

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.36243 of 2016

and

WMP No.31160 of 2016

1.V.Padmapriya

2.V.R.Anandan

... Petitioners

Vs.

The Sub Registrar,
Sunguvarchatram,
Kancheepuram.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent in Letter dated 7.9.2016 and quash the same as arbitrary and illegal.

For Petitioner : Mr.Harishankar Mani

For Respondent : Mr.R.A.S.Senthilvel,
Additional Government Pleader

O R D E R

Mr.R.A.S.Senthilvel, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of the counsel, the Writ Petition itself is taken up for disposal at the admission stage.

2. This Writ Petition has been filed challenging the impugned Demand Notice dated 7.9.2016, wherein the petitioners were directed to pay a sum of Rs.2265/- towards deficit registration fees and a sum of Rs.20/- towards deficit stamp duty with respect to Document No.3318/2015.

3. The facts of the case is that the petitioners herein had jointly entered into a construction agreement with the

promoter. In this connection, a Construction Agreement was registered as Document No.3318 of 2015 on payment of necessary Stamp Duty and Registration Fees as fixed by the respondent herein on 21.8.2015. Subsequently, the impugned Demand Notice was issued to the petitioners directing them to pay a sum of Rs.2265/- towards deficit registration fees and a sum of Rs.20/- towards deficit stamp duty with respect to Document No.3318/2015.

4. The learned counsel for the petitioners would submit that the grievance of the petitioners is that no enquiry was conducted and no opportunity of hearing was afforded to them before issuing the impugned Demand Notice and therefore, there is violation of principles of natural justice in issuing the impugned Demand Notice. The learned counsel would further submit that, merely based on the audit report, the impugned Demand Notice was issued and therefore, it is not a reasoned order and the same is liable to be set aside.

5. Heard both sides.

6. After hearing the learned counsel for the parties and perusing the impugned Demand Notice, it is seen that prior to the issuance of the demand under section 33-A of the Act, the procedure required to be followed has not been complied with. The statute mandates that even after registration of any instrument under the Registration Act, if it is found that the proper stamp duty payable under the Act has not been paid or has been insufficiently paid, such duty or the deficit as the case may be, on a certificate from the Registrar of the District be recovered from the person liable to pay the duty as arrears of land revenue. In terms of first proviso to sub section 1 of Section 33 -A of the Act, no such certificate shall be granted by the Registrar of the District, unless the due inquiry is made and such person liable to pay the stamp duty should be given opportunity of being heard.

7. In Thomas George Versus Inspector General, Chief Controlling Revenue Authority, Chennai and another reported in (2013) 2 MLJ 622 (Mad.), this Court has held that prior to issuance of demand notice, procedure under Section 33-A(1) of the Act shall be complied with.

8. In the instant case, admittedly, no record has been placed before this Court to show that prior to issuance of Demand Notice dated 7.9.2016, the procedure contemplated under sub-section 1 of Section 33-A of the Act has not been complied with.

9. In view of the above reasons and taking note of the fact that provisions of Section 33-A of the Act has not been followed, the impugned Demand Notice is set aside and the Writ

Petition is allowed. No costs. Connected Miscellaneous Petition is closed. The matter is remitted back to respondent to conduct enquiry and provide an opportunity of hearing to the petitioners and to proceed afresh in the matter as contemplated under the Act.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

asvm

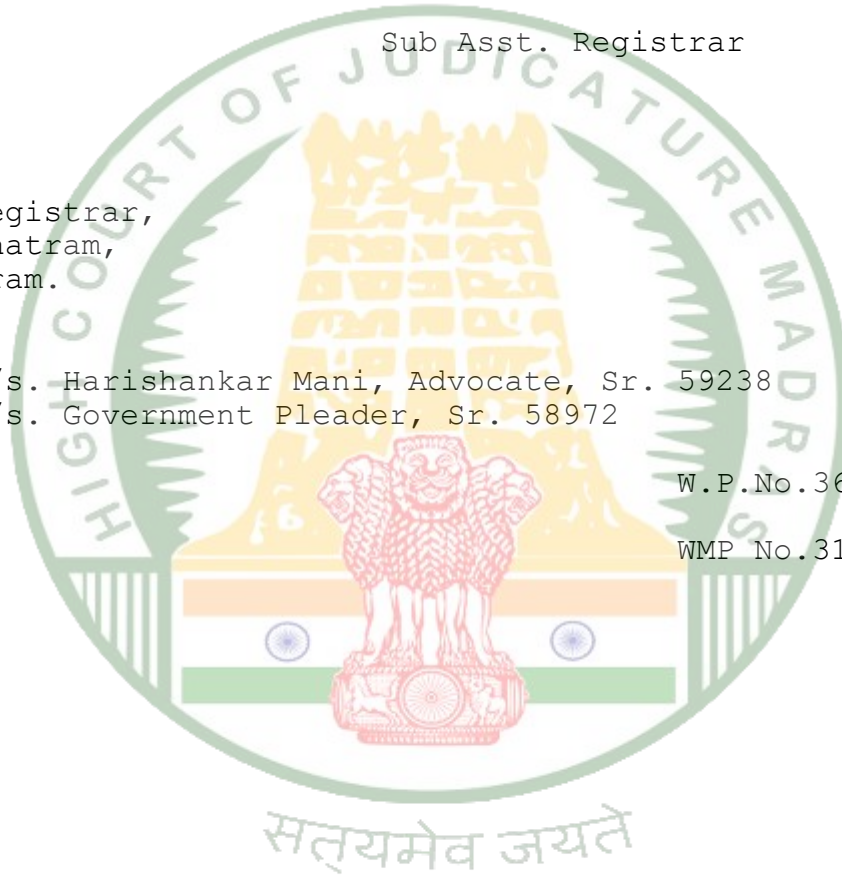
copy to:

The Sub Registrar,
Sunguvarchatram,
Kancheepuram.

1 cc to M/s. Harishankar Mani, Advocate, Sr. 59238
1 cc to M/s. Government Pleader, Sr. 58972

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