

In the High Court of Judicature at Madras

Dated: 03.01.2017

Coram

The Honourable Mr.JUSTICE B.RAJENDRAN

W.P.No.42850 of 2016

and

WMP No.36750 of 2016

R.Muthusamy

..Petitioner

Vs

1.The Special Duty Collector (Stamps)

Room No.311, 3rd Floor,
Office of the District Collector,
Salem 638 001.

2.The Sub-Registrar,
Sub-Registrar Office,
Tiruchengode,
Namakkal District.

..Respondents

Prayer: Writ petition filed under Article 226 of the constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order made in Lr.No.73/2016 dated 02.11.2016-Serial No.7 issued by the second respondent, quash the same and consequently forbear the respondents from taking any action under Section 47A of the Indian Stamp Act in view of the judgment of this Court in Tata Coffee Ltd., (2008 (3) CTC 614) with regard to my sale deed dated 22.12.2005 (Doc.No.5887 of 2005) registered before the second respondent.

For Petitioner: Mr.N.Manokaran

For Respondents: Mr.A.Kumar

Special Government Pleader

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ORDER

The writ petition has been filed challenging the impugned order dated 02.11.2016-Serial No.7 issued by the second respondent.

2.According to the petitioner, he purchased the subject matter property by virtue of sale deed dated 22.12.2005 on the file of the second respondent executed by one T.V.Krishnan and

his sons. Further, he was directed to pay stamp duty at the time of registration by the second respondent to which he gave a representation dated 11.03.2012 disputing the contents of notice. For the said representation, there was no reply. Again after a lapse of 3 years and 3 months, the second respondent issued a notice dated 13.07.2015 with a direction to pay the deficit stamp duty to which the petitioner made a representation dated 27.07.2015 raising his objections. The second respondent without considering his representations, passed the impugned order without any enquiry or without serving Form I notice or Form II notice. Therefore, the impugned order is per se illegal. Further he relied on the decision of this court reported in 2012 (1) Madras Weekly Notes (Civil) 126, K.Vijayalakshmi vs The Chief Controlling Revenue Authority of Tamil Nadu cum Inspector General of Registration, for the proposition that the adjudicating authority has to serve Form Notice I and II and also seek the explanation. Further they would also contend that the final order served is not passed by the competent authority viz., the Collector whereas passed by the Sub Registrar. Therefore, it is illegal and the same is liable to be quashed.

3. When the matter came up for admission, this court mainly directed the Government Pleader to file documents showing whether Form I and Form II notice has been duly sent by the respondents and the same was acknowledged by the petitioner and if the acknowledgement is produced before this court, the petition would be dismissed with cost. Today when the matter is taken up, the learned Government Pleader brought to the notice of this court that Form -I notice has been sent to the petitioner by ordinary post and no acknowledgment is produced. Final notice has also been served which is also produced before the court by the petitioner. But at the same time, the learned counsel for the petitioner would contend that the final order is not still being passed. On instructions, the learned Government Pleader brought Form I notice has been sent to the petitioner by ordinary post no acknowledgment is produced. Final notice has also been sent which is also produced to the court by the petitioner. But at the same time, he would only contend that the final order is not still being passed. On instructions, the learned Government Pleader submits that since the Form I notice sent to the petitioner has not been acknowledged and no final order has been passed, as per the decision of this court, the petitioner will be given an opportunity.

4. Considering the fact that though Form I notice has been sent to the petitioner, the same has not been acknowledged and that no final order has been passed and that the petitioner has to be served Form II notice and also as no explanation is called for, the impugned order is set aside and the matter is remitted back to the authority concerned and the authority concerned, the District Collector (Stamp) will give an opportunity to the

petitioner for explanation and immediately thereafter, pass appropriate orders. It is made clear that since the Form I notice has also been served to the petitioner, the point of limitation cannot be raised by the petitioner and that the orders shall be passed only after giving opportunity to the petitioner. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Special Duty Collector (Stamps)
Room No.311, 3rd Floor,
Office of the District Collector,
Salem 638 001.

2.The Sub-Registrar,
Sub-Registrar Office,
Tiruchengode,
Namakkal District.

+1 cc to the Government Pleader sr 753

+1 cc to M/s.N.Manokaran Advocate sr 735

W.P.No.42850 of 2016

pvs (co)
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