BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:09.12.2016
CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
W.P.(MD)Nos.34 to 36 of 2015
and
M.P.(MD)Nos.1 to 3 of 2015(In all W.Ps)

M.Lakshmi ... Petitioner in all W.Ps.

Vs.

1.The Special Deputy Collector(Stamps),
Kokkirakulam,
Tirunelveli.

2.The Joint Sub-Registrar No.1,
Palayamkottai,
Tirunelveli. ... Respondents in all W.Ps

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the Impugned orders of the 1st Respondent in Mu.Sa.X.1/129/14, Mu.Sa.X.1/130/14, Mu.Sa.X.1/132/14 dated 30.09.14, respectively and quash the same and consequently direct the 1st respondent to conduct enquiry after affording opportunity to the petitioner.

For Petitioner(In all W.Ps) : Mr.H.Arumugam
For R-1 & R-2 : Mr.T.S.Mohammed Mohideen
Additional Government Pleader

COMMON ORDER

In all three Writ Petitions, the petitioner is one and the same. She is aggrieved against the individual order passed by the first respondent fixing the deficit stamp duty and demanding such payment from the petitioner under Section 47(A) of the Indian Stamp Act, 1899.

2. The case of the petitioner in short is that three sale deeds presented for registration before the second respondent by paying the required stamp duty, were not returned after registration and on the other hand, a proceedings under Section 47(A) of the Indian Stamp Act, 1899, was initiated and orders came to be passed by the first respondent, which are impugned in these Writ Petitions, fixing the deficit stamp duty payable by the petitioner and demanding the same, without issuing any notice to the petitioner and hearing her objections. In other

words, the crux of the matter in dispute is that the impugned proceedings were passed in violation of principles of natural justice.

3. Even though the petitioner has raised other points on the merits of the claim made by her, this Court is not inclined to go into the same as these writ petitions can be disposed of on a short ground by considering as to whether proper notice was issued to the petitioner before passing the impugned communications.

4.Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader appearing for the respondents submitted that notice was issued to the petitioner through ordinary post and therefore, the respondents are not having any acknowledgment. Therefore, he contended that there is proper compliance of principles of natural justice.

5.On the other hand the learned counsel appearing for the petitioner by relying on Rule 15 of the Rules made under the Prevention of Undervaluation of Instruments Rules, 1968, submitted that sending notice by ordinary post is not permissible and on the other hand, it has to be sent only by way of registered post with acknowledgment due. He also relied on the decisions reported in 2010 (1) CWC 710 (Nirmala Kumari vs. The Special Deputy Collector(Stamps), Collector Office, Vellore and two others, 2011 (1) CWC 15(V.Chokalingam v. The District Revnue Officer(Stamps), Chennai and two others, 2012 (1) MWN (Civil) 126), in support of the above contention.

6. Heard both sides.

7. The impugned proceedings are admittedly passed under Section 47(A) of the Indian Stamp Act, demanding the payment deficit stamp duty from the petitioner in respect of three sale deeds presented by her for registration. It is the specific case of the petitioner that before passing such order, she was not given any notice. Though the respondent denied such contention, their specific case of sending notice through ordinary post cannot sustain the scrutiny of this Court, as such service of notice is not a notice as required to be issued under Rule 15 of the above said Rules, wherein it is specifically contemplated that such notice should be sent to the person concerned by a registered post with acknowledgment due. The very same view was taken by this Court in very many occasions as referred to in the above decisions. Therefore, there cannot be any doubt to the fact that the respondents have not followed the principles of nature justice before passing the impugned orders and thus, orders are liable to be set aside.

8. The learned counsel appearing for the petitioner further contended that even pending proceedings under Section 47(A) of the Indian Stamp Act, the registering authority cannot retain the document and on the other hand, he has to return the sale deeds to the petitioner, however, by making an endorsement with regard to the pendency of the proceedings under Section 47(A) of the Indian Stamp Act. In support of his submission, the learned counsel relied on a recent decision made by the Division Bench of this Court in W.A(MD)No.1346 of 2016, dated 17.10.2016.

9.Perusal of the above-said decision of the Division Bench would show that the above issue was considered and it was observed therein that the District Revenue Officer need not retain the document for dealing with the proceedings under Section 47(A) of the Indian Stamp Act. Relevant observations made at paragraph Nos.9 to 13 of the said decision are extracted hereunder:-

> 9. The learned Special Government Pleader appearing for the appellants draw the attention of this Court to Sections 47 (A) (B), and would submit that in the event of exercise of Stamp Rules, the concerned authority is entitled to call for the instruments and as such, the document forwarded by the fourth appellant is being retained by the third appellant for the purpose of ascertaining the said value and as such, it cannot be returned.
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> 10. Rule 4 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, speaks about Procedure on receipt of reference under Section 47-A and Rule 7 speaks about final order determining the market value.
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> 11. It is pertinent to point out at this juncture that the copy of the document is also available with the fourth appellant, which contains description of the property and also other details such as subject matter of conveyance, the sale consideration, the stamp duty paid as well as the registration charges and in the light of the fact that all the particulars are available, it is not necessary on the part of the third appellant to retain the document for the purpose of dealing with the issue under Section 47(A)(1) and A(2).
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> 12. It is also well settled position of Registration Act, 1908, Section 61(2) also says that once the document is registered, the document should be returned to the person, who presented the same for registration, or to such other person (if any) nominated in writing in that behalf on the receipt mentioned in Section 52.

> 13. It is also to be noted at this juncture, the interest of the respondents also protected for the reason that under Section 47(A)(4), every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section(3) shall pay such duty within such period as may be prescribed and in default of such a payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due [interest at one per cent per month on such amount for the entire period of default: The proviso also says that "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."

10. Considering the above decision of the Division Bench of this Court, I am of the view that certainly a suitable direction has to be issued to the respondents to return the subject matter sale deeds to the petitioner, however, by making necessary endorsement therein with regard to the pendency of the proceedings under Section 47(A) of the Indian Stamp Act.

11. Accordingly, these writ petitions are allowed and the impugned orders are set aside and the matter is remitted back to the first respondent for passing fresh orders on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the first respondent, within a period of twelve weeks from the date of receipt of a copy of this order. Notwithstanding with the pendency of such proceedings, the respondents are also directed to return the subject matter sale deeds to the petitioner, after making necessary endorsement therein with regard to the pendency of the proceedings under Section 47(A) Indian Stamps Act, within a period of two weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To
1.The Special Deputy Collector(Stamps),
Kokkirakulam,
Tirunelveli.

2.The Joint Sub-Registrar No.1,
Palayamkottai,
Tirunelveli.

+1cc to Mr.H.Arumugam, Advocate in SR No.80413
+1cc to the Spl.Govt.Pleader in SR No.80502

W.P.(MD)Nos.34 to 36 of 2015
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pm/skn
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