BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.06.2016**

CORAM:

THE HONOURABLE MR.JUSTICE **M.VENUGOPAL**

W.P.(MD)No.15924 of 2013

J.Jeyaraj ... Petitioner

Vs.

1. The District Registrar,
(Administration)
Office of the District Registrar,
Palayamkottai,
Tirunelveli - 627 009.

2. The Sub Registrar,
Nazareth 628 617,
Tuticorin District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in R.C.No.484/B1/2013 dated 02/2013, signed on 13.03.2013 on the file of the first respondent herein and to quash the same and direct the respondents to release to the petitioner the rectification deed dated 17.11.2011 executed in his favour, within a time frame as may be fixed by this Court.

For Petitioner : Mr.S.Subbiah
For Respondents : Mr.K.Mahesh Raja
Government Advocate

O R D E R

The petitioner has preferred the present Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the proceedings in R.C.No.484/B1/2013 dated 02/2013 (signed on 13.03.2013) on the file of the first respondent/District Registrar, (Administration), Palayamkottai, Tirunelveli and to quash the same. Further, he has sought for passing of an order by this Court in directing the Respondents to release the Rectification Deed dated 17.11.2011 executed in his favour, within a time frame to be determined by this Court.

2. Heard both sides.

3. By consent, the main writ petition itself is taken up for final disposal.

4. The Learned counsel for the petitioner urges before this Court that the First respondent/District Registrar (Administration) Palayamkottai, Tirunelveli District, without conducting an enquiry and without application of mind, passed an order dated 13.03.2013 in R.C.No.484/B1/2013, calling upon the petitioner to pay deficit stamp duty of Rs.1,70,436/-.

5. The learned counsel for the petitioner brings it to the notice of this Court that after receipt of the letter dated 03.03.2013, the petitioner sent a reply dated 26.05.2013 to the first respondent/District Registrar (Administration), Tirunelveli, explaining the matter in detail and also challenging his powers to issue such a notice to him and for that, the respondents had not either positively or negatively responded. The prime contention put forth on behalf of the petitioner is that the impugned order dated 13.03.2013 passed by the first respondent is without any power or jurisdiction, besides the same being an arbitrary one and also in negation of the principles of natural justice, equity and also mandatory provisions of the Act and Rules framed thereunder.

6. Added further, the Learned counsel for the petitioner projects an argument that the procedure to be followed in terms of Section 47-B of the Indian Stamp Act, 1899, is that the ambit of Section 47-A of the Act should be adopted for the purpose of determination of the question, relating to the rectification deed dated 17.11.2011. Unfortunately, in the instant case, such a procedure was not followed by the authorities concerned and this had resulted in serious miscarriage of justice.

7. The Learned counsel for the petitioner fairly submits that the petitioner is giving up the relief of releasing the rectification deed dated 17.11.2011 executed in his favour and the same is recorded.

8. Advancing his arguments, the Learned counsel for the petitioner contends that in terms of Section 47-A of the Indian Stamp Act, 1899, the Collector cannot determine any amount either transitorily or finally and such determination is only to be made, as per ingredients of Section 47-A of the Act itself.

9. Expatiating his submission, the Learned counsel for the petitioner strenuously submits that firstly, notice must be issued to the executants as per Rule 4 of the Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, in and by which, the receipt of reference ought to be informed and the concerned must be required to submit his representations, if any, in writing, as per issuance of Form No.I. However, in the present case, the Respondents had not issued any Form No.I to the petitioner.

10. The pith and substance of the stand of the petitioner

is that the first respondent/District Registrar, Palayamkottai, Tirunelveli, only after calling for an enquiry, in the manner enshrined as per Rule 5 of Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, and after determining transitorily the market value of the properties and the duty payable in the manner prescribed under Rule 6 in Form No.II and only after taking the objections, a final order could be passed as per Rule-7, under Form No.III. However, in the instant case, the ingredients of Rule 5 to 7 of Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, were not adhered to by the authorities concerned.

