 and consequent summon issued by the 3rd respondent dated 20.05.2015 quash the same.

For Petitioner : Mr.S.Packiaraj
For Respondents : Mr.P.Sanjai Gandhi
Additional Government Pleader

# O R D E R

By consent, the writ petition is taken up for final disposal.

2.The petitioner would state that it purchased the property admeasuring 106.5 grounds of land in No.1, Stephenson Lane, Vyasarpadi, Chennai - 39 and it was registered as document no.1362 of 2003 with the office of the Sub Registrar, Purasaiwalkam. The second respondent has revised the valuation and passed an order on 24.01.2004 and the petitioner was called upon to pay a sum of Rs.20,64,075/- as the differential amount payable towards stamp duty under Section 47 A (1) of the Indian Stamp Act, 1899 and accordingly, it was paid vide receipt dated 04.02.2004.

3.The grievance expressed by the petitioner is that the first respondent has issued a show cause notice dated 23.07.2013, in exercise of powers under Section 47 A (6) of the said Act, calling upon

the petitioner to offer explanation as to why deficit stamp duty and registration fee should not be collected for which, the petitioner has submitted its response dated 19.08.2013. Thereafter, the petitioner was called upon to appear for personal enquiry on 04.06.2014 and accordingly, the petitioner appeared. Thereafter, the first respondent has passed the impugned order dated 16.06.2014, calling upon the petitioner to pay the deficit stamp duty as well as the registration fee totalling to a sum of Rs.1,35,62,137/- and also issued a proceedings based on which, the third respondent has issued a memo calling upon the petitioner to make the said payment, failing which, steps would be taken to conduct auction. The petitioner challenging the legality of the order, came forward to file this writ petition.

4.Mr.S.Packiaraj, learned counsel appearing for the petitioner has drawn the attention of this Court to Sections 47 A (3), 47 A (6) and 47 A (7) of the Indian Stamp Act and would submit that as per Section 47 A (7)(b), the Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3), after the expiry of the period of five years from the date of passing of such an order.

5.Admittedly, the order calling upon the petitioner to pay the deficit stamp duty was passed on 24.01.2004 and accordingly, the petitioner has paid the same vide receipt dated 04.02.2004 and nearly after ten years, the first respondent has issued a show cause notice on 23.07.2013 and therefore, it is clearly barred in terms of Section 47 A (7)(b) of the Indian Stamp Act.

6.The learned counsel appearing for the petitioner in support of his submissions has also placed reliance upon the judgment of the Division Bench of this Court dated 21.01.2015, made in W.A.No.1748 of 2014 and M.P.No.1 of 2014 - The Inspector General of Registration, Chennai and two others versus L.Narayana Reddy and prays for quashment of the proceedings.

7.Per contra, Mr.P.Sanjai Gandhi, learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit and would vehemently contend that the first respondent on going through the relevant papers, found that the market value assessed was at the rate of Rs.550/- per sq.ft. and therefore, arrived at prima facie decision stating that there was deficit stamp duty and accordingly, called upon the petitioner to offer his explanation and taking into consideration the explanation offered, passed the impugned order after due and proper application of mind and hence, prays for dismissal of the writ petition.

8.This Court carefully considered the rival submissions and also perused the materials placed before it.

9.The petitioner has registered the sale deed as document no.1362 of 2003 with the office of the Sub Registrar, Purasaiwalkam. The Special Deputy Collector (Stamps) vide proceedings dated 24.01.2004, has called upon the petitioner to pay a sum of Rs.20,64,075/- as the differential amount payable towards stamp duty and it was also paid by the petitioner vide receipt dated 04.02.2004. The first respondent nearly after nine years, has issued the show cause notice on 23.07.2013 calling upon the petitioner to offer explanation as to why the deficit stamp duty and registration fee should not be collected and the petitioner has also offered its explanation. Thereafter, the first respondent has conducted personal enquiry on 04.06.2014 and arrived at a decision and passed the impugned order dated 16.06.2014, calling upon the petitioner to remit a sum of Rs.1,35,62,137/- towards the deficit stamp duty as well as the registration fee.

10.In the considered opinion of this Court, it is relevant to extract Sections 47 A (3), 47 A (6) and 47 A (7) of the Indian Stamp Act hereunder:

"(3) The Collector may suo motu, [or otherwise within five years] from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement and the duty payable thereon and if after such examination, he has reason to believe that the market value of such property has not been truly set forth in the instrument he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

(6) The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry of cause such inquiry to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as the thinks fit.

(7) The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3), if, -

(a) the time for appeal against that order has not expired; or

(b) more than five years have expired after the passing of such order."

11.The said issue was considered in the above stated judgment of the Division Bench of this Court, wherein the very same first respondent along with the Special Deputy Collector, Stamp Duty, Salem and the Sub Registrar, Kelamangalam, Krishnagiri District has made a challenge with regard to the quashment of the order passed, in pursuant to the suo motu proceedings. The Division Bench of this Court has dismissed the writ appeal and while dismissing the appeal, had taken note of the earlier order and passed the following order and observed as follows:

> "18.In view of the above factual background, it is quite clear that the final order was passed by the Second Appellant (Special Deputy Collector, Stamp Duty, Salem) on 30.04.2002 after long lapse of nearly 10 years from the date of sale deed in respect of document no.238/92. After five years, the concerned authority under Section 47(A)(2) of the Indian Stamp Act, 1899 has no authority or jurisdiction to proceed further in the subject matter in issue."

12.In the case on hand, the first respondent has admittedly exercised suo motu powers under Section 47(A)(7)(b) of the Indian Stamp Act after five years from the date of passing of the order dated 24.01.2004 and therefore, the claim made by the first respondent is clearly barred by limitation.

13.Therefore, the writ petition is allowed and the letter of the first respondent in Letter No.64555/U1/06, dated 16.06.2014 and consequent summon issued by the third respondent, dated 20.05.2015 are quashed. However, in the circumstances of the case, there is no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To

1 The Inspector General of Registration/
Chief Revenue Controlling Authority,
No.100, Santhome High Road,
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2 The Special Deputy Collector (Stamps)
Singaravelar Maaligai
Rajaji Salai, Chennai-1.

3 The Sub Registrar
Purasailwalkam Registration Office,
Perambur Baracks Road, Chennai-112.

+ 1 CC to Mr.S.Packiaraj, Advocate SR NO 36788

+ 1 CC to Government Pleader SRNO 37492

W.P.No.19380 of 2015

MP1[CO]
GP/11.7.