RESERVED ON : 21.10.2016
DELIVERED ON :04.11.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.3959 of 2010 and

M.P.Nos.1 & 2 of 2010

K.Balaji Sundaram ...Petitioner

-Vs-

1. The Chief Controlling Revenue,
Authority/Inspector General of Registration,
Chennai-28.

2. The District Revenue Officer,
[Stamps], Office of the,
District Collector,
5th Floor, Singaravelar Maligai,
Rajaji Salai, Chennai-1.

3. The Sub Registrar,
Office of the Registrar,
Kodambakkam, Chennai-24. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling the records of the proceedings of the 2nd respondent herein in his proceedings in Na.Ka.C.Pa.No.A3/423/2001 dt.17.2.2010 received on 22.2.2010 and quash the same and consequently directing the respondent herein to issue treasury chellan for the payment of difference in stamp duty in respect of Document No.2956/01 to 2959/01 for a sum of Rs.3 13 769/- in respect of each document thereby permitting the petitioner to pay stamp duty without interest pursuant to the order of the 1st respondent in his proceedings in Pa.Mu.No.66998/N5/04 dt.22.1.2010 passed afresh u/s 47A(4) Indian Stamp Act pursuant to the direction of Honble High Court in C.M.A.No.1019 of 2004 dt.6.4.2009.

For Petitioner : Mr. R.Suresh Kumar
For Respondent : Mr.Jaya Prakash Narayanan, Spl.GP

O R D E R

The prayer in the writ petition is for a Certiorarified Mandamus calling the records of the proceedings of the 2nd respondent herein in his proceedings in Na.Ka.C.Pa.No.A3/423/2001 dt.17.2.2010 received on 22.2.2010 and quash the same and consequently directing the respondent herein to issue treasury chellan for the payment of difference in stamp duty in respect of Document No.2956/01 to 2959/01 for a sum of Rs.3,13,769/- in respect of each document thereby permitting the petitioner to pay stamp duty without interest pursuant to the order of the 1st respondent in his proceedings in Pa.Mu.No.66998/N5/04 dt.22.1.2010 passed afresh u/s 47A(4) Indian Stamp Act pursuant to the direction of Honble High Court in C.M.A.No.1019 of 2004 dt.6.4.2009.

2. The case of the petitioner as culled out from the averments of the affidavit filed in support of the writ petition is as follows:

The petitioner has registered his property in document No.2956/01 to 2959/01 by way of sale deeds and paid stamp duty. Pursuant to the proceedings of 47 A (1) of Stamp Act, the stamp duty was fixed by the Collector as Rs.2,150/- per sq.ft. On appeal before the first respondent, the same was reduced to Rs.1884/- per sq. ft. The said order of the first respondent being an order of the Appellate Authority under Section 47 A (5) of Stamp Act and as against the said common order dated 28.3.2003, a further appeal was filed before this Court in C.M.A.No.1019 of 2004. This Court, while setting aside the order of the first respondent for fixing the market value of Rs.1,884/- as against Rs.1,594.70/- has directed the first respondent to determine afresh, the market value of the property concerned within one month from the date of receipt of the order passed in the said CMA.

3. Thereafter, the first respondent after having considered the relevant merits of the issue once again passed the order dated 22.01.2010 fixing the same market value as that of the earlier one which was infact set aside by this Court as stated

supra in C.M.A.No.1019 of 2004. The said order passed by the first respondent however did not specify the date of payment of the freshly assessed market value and that order was received by the petitioner on 20.02.2010. At paragraph 11 of the order dated 22.1.2010, it was stated that the interest would be levied at 2% per month on the difference in the market value assessed from the date specified for its payment. The petitioner's further case is that even though no date was specified as per the rules, difference of amount has to be paid within 60 days from the date specified or the date of receipt of the order. The petitioner further states that the petitioner would be under obligation to pay the difference in stamp duty as assessed afresh within 60 days from the date of receipt of the order i.e., on or before 20.04.2010, since the date of receipt of the order of the first respondent being 20.2.2010. However, in contradiction to the order of the first respondent as well as the Judgment of this Court in the CMA referred to above, the second respondent issued the impugned order by which, besides demanding the stamp duty, he also demanded an interest under Section 47 A (4) of Stamps Act to the extent of a sum of Rs.5,77,392/- for each one of the 4 documents. The petitioner submits that the said demand of interest is inconsistent with the order of the first respondent as well as the order of this Court made in C.M.A.No.1019 of 2004. The petitioner also submits on legal advice that the said demand of interest is also ultra vires to Section 47A(4) of Indian Stamp Act.

