BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.12.2016
CORAM :
THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.9886 of 2013
and
M.P(MD)No.1 of 2013

SOWMA Educational and Social Welfare Trust,
Kovilpatti Road,
Manaparai, through its Trustee,
Rajarathinam ... Petitioner

Vs.

1.The District Collector,
Trichy District.
2.The Deputy Collector of Stamps,
District Collectorate Office,
(Old Building), Tiruchirappalli.
3.The Tahsildar, Manaparai Taluk,
Trichy District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to quash the proceedings of the 2nd respondent in proceedings dated 18/02/2003 in Tha.Pa.No. 4570/00 (19 gp) as illegal incompetent and without jurisdiction.

For Petitioner : Mr.H.Lakshmi Shankar
For Respondents : Mr.Aayiram K.Selvakumar, Government Advocate.

ORDER

The order impugned in the present writ petition is a memorandum directed the petitioner demanding payment of arrears of Rs.1,91,640/- under the Tamil Nadu Revenue Recovery Act, 1890, together with interest at the rate of 24% per annum from 06.03.2000 to 31.08.2010 and interest at the rate of 12% thereafter.

2.Heard Mr.H.Lakshmi Shankar, learned counsel appearing for the petitioner and Mr.Aayiram K.Selvakumar, learned Government Advocate appearing for the respondents.

3.Mr.H.Lakshmi Shankar, learned counsel appearing for the petitioner would submit that he had presented a document No.855/96 for registration and pursuant to the registration, he had received the document also. After a considerable period, the present impugned order in a cyclostyled format was served on the petitioner demanding the aforesaid sum together with interest. He would further submit that the impugned memorandum contains blank spaces and the second respondent had stated in the impugned memorandum that on payment of the aforesaid sum of Rs.1,91,640/-, the registered document No.855/96 would be returned to the petitioner. He would further submit that the second respondent had not applied his mind while serving the impugned memorandum on him, since the petitioner had already received the registered document.

4.Learned counsel appearing for the petitioner relying upon Section 47-A of the Indian Stamp Act, 1899 and Rules 4 to 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (for brevity "Rules") would submit that the procedure contemplated for determining the provisional market value and before passing final order determining the market value, was not followed since no notice under Form I, Form II and Form III was served on him. Relying on Rule 15(d), he submitted that the respondents are bound to serve Form I, Form II, Form III notices by registered post or by any other mode contemplated therein. He would further submit that while passing a final order determining the market value, the respondents are bound to pass the same within three months from the date of first notice. Since the respondents had not served any notice as contemplated under Rules 4, 6 or 7, the impugned order is liable to be quashed.

5.Learned Government Advocate, on the other hand, would submit that the procedure contemplated under the Rules have been adhered to and all the notices have been sent to the petitioner. Since the petitioner had failed to remit the deficit stamp duty even after receipt of the notices, the impugned memorandum was sent to the petitioner. Learned Government Advocate would urge that the amount demanded is a huge amount and would cause revenue loss to the Government, if the writ petition is allowed. He had also produced the original files pertaining to the impugned proceedings before this Court.

6.From a perusal of the original files it is seen that the notices claimed to have been sent by the respondents to the petitioner in Form I, Form II and Form III is claimed to have been sent by ordinary post. This fact was also informed to the petitioner, to his query under the Right to Information Act, 2005.

7.Rule 15 (d) of the Rules speaks about the manner of service of notice. In the case of an individual person, the notices have to be served to the person directly or to some adult member of his family or through registered post with acknowledgment due on that person and if none of the said modes of service is practicable, by affixture in the last known place of residence. Rule 15(d) does not speak about the service of notice through ordinary post. In the absence of any receipt of notices in Form I, Form II, Form III sent to the petitioner, it can only be concluded that no such notice was ever served on the petitioner.

8.It has been consistently brought to the notice of the Registration Department by this Court about the usage of cyclostyled forms and notices and its repercussions. In the present case, as rightly pointed out by the learned counsel for the petitioner, the second respondent has informed the petitioner that the registered document could be returned to him on payment of demanded sum. Since, the petitioner had already received the original document, such a statement would no doubt be deemed to be passed on non application of mind.

9.The learned Government Advocate submitted that as per the report from the Sub Registrar, Manapparai, the petitioner was bound to pay deficit stamp duty for Rs.1,91,640/- for the impugned sale deed No.855/96, dated 07.03.1996. Reiterating the counter affidavit of the second respondent, he submitted that Form-I notice was issued on 07.06.2000, followed by Form-II notice on 05.11.2008 and lastly, Form-III notice was issued on 02.04.2009. Since the petitioner had failed to remit the deficit stamp duty, the proceedings under the Revenue Recovery Act, 1890 was initiated on 21.12.2009 and final notices were sent to the petitioner on 09.08.2010 and 16.12.2010. In spite of all these notices, the petitioner had failed to remit the deficit stamp duty and hence, the impugned memorandum dated 18.02.2013 was sent to the petitioner.

