IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2017

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.31343 of 2013
and
MP.No.1 of 2013

1.C.Manoharan
2.Mrs.M.Alamelumangai
3.Mrs.V.Yogam ...Petitioners

.. Vs ..

1.The District Registrar,
Office of the District Registrar,
State Bank Road,
Mayiladuthurai, Nagapattinam.

2.Joint Sub-Registrar No.2,
Office of Joint Sub-Registrar No.2,
Mahadhna Street,
Mayiladuthurai,
Nagapattinam District.

3.The Special Deputy Collector (Stamps),
Office of the District Collector,
Tanjore - 613 001. ..Respondents

Writ Petition under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the first respondent in O.Mu.No.2018/va/2013 dated 23.5.2013 and that of the 2nd respondent's Notice dated 28.5.2013 and his proceedings in No.112/2013 dated 21.6.2013 and quash the same and further direct the respondents to return the Sale Deed dated 12.11.2012 bearing Document No.1188 of 2013 to the petitioners.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.S.Diwakar,
Special Government Pleader

O R D E R

The petitioner has filed the present Writ Petition for the relief stated above.

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2. It is submitted by the learned counsel for the petitioners that the petitioners have jointly purchased wet lands (Nanja lands) measuring 0.51.5 Ares (1 Acre 27 cents) along with agricultural produce storage shed measuring an extent of 1 cent situate at Old Survey No.167/3, New Survey No.167/3B in Nallathukudi Village, Mayiladuthurai Taluk, by registered Sale Deed dated 12.11.2012, which was registered before the second respondent as Document No.P-79. The total sale consideration was Rs.5,75,000/- and paid stamp duty for Rs.5,75,000/-. Since the 2nd respondent did not return the document even after two weeks from the date of registration, the petitioner approached him several times and requested him to release the document. But, he did not do so. In view of non-releasing of the Sale Deed by the second respondent, the petitioners were constrained to issue a Lawyer's Notice on 29.5.2013 to the second respondent. In the said notice, it was clearly stated that the Guideline value of the property sold under P-79 was Rs.3,00,000/- per Acre and they had accordingly paid stamp duty and registration fees. Since the document was not released for more than 7 months, the petitioners offered to pay stamp duty on a market value of Rs.6,00,000/- per acre and pay stamp duty for the one cent in which shed is put up on square foot rate in order to get the Sale Deed. As there was no response from the second respondent, the petitioners issued another Lawyer's Notice on 22.6.2013 reiterating the position of law and also reminding the second respondent that he cannot retain the Sale Deed indefinitely. The said notice was also sent to the first respondent/Inspector General of Registration, Chennai and Deputy Inspector General of Registration, Tanjore. Thereafter, a reply was sent by the second respondent stating that the Mortgage Deed executed by the predecessor-in-interest of the petitioners, the market value of the property and another extent were shown as Rs.20,88,000/- and Predecessor-in-Interest had converted the land into sites in the year 2011 itself and therefore, the matter was referred to the first respondent to ascertain as to whether the market value of the property is to be taken on the basis of wet lands or house sites and sought for his opinion. The first respondent instructed the second respondent to value the property at Rs.90/- per sq.ft. and in case, the petitioners did not accept the said valuation, he was directed to refer the matter under Section 47A(1) of the Indian Stamp Act. The second respondent further stated that the pending Document No.P-79 was assigned with regular number as Document No.1188 of 2013 and he issued a Demand Notice dated 28.5.2013 asking the petitioners to pay a deficit Stamp Duty of Rs.3,22,909/- and Registration Charges at Rs.46,140/- and in all, the petitioners were asked to pay Rs.3,69,049/- and receive the document from him. Thereafter, the matter was referred under Section 47A(1) of the Stamp Act on 21.6.2013. On receipt of such reply dated 21.6.2013, the petitioners issued a rejoinder through their lawyer on 9.7.2013. In their

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rejoinder, the petitioners had categorically stated that the market value of the lands cannot be taken on the basis of the value mentioned in the Mortgage Deed since the borrower with an intention to raise more loan used to give inflated figure and as per the Circular dated 8.8.1988 issued by the Inspector General of Registration, the market value fo the land can be fixed on the basis of value given in Sale, Exchange and Gift Deed and not on the basis of Mortgage Deed. It is further reiterated that the lands sold under the Sale Deed dated 12.11.2012 are continued to be wet lands and the petitioners have raised trees also. The petitioners are also cultivating the same. The shed in the lands is only to store the agricultural produce and also keep fertilizers, pesticides, tools and implements for agricultural operation. The petitioners also state that they have not received the communication dated 23.5.2013 stated to have been sent by the second respondent.