4. Therefore, aggrieved by the said order of demand made by the second respondent for paying the deficit stamp duty as well as the interest calculating for the whole period which comes around Rs.5,77,392/-, the petitioner has come out with the present writ petition with the aforesaid prayer.

5. Heard both sides.

6. The learned counsel appearing for the petitioner would make three fold submissions.

7. Firstly, the learned counsel submitted that as against the original order of assessment of deficit stamp duty on the market value of Rs.2,150/- per sq.ft, the petitioner preferred an appeal before the first respondent. The first respondent after having received recommendations from the Deputy Inspector General of Registration passed further order in the appeal of the petitioner fixing the market value for sq. ft as Rs.1884/- instead of Rs.2,150/-. Aggrieved by the said fixation of market value by the first respondent in the appeal filed by the petitioner, he had already approached this Court by way of statutory appeal under Section 47A(10) of the Act. In that

appeal, this Court found that the fixation of Rs.1884/- per sq.ft by the Appellate Authority, namely, the first respondent was not on the basis of any clear finding for arriving at Rs.1884/- per sq.ft, and was pleased to set aside the said order of the first respondent dated 28.03.2003 and remanded the matter back to the first respondent for fresh consideration and directed to complete the said consideration and pass orders within a period of one month. When that being the position, once again, the first respondent being the Appellate Authority had passed the order fixing the very same amount of Rs.1884/- and that itself is wrong. However, the petitioner having accepted the said amount paid the same. Even though the said fixation was accepted, the subsequent calculation of interest as demanded through the impugned order by the second respondent is absolutely erroneous and cannot be sustained.

8. The second submission of the learned counsel appearing for the petitioner would be that in the order impugned, the second respondent has calculated 92 months as a delay for making the payment of deficit stamp duty and in that view of the matter, the second respondent in the order impugned, directed the petitioner to pay the interest at the rate of 2% per month till 28.2.2010. This calculation of delay for making the payment of deficit stamp duty has not occurred because of any action on the part of the petitioner but because of the pendency of the appeal as well as the reconsideration as directed by this Court in the earlier rounds of litigation as has been set out above and therefore, the petitioner would no way be liable to pay the interest for such a long period and therefore, such a demand made by the second respondent in the order impugned, is totally unlawful and unjustifiable.

9. Thirdly, the learned counsel appearing for the petitioner by relying upon the relevant provisions of the Stamp Act has submitted that under Section 47 A of the Act, if in the opinion of the Registering Authority or has reason to believe that the market value of the property of which registration was made has not been truly set forth in the instrument he may refer the matter to the Collector for determination of the market value under Section 47 A(1). On receipt of such reference under Section 47 A(1), the Collector can examine the same as per the procedure established therein under Section 47 A (2) and under the Rule, namely, the Tamil Nadu Stamp (Prevention of under valuation of Instruments) Rules 1968. On such determination made under sub section (2) or a determination made under sub section (3) made by the Collector on suo motu proceedings without being the matter referred to by the Registering Authority under sub section (1), every person, who suffered with an order of re-determination by the Collector as set out above under sub

section (2) and (3) of 47 A has to pay the difference in the Stamp duty within such period as may be prescribed. Under sub section (4), if the amount is not paid within the time stipulated, he shall pay the interest at the rate of 2% per month on such amount for the entire period of default provided, if an appeal against the order under sub section (2) or sub section (3) has been preferred, the payment of such interest shall be postponed till the disposal of the appeal and it shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as such, if such amount had been determined under sub section (2) or sub section (3) as the case may be.

10. In view of the said proviso, the payment of interest since has been deferred or postponed till the disposal of the appeal, the present demand made by the second respondent in the impugned order for the whole period of 92 months, is totally unlawful and unjustifiable and is running contra to the said proviso to Section 47 A (4). Therefore, on this legal ground alone, the demand made by the second respondent in the impugned order is liable to be interfered with and accordingly, order has to be set aside.

11. Based on the aforesaid three fold submissions, the learned counsel appearing for the petitioner prays for setting aside the impugned order by allowing the writ petition.

