IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2016

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.Nos.20441 and 20442 of 2016
And
W.M.P.Nos.17540 to 17545 of 2016

Mrs.Mythili Srinivas ..Petitioner in both the W.Ps.

Vs.

1 The Sub Registrar
Joint IV,
Kancheepuram.

2 The District Revenue Officer,
Stamps,
Singaravelar Maligai,
Rajaji Salai,
Chennai-600 001. ..Respondents in both the W.Ps.

Common Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent No.2 in connection with his order in C.Pa.Nos.182/13 and 7943/13 respectively, dated 09.05.2016 and quash the same.

For Petitioner : Mr.V.Selvaraj
for Mr.G.Vijayakumar

For Respondents: Mr.P.Govindasamy
Special Government Pleader

C O M M O N O R D E R

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

2.The petitioner in the affidavit filed in support of these petitions would aver among other things that she had purchased 0.90 cents of land in S.No.42/4 at Vedal Village, Kancheepuram

District along with five others, by means of registered sale deed bearing document no.6288/2013 dated 04.10.2013 and also purchased lands admeasuring an extent of 0.59 cents in S.No.42/5, in the very same place through a registered sale deed bearing document no.5169/2013 dated 19.08.2013. The petitioner would state that though both the sale deeds have been registered, the said documents have not been returned and therefore, the petitioner had approached the first respondent very many times and to her shock and surprise, she was issued with the impugned notices, alleging deficit stamp duty under Section 47 - A (1) of the Indian Stamp Act, and challenging the legality of the same, had filed these writ petitions.

3.Mr.V.Selvaraj, learned counsel appearing for the petitioner would submit that though the petitioner is having an alternative remedy under Section 47 - A (5) of the Indian Stamp Act, she need not invoke the same for the reason that the impugned notices are per se in violation of the principles of natural justice and prays for appropriate orders.

4.Per contra, Mr.P.Govindasamy, learned Special Government Pleader who accepts notice on behalf of the respondents would submit that the petitioner by filing an appeal can canvass all the points before the Appellate Authority and since she is having an effective alternative remedy, this Court may not interfere with the impugned orders and prays for dismissal of the writ petitions.

5.This Court has carefully considered the rival submissions and perused the materials placed on record.

6.Section 47-A of the Indian Stamp Act, 1899, speaks about Instruments of conveyance etc., under-valued how to be dealt with, which is as under:

> "47-A. Instruments of conveyance etc., under-valued how to be dealt with.- (1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering an instrument of conveyance, [exchange, gift, release of benami right or settlement] has reason to believe that the market value of the property of which is the subject matter of conveyance [exchange, gift, release of benami right or settlement], has not been truly set forth in the instrument he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon."

and Section 47-A (2) reads as follows:

"(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 matter of conveyance, [exchange, gift, release of benami right or settlement], and the duty as aforesaid. This difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty."

7.Rule 4 of Prevention of Undervaluation of Instruments Rules, deals with Procedure on receipt of reference under section 47-A. and it reads as follows:

"4.Procedure on receipt of reference under section 47-A.- (1) On receipt of a reference under sub-section (1) of section 47-A, from a registering officer, the Collector shall issue a notice in Form I,

(a) to every person by whom, and

(b) to every person in whose favour the instrument has been executed,

informing him of the receipt of the reference and asking him to submit to him his representations, if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days from the date of service of the notice.

(2)The Collector may, if he thinks fit, record a statement from any person to whom a notice under sub - rule (1) has been issued.

(3)The Collector may for the purpose of his enquiry-

(a)call for any information or record from any public office, officer or authority under the Government or any local authority;

(b)examine and record statements from any member of the public, officer or authority under the Government or the local authority; and

(c)inspect the property after due notice to the parties concerned.

(f)After considering the representations, if any, received from the person to whom notice under sub-rule (a) has been issued, and after examining the records and evidence before him, the Collector shall

> pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order.”

8.A perusal of the impugned proceedings issued by the first respondent would disclose that the said Official is under mandate to follow the procedure prescribed under Section 47-A (2) of the Indian Stamp Act read with Rule 4 of Prevention of Undervaluation of Instruments Rules. In the considered opinion of this Court, the impugned orders are per se in violation of the above said statutory provisions and also in violation of the principles of natural justice and therefore, on the short ground, warrant interference.

9.In the result, these writ petitions are partly allowed and the impugned orders dated 09.05.2016 are set aside and the matter is once again remanded to the first respondent, who shall strictly comply with the above stated provisions and pass orders in accordance with law, within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

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To
1 The Sub Registrar
Joint IV, Kancheepuram.
2 The District Revenue Officer,
Stamps, Singaravelar Maligai,
Rajaji Salai, Chennai-600 001.
+1cc to M/s. G. Vijayakumar, Advocate, S.R.No.33486

SNS(CO)
EU(21/06/2016)

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