IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.No.18649 of 2017
and
W.M.P.No.20186 of 2017

M.Vignesh ... Petitioner

vs.

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

2. The Joint-II Sub Registrar,
Namakkal. ...Respondents

PRAYER:
Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to calling for the records of the 1st respondent in C.P.No.887/2016/NKL-II dated 21.06.2017 and quash the same and further direct the respondents to return the registered Sale Certificate bearing Document No.1810/2016.

For Petitioner : Mr.I.Abrar Md Abdullah

For Respondents: Mr.E.Balamurugan,
Additional Government Pleader.

O R D E R

The petitioner is aggrieved against the final notice by the first respondent dated 21.06.2017 calling upon the petitioner to pay the deficit stamp duty of Rs.3,54,330/- for the purpose of releasing the subject matter document. The petitioner presented the Sales Certificate for registration before the second respondent and the same was registered as Document No.1810/2016. The proceedings under Section 47-A of the Indian Stamp Act was initiated by issuing a notice in Form-I under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, on 30.05.2016 indicating the deficit stamp duty of Rs.3,54,330/-.

2. Mr.I.Abrar Md Abdullah, learned counsel appearing for

the petitioner contended that the impugned proceedings is liable to be set aside both on the ground of limitation as well as on the merits of the matter. It is his contention that as per Rule 7 of the Tamil Nadu Stamp Act (Prevention of Undervaluation of Instruments) Rules, 1968, the first respondent should pass the final order within three months from the date of issue of Form-I notice and in the absence of any such final order passed so far, the impugned proceedings cannot be sustained as the same is barred by limitation. Even otherwise, the learned counsel contended that since it is a sales certificate, the amount quoted in the certificate alone should be taken into consideration and not the market value. In support of his contention with regard to the limitation point, the learned counsel relied on the recent decision of this Court reported in 2017(5) CTC 173 (G.Mary Chellathai v. Tamil Nadu Inspector General of Registration & Principal Revenue Authority).

3. The second respondent filed a counter affidavit, wherein it is stated that Form-I notice was issued to the petitioner on 30.05.2016 directing the petitioner to appear for enquiry on 13.06.2016 and that the petitioner also participated in the enquiry and submitted his written explanation. It is further stated that after considering the explanation submitted by the petitioner, the first respondent passed the present impugned order on 21.06.2017.

4. Learned Additional Government Pleader reiterated the contention raised in the counter affidavit and submitted that the impugned proceedings need not be proceeded with.

5. The question as to whether the first respondent is entitled to pass the final order at any point of time after issuance of Form-I notice as he wishes is no more res integra in view of the recent decision of this Court reported in 2017(5) CTC 173 (G.Mary Chellathai v. Tamil Nadu Inspector General of Registration & Principal Revenue Authority) wherein the learned Judge, after noting the earlier decision of this Court made in 2012(1) MWN (Civil) 126 (K.Vijayalakshmi v. Chief Controlling Revenue Authority-cum-Inspector General of Registration) and 2008(3)CTC 614 (State Coffee v. State of Tamil Nadu) observed that non-completion of the proceedings within a period of three months as mandated by Rule 7 would vitiate the entire proceedings. Paragraph Nos.15 to 18 of the order passed by the learned Judge are extracted hereunder for immediate and ready reference.

> 15. Mr.K.Bijay Sundar, learned counsel appearing for the appellants would invite my attention to Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, and contend that it is incumbent upon the Original Authority, namely the 2nd respondent to conclude the proceedings and pass final

orders within a period of three months from the date of the 1st notice. He would also contend that the said requirement is mandatory and any violation would result in the entire proceedings being vitiated. On the other hand, Mr.Venugopal, learned Special Government Pleader would submit that the requirement cannot be said to be mandatory and in any event, the delay was occasioned due to administrative reasons and hence the same cannot be taken as a vitiating factor. Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules, 1968, reads as follows:-

> "7. Final order determining the market value:-
>
> (1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after careful consideration of all the relevant factors and evidence available with him pass an order within three months from the date of first notice determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any.
>
> (2) A copy of the order shall be communicated to the registering officer concerned for his record.
>
> (3) The difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under Sub-section (2) or sub-section (3) of section 47-A.
>
> (4) The Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under section 47-A, give a certificate in Form III by endorsement on the instrument."

16. A reading of the above Rule would make it clear that a duty is imposed on the Original Authority, namely the Deputy Collector (Stamps) to pass a final order within a period of three months from the date of the 1st notice. The 1st notice is the Form I notice. From the order of the 2nd respondent dated 13.06.2014,

it is seen that the Form I notice was issued on 09.12.2013 and the period of three months which is to be reckoned from the said date, expires on 09.03.2014. Admittedly, the final order was passed on 13.06.2014, which is well beyond the period of three months prescribed under the Rules.

17. In Tata Coffee v. State of Tamil Nadu, reported in 2008 (3) CTC 614, this Court, after elaborately discussing the procedure to be followed by the Authorities under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, has observed as follows:

> "2. As it is stated above the procedure for such suo motu power is also contemplated in Rules 4 to 7 of the Rules, however it is also relevant note that in respect of the powers of the Collector to conduct enquiry under Section 47A (2) and also in respect of the time within which of the registering authority should refer the matter for determination for market value to the Collector, nothing stipulated under the Act, either Under Section 47 A (1) or 47 A(2), even though the Rules as stated above namely Rules 4,5,6 and 7 the Collector is bound to give 21 days notice while asking for representation in Form-1: the Collector, after assessment of the provisional market value while sending Form 2, can fix the date of its choice calling for objection in respect of provisional market value, the Collector has pass final order determining the market value, within three months from the date of 1st notice namely notice in Form I."

18. The above decision of this Court was cited and followed in K.Vijayalakshmi v. Chief Controlling Revenue Authority cum Inspector Genral of Registration, reported in 2012 (3) LW 27, Honble Mr.Justice B.Rajendran, in the said decision had, after referring to Tata Coffee v. State of Tamil Nadu, cited supra, concluded that the non completion of the proceedings within a period of three months as mandated by Rule 7 would vitiate the entire proceedings. Therefore, the second question has also to be necessarily answered in favour of the appellants.

6. In this case, there is no dispute to the fact that Form-

I notice was issued on 30.05.2016 and in fact, the present impugned proceedings, that too, styled as final notice itself came to be issued only on 21.06.2017. Therefore, it is evident that after issuance of Form-I notice on 30.05.2016, the first respondent has not passed the final order within three months as required under the above said Rule 7. Therefore, on this ground alone, I am inclined to set aside the impugned order without going into the other question raised by the petitioner on merits. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the respondents are directed to return the subject matter document to the petitioner within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

// True Copy//

Sub Assistant Registrar

vsi

To

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

2. The Joint-II Sub Registrar,
   Namakkal.

+1cc to Mr.I.Abram Md.Abdullah, Advocate SR.No.79424
+1cc to Government Pleader SR.No.80152

W.P.No.18649 of 2017

GN(27/11/2017)