11. At this juncture, the learned counsel for the petitioner seeks in aid of the decision of this Court ***(Inspector General of Registration and Others vs. C.Marappan)*** reported in (***2007) 1 MLJ 847***, wherein it is observed as under:

> ***"On a plain reading of Section 47-B, it is clearly seen that the provisions of the Section will be attracted only in case of instruments falling within the purview of Section 47-A of the Act. In the present case, no proceedings were initiated under Section 47-A of the Act and thus the question of application of Section 47-B does not arise. In these circumstances, there is no warrant to interfere with the order of the learned single Judge and, hence, the writ appeal is dismissed."***

12. It is to be remembered that Section 47-A has been inserted in the statute book for the State of Tamil Nadu only to meet certain exigencies and in fact, refers to the method to be taken in the event of instrument or conveyance was found under valued. But the registration of document could not be refused by reason of under valuation as per decision (***Government of Tamil Nadu vs. P.V. Enterprises) 2001 (1) AIR (Civil) 467 (SC)***.

13. Section 47-A (inserted in Tamil Nadu) deals with 'instruments of conveyance, etc., under-valued, how to be dealt with'. Section 47-B (inserted in Tamil Nadu) speaks of 'Stamp duty chargeable for instrument of rectification'.

14. It is to be noted that the object of Section 47-A of the Indian Stamp Act, 1899 is to neutralise the effect of under valuation of the immovable property conveyed by means of a registered document of sale, or Exchange, or Gift, or partition or Settlement. To attract Section 47-A of the Indian Stamp Act, it is not enough to show that the consideration mentioned in the document of sale etc., is less than the prevailing market value. Further more, it must be exhibited that it is a case of under valuation as per decision in ***L.R.Venkateswaran v. Government of AP***, reported in ***1990 (2) ALT 110***.

15. It is borne in mind that the purpose of enacting Section 35 of the Indian Stamp Act is to recover stamp duty, as opined by this Court. As a matter of fact, the pre-requisite for the attraction of Section 47-A of the Indian Stamp Act, is one of wilful under valuation of property with a fraudulent intention to effect payment of proper stamp duty, in the considered opinion of this Court. It is true that the basic valuation is only for the purpose of collecting the stamp duty and it cannot form the foundation to determine the market value, as per decision of Hon'ble Supreme Coutt in ***U.P.Jal Nigam, Lucknow v. Kalra Properties (P) Limited*** reported in ***AIR 1996 SC 1170.***

16. It cannot be gainsaid that explanation to Section 47-A of the Indian Stamp Act provides that the value of the property shall be determined by fixing the price which the property would have fetched if sold in the open market, as per decision in ***Inderjeet Singh v. State of Punjab*** reported in ***1997(2) PLR 759 (P&H).***

17. In this connection, this Court pertinently points out that the 'Market Value' is to be determined only on the basis of the evidence adduced by a claimant and rebuttal thereof by the State as to the prevailing market value of a particular property. No wonder, the powers conferred under Section 47-A of the Act should be exercised with utmost care, circumspection and caution so as to ensure that it does not work as a tool of oppression nor as a matter of routine mechanically without application of mind so as to existence of any material or reason to believe the fraudulent evasion of stamp duty, as per decision in ***S.Jayalakshmi v. Government of Tamil Nadu*** reported in ***AIR 2003 Madras 142, 144.***

18. The formulation of requisite belief under Section 47-A of the Stamp Act is not a matter of purely subjective satisfaction, but one of objective one as well, as per decision in ***State of Punjab v. Mahavir Singh*** reported in ***AIR 1996 S.C. 2994.*** Besides that, the reason for the formation of belief must be held in good faith and it should not be a mere pretence and ought not to be an arbitrary, capricious or fanciful one, as per decision in ***ITO v. Lakhmana Mewal Das*** reported in ***AIR 1976 SC 1753.*** The words "reason to believe" means a cogent reason for believing that the value mentioned in the document is not truly set forth and such reason should be based on material on record, in the considered opinion of this Court.