12. Per contra, the learned Special Government Pleader appearing for the respondents would contend that the order of the first respondent being the Appellate Authority after the remand made by this Court in C.M.A.No.1019 of 2004 dated 06.4.2009, have been fully accepted by the petitioner as the petitioner himself accepted the justifiability on the part of the Appellate Authority to fix the market value as Rs.1884/- per sq. ft. as no challenge was made against the said order statutorily. Since the said order having been accepted which is the basis for passing the consequential order by the second respondent dated 20.02.2010 which is impugned herein, cannot be challenged on the ground that interest has been calculated for the whole period.

13. The learned Special Government Pleader further submits that whether the interest for the delayed payment of difference of Stamp duty has to be calculated either from the date of determination or otherwise has been considered by this Court in an earlier occasion in W.P.No.22305 of 2006 in the matter of Velusamy Vs. The Inspector General of Registration, Chennai and three others by order dated 12.11.2007. Relying heavily on the said order of this Court dated 12.11.2007, the learned Additional Government Pleader has submitted by quoting paragraph

6 of the said order that the interest can be calculated from the date of the determination. By making the said submission, the learned Additional Government Pleader also relied on Section 47 A (4) as well as Sub Rule (3) of Rule 7 of the Tamil Nadu Stamps (Prevention of undervaluation of Instruments) Rules, 1968 and the same is reproduced hereunder:

> "7(3). The difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under sub-section (2) or sub-section (3) of section 47-A"

14. Therefore the learned Special Government Pleader further submits that the order impugned demanding the interest from the petitioner for the period from determination is perfectly right and the order impugned, therefore, is fully sustainable and need not be interfered with. Hence, he wants the writ petition to be dismissed.

15. I have heard both counsels and considered the rival submissions made by them.

16. The factual matrix as has been stated above in respect of the issue raised in the writ petition are not in dispute. It is the main contention of the learned counsel for the petitioner that since the very order passed by the first respondent being the Appellate Authority in the first round itself having been set aside by this Court in C.M.A.No.1019 of 2004 dated 06.04.2009 and remanded the matter back to the first respondent for reconsideration, the first respondent ought not to have passed an order fixing the same amount of stamp duty by calculating the market value at Rs.1884/- per sq. ft.

17. Insofar as the said contention of the learned counsel for the petitioner is concerned, as has been rightly pointed out by the learned Special Government Pleader, the said order passed by the first respondent dated 22.01.2010 fixing the market value for sq.ft at Rs.1884/- has been accepted by the petitioner as no further appeal under the Act has again been made by the petitioner and this has been infact accepted by the petitioner at para 8 of the affidavit filed in support of the writ petition which reads thus:

> 8. The petitioner states that even though the petitioner has a grievance for fixing the market value by the 1st respondent the same as that of the impugned order set aside by this court, for the sake of putting end to the endless litigation, the petitioner had accepted the same without further challenging.

18. Therefore, there is no quarrel that the order passed by the first respondent on 22.01.2010 fixing the market value at Rs.1884/- is correct and only based on which the Stamp duty has to be calculated by the second respondent. In the said order of the first respondent itself at paragraph 11, it is stated that as per the said order, for the difference of Stamp duty to be paid by the petitioner, he has to pay an interest at the rate of 2% per month after deducting the payment period. Since the petitioner has accepted the said order, the 2% interest for the difference of Stamp duty has to be necessarily paid by the petitioner.

19. Insofar as the further contentions made on behalf of the petitioner as to the liability of paying the interest for the period of 92 months, i.e., from the date of determination till 28.2.2010 i.e., the end of the month where the impugned order was passed, is justifiable or not is the only issue to be decided in this writ petition.

20. The learned counsel for the petitioner having taken me through the provisions of Section 47 A of the Indian Stamp Act, 1899, submitted that the proviso to Section 47 A (4) would save the petitioner from paying any interest as the language used in the said proviso is that the interest payable under this Sub Section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in the appeal as if such amount has been determined under sub section (2) or sub section (3) as the case may be.

