BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.(MD)No.11270 of 2016
and
W.M.P.(MD).No.8629 of 2016

1. R.Koman
2. R.K.Sivaraj
3. R.K.Dhananjeyan
4. D.R.Manivel
5. R.Rubhan ...Petitioners

[Petitioners 2 to 5 are rep.by their power agent the 1st petitioner.

Vs.

The Sub Registrar,
Sivakasi,
Virudhunagar District. ...Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for records relating to the Letter No.1/2016 and 2/2016 issued by the respondent dated 22.04.2016 and 26.04.2016 and consequently, direct the respondent to remove the encumbrance made by him in his records based on the impugned proceedings.

For Petitioners : Mr.A.Sivaji
For Respondent : Mr.S.Sades Kumar
Additional Govt. Pleader

O R D E R

Heard both sides.

2. By consent, the main Writ Petition itself is taken up for final disposal.

3. No counter is filed on behalf of the respondent.

4. The learned counsel for the petitioners urges before this Court that the respondent/Sub Registrar, Sivakasi, Virudhunagar District had passed the impugned orders on 22.04.2016 and 26.04.2016 by calling upon the petitioners to pay the deficit stamp duty of Rs.3100506/- and deficit registration fee of Rs.442925/- amounting in all to Rs.35,43,431/- within 15 days, failing which the amount would be recovered under the Revenue Recovery Act.

5. The learned counsel for the petitioners contends before this Court that the Respondent had issued the impugned orders dated 22.04.2016 and 26.04.2016 to the petitioner Nos.1 to 5 on

the footing that it was found out in the audit of Virudhunagar District Registrar (Audit) Note Part-2 item 2(1)(1), there was a revenue loss in regard to the deficit stamp duty of Rs.3100506/- and deficit registration fee of Rs.442925/- aggregating in all a sum of Rs.3543431/- is to be paid.

6. The Learned counsel for the petitioners projects an argument that the liability to pay the stamp duty and the registration fee as demanded by the respondent in the impugned notices are without issuance of any notice to the petitioners, which is a breach of principles of natural justice.

7. Yet another contention projected on the side of the petitioner is that in terms of Section 60 of the Indian Registration Act, 1908, the Respondent had issued a certificate of registration to the partition deed in question and when the legal procedure for registration of document was followed and completed, then it is not open to the Respondent to pass the impugned orders dated 22.04.2016 and 26.04.2016 respectively and that too in a self-serving and an unilateral fashion.

8. Continuing further, the Learned counsel for the petitioner takes an emphatic stand that for the recovery to be made as an 'arrears of land revenue' the respondent/Sub Registrar, Sivakasi is to follow the procedures contemplated under Section 33 and 33-A of Indian Stamp Act, 1899 and in the instant case, such a procedure has not been resorted to by the respondent.

9. At this stage, this Court has perused the impugned orders dated 22.04.2016 and 26.04.2016, issued by the respondent in regard to the loss of revenue of Rs.3543431/- to the Government, issued to the petitioners and this Court is of the considered view that ipso facto based on the audit note of the Virudhunagar District Registrar, the deficit stamp duty of Rs.3100506 and deficit registration charge of Rs.442925/- in all a sum of Rs.3543431/- cannot be asked for from the petitioners because of the simple reason that audit objection/remark cannot be a cementing platform for the Respondent to issue the impugned orders. Furthermore, this Court is of the opinion that before calling upon the petitioners in regard to any loss of revenue centering around a particular amount, then the aggrieved person/affected parties in Law should be provided with an opportunity to put forward their objections/submit their remarks either in person or in writing and after considering the remarks/objection of the aggrieved persons, then it is for the concerned competent authority to look into the same and to pass necessary orders after application of mind. In the instant case, admittedly, such a procedure was not followed by the respondent at the time of passing the impugned orders. Therefore, this Court, without any haziness, comes to a resultant conclusion that the impugned orders dated 22.04.2016 and 26.04.2016 of the respondent

are clearly not legally tenable. As such, this Court, in the interest of justice, interferes with the said orders and sets aside the same.

10. In fine, the Writ Petition is allowed and the impugned orders passed by the respondent dated 22.04.2016 and 26.04.2016 are set aside. It is open to the respondent to pass fresh orders in the subject matter in issue after fulfilling the required formalities of adhering to the principles of natural justice (by providing adequate opportunity to the concerned affected persons in stricto sense of the term) in accordance with Law. No costs. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)

To
The Sub Registrar,
Sivakasi, Virudhunagar District.

+1cc to Mr.A.Sivaji, Advocate in SR.32865
+1cc to the Special Government Pleader in SR.33095

W.P.(MD)No.11270 of 2016
24.06.2016

akv
PBK/NGM-MP 13.07.2016 ::3P-4C: