IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2017

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. No. 30447 and 30448 of 2016
and
W.M.P.No. 26398 and 38466 of 2016

1. D. Shivakumaran
2. Dr. Gitanjali Sivakumar ...Petitioners in both the WPs

Versus

1. The District Revenue Officer (Stamps)
District Collectorate
5th Floor, Singaravelan Maligai
32, Rajaji Road, Chennai - 600 001

2. The Sub-Registrar
Chennai North, Joint- I
Rajaji Road, Chennai - 600 001 ...Respondents in both WPs

WP No. 30447 of 2016:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the preliminary order in Na.Ka.Si.P1.No.29/14/A3 dated 30.11.2015 and consequential final order in Si.P.No.29/14/A3 dated 20.06.2016 from the file of the first respondent, quash the same and further direct the first respondent to grant an opportunity of personal hearing to enable the petitioners to substantiate their case regarding the valuation of the property as stated in the sale deed in document No. 121 of 2014 on the file of the second respondent.

WP No. 30448 of 2016:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to return the sale deed dated 14.03.2014 registered as document No.121 of 2014 on the file of the second respondent by making necessary endorsement in the said document regarding the pendency of the proceedings Under Section 47-A (1) of the Indian Stamp Act and the Tamil Nadu Stamp "Prevention of undervaluation of Instruments" Rules, 1968

For Petitioners	:	Mr. S. Mukunth for Mr. S. Mayilnathan in both the Writ Petitions
For Respondents	:	Mr. A. Kumar Special Government Pleader in both the Writ Petitions

COMMON ORDER

The petitioners in these two writ petitions as well as the respondents are one and the same. The issue involved in these writ petitions are inter-connected and therefore, with the consent of counsel for both sides, they are taken up together for final disposal.

2. The first writ petition being WP No. 30447 of 2016 has been filed by the petitioners challenging the proceedings dated 30.11.2015 and the consequential order dated 20.06.2016 of the first respondent. The second writ petition being WP No. 30448 of 2016 has been filed by the petitioners seeking to issue a Writ of Mandamus directing the respondents to return the sale deed dated 14.03.2014 registered as document No.121 of 2014 on the file of the second respondent by making necessary endorsement in the said document regarding the pendency of the proceedings Under Section 47-A (1) of the Indian Stamp Act and the Tamil Nadu Stamp "Prevention of undervaluation of Instruments" Rules, 1968.

2. It is the case of the petitioners that they have intended to jointly purchase the land measuring an extent of 2126 square feet or thereabouts together with a building thereon from M/s. Omega Shipping Private Limited. The vendors have agreed for sale of the aforesaid land and building for a total sale consideration of Rs.65,50,000/- for which a stamp duty of Rs.4,58,500/- was payable by the petitioners. Accordingly, the petitioners presented the sale deed for registration with the second respondent on 14.03.2014 and it was registered as document No. 121 of 2014. However, the second respondent refused to return the sale deed on the ground that it has to be examined as to whether the petitioners have properly valued the stamp duty payable on the instrument. In other words, the second respondent wanted to determine the correct market value of the property covered in the sale deed and the stamp duty payable thereof. For such purpose, the second respondent has forwarded the sale deed to the first respondent, who is the competent authority to determine the market value and the stamp duty payable by the petiitioners. Thereafter, the first

respondent, by a communication dated 28.01.2015 in Form I called upon the petitioners to produce necessary documentary evidence to substantiate the market value of the property covered in the sale deed dated 14.03.2014 inter alia indicating that the guideline value of the property is Rs.16,500/- per square feet and the undivided share of the property is Rs.1,04,86,700/-. It was further mentioned that the petitioners are liable to pay a deficit stamp duty of Rs.2,75,569/-. Thereafter, the first respondent sent another communication dated 30.11.2015 in Form II whereby a preliminary order has been passed by the first respondent. Thereafter, the first respondent passed the final order dated 20.06.2015 directing the petitioners to pay the deficit stamp duty of Rs.2,75,569/-.

3. The learned counsel for the petitioners would mainly contend that in response to the notice dated 28.01.2015 in Form I, the petitioners have submitted an appeal/objection to the first respondent on 26.02.2015 with a request to afford them an opportunity of personal hearing and by fixing a date and time for their appearance. However, the first respondent has passed the preliminary order dated 30.11.2015 as if the petitioners did not raise any objection to the notice dated 28.01.2015. According to the learned counsel for the petitioners, even the preliminary order dated 30.11.2015 was received by them on 09.12.2015 and immediately, they have sent a letter dated 14.12.2015 specifically stating that they have already sent their objection on 26.02.2015 to the notice dated 28.01.2015 in Form I. Inspite of the same, the first respondent has passed the final orderr dated 20.06.2016 determining the deficit stamp duty payable by the petitioners. Therefore, the learned counsel for the petitioners would contend that the impugned orders dated 30.11.2015 as well as the final order dated 20.06.2016 have been passed in violation of the principles of natural justice and therefore, on that ground, the orders, which are impugned in WP No. 30447 of 2016, have to be set aside.

