

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.9937 of 2011

and

M.P.No.1 of 2011

K.K.Thirumurugan

.. Petitioner

vs.

1.The Inspector General of Registration,
O/o.I.G.of Registration,
Santhome High Road,
Mylapore, Chennai - 4.

2.The Assistant Inspector General of Registration,
Chennai South,
Saidapet, Chennai - 600 015.

3.The Sub Registrar,
O/o.Sub-Registrar,
Pallavaram,
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to refund excess amount paid by the petitioner towards Stamp Duty and Registration Charges a sum of Rs.14,95,588/- together with interest to the petitioner within the time limit to be fixed by this Court.

For petitioner : Mr.M.Muthappan

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

ORDER

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

2. The learned counsel for the petitioner submitted that, earlier, the petitioner filed a Writ Petition in W.P.No.29226 of 2010 seeking for issuance of a mandamus directing the respondents to accept the value of the Sale Certificate dated 28.10.2010 issued in favour of the petitioner presented on

4.11.2010 and to register the document and return the same with respect to the property comprised in S.No.166/3B3 part in Plot No.16 to 23 of PMD Nagar admeasuring 18,349 sq.ft.of land with structures constructed thereon in 122, Kovilambakkam Village, Vadakkupatti Road, Saidapet Taluk, now sholinganallur Taluk, Kanceehuram District. By order dated 6.1.2011, the said Writ Petition was allowed by this Court. Aggrieved by the order, the Department preferred Writ Appeal in W.A.No.1749 of 2011, which was dismissed vide Judgment dated 27.11.2014 by a Division Bench of this Court, while confirming the order dated 6.1.2011 passed in W.P.No.29226 of 2010. However, the respondent department preferred Review Application against the aforesaid Judgement dated 27.11.2014. In the meantime, the petitioner paid the excess stamp duty and registration charges under protest, without prejudice to the order to be passed in the Review Application and thereafter, the subject document was returned after registration. It is further submitted by the learned counsel for the petitioner that the respondents are not entitled to demand the stamp duty on the market value of the property since the property was purchased in a Public Auction Sale and the question of stamp duty on the market value does not arise and therefore, the petitioner is entitled to get refund of a sum of R.14,95,588/- being the excess amount paid by the petitioner. Hence, the petitioner has filed the present Writ Petition. It is further submitted by the learned counsel for the petitioner that the petitioner is even ready to furnish a bank guarantee for the excess stamp amount and the registration charges paid by the petitioner in favour of the third respondent without prejudice to the right of the petitioner in the Review Application filed by the petitioner in the event of refunding the excess stamp duty and registration charges.

3. On the contrary, the learned Special Government Pleader for the respondents submitted that though the order dated 6.1.2011 passed in W.P.No.29226 of 2010 which was filed by the petitioner was allowed by a Division Bench of this Court in W.A.No.1749 of 2011, by judgment dated 17.11.2014, and the respondent department has filed Review Application and the same is pending adjudication. At this juncture, the relief sought in the present Writ Petition cannot be granted. If, ultimately, the Review Application is allowed, the department will find it difficult to recover such amount from the petitioner.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

5. Considering the facts and circumstances of the case and the submission made by the learned counsel for the petitioner, by safeguarding the interest of the respondent

department pending Review Application, I am inclined to pass the following orders:-

(i) The writ petitioner is directed to approach the third respondent and furnish a bank guarantee in favour of the third respondent for the amount liable to be refunded, within a period of two weeks from the date of receipt of a copy of this order.

(ii) In view of the judgment rendered in W.A.No.1749 of 2011 dated 27.11.2014, the third respondent is directed to refund the excess amount paid by the petitioner for the aforesaid Sale Certificate dated 28.10.2010 issued in favour of the petitioner, on furnishing a bank guarantee, within a period of three months from the date of receipt of bank guarantee. This order of refund is subject to the outcome of the pending Review Application.

6. The Writ Petition is disposed of, with the above direction. Connected Miscellaneous Petition is closed. No costs.

sd/

Assistant Registrar (CO)

/true copy/

Sub Assistant Registrar

asvm
TO

1. The Inspector General of Registration,
O/o.I.G.of Registration,
Santhome High Road,
Mylapore, Chennai - 4.

2. The Assistant Inspector
General of Registration,
Chennai South,
Saidapet, Chennai - 600 015.

3. The Sub Registrar,
O/o.Sub-Registrar,
Pallavaram,
Chennai.

+1cc to Mr.M.Muthappan, Advocate SR.No.9399

W.P.No.9937 of 2011
and
M.P.No.1 of 2011

SV (CO)
GN(08/03/2017)