21. This Court has shown its anxious consideration on the said submission of the learned counsel for the petitioner. When we look into the scheme of Section 47 A, it seems that under Sub Section (1), if the Registering Authority has reason to believe that the market value of the property has not been correctly given in the instrument, he can refer the matter to the Collector for re-determination of the correct market value of the property covered under the instrument concerned. Under sub section (2), it is for the Collector to determine the market value of the property and after determination, the difference if any in the amount of duty shall be payable by the person liable to pay the duty. Like that, a suo motu power also is vest in the Collector to determine the market value which is not correctly determined according to the said authority and ultimately, the Collector may determine the market value of course, may in accordance with the same procedure provided under sub section (2). Thereafter, once the market value is determined either under sub section (2) or under sub section (3), the person liable to pay the difference shall pay such duty within such

period as may be prescribed. It is important to note here that sub section (4) provides, in default of such payment such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument and on any amount paid after the date specified for its payment, the person liable to pay the duty shall also pay in addition to the amount due, interest at 2% per month on such amount for the entire period of default. The said percentage i.e., 2% of interest as stood originally has been subsequently amended by Tamil Nadu Act 13 of 2008 which came into effect only from 01.09.2010. Therefore, as far as the petitioner's case is concerned, it is prior to the said amendment. Therefore, only the 2% interest as has been provided under sub section (4) alone will apply.

22. Under sub section (5), it is provided that any person aggrieved by an order of the Collector under sub section (2) or sub section (3) may appeal to such authority as may be prescribed in that behalf. Therefore, appeal provision has been given under sub section (5) as against the order of the Collector passed either under sub section (2) or sub-section (3). Only in that context, the following proviso as has been heavily relied upon by the learned counsel for the petitioner could be considered which reads as follows:

> "Provided that where a person has preferred an appeal against the order under sub section (2) or sub section (3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub section (2) or sub-section (3) as the case may be."

23. The aforesaid proviso no doubt gives clear relief to those who filed appeal against order passed under sub section (2) or sub section (3) to defer or postpone the payment of interest till the disposal of such appeal and the interest also shall be calculated on the amount that becomes due in accordance with the final order to be passed in the appeal as if such amount had been determined under sub section (2) or sub section (3) as the case may be. Therefore, it becomes abundantly clear that whenever appeal is filed under sub section (5) as against the order passed by the Collector under sub section (2) or sub section (3) during the pendency of the said appeal and of course until a decision is made in such appeal, the payment of interest shall be waived.

24. Here in the case in hand, such appeal was disposed and a market value was fixed by the Appellate Authority, namely, the first respondent in the first round on 28.03.2003. As against

the said order of the first respondent, the writ petitioner preferred further appeal under sub section (10) before this Court in C.M.A.(NPD)No.1019 of 2004 and the same was pending before this Court till 2009 and ultimately, by order dated 06.04.2009, the appeal was disposed as set out above remanding the matter back to the first respondent for reconsideration for fixing the market value of the property concerned of the petitioner.

25. Thereafter, the order was passed by the first respondent on 22.1.2010 where the market value was fixed at Rs.1884/- and the same has been accepted by the petitioner where at paragraph 11, 2% interest was also directed to be recovered from the petitioner and only pursuant to that order, the present impugned order has been passed by the second respondent calculating the interest up to 28.2.2010.

26. In the impugned order, the calculation of the amount demanded by way of 13% Stamp duty as well as the interest of 2% has been clearly mentioned in the following manner:

(i) Market Value Rs.1884/- for total area of the land 2293.65 sq.ft.

(ii) Value of the building;

(iii) 13% stamp duty

(iv) the amount to be paid by way of difference in stamp duty;

27. After deducting the statutory period of 60 days for making payment without interest, for 92 months, the interest at the rate of 2% till 28.2.2010 was calculated. After showing this calculation, the amount arrived by the second respondent in the impugned order for one document is Rs.5,77,392/- and for four documents which was registered in favour of the petitioner is Rs.35,64,644/- including deficit Stamp duty.