3. It is further submitted by the learned counsel for the petitioner that the second respondent cannot fix the market value of the wet lands sold under the Sale Deed P-79 (Document No.1188 of 2013) as if the same is a house site. There is no evidence to show that the lands were converted into house sites. In fact, the District Registrar, on inspection, found that the lands sold under the document are continued to be wet lands. The Kist Receipts, Chitta and Patta produced by the petitioners also show that the same is only wet lands i.e. Cultivable lands. By no stretch of imagination, the respondents can term the wet lands as house sites and fix the market value as house sites. Hence, the very procedure adopted by the respondents 1 and 2 is bad in law. Hence, the orders of the respondents are liable to be quashed.

4. It is also submitted by the learned counsel for the petitioner that though no time limit is prescribed for referring the matter under Section 47(A)(1) of the Indian Stamp Act, the Registering Authority cannot withhold the document for an unlimited period and refer it for its valuation at any time he chooses. Thus, the action of the respondents 1 and 2 referring the document to the Special Deputy Collector (Stamps), the third respondent herein under Section 47 A (1) of the Indian Stamp Act after seven months is one without jurisdiction and the same is barred by limitation. A Division Bench of this Court has categorically held in the judgment rendered in the District Collector, Erode v. Ponnusamy, reported in 2001 (2) MLJ 458 that if the document is found to be undervalued the Registering Officer may refer it to the Collector for adjudication within 3 weeks from the date of registration. In support of this contention, the learned counsel for the petitioner relied on the Judgment of a this Court in the case of S.Sivasubramaniam vs. Chief Controlling Revenue Authority-cum Inspector General of Registration reported in 2013 (6) CTC 295 and the Judgment of

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a Full Bench of this Court in the case of G.Karmegam and others vs. the Joint Sub-Registrar IV, Madurai, reported in 2007 (5) CTC 737. On this ground also, the impugned notice and proceedings are liable to be quashed.

5. It is also submitted by the learned counsel for the petitioner that the Registration of document is a sine qua non for referring the matter to the Collector, if the Registering Officer believes that the property is undervalued. No jurisdiction has been conferred on the Registering Officer to refuse the registration, even if the document is undervalued. Besides, there is no authority for him to call upon the person concerned to pay additional stamp duty. Collector is the prescribed authority to determine the market value, after affording a reasonable opportunity of hearing the parties. The Registering Officer cannot make a roving enquiry to ascertain the correct market vlaue fo the property by examining the parties. However, it is expected that he has to give reasons for his conclusion for undervaluation, however short they may be. Hence, according to the learned counsel for the petitioner, the impugned orders shall be quashed.

6. On the contrary, assailing the allegations of the petitioners, the second respondent has filed a counter affidavit. In the counter affidavit, it is stated that a Deed of Sale dated 12.11.2012 executed by one S.Balasubramanian in favour of the petitioners conveying the land measuring Hec.0.51.5 and the building constructed thereon in Nallathukudi Village for a consideration of Rs.5,75,000/- and declaring the market value as Rs.5,85,000/- was present for registration on 12.11.2012. It was found that the time of examining the value of the property that the property has already been declared as a House Site and a building has also been constructed thereon as per the Mortgage Deed dated 9.2.2011 executed by the said S.Balasubrmanian, in favour of Mayavaram Co-op.Urban Bank Ltd., vide document No.274 of 2011. But, the property in the said sale deed in question was described as wet land and the property has been valued as that of an agricultural land. Hence, the 2nd respondent had reasons to believe that the market value of the property has not been truly set-forth in the document and decided to refer the matter o the Collector/third respondent herein for determination of market vlaue under Section 47-A(1) of the Indian Stamp Act, 1989 and the document was kept pending as No.P 79/2012 to consider which value is to be taken as the Guideline value for the property. The second respondent has made a reference to fix the guideline value of the property and the first respondent has ordered to adopt the value of Rs.90/- per sq.ft. which is fixed as Guideline value for Nallathukudi Road as the property is also situated abutting the Nallathukudi Road. Immediately, the petitioners were informed by the letter dated 28.5.2013 that they shall remit the difference in stamp duty and registration fees based on

