IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.12171 of 2004

Bharat Petroleum Corporation Ltd.,
1, Ranganathan Gardens,
Off. 11th Main Road,
Anna Nagar, Chennai 600 040. ... Petitioner

vs.

1. The Chief Revenue Control Authority
and Inspector General of Registration,
No.100, Santhome High Road,
Chennai 600 028.

2. The District Revenue Inspector (Stamps),
District Collector Office,
Rajaji Salai,
Chennai 600 001.

3. The Sub-Registrar,
Sub-Registrar's Office,
Central Madras,
Chennai 600 018. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent under Reference No.59283/N1/2003, dated 30.01.2004, quash the same and consequently direct the 1st respondent to dispose of the Appeal preferred by the petitioner Corporation in accordance with law.

For Petitioner : Mr.O.R.Santhanakrishnan

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the proceedings of the 1st respondent under Reference No.59283/N1/2003, dated 30.01.2004 and for a consequential direction to the 1st respondent to dispose of the Appeal preferred by their Corporation in accordance with law.

2. According to the petitioner-Corporation, they purchased a property ad-measuring an extent of 5,976 sq.ft. vacant land from one D.M.Rajan for sale consideration of Rs.71,71,200/-. The Sale Deed was drawn on stamp papers of the value of Rs.9,32,256/- calculated at 13% on the aforesaid sale price as applicable and the same was presented for registration before the Sub-Registrar of Central Madras on 20.01.1997 with the requisite registration fee of Rs.71,745/-. The Sub-Registrar registered the Sale Deed by allotting P.No.8/97 and the sale consideration of Rs.71,71,200/- was duly ratified by the appropriate authority expressing his No-Objection to the transfer of the property in favour of the petitioner Corporation and the document was re-numbered as 569/1999.

3. When the petitioner-Corporation approached the 3rd respondent to get back the Original Sale Deed, the 3rd respondent refused to release the same, instead, he directed the petitioner to pay additional stamp duty of Rs.1,16,532/- to get back the original instrument, lest the matter would be referred to the Deputy Collector (Stamps) for under-valuation of stamps. Accordingly, the matter was referred to the Special Deputy Collector (Stamps), Chennai under Section 47-A(1) read with Rules 4 to 6 of the Tamil Nadu Stamps (Prevention of Under-valuation of Instruments) Rules, 1968 (in short 'Rules') for proper adjudication. Thereafter, the petitioner was served with notice in Form No.1 under Rule 4 of the Rules for immediate payment of the deficit payment or else file objections within 21 days of such notice with supporting documents. Aggrieved by the original assessment, the petitioner-Corporation made oral representations during the enquiry proceedings.

4. Finally, an order dated 23.09.2003 was passed by the 2nd respondent stating that the property, which is the subject matter of the Writ Petition, is under-valued to the extent of Rs.1,16,532/- and called upon the petitioner-Corporation to pay the said sum within two months, failing which interest at 2% will be levied. Aggrieved by the said order, the petitioner-Corporation filed an Appeal before the 1st respondent on 01.12.2003. It is further stated by the petitioner that orders were purported to have been passed by the 1st respondent stating that the Appeal cannot be entertained by the 1st respondent, as the same is time-barred and a communication dated 23.03.2004 was addressed by the 2nd respondent to the petitioner-Corporation stating that the Appeal preferred by the petitioner-Corporation has been rejected by an order dated 30.01.2004 under Reference No.59283/N1/2003 by the 1st respondent. Challenging the same, the petitioner is before this Court.

5. The 3rd respondent filed counter affidavit stating that the value set forth in the Sale Deed is at the rate of Rs.1,200/- per sq. ft. as against Rs.1,350/- per sq. ft. as per

the guideline value. Hence, the 3rd respondent referred the document under Section 47-A(1) of the Indian Stamp Act, 1899 for determination of true market value. The 2nd respondent, vide proceedings No.97/93, dated 23.09.2003 determined the market value at Rs.1,350/- per sq.ft. and demanded payment of deficit stamp duty of Rs.1,16,532/-. Challenging the said order, the petitioner-Corporation filed an Appeal dated 01.12.2003 before the 1st respondent under sub-section (5) of Section 47-A of the Indian Stamp Act, 1899. Since the petitioner-Corporation had not filed the said appeal within two months from the date of the order of the 2nd respondent as per sub-rule (1) of Rule 9 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968 and that the appeal is not in accordance with Rule 9 (2) of the Rules, the 1st respondent rejected the appeal.

