

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.640 of 2017 and C.M.P.No.8854 of 2017

R.Muthusamy ... Appellant/Writ Petitions

Vs

1. The Special Deputy Collector (Stamps),
Room No.311, 3rd Floor,
Office of the District Collector,
Salem - 636 001,
Salem District.

2. The Sub-Registrar,
Sub-Registrar Office,
Tiruchengode - 637 211,
Namakkal District.

... Respondents/Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order dated 03.01.2017 made in W.P.No.42850 of 2016 passed by the learned single judge.

Writ petition filed under Article 226 of the constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order made in Lr.No.73/2016 dated 02.11.2016-Serial No.7 issued by the second respondent, quash the same and consequently forbear the respondents from taking any action under Section 47A of the Indian Stamp Act in view of the judgment of this Court in Tata Coffee Ltd., (2008 (3) CTC 614) with regard to my sale deed dated 22.12.2005 (Doc.No.5887 of 2005) registered before the second respondent.

For Petitioner : Mr.N.Manokaran

For Respondents : Mrs. Sri Jayanthi

Special Government Pleader

JUDGMENT

[Order of the Court was made by P.VELMURUGAN, J.]

This writ appeal has been filed to set aside the order dated 03.01.2017 made in W.P.No.42850 of 2016.

2 The brief facts of the appellant's case in the writ petition is as follows :-

The case of the appellant before the writ court is that he had purchased the subject matter property by virtue of sale deed dated 22.12.2005, on the file of the second respondent, executed by one T.Krishhnan and his sons. The document was registered and he obtained the registered sale deed. Based on the recommendation made by the second respondent for initiating proceedings under Section 47A (1) of the Indian Stamp Act, hence, the first respondent issued a notice dated 09.02.2012 to pay the deficit stamp duty to which the petitioner made a representation dated 11.03.2012, interalia disputing the contents of the notice. For the said representation, there was no reply. Again after a lapse of 3 years and 3 months, the second respondent issued a notice dated 13.07.2015 with a direction to pay the deficit stamp duty to which the petitioner made a representation dated 27.07.2015 raising his objections. The second respondent without considering the representations of the appellant dated 11.03.2012 and 27.07.2015, passed the final order without holding any enquiry or without serving Form I notice or Form II notice on the appellant. Therefore, the order is per se illegal. Further, the appellant placed his reliance on the decisions of this Court. Further the appellant contended that the final order is not passed by the competent authority viz., the Collector, whereas it is passed by the Sub Registrar. Therefore, it is illegal and the same is liable to be quashed.

3 The learned Single Judge, after considering the rival submissions made on either side and the documents available on record, passed an order dated 03.01.2017, the operative portion of the order is as follows:

"4.Considering the fact that though Form I notice has been sent to the petitioner, the same has not been acknowledge and that no final order has been passed and that the petitioner has to be served Form II notice and also as not explanation is called for, the impugned order is set aside and the matter is remitted back to the the authority concerned and the authority concerned, the District Collector (Stamp) will give an

opportunity to the petitioner for explanation and immediately thereafter, pass appropriate orders. It is made clear that since the Form I notice has also been served to the petitioner, the point of limitation cannot be raised by the petitioner and that the orders shall be passed only after giving opportunity to the petitioner. "

4 Aggrieved by the above said order dated 03.01.2017 in WP.No.42850 of 2016, the present writ appeal has been filed by the appellant/petitioner.

5 The learned counsel for the appellant would submit that the appellant had purchased the property in the year 2005 from one T.Krishhnan and sale deed was also executed and registered on 22.12.2005, by paying correct stamp duty and also the said document was released and now the document is in the custody of the appellant. On 09.02.2012, the appellant received a notice from the first respondent for which he had sent a representation on 11.03.2012 and no reply was received on the said representation. Once again after a period of more than three years, the second respondent issued a notice dated 13.07.2015 on the appellant, for which he has also sent a reply dated 27.07.2015 and thereafter no final orders have been passed. Again on 28.09.2016, the second respondent issued a notice on the appellant, the same was replied by the appellant on 20.10.2016 raising his objections. On 02.11.2016, the second respondent passed a final order, which is challenged by the appellant in W.P.No.42850 of 2016, which is disposed of by this Court on 03.01.2017.