19. Suffice it for this Court to point out that the 'Registering Authority' has to apply his mind before directing the concerned person to pay 'deficit duty', only if he had reason to believe that the consideration amount did not reflect the true value of the property, as per decision (***Birendra Nath Manna v. State of West Bengal)*** reported in ***(2000) 1 CWN 166.***

20. It may not be out of place for this Court to very relevantly point out that the Collector is bound to cause an enquiry and to render a finding on the market value of the property. A mere reference to an audit objection, which is no evidence of market value, would show that the Collector had not applied his mind in determining the market value of the property.

21. Indeed, the word 'may' in Rule 4(3)(c) of the Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules,1968 gives an option to the Collector to inspect the property. It is mandatory on the part of Collector to issue notice to the petitioner before inspecting the property, otherwise, the very requirement prescribed under Section 47-A of the Act r/w. Rule 4(3)(c) would become an empty formality and it would render the whole enquiry as an illegal one.

22. It is to be pertinently pointed out that an order passed under Section 47-A of the Act is amenable to 'Revisional Jurisdiction' conferred on the Chief Controlling Revenue Authority under Section 56(1) of the Act. It is needless to point out that 'Revisional Jurisdiction' is similar to an appellate jurisdiction and indeed the Chief Controlling Officer has the power to grant relief pending revision as per decision ***Jagdish Narain v. Chief Controlling Revenue Authority (***AIR 1994 AII 371).

23. It cannot be forgotten that in case of violation of fundamental right or breach of violation of statutory provision, there is no bar for exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India.

24. In the impugned notice/order dated /02/2013, (addressed to Inbam Ammal and J.Jeyaraj), it is *inter alia* stated that as to how a sum of Rs.1,70,436/- was not to be recovered from them and they were further informed that if they submit their explanation within 15 days from the date of receipt of notice, the same would be considered etc.

25. In the upshot of qualitative and quantitative discussions, as mentioned supra and also this Court taking note of the entire facts and circumstances of the present case in a conspectus fashion, comes to an irresistible conclusion that in the instant case, in-reality no proceedings are initiated in terms of Section 47-A of the Indian Stamp Act, 1899. Per contra, straight away the impugned notice/order dated /02/2013 in R.C.No.484/B1/2013 was passed by the Office of the First respondent/ District Registrar (Administration), Tirunelveli. Therefore, the issue of applicability of Section 47-B of the Indian Stamp Act, 1899 and paying of deficit stamp duty does not arise on any score, as opined by this Court.

26. Viewed in that perspective, the impugned order in R.C.No.484/B1/2013 dated .02/2013 bristles with legal infirmities in the eye of law. Resultantly, this Court, to prevent an aberration of justice and to promote substantial cause of justice, interferes with the said order and set aside the same. Consequently, the Writ Petition succeeds.

27. In fine, the Writ Petition is allowed leaving the parties to bear their own costs. Resultantly, the order dated / 02/2013 passed by the first respondent in R.C.No.484/B1/2013 is hereby set aside by this Court for the reasons assigned in this Writ Petition. The First Respondent/District Registrar (Administration), Tirunelveli is directed to pass a fresh, reasoned and speaking order, on merits in the manner known to Law and in accordance with Law (of course, after providing necessary opportunities to the petitioner, by adhering to the principles of natural justice in true letter and spirit.

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1. The District Registrar, (Administration)
   Office of the District Registrar, Palayamkottai,
   Tirunelveli – 627 009.

2. The Sub Registrar, Nazareth 628 617, Tuticorin District.

+1 cc to M/s.S.Subbiah, Advocate in SR.No.27491
+1 cc to The Special Government Pleader in SR.No.27661

akv
CSL/SKS-RR/13.06.2016 :6P/5C

W.P.(MD)No.15924 of 2013
02.06.2016