4. As regards the relief sought for in WP No. 30448 of 2016, the learned counsel for the petitioners, by placing reliance on the order passed by this Court in (P. Mahalingam and another vs. The Registrar of Documents, Registration Office, Thirumangalam, Madurai District and others) reported in 2008 (4) CTC 661 would contend that the registering authority is not entitled to impound the instrument after registration. If the registering authority entertains any doubt regarding the stamp duty paid on the instrument, the registered document has to be returned to the executor and thereafter, proceedings under Section 47-A(1) can be initiated for determination of the correct stamp duty payable on the instrument. By placing reliance on the above decision, the learned counsel for the

petitioners prayed for issuing a Mandamus as prayed for by the petitioners in WP No. 30448 of 2016.

5. On the contrary, the learned Special Government Pleader would contend that on 28.01.2015, the petitioners were called upon to attend an enquiry. The said notice was issued in Form I read with Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Even in the said notice, it was indicated that the petitioners have to pay a sum of Rs.2,75,569/- towards deficit stamp duty, however, the petitioners did not produce documents to the contra or responded to the notice. Since the petitioners did not raise any objection or filed documentary evidence, a preliminary order dated 30.11.2015 was passed and thereafter, the final order dated 20.06.2016 was passed affirming the demand made in the notice dated 28.01.2015 inter alia determining the deficit stamp duty payable by the petitioners. In such view of the matter, according to the learned Special Government Pleader for the respondents, the orders, which are impugned in WP No. 30447 of 2016 are legally sustainable and they are not in contravention to the principles of natural justice.

6. I heard the counsel for both sides and perused the materials placed for consideration. It is seen from the records that the first respondent sent a notice dated 28.01.2015 in Form I to the petitioners calling upon them to appear for an enquiry indicating the deficit stamp duty payable by them at Rs.2,75,569/- after deducting the stamp duty already paid by them on the instrument. On receipt of the same, the petitioners have sent their objections on 26.02.2015 which is available in page No. 12 of the typed set of papers. Such objection sent by the petitioners were also received by the office of the first respondent on 26.02.2015 itself as could be evident from the seal affixed thereon. However, the first respondent passed a preliminary order dated 30.11.2015 in Form II. In the preliminary order dated 30.11.2015, it was stated as though the petitioners did not raise any objections, when in fact, the petitioners have sent their objections on 26.02.2015 as mentioned above. Even for the preliminary order dated 30.11.2015, the petitioners have sent their objections on 14.12.2015. In the objections, it was specifically stated that they have already sent their objections on 26.02.2015 and the statement made in the preliminary order dated 30.11.2015 as though the petitioners have not raised any objections is not correct. Inspite of the above, the first respondent has passed the final order dated 20.06.2016 which is legally not sustainable. It is evident that the first respondent did not consider the objections raised by the petitioners in their objections/reply dated 26.02.2015 to the notice in Form I sent

on 28.01.2015. In fact, in the objections/reply dated 26.02.2015, the petitioners have specifically sought for affording an opportunity of personal hearing so as to justify their plea. Inspite of the same, the first respondent has not afforded an opportunity of hearing to the petitioners. Therefore, the orders, which are impugned in WP No. 30047 of 2016 cannot be legally sustained and the same are liable to be set aside as they are in contravention of principles of natural justice.

7. As regards the prayer in WP No. 30448 of 2016 is concerned, it is well settled principles of law that when once the document is registered on the basis that prima facie the document is valid in law as per the requirements under the Registration Act, it is the duty of the registering authority to release the documents after registration and thereafter refer the same to the Collector or the competent authority for determining the correct stamp duty payable on the instruments. This was also the view taken by this Court in the decision of this Court in (P. Mahalingam and another vs. The Registrar of Documents, Registration Office, Thirumangalam, Madurai District and others) reported in 2008 (4) CTC 661 which was relied on by the learned counsel for the petitioners. In the light of the above legal proposition of law, the prayer sought for in WP No. 30448 of 2016 has to be ordered as prayed for.

8. In the result, the orders which are impugned in WP No. 30447 of 2016 are set aside and WP No. 30447 of 2016 is ordered as prayed for. The first respondent is directed to afford sufficient opportunity of hearing to the petitioners to substantiate their plea and thereafter the first respondent shall pass orders on merits and in accordance with law. Similarly, WP No. 30448 of 2016 is allowed directing the respondents to forthwith release the sale deed dated 14.03.2014 registered as document No.121 of 2014 on the file of the second respondent by making necessary endorsement in the said document regarding the pendency of the proceedings Under Section 47-A (1) of the Indian Stamp Act and the Tamil Nadu Stamp "Prevention of undervaluation of Instruments" Rules, 1968 and as per the conditions imposed in the case reported in 2008 (4) CTC 661 as exdeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

rsh

Sub Assistant Registrar

To

1. The District Revenue Officer (Stamps)
   District Collectorate
   5th Floor, Singaravelan Maligai
   32, Rajaji Road, Chennai - 600 001

2. The Sub-Registrar
   Chennai North, Joint- I
   Rajaji Road, Chennai - 600 001

+2cc to Mr.Mayilnathan, Advocate, S.R.No.13651
+1cc to the Government Pleader, S.R.No.13564

WP No. 30447 & 30448/2016

MP(CO)
RS(27/03/2017)