10.I am unable to agree with the submissions made by the learned Government Advocate since Rule 7 of the Rules prescribes a period of three months for the Collector to pass final order from the date of the first notice determining the market value. Form II notice is claimed to have been sent, after a lapse of more than eight years and Form III notice was after four months. The three months period prescribed under the Rules was inserted in Rule 7, by way of an amendment dated 26.02.1997. The significance of such an insertion is to stress on the limitation for passing of the final order and make it mandatory.

11.In this case, there is a delay of 9 years for passing the final order from the date of the first notice. As observed above, these notices were also not served as claimed by the respondents. The entire exercise adopted by the respondents for determination of the market value of the property is in total contravention of the procedure contemplated under the provisions of the Rules.

12.Relying upon the judgment of this Court reported in *2008 (3) CTC 614 (Tata Coffee Limited Vs.The State of Tamil Nadu)*, learned counsel appearing for the petitioner would submit that the entire proceedings of the respondents should be deemed to be lapsed since the respondents have not adhered to the procedure contemplated under the law. The relevant portion of the said order reads as follows:-

> *"23(d).It is also surprising to note that in these cases it is not known as to when the Registering Authority has referred the question relating to undervaluation to the Collector and what are the reasons for the Registering Authority to refer to the Collector, which are pre-condition for making reference as established by the judicial precedent stated above. In such a situation, it has to be concluded that there was no enquiry conducted in*

the eye of law and in the manner known to the provisions of the Indian Stamp Act and therefore, in my considered view, the final orders said to have been passed by the Collector under Section 47-A(2) of the Act in all these Writ Petitions have to be simply ignored , since they are non est in the eye of law. The necessary consequence is that there is no question of directing these petitioners to receive such orders at this stage, especially after a period of nearly eight years and then to file Appeal to the Appellate Authority under Section 47-A(5) of the Act.

23(e).Even though there is no time limit given to the Registering Authority to refer the documents to the Collector, certainly, for the authority performing statutory functions under Section 47-A(2), viz., the Collector, there are period of limitation prescribed at various stages, viz., while giving notice in Form No.I, he has to give 21 days time to the owner and thereafter after arriving at the provisional conclusion, the order has to be communicated to the executant asking him to file objections to the provisional conclusion by fixing a date for enquiry and thereafter, the final order has to be passed. It is made clear under Rule 7 that all the said proceedings commencing from Form No.I notice till the passing of final order shall be completed within a period of three months.

23(f).It is true that like the referring authority/Registering Authority for whom there is no period of limitation prescribed either in the Act or under the Rules for referring documents to the Collector, there is no period of limitation prescribed for the Appellate Authority for disposing of Appeal, even though a period of limitation, as I have stated earlier, can be inferred for the Collector to complete the enquiry under Rule 7. It is also seen under Section 47-A(3) that the Collector has suo motu power to conduct enquiry regarding valuation of the property which is the subject of the document and such power is restricted for a period of five years from the date of registration of such document. Therefore, the power of the Collector to conduct suo motu enquiry would get lapsed after five years.

23(g). Another point that can be raised is as to whether the referring authority, if not already referred the documents to the Collector, can be directed to refer the documents to the Collector now, especially in the absence of any time limit prescribed for the referring authority. But, such contention is also not tenable since the power that *can be conferred on the Collector at this point of time after eight years would be more than the suo motu power of the Collector for which the limitation is five years. Therefore, looking at any angle, there is no question of fresh enquiry which can be directed to be done by the District Collector or there is no question of directing the petitioners to file any Appeal within the time that may be given by this Court.*

23(h).The necessary conclusion is that the entire proceedings in respect of determination of the market value in the documents which are subject matter of the above Writ Petitions should be deemed to be lapsed by the conduct of the respondents, which is not only callous but also opposed to all canons of justice which can never be approved. In such a situation, the contention of the learned Additional Advocate General that in these cases if really the petitioners have undervalued the properties for the purpose of registration, it will be a great loss to the State has no meaning in the sense that it is not due to the fault on the part of the petitioners, but on the part of the officials of the respondents for which the petitioners cannot be made to suffer any further."

13.Following the aforesaid judgment, the Division Bench of this Court has also reiterated the same principle in *Inspector General of Registration Vs.L.Narayana Reddy reported in 2015 2 MLJ 257*. The case of the petitioner is identical to that of the aforesaid judgment.

14.In the result, the petitioner is entitled to succeed. The impugned proceedings of the second respondent dated 18.02.2013 is quashed. Accordingly, the writ petition stands allowed. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To
1.The District Collector, Trichy District.
2.The Deputy Collector of Stamps,
District Collectorate Office, (Old Building), Tiruchirappalli.
3.The Tahsildar, Manaparai Taluk, Trichy District.
+One cc to M/s.H.Lakshmi Shankar, Advocate, SR.No.80226
+One cc to The Special Government Pleader, SR.No.80305
sms
RL/6C/5P/RR/28.12.2016

Order made in
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<u>and</u>
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<u>08.12.2016</u>