IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.18320 of 2013
and
M.P.No.1 of 2013

M/s.Balachandra Builders,
A company registered under the
Companies Act, 1956,
No.A/-5, First Floor No.41,
First Main Road, Gandhi Nagar,
Adyar, Chennai - 600 020.
rep. by its Managing Director,
Mr.T.Srinivasan.

.. Petitioner

vs.

1.The Sub-Regisrar,
Neelangarai,
Chennai - 600 041.

2.The District Revenue Officer,
(Stamps), Office of the District Collector,
5th Floor, M.Singaravelar Building,
No.32, Rajaji Salai, Chennai - 600 001.

3.The Chief Revenue Control Officer,
(Inspector General of Registration),
Santhome, Chennai - 600 004.

4.The Special Thasildar,
(Stamps), Chennai - 600001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring that the entire action of the official respondents in issuing the show cause notice dated 10.10.2010, passing of the order under Section 47A (1) of the Stamps Act on 11.5.2012 and culminating in the issuance of the Distraint Order dated 12.6.2013 despite the pendency of a statutory appeal before the third respondent is wholly illegal, arbitrary and void ab initio and consequently, direct the respondents to return to the petitioner original rectification deed dated 19.8.2009 and registered as Document No.1589 of 2010 on the file of the first respondent.

For petitioner : Mr.P.K.Rajagopal
For respondents : Mr.S.Navaneetham
Additional Government Pleader

ORDER

The petitioner company purchased a property under Sale Deed registered as Document No.4487 of 2005. The said property is a land situate at No.155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District comprised in Old Survey No.575/2010, New Survey No.575/10F, 575/10D2, 577/10E and 577/10C. In this regard, a Rectification Deed was executed in which the extent of the land was rectified as 88.5 cents instead of 92.5 cents. The said Rectification Deed was presented before the first respondent and the same was registered as Document No.1589 of 2010 on 1.4.2010. The market value of the subject property is Rs.2,89,39,500/- and the petitioner ought to have paid stamp duty of Rs.23,15,160/- but he has paid only Rs.1,87,136/- as stamp duty. Since the said document has been executed with lesser value, as per the Guideline Register, the same was referred under Section 47(A) of the Indian Stamp Act to the second respondent on 11.10.2010. Hence, the petitioner has filed the present Writ Petition for the relief stated above.

2. It is submitted by the learned counsel for the petitioner that though the petitioner has sent a reply/explanation on 25.11.2010 to the notice issued by the second respondent under Rule 4 of the Tamil Nadu Stamps (Prevention of Undervaluation) Rules 1968, without taking into account the explanation offered by the petitioner, the second respondent passed an order on 11.5.20102 under Section 47(A)(1) of the Indian Stamps Act in respect of Document No.1589 of 2010 determining that there is a deficit of stamp fees payable on the said document at Rs.20,35,404. Aggrieved against this order, the petitioner filed an appeal before the third respondent. Thereafter, by communications dated 23.7.2012 and 2.11.2012, the office of the third respondent called upon the petitioner to rectify certain defects in the appeal and the same was rectified. The appeal was admitted and the same is pending. While so, a Distraint Order under Section 8 of the Recovery Act in Form No.1 dated 12.6.2013 has been served on the petitioner by the registration department informing that the petitioner should pay a sum of Rs.21,28,024/- within 15 days, failing which, the fourth respondent would attach the land in Survey No.575/10A2 and sell it by public auction. It is further submitted by the learned counsel for the petitioner that the action of the respondents starting from issuing a notice under Rule 4 of the Tamil Nadu Stamps (Prevention of Undervaluation) Rules 1968 and culminating in the Distraint Order is completely illegal, unconstitutional and liable to be declared as such. In support of his contention, the learned counsel for the petitioner, relied on

the decision of this Court in P.Uthamaraj Vs. District Registrar, reported in (2010) 1 MLJ 246 (W.P.No.17776 of 2009 dated 24.10.2009).

3. It is submitted by the learned Additional Government Pleader that against the orders passed by the second respondent by order dated 11.5.2012, the petitioner has preferred an appeal before the third respondent and the same will be considered in accordance with law.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

5. It is an admitted fact that the against the order passed by the respondents, the petitioner has preferred an appeal before the third respondent and the same is pending. In the decision rendered in P.Uthamaraj Vs. District Registrar, reported in (2010) 1 MLJ 246 (W.P.No.17776 of 2009 dated 24.10.2009), this Court held that there is no alteration in the basic nature of the document especially in the extent and valuation of the property or where the rectification is only in respect of technical aspect such as typographical error or where the rectification is in respect of extent of property while the actual measurement remains unchanged, there is no question of application of Schedule I or application of Section 47-A of the Indian Stamp Act.

6. Considering the facts and circumstances of the cases, the submissions made, and in view of the ratio laid down in the said judgment, as far as the Distriant impugned Order dated 12.6.2013 is concerned, it is quashed. The appellate authority/third respondent herein is directed to consider the appeal filed by the petitioner in the subject matter and pass appropriate orders by considering the aforesaid decision of this Court, within a period of 12 weeks from the date of receipt of a copy of this order.

7. With the above direction, the Writ Petition is allowed. No costs. Connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

asvm

To
1.The Sub-Regisrar,
Neelangarai,
Chennai - 600 041.

2.The District Revenue Officer,
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(Stamps), Chennai - 600001.

+1 cc to Mr.P.K.Rajagopal Advocate sr 76161
+1 cc to Government Pleader sr 76288

W.P.No.18320 of 2013
and
M.P.No.1 of 2013

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aa07/02/2017