6. Learned counsel for the petitioner contended that the petitioner purchased the property in question by paying due stamp duty and there is no under-valuation. Unfortunately, an erroneous order was passed by the original authority on 23.09.2003 and the said order was resisted by the petitioner on 03.10.2003. According to the learned counsel, the time limit to prefer an appeal expired only on 02.12.2003 and that the petitioner filed an appeal on 01.12.2003 and the same was received on 02.12.2003. Hence, he contended that there is no delay in preferring the appeal and that the impugned order is erroneous.

7. On the other hand, learned Government Advocate appearing for the respondents reiterated the stand taken in the counter affidavit and submitted that the time limit has got to be reckoned from the date of the order passed by the original authority and not from the date of receipt of the order. According to him, as no time limit is prescribed for extension of time, the order of rejection is perfectly valid.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. There is no dispute with regard to the date of purchase of the property that has been presented for registration by the petitioner. According to the original authority, the Sale Deed is under-valued, for which, higher stamp duty has got to be paid by the petitioner. Aggrieved by the said order dated 23.09.2003, the petitioner preferred an appeal on 01.12.2003 and the same was received by the Appellate Authority on 02.12.2003.

10. On a reading of the relevant provisions of the Indian Stamp Act, it appears that the period of limitation has got to be considered only from the date of the order, which is not the spirit of the provision. If the contention of the respondents

has got to be accepted, the petitioner ought to have been asked to appear before the Original Authority and produce a copy of the order on the same date. If the order had been despatched, the transmission period needs to be excluded for the purpose of limitation.

11. A reading of the order of the Original Authority namely, the District Revenue Officer is very clear that the order has not been served on the petitioner, in person. The endorsement makes it very clear that it has been despatched from the Office. There is no whisper that the order has been given to the petitioner on 23.09.2003 and the fact that the petitioner has received the order on 03.10.2003 is also not disputed.

12. A reading of Section 45(5) together with Rule 9(1) of the Rules makes it clear that the period of limitation has got to be counted from the date of receipt of the order by the aggrieved person and the limitation runs from that date and not from the date of the order. Even if the contention of the respondents is acceptable, it still creates hurdle to the applicant, as there are chances that the order to be despatched, may take more than a month's time from the date of signing the order.

13. The principle of harmonious construction has got to be applied for Section 47(5) r/w Rule 9(1) for the purpose of computing limitation and the limitation commences only from the date of receipt of the order by the applicant. Hence, there is a prima facie case. I agree with the contentions of the petitioner and the Writ Petition is allowed by setting aside the order dated 30.01.2004 passed by the 1st respondent.

14. As the appeal is pending, the Appellate Authority is directed to take up the appeal and decide the same within a period of one month from the date of receipt of the order, after giving due opportunity to the petitioner and the petitioner shall appear before the Appellate Authority on the specified date of personal hearing. Once the appeal is disposed of, the Authority concerned shall ensure return of the original document, after due compliance in accordance with law, within 15 days from the date of receipt of a copy of this order to the petitioner.

No costs. Consequently, connected W.P.M.P.No.14234 of 2004 is closed.

aeb

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

1. The Chief Revenue Control Authority
and Inspector General of Registration,
No.100, Santhome High Road,
Chennai 600 028.

2. The District Revenue Inspector (Stamps),
District Collector Office,
Rajaji Salai,
Chennai 600 001.

3. The Sub-Registrar,
Sub-Registrar's Office,
Central Madras,
Chennai 600 018.

+1cc to Government Pleader Sr.67945
+1cc to M/S O.R.Santhanakrishnan, Advocate Sr.66542

Order in
W.P.No.12171 of 2004

***(CO)
RVR 14/11/2017