28. The contention of the learned counsel for the petitioner by quoting the proviso to sub section (4) of Section 47 A is liable to be rejected for the simple reason that the said proviso comes for the rescue of the appellants, who made appeals under sub section (5) as against the order passed by the Collector under sub section (2) or sub section (3) for making payment of interest during the appeal period. Thereafter, there is no such provision as has been given under sub section (4) in sub section (10) of Section 47 A where under a further appeal can be filed by the parties, who have been aggrieved by the orders passed by the Appellate Authority, namely, Chief Controlling Revenue Authority either under sub section (5) or sub section (6) of Section 47 A. The said further appeal can be filed before this Court and such a provision has been utilised by the petitioner by filing the CMA as set out above in the year

2004 as against the order dated 28.3.2003 passed by the first respondent in the first round under Section 47 A (10) and the same has been mentioned in the very order of this Court dated 06.04.2009. Therefore, for the said period of appeal filed before this Court under Section 47 A (10) of the Act being the further appeal, there is no provision available in the Act to give exemption for making the payment of interest as has been provided under sub section 4 of Section 47 A for pendency of appeals before the Appellate Authority under sub section (5) as against the orders passed by the Collector under sub section (2) or sub section (3). In view of the said position, the claim made by the petitioner to seek exemption for the payment of interest at the rate of 2% for the period where the appeal was pending and other corresponding delay has to be exempted cannot be accepted as for the said claim, there is no legal basis available in the provisions of Section 47 A of the Stamp Act. Therefore, the said submission made on behalf of the petitioner is liable to be rejected and accordingly, is rejected.

29. As has been rightly relied upon by the learned Special Government Pleader appearing for the respondents, similar issue came to be considered by this Court by order dated 12.11.2007 made in W.P.No.22305 of 2006 wherein the learned Judge at paragraph 6 of the order has held as follows:

> 6.After doing so, this Court is unable to agree with the case of the petitioner. It is not in controversy that when the document was placed for registration before the third respondent, the petitioner valued the property at Rs.48.50 per sq. ft.; but, it was re-fixed by the third respondent at Rs.645/- per sq. ft., and the matter was referred to the second respondent under Sec.47(A)(2) of the Indian Stamp Act. When an appeal was preferred by the petitioner, on enquiry, it was reduced to Rs.425/- per sq. ft. by the second respondent, and a direction was given to the fourth respondent to collect the deficit stamp duty along with interest at 2% on the said amount from 24.2.2003. Now, it is pertinent to point out that the second respondent has issued direction for the collection of the interest amount only from 24.2.2003 and not from the date of registration namely 19.6.2000. The contention put forth by the learned Counsel for the petitioner that the interest has got to be collected only from 2.5.2006 cannot be countenanced for the simple reason that it

was an appeal preferred by the petitioner challenging that order of the third respondent before the second respondent. Merely because an appeal is filed, it did not mean that the interest rate stipulated by the authority and payable by the petitioner, would get suspended. But, in the instant case, the second respondent has applied its mind properly and has also directed for the collection of interest at 2% from 24.2.2003. No infirmity is noticed by this Court in applying the provision of law as one envisaged under the Indian Stamp Act.

30. I respectfully agree with the learned Judge, who has already held as stated above in the said Judgment where also a similar issue was raised and the interest to be paid by the party was calculated from the date of determination of the market value of course not from the date of registration. Here in this case also, such interest was calculated for the period from the date of determination till the date of payment which comes about 92 months of course after deducting the statutory period of payment of two months i.e., 60 days.

31. In view of the aforesaid discussion, this Court is of the considered view that the plea raised by the petitioner as against the impugned order, especially the calculation of the interest for 92 months for the delayed payment of difference of stamp duty as has been determined by the respondents both by the original authority, namely, the second respondent and the Appellate Authority, namely, the first respondent, is not acceptable and therefore, the impugned order, is a sustainable one and needs no interference from this Court.

32. In view of the above, the writ petition is liable to be dismissed. Accordingly, it is dismissed. The Interim Stay granted is vacated. The petitioner shall make the payment as has been demanded by the second respondent in the order impugned within a period of 30 days from the date of receipt of a copy of this order. With this observation, the writ petition is dismissed. Consequently, connected miscellaneous petitions are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Chief Controlling Revenue,
Authority/Inspector General of Registration,
Chennai-28.

2. The District Revenue Officer,
[Stamps], Office of the,
District Collector,
5th Floor, Singaravelar Maligai,
Rajaji Salai, Chennai-1.

3. The Sub Registrar,
Office of the Registrar,
Kodambakkam, Chennai-24.

+1cc to Mr.R. Sureshkumar , Advocate, S.R.No.62695
+1cc to the Government Pleader, S.R.No.63317

ssk(CO)
md(29/11/2016)

W.P.No.3959 of 2010