IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27329 of 2004 and

W.M.P.No.33246 of 2004

E.Karthik ... Petitioner

Vs.

1. The Tahsildar,
   Perambur Purasawalkam Taluk,
   Chennai 600 011.

2. The Collector of Chennai,
   Collector's Office,
   Chennai 600 002. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in respect of proceedings in A2/29211/04 dt.07.09.2004 and quash the impugned notice of the 1st respondent in A2/29211/04 dt.07.09.2004 and consequently forbearing the 1st respondent from taking any coercive proceedings to collect the additional court fees.

For Petitioner : Mr.P.K.Sivasubramaniam,

For Respondents: Mrs.K.Bhuvaneswari,
Government Advocate.

O R D E R

The petitioner has filed this writ petition seeking for issuance of a Writ of Certiorarified Mandamus challenging the proceedings of the first respondent in A2/29211/04 dt.07.09.2004 and to quash the same and consequently forbearing the first respondent from taking any coercive proceedings to collect the additional court fees.

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

3. The short issue centers around the case is that Whether the District Collector have Power to issue notice calling upon the petitioner to pay a sum of Rs.50,136/- under the Tamilnadu Court Fees and Suit Valuation Act, 1955, without following the procedure contemplated under Section 59(5), when the probate is pending before the High Court.

4. The case of the petitioner is that he is the son of R.G. Elumalai. He applied for grant of probate in respect of the last will and testament of his mother Radhakrishnammal in O.P. No.339 of 1996 and the probate duty is payable as per the valuations submitted in the affidavit of assets and the probate proceedings is pending before this Court. It is further stated that the petitioner's father Elumalai died on 23.03.1997 and application was filed to implead leagal heirs of the deceased and the same is pending before this Court. While so, the second respondent on 14.05.1998 issued a notice under Section 59(3) of the Tamilnadu Court Fees and Suit Valuation Act, 1955, fixing the enquiry on 29.05.1998 and on receipt of the above said notice, the petitioner sent a reply on 16.06.1998 to the respondents stating that the father of the petitioner died on 23.03.1997 and objected to the proposed re-valuation at the property, which is the subject matter of proceedings in O.P. No.339 of 1996, pending before this Court.

5. It is further stated that on receipt of the said notice, the first respondent issued another notice on 26.09.2002 to the father of the petitioner, who died in the year 1997 itself. The petitioner sent a reply through Advocate on 18.10.2002. The sum and substance of reply is that without refering the matter to the Court as per Section 59(3) of the Tamilnadu Court Fees and Suit Valuation Act, fixing the value of the Property is not proper and without following the procedure contemplated under Section 59 of the Tamilnadu Court Fees and Suit Valuation Act, 1955 exercising power under Section 64 is bad and he also made a request to the first respondent to drop the proceedings and follow the procedure contemplated under Section 59 of the said Act. Even then, the impugned notice was caused against the petitioner, call upon him to pay additional Court fee of Rs.57,136/-, as differential

value of the property. Hence, the petitioner has come forward with this Writ Petition seeking for the aforesaid relief.

6. In this context, it is useful to extract Section 59 of the Tamilnadu Court Fees and Suit Valuation Act, 1955, which is as follows:

> 59. Inquiry by the Collector: (1) The Collector to whom a copy of the application and of the valuation has been sent under section 55, sub-section (2), shall examine the same and may make or cause to be made by any officer subordinate to him such inquiry if any, as he thinks fit as to the correctness of the valuation or where a part only of the property is situated in his district, of the valuation of that part, and may require the Collector of any other district in which any part of the property is situated to furnish him with the correct valuation thereof.
>
> (2) Any Collector required under sub-section (1) to furnish the correct valuation of any property shall comply with the requisition after making or causing to be made by any officer subordinate to him such inquiry, if any, as he thinks fit.
>
> (3) If the Collector is of 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.

> (4) If, in any such case, the probate or letters of administration has or have been granted and the applicant amends the valuation to the satisfaction of the Collector and the Collector finds that a less fee has been paid than was payable acording to the true value of the estate, he shall proceed under section 61, sub-section (4); but, if a higher fee has been paid than was payable according to the true value of the estate, the excess fee shall be refunded to the applicant.
>
> (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).
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> (Emphasis supplied)

7. Section 59 mandates the District Collector to conduct enquiry regarding the correctness of the valuation of the property involved and shall examine the same by issuing the notice to a person and if the property is under estimated may require the applicant to amend the valuation and if the application for probate or letters administration is pending in Court, to file a copy of the amended valuation in such Court.



8. Once the probate proceeding is pending before the Court the District Collector may move the Court and after adjudication, if the Court arrived at a conclusion fixing the market value, the Collector may take steps to collect the deficit Court fees in the property to call upon the person to pay the amount by invoking 61(4) of the Act.

9. In the present case without following the procedure contemplated under Section 59 of the Tamil Nadu Court Fees & Suits Valuation Act, 1955, the respondents issued a notice to the dead person and the legal heirs is not sustainable.