6 The learned Special Government Pleader appearing for the respondents would contend that the appellant has not disclosed the nature of the property and not correctly assessed the value of the property and proper stamp duty also was not paid. Based on the Audit Report, they sent a notice, in which the appellant has not given any reply with regard to deficit of stamp duty. The learned single Judge has appreciated the facts of the case and rightly disposed of the writ petition and there is no merit in the appeal.

7 Heard the rival submissions made on both sides and perused the materials available on record.

8 A perusal of the records, it appears that the appellant purchased the property from one T.Krishhnan under the registered sale deed dated 22.12.2005, on the file of the second respondent. According to the respondents, the first respondent sent Form-I notice on 30.06.2006 itself, indicating that the

documents have been registered with deficit stamp duty and directed to the appellant to submit his representation within the time framed therein, for which the appellant had not sent any reply. The appellant had not paid the deficit stamp duty nor made his representation before the concerned authority. Therefore, the first respondent passed the final notice on 09.02.2012, for which the appellant sent his reply on 11.03.2012, denying the contents in the notice. Subsequently, the second respondent sent a notice on 13.07.2015, though the said notice was duly acknowledged by the appellant, he had not paid any deficit stamp duty. Instead of paying the deficit stamp duty, the appellant sent a false representation against the first respondent on 27.07.2015, stating that he is not liable to pay any stamp duty. Subsequently, the second respondent issued another notice on 28.09.2016, demanding the appellant to pay the deficit stamp duty. The appellant sent his objections by way of reply on 28.09.2016. On 02.11.2016, the second respondent passed the final notice and communicated the copy of the same to the appellant. Aggrieved by the said final notice dated 02.11.2016, the appellant is before this Court.

9 Further more, it is contended by the learned counsel for the appellant, that the Form-I Notice dated 30.06.2006 was never sent to the appellant. The learned Special Government Pleader appearing for the respondents also admitted that they have sent the copy of the notice only through ordinary post and not by way of registered post. Therefore, there is no evidence to show that the Form-I Notice dated 30.06.2006 was duly served on the appellant. On a perusal of the typed set of papers, it is seen that on 09.02.2012 first respondent sent a notice to the appellant, directing him to pay the deficit stamp duty of Rs.63,184/- for the document No.5887 of 2005, within one week from the date of receipt of the notice, in the event of failure to pay the deficit stamp duty, action will be taken against him. The appellant sent a representation dated 11.03.2012, that he has already paid the correct stamp duty and also document was released and he also effected mutations in the revenue records and he is in peaceful possession of the property. Even, at the time of releasing the documents, no query was raised and therefore, he is not liable to pay any deficit amount. Thereafter, no enquiry was conducted and no opportunity of hearing was given and final order was came to be passed by the respondents.

10 Subsequently, the second respondent issued a notice dated 13.07.2015 to the appellant to remit deficit stamp duty of Rs.63,184/- and registration fee of Rs.8,900/-, totally Rs.72,084/-, for which the appellant sent a reply on 27.07.2015, denying the liabilities. Once again, the second respondent sent a notice on 28.09.2016 demanding the appellant to pay the deficit stamp duty, failure to do so legal action will be

initiated against the instrument. For which, the appellant also replied vide his letter dated 20.10.2016.

11 On 02.11.2016, the second respondent sent a final notice calling upon the appellant to pay a sum of Rs.72,084/- towards deficit stamp duty, failing which, no document such as depositing title deed, sale deed, settlement deed, release deed, partition deed etc shall be entertained for registration in the future and further that the document will not be admitted in evidence before any public officer under Section 35 of the Indian Stamp Act.

12 From the materials placed before this Court, it is seen that the appellant purchased the property under the registered sale deed dated 22.12.2005 and got released the documents from the Registrar Office. Whereas the first respondent sent a Form-I Notice dated 30.06.2006 to the appellant, demanding to pay deficit stamp duty. The appellant denied the service of the said notice and the respondent has not filed any proof to show that the said notice was served on the appellant.

