IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26891 of 2004

And

W.P.M.P.No.32727 of 2004

V.Neelakandan ... Petitioner

Vs.

1.State of Tamil Nadu
rep. by its Secretary to Government,
Revenue Department,
Chepauk, Chennai - 600 005.

2.The Collector of Chennai,
Collectorate, Chennai - 600 001.

3.The Tahsildhar,
Mambalam - Guindy Taluk,
K.K.Nagar, Chennai - 600 078. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in D3/26049/02 dated 10.09.2004 and quash the same and consequently forbear the respondents from collecting the alleged deficit court fee of Rs.70.085/- till the disposal of T.O.S.No.15 of 1998 on the file of the Hon'ble Court.

For Petitioner : Mr.T.S.Baskaran

For Respondents : Mrs.K.Bhuvaneswari
Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent in D3/26049/02 dated 10.09.2004 and quash the same and consequently forbear the respondents from collecting the alleged deficit court fee of Rs.70.085/- till the disposal of T.O.S.No.15 of 1998.

2.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents.

3.The brief facts leading to the case is as follows: The petitioner's father K.Vaidyanathan executed a Will dated 07.07.1995 in favour of the petitioner and subsequently died on 01.11.1996. Thereafter, the petitioner had filed O.P.No.1013 of 1997 on the file of this Court for grant of probate of the Will as he had been appointed as the Executor under the Will. Since his sister is not willing to accept the Will and in view of the dispute in between the brother and the sister, the said O.P. was converted to T.O.S.No.15 of 1998. Subsequently, the T.O.S. was disposed on 30.07.2007.

4.Whileso, the District Collector inorder to assertain the valuation of the property, pending probate proceedings before this Court, sent a letter dated 22.11.1998 to the Tahsildar seeking report with regard to the valuation of the property. Thereafter, the District Collector on 19.02.2002 issued a notice under Section 59(3) of the Tamil Nadu Court Fees and Suits Valuation Act, for conducting enquiry on 10.06.2002.

5.The petitioner sent a reply to the District Collector stating that the probate O.P. was converted into T.O.S. Hence, initiating proceedings under the Tamil Nadu Court Fees and Suits Valuation Act is bad. Even thereafter, the District Collector on 19.08.2003 directed the petitioner to pay additional Court fees. Again on 14.10.2003, the petitioner sent a letter to the District Collector regarding the conversion of the O.P. into T.O.S. Thereafter, on 15.10.2003, the District Collector passed the same order directing the petitioner to pay addtional Court fee. Consequent to the order of the District Collector, the Tahsildar also passed an order on 10.09.2004 directing the petitioner to pay additional Court fees, failing which, attachment proceedings will be initiated against the petitioner. Challenging the same, the present writ petition has been filed.

6.The learned counsel appearing for the petitioner would submit that the initiation of the proceedings under the Tamil Nadu Court Fees and Suits Valuation Act arise only if the probate proceeding is pending before the Court. When the probate proceeding was converted into T.O.S., the entire proceedings initiated under the Tamil Nadu Court Fees and Suits Valuation Act vitiates.

7.It is useful to extract hereunser Sections 59(3) and 59(5) of the Tamil Nadu Court Fees and Suits Valuation Act.

> "59(3): If the Collector is of the opinion that the applicant has under-estimated the value of the property of the deceased, he may, if he thinks fit, require the attendance of the applicant, either in person or by his agent, and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been underestimated, may require the applicant to amend the valuation, and, if the application for probate or letters of administration is pending in Court, to file a copy of the amended valuation in such Court.
>
> 59 (5): If the applicant does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property:
>
> Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 317 of the Indian Succession Act, 1925 (Central Act XXXIX of 1925)."

(Emphasis Supplied)

8.Perusal of Sections 59(3) and 59(5) of the Tamil Nadu Court Fees and Suits Valuation Act clearly manifests that during the pendancy of the probate proceedings before this Court or any competent Court, the Collector can call upon the person to amend the valuation, if he feel to do so. As per Section 59(5) of the Tamil Nadu Court Fees and Suits Valuation Act, the District Collector has moved the application before the Court wherein the probate proceeding was pending. In this case, once the probate proceedings was converted to TOS, there is no question of initiating proceedings under the Tamil Nadu Court Fees and Suits Valuation Act.

9.Further, in the present case on hand, the impugned order has been passed by the Tahsildhar/ third respondent, calling upon the petitioner to pay the deficit court fees. Perusal of Sections 59 and 64 of the Tamil Nadu Court Fees and Suits Valuation Act discloses that if a person fail to pay the court fees, after evaluation it is for the District Collector to invoke the power under Section 64 of the Tamil Nadu Court Fees and Suits Valuation Act and that power is not vested with the Tahsildhar to issue such notice. Further, the District Collector has no power to authorise any person to collect the deficit court fees. Hence, the Tahsildhar/ third respondent issuing notice under the Tamil Nadu Court Fees and Suits Valuation Act is bad. Accordingly, the order of the third respondent dated 10.09.2004 is set aside.

10.Accordingly, this writ petition is allowed. No Costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.State of Tamil Nadu
rep. by its Secretary to Government,
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2.The Collector of Chennai,
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3.The Tahsildhar,
Mambalam - Guindy Taluk,
K.K.Nagar, Chennai - 600 078.

+1 CC to Mr.T.S.Baskaran, Advocate Sr.No.65537

+1 CC to Government Pleader, High Court, Chennai, Sr.No.65984

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BR(CO)
KP(11.10.2017)