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the Guideline value of Rs.90/- per sq.ft., in the office of the second respondent itself. As there was no response from the petitioners, the documents was registered as No.1188/2013 and referred to the 3rd respondent for determination of market value under Section 47-A(1) of the Act on 21.6.2013. The market value declared in the mortgage deed has not at all been taken into consideration as alleged by the petitioners. The guideline value of Rs.90/- per sq.ft. fixed for similar properties situated at Nallathukudi Road alone has been taken as the Guideline Value which can be disputed before the third respondent who is the statutory authority to determine the market value under Section 47-A of the Act. With regard to the contention of the petitioners that the document should be referred under section 47A(1) of the Indian Stamp Act within three weeks from the date of registration, the second respondent contended that it has not been provided in the Indian Stamp act that no document could be referred under Section 47A(1) after three weeks from the date of registration. In support of this contention, the respondent also relies on the Judgment of a Full Bench of this Court in the case of G.Karmegam and others vs. the Joint Sub-Registrar IV, Madurai, reported in 2007 (5) CTC 737 (supra) wherein, it has been held that Court cannot fix or suggest a time frame to a statute in the normal course if that statute is silent with regard to it and no guidelines, in this regard shall be introduced by the Court. Hence, the petitioner's claim that the second respondent has no jurisdiction to refer the document after 21 days from the date of registration is not tenable. Hence, the Writ Petition deserves to be dismissed.

7. Heard the learned counsel for the petitioners and the learned Special Government Pleader for the respondents.

8. Admittedly, Sale Deed dated 12.11.2012 was presented before the second respondent for registration and the said document was assigned P.No.79/2012 and the same was kept pending for ascertaining the true guideline value of the property. Thereafter, the second respondent made a reference to fix the guideline value of the property and the first respondent has ordered to adopt the value of Rs.90/- per sq.ft. which is fixed as Guideline Value for Nallathukudi Road as the property is also situated abutting the Nallthukudi Road. Immediately, the petitioners were informed by letter dated 28.5.2013 to remit the difference in stamp duty and registration fees based on the guideline value of Rs.90/- per sq.ft,. As there was no response from the petitioners, the document was registered as Document No.1188/2013 and referred to the third respondent for determination of market value under Section 47-A(1) of the Indian Stamp Act on 21.6.2013.

9. In Ponnusamy v. District Collector, Erode, 1999 (2) LW 231, this Court had occasion to consider the scope of Section 47-A of the Indian Stamp Act. The relevant Paragraphs are usefully extracted hereunder:-

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> "96. Whenever a document is registered and referred to the Collector under Section 47-A of the Indian Stamp Act read with Tamil Nadu Stamp (Prevention of Under-valuation of Instruments) Rules in the absence of statutory Rules, the Registering Authority shall forthwith release the original documents with an endorsement that a reference under Section 47-A is pending in respect of the said instruments.
>
> 97. At the time of release of original documents, the Registering Authority shall intimate the parties to the instruments that a reference is being made under Section 47-A of the Indian Stamp Act read with Tamil Nadu Stamp (Prevention of Under-valuation of Instruments) Rules."

The said matter went on appeal. In Appeal, the above said view of this Court has been confirmed by a Division Bench of this in District Collector, Erode v. M.Ponnusamy [2001 (2) CTC 449].

10. Following the above said decision and considering the facts of the present case, this Court permits the petitioner to make an application before the third respondent seeking to return the document registered as Document No.1188/2013. On receipt of such application, the Special Deputy Collector (Stamps)/the third respondent is directed to consider the application and pass appropriate orders on merits and in accordance with law within a period of 8 weeks from the date of receipt of a copy of this order. It is open to the respondents to assess the true market value and recover dues, if any, towards stamp duty and registration fees once the market value is determined. If the petitioners are aggrieved on the orders of the third respondent to be passed in determining the market value, they can approach the appellate authority.

11. With the above direction, the Writ Petition is disposed of. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To
1.The District Registrar,
Office of the District Registrar,
State Bank Road,
Mayiladuthurai, Nagapattinam.

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2.Joint Sub-Registrar No.2,
Office of Joint Sub-Registrar No.2,
Mahadhna Street,
Mayiladuthurai,
Nagapattinam District.

3.The Special Deputy Collector (Stamps),
Office of the District Collector,
Tanjore - 613 001.

+1 cc to Mr.A.Muthukumar,advocate,sr.4251

+1 cc to Govt.Pleader,sr.3975.

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