IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.43976 of 2016

and
W.M.P.No.37797 of 2016

R.Ganesan .. Petitioner

vs.

1.The District Registrar (Audit),
Salem (West) Registration District,
Salem - 636 001.

2.The Sub Registrar,
O/o.Sub Registrar,
Suramangalam,
Salem - 636 005. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records pertains to both the impugned order in Mu.Mu.No.479/Tha1/2016 of the first respondent dated 29.07.2016 and consequential impugned order No.528/2016 dated 6.10.2016 passed by the second respondent, quash the same and consequently, direct the respondents to remove the entry made in the Encumbrance Certificate Register relating to the Rectification Deed dated 20.10.2014 registered as Document No.5945/2014 on the file of the second respondent.

For petitioner : Mr.P.Sivakumar
For respondents : Mr.S.Navaneethan,
Additional Government Pleader

ORDER

This Writ Petition is filed challenging the order of the District Registrar (Audit), Chennai, the first respondent herein, dated 29.7.2016, by which the first respondent reported that the petitioner has to pay deficit stamp duty of Rs.1,00,493/- and the consequential order of the second respondent dated 6.10.2016 demanding to remit the aforesaid amount to the Government and for a consequential direction to the respondents to remove the entry made in the Encumbrance Certificate Register relating to the Rectification Deed dated 20.10.2014 registered as Document No.5945/2014 on the file of the second respondent.

2. It is the case of the petitioner that he purchased the land and building with an extent of 100 square metre from K.Venkatramani by virtue of a sale deed dated 26.11.2012, registered in Book 1 as Document No.6862 of 2012 on the file of the second respondent. After registration of the above sale deed, the second respondent inspected the building in his property and ascertained the valuation of the building mentioned in the sale deed and only there after, the said registered sale deed was returned. While so, he measured the property after demolition of the building and found that the land has a total measurement of 3000 square feet instead of 3161 square feet as mentioned in the Sale Deed. In order to rectify the error occurred in the Sale Deed dated 26.11.2012 registered in Book 1 as Document No.6862 of 2012 on the file of the second respondent, a deed of rectification dated 20.10.2014 was executed and registered in Book 1 as Document No.5945 of 2014 on the file of the second respondent. In the recitals of the said rectification deed, it has been categorically mentioned that the total extent in the Sale Deed dated 26.11.2012 (Doc.No.6862/2012) has been erroneously typed as 3161 square feet instead of 3000 square feet and the factum of 3/4th right to take water from the well in S.No.84/2 has been erroneously typed and included and in order to rectify the same, that rectification deed has been executed. While so, the second respondent issued notice dated 9.9.2016 demanding the petitioner to pay a sum of Rs.87,968/- towards deficit stamp duty and Rs.12,525/- towards deficit registration fees, totalling a sum of Rs.1,00,493/- on the Rectification Deed dated 20.10.2014 registered on the file of the second respondent as Document No.5945/2014. Following the notice, the impugned order dated 06.10.2016 was issued by the second respondent directing the petitioner to pay the aforesaid sum of Rs.1,00,493/-within 15 days from the receipt of the order.

3. The learned counsel for the petitioner submitted that the impugned orders of the respondents are liable to be quashed on the grounds that - (i) the original Sale Deed dated 26.11.2012 was registered and returned without any dispute and (ii) the subsequent Rectification Deed dated 20.10.2014, no new right or title is conveyed under Sale Deed dated 26.11.2012 and that the authority assessed the value of the land as on the date of rectification of typographical error in the original Sale Deed dated 26.11.2012 and sought to recover the stamp duty on the rectification deed. Therefore, the impugned orders have no

basis and do not stand scrutiny of the law. In support of his contention, he relied on the judgment of a Division Bench of this Court in the case of District Collector, Erode v. M.Ponnusamy reported in 2001 (2) CTC 449 and sought to quash the impugned orders.

4. On the contrary, the learned Additional Government Pleader, appearing for the respondents would submit that even though the Sale Deed was registered and returned to the petitioner, thereafter, during the course of audit, it was found that the petitioner had paid lesser stamp duty and hence, the impugned orders have been passed to recover the aforesaid amount from the petitioner. Therefore, the orders passed by the respondents are in accordance with law.

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

6. It is an admitted fact that the original Sale Deed had been registered as Document No.6862 of 2012 by paying requisite stamp duty for the subject matter of the property and was returned after registration and as there was typographical error, a rectification deed was registered by reducing the actual measurement of the land. Thereafter, the impugned order was passed by the second respondent directing the petitioner to pay the aforesaid sum. As rightly contended by the learned counsel for the petitioner, in the light of the decision in District Collector, Erode v. M.Ponnusamy reported in 2001 (2) CTC 449, the respondents have no basis to demand additional stamp duty. Even in the judgment, in the case of P.Uthamaraj versus District Registrar reported in (2010) 1 MLJ 246) (W.P.No.17776 of 2009 dated 24.10.2009), in paragraph 15, it has been held as follows:-

> "15. At the risk of repetition, it is made clear that if by way of rectification deed, the extent is going to be increased, certainly for the difference in extent, the registering authority is entitled to charge the stamp duty under Schedule I. But, it is not open to the registering authority to reopen the original sale that took place in the year 2003 for the purpose of fresh assessment of value as on the date of rectification of typographical error and by imposing stamp duty on the rectification deed and to seek to recover the difference of stamp duty from the petitioner. Inasmuch as the registering authority at the time of presentation of document for registration in the year 2003 did not raise any objection under Section 47-A of the Act, it is not open

to the respondents to raise the dispute regarding valuation now."

7. In the light of the above discussion and the decisions cited above, the impugned orders passed by the respondents are quashed. The Writ Petition is allowed as prayed for. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

To
1.The District Registrar (Audit),
Salem (West) Registration District,
Salem - 636 001.

2.The Sub Registrar,
O/o.Sub Registrar,
Suramangalam,
Salem - 636 005.

+1 cc M/s. P. Sivakumar Advocate Sr.No.76194
+1 cc Addl. Govt., Pleader, Sr.No.76367

ssk(CO)
md(12/02/2017)

W.P.No.43976 of 2016 and
W.M.P.No.37797 of 2016