13 Further, the final notice dated 09.02.2012 was sent by the first respondent states that even after several reminders, the appellant has not come forward to pay the deficit stamp duty which is due to the Government or to record his objections and to get necessary endorsements in the original documents. Whereas the document was already released by the second respondent. After submission of the representation by the appellant on 11.03.2012, the first respondent has passed a final orders. Thereafter only the second respondent issued a notice dated 13.07.2015 for which also he made a representation dated 27.07.2015, stating that the second respondent has no authority to issue any notice after registering and releasing the document. If the correct stamp duty were not paid, the first respondent can withhold the document or instrument and the first respondent after conducting the enquiry may pass orders for payment of deficit stamp duty. Whereas in this case the first respondent issued final notice on 09.02.2012. Thereafter, in the year 2015 only, the second respondent issued a notice, for which the appellant has given a suitable reply. Finally on 02.11.2016, the second respondent passed a final orders which is impugned in the writ petition.

14 The fact remains undisputed, a perusal of the entire records, the appellant purchased the property from one T.Krishhnan under registered sale deed dated 22.12.2005 and the document was also released. At that time, the second respondent has not made any objection and if at all the instrument is under valued and proper stamp duty was not paid, the second respondent ought to have forward the documents to the first respondent for further action. The first respondent after conducting full-

fledged enquiry by giving an opportunity of hearing to the appellant and upon verification of records, the first respondent shall pass the final order. But whereas, in the case on hand, it has not been done by the respondents. The second respondent after releasing the document, has no authority either to issue a notice or to pass any order. Hence, the impugned order passed by the second respondent is without any authority. Further, the document was registered on 22.12.2005, the respondents have also taken a stand that they have duly served the Form-I notice dated 30.06.2006, whereas the same was denied by the appellant and the respondent are not in a position to prove the service of notice on the appellant. On a careful perusal of Section 47(A)(3) of the Act, it is clear that the first respondent ought to have concluded the proceedings within five years from the date of conveyance of the instrument. In the present case on hand, the first respondent issued final notice on 09.02.2012, after the lapse of five years from the date of issuance of Form-I Notice dated 30.06.2006 and lapse of morethan seven years from the date of registering the sale deed by the appellant. Particularly absence of proof of service of Form-I Notice dated 30.06.2006 on the appellant, when the appellant deserved the service of the said notice.

15 It is relevant to extract Section 47(A)(1), (2) and (3) of the Indian Stamp Act, 1899.

47-A. Instruments of conveyance, etc., undervalued how to be deal with - If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 1908), while registering any instrument of conveyance (exchange, gift, release of benami right or settlement) has reason to believe that the market value of the property of which is the subject matter of conveyance (exchange, gift, release of benami right or settlement), has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under subsection(1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, (exchange, gift, release of benami right or settlement), and the duty as aforesaid. The difference, if any in the amount of duty,

shall be payable by the person liable to pay the duty.

(3) (The Collector may, suo motu or otherwise, within five years) from the date of registration of any instrument of conveyance, (exchange, gift, release of benami right or settlement), not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, (exchange, gift, release of benami right or settlement), and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure proved for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

16 In the present case, no document was referred to by the second respondent to the first respondent, as per Section 47(A) (1) of the Indian Stamp Act and no personal enquiry was conducted by affording reasonable opportunity to the appellant as per Section 47(A) (2) of the Act. A perusal of Section 47(A) (3) of the Act, it is clear that the first respondent ought to have called for and examined within five years from the date of conveyance of the instrument. In the present case on hand, the first respondent issued final notice only on 09.02.2012, after the lapse of five years from the date of issuance of Form-I Notice dated 30.06.2006 and lapse of morethan seven years from the date of registering the sale deed by the appellant. Further, what is important to see here is that the second respondent had passed the impugned order without any jurisdiction.

17 In view of the discussions held above, we are of the considered view, the order passed by the learned single judge on 03.01.2017 in W.P.No.42850 of 2016, warrants interference.

18 In the result, the writ appeal is allowed by setting aside the order passed by the learned single judge in

WP.No.42850 of 2016 on 03.01.2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Special Deputy Collector (Stamps),
Room No.311, 3rd Floor,
Office of the District Collector,
Salem - 636 001,
Salem District.
2. The Sub-Registrar,
Sub-Registrar Office,
Tiruchengode - 637 211,
Namakkal District.

+ 1 cc to Mr.N.Manokaran Advocate,SR.84012
+ 1 cc to The Govt.Pleader, SR.84192

W.A.No.640 of 2017 and C.M.P.No.8854 of 2017

rsi(co)
nr 26/12/2017

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