10. The learned Counsel appearing for the petitioner also relied the decision of this Court reported in 2001(3) MLJ 225 in the case of V.S. Shanmugam and another Vs. The Personal Assistant (G) to the Collector of Madras, Office of the Collector of Madras and another. The relevant portions of which is extracted hereunder:

> "5. The enquiry made by the Collector or his sub-ordinate under Sec.59, Sub-sec.(1) and the result of that enquiry referred to in Sub-sec.(3) only enables the Collector to call upon the applicant for probate or letters to amend the valuation of the property. It does not empower the Collector to regard the extent of undervaluation as determined by him as final and binding on the applicant for probate or letters and such applicant is not bound to pay the amount determined by the Collector as the deficit.
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> 6. The result of the enquiry only enables the Collector to call upon the applicant to amend the valuation. Where amendment is made, Sub-sec.(4) of Sec.59 as also Sec.64, Sub-sec.(4) of the Act will operate. If such amendment is not carried out by the applicant, the Collector has no alternative, but to move the Court which issued the probate letters to hold an enquiry into the true value of the property. The Proviso to Sub-sec.(5) prescribes the period of limitation of six months from the date of execution of the inventory, within which the Collector must move the Court.
>
> 7. In this case, the Collector has filed a counter-affidavit which makes it abundantly clear that the Collector has not moved the Court, and that there

> has been no determination made by the Court of the true value of the properties comprised in the inventory. The fact that the enquiry before the Collector dragged on for a long time cannot by itself be a reason for the Collector to assume the jurisdiction of the Cout.
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> 8. The assertion made by the Collector in the order dated 27.12.1993 that Sec.59(5)of the Act is not mandatory is without any merit. The Collector has clearly misconstrued the scope of the power conferred on the Collector.
>
> 9. The proceedings for grant of probate or letters of administration is initiated in the Court. Inventory is to be exhibited in Court, The Collector's role is only to assist the Court. If the determination made by the Collector is accepted by the applicant for probate and the valuation of the items are amended, it is only then the Collector can exercise powers under Sec.61(4). If the valuation is not amended in the manner decided by the Collector, the Collector must necessarily apply to the Court for the determination of the true value of the properties."

11. In the above said Judgment, it is clearly held that without following the procedure contemplated under Section 59(3) and without approaching the Court, contemplated under Section 59(5), issuing notice is not sustainable.



12. Apart from the above, the Hon'ble Division Bench of this Court in O.S.Ramaswamy Vs. Personal Assistant (G) to Collector of Madras and another reported in 2006 (5) CTC 541, while dealing with the similar issue has held as follows:

> "6. Chapter VI of the Tamil Nadu Court Fees and Suits Valuation Act,1955 deals with Probates, Letters of

Administration and Certificates of Administration. As per Section 55, every application for the grant of Probate or Letters of Administration shall be accompanied by valuation of the estate in duplicate in the form set forth in Part I of Schedule III. Sub-section (2) enables the Court which receives the application for Probate or Letters of Administration to forward a copy of valuation to the Collector of the District, in which the estate is situate. It is not in dispute that the said provision was complied with.Section 57 speaks about the grant of Probate. It is clear that unless the Court is satisfied that a fee not less than the one that is prescribed has been paid on the basis of the net value of the estate as furnished in the valuation accompanying the application, or in the amended valuation filed under Section 59(3) of the Act, the Court shall not order Probate or grant of Letters of Administration.Section 59 speaks about the enquiry by the Collector. Sub-section (4) of Section 59 makes it clear that after Probate or Letters of Administration has been granted, when the applicant amends the valuation to the satisfaction of the Collector, or the Collector finds that a less fee has been paid than the fee payable according to the true value of the estate, the Collector shall proceed under Section 61(4) and recover the amount due. Sub-section (5) of Section 59 makes it clear that if the applicant does not amend the valuation, the Collector may move the Court before which the application for Probate or Letters of

Administration was made to hold an enquiry to find out the true value of the property. Proviso to the above Section makes it clear that no such action shall be taken after expiry of six months from the date of exhibition of the inventory as required by Section 317 of the Indian Succession Act, 1925.

10. We intend to point out that it is the duty of the District Collector to file an application before the Original Side of this Court for directing the party to pay court fee, when such party disputes the differnece in valuation being adverted to by the Collector. It is brought to our notice that in recent years, there seems to be latitude on the part of the Collectorate in filing such application before this Court, resulting in loss of revenue to the State. The District Collector, Chennai is directed to act diligently in future by taking serious note of the aspect adverted to above. "

13. Admitedly, the probate O.P. is pending before this court. When the probate O.P. is pending before this Court, the duty of the District Collector as per Section 59(3) of the Act is that if he is of the opinion that the applicant underestimated the value of the property of the deceased, he may, if he thinks fit, require the attendance of the applicant and take evidence and enquire into the matter in such a manner as he thinks fit and after the enquiry, if he is still of the opinion that the value of the property is underestimated, he may direct the applicant to amend the valuation. Thereafter, to file a copy of the amendment valuation, if the application for probate or letters of administration is pending before this Court. In this case, the respondent did not follow the procedure as stated above.

14. In view of the above and also in the light of the decisions stated supra, this writ petition is allowed and the impugned order dated 07.09.2004 is set aside. No costs. Consequently the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

arr/msvm

To

1. The Tahsildar,
   Perambur Purasawalkam Taluk,
   Chennai 600 011.

2. The Collector of Chennai,
   Collector's Office,
   Chennai 600 002.

+1 CC to Mr.P.K.Sivasubramaniam, Advocate Sr.No.61470

+2 CC to Government Pleader, High Court, Chennai Sr.No.61663, 61640.

W.P.No.27329 of 2004

GJ(CO)
KP(26.07.2017)