IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.12.2017
CORAM
THE HON'BLE MR. JUSTICE R.SURESH KUMAR
W.P.No.17842 of 2003
W.M.P.No.19336 of 2017

S.Dhanammal ...Petitioner

Vs.

1. The State of Tamilnadu rep. by its Secretary, Commercial Taxes and Religious Endowment Department.

2. Inspector of General of Registration, Santhome High Road, Chennai - 600 028.

3. The Special Deputy Collector (Stamps), (District Revenue Officer) In the Office of The Collector of Chennai -1.

4. The Sub Registrar of Assurances, Bharathi Salai, Chennai - 600 014. ...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to show cause notice 107/2000 dated 2.1.2003 on the file of the third respondent and quash the same and direct the respondents 2 to 4 to return the Release Deed bearing Document No.768/96 on the file of the fourth respondent after completing all the formalities by Registered Post Acknowledgment Due with costs of Rs.10,000/-.

For Petitioner : Mr.A.S.Narasimhan

For Respondents: Mr.M.Elumalai
Government Advocate.

ORDER

The prayer sought for in this writ petition is for a writ of certiorarified Mandamus to call for the records relating to show cause notice 107/2000 dated 2.1.2003 on the file of the third respondent and quash the same and direct the respondents 2 to 4 to return the Release Deed bearing Document No.768/96 on the file of the fourth respondent after completing all the formalities by Registered Post Acknowledgment Due with costs of Rs.10,000/-.

2. The short facts which are required to be noticed for disposal of the writ petition are as follows :-

The petitioner had submitted a document of release deed before the fourth respondent Sub Registrar and the same, though had been registered as document No.768 of 1996, had been kept pending and the same was not released on the ground that the stamp value for the said document was, according to the respondents, under valued and the document had been referred to the third respondent for adjudication under Section 47-A of the Indian Stamps Act 1899 (herein after referred to as the Act).

3. On such reference, it seems that, the Special Tashildar Office, Stamps, at the Office of the District Collector, Chennai, by notice nil dated August 2000, required the petitioner to give reply as to why the decision cannot be made on the value of the property involved in respect of the said release deed based on the available records at the office of the third respondent. Instead of giving reply to the said notice of August, 2000, since the petitioner thought that the said reference itself under Section 47-A of the Act was not necessitated, because of the nature of the document, which is merely release deed, she issued notice through her lawyer dated 04.07.2002 to the Special Thasildhar, Stamps, Collector Office, Chennai.

4. In spite of the said notice having been given on behalf of the petitioner on 04.07.2002, by her lawyer, the third respondent office had not acted upon by taking decision, as to whether the reference made by the registering authority under Section 47-A of the Act was necessitated or not. However, a further notice dated 02.01.2003 was issued from the office of the Collector Stamps, through the District Revenue Officer, Stamps, Chennai and in that notice also similar requirement of show cause from the petitioner was sought for, otherwise it had been mentioned therein that, decision would be taken on the basis of the available records. Thereafter, it seems that, the petitioner had given reply or objection to the said notices issued by the third respondent office and after considering the same an order was passed on 14.02.2003 in the proceedings Na.Ka.Ce.Pa. No.107/2000 by the District Collector (Stamps) Chennai-1.

5. It seems that, subsequently, the petitioner had given a detailed representation in March, 2003, to the District Revenue Officer (Stamps), Chennai stating that the document in question ought not to have been referred to by the Registering Authority to the Collector Stamps under Section 47-A of the Act

as the very document itself is a mere release deed among the family members and therefore, it cannot be construed as a benami release deed and therefore the question of referring the said document for adjudication of stamps by the authority concerned under Section 47-A of the Act does not arise. Though such representation had been given by the petitioner, no orders have been passed by the respondents.

6. Since it is the stand of the petitioner right from the beginning that, the very document ought not to have been referred by the Registering Authority for adjudication of correct value of the stamps under Section 47-A of the Act and it is the firm stand of the petitioner that the very notice issued by the District Revenue Officers, Stamps on behalf of the third respondent itself is unlawful and without jurisdiction, and therefore challenging the said notice issued by the third respondent dated 02.01.2003, the present writ petition has been filed with the aforesaid prayer.

7. Mr.A.S.Narasimhan, learned counsel for the petitioner would contend that as per Section 47-A of the Act only certain documents, as has been enumerated therein, alone would be liable to be referred to the authority concerned for adjudication to fix the value of the property and the stamp value to be affixed on that. In this regard, learned counsel appearing for the petitioner heavily relied upon Section 47A of the Act and the same is reproduced hereunder:-

> "47-A. Instrument of conveyance, etc., undervalued how to be dealt with:- If the registerin officer appointed under the Registration Act, 1908 (Central Act XVI of 1908), while registering any instrument of conveyance [exchange, gift, release of benami right or settlement] has reason to believe that the market value of the property of which is the subject matter of convenyance [exchange, gift, release of benami right or settlement] has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon"

8. By relying upon the said provisions, the learned counsel appearing for the petitioner would submit that the words "while registering any instrument of conveyance exhange, gift, release of benami right or settlement has reason to believe that the market value of the property of which is the subject matter of conveyance" are very specific that only instruments of these nature as has been set out in Section 47-A of the Act alone

would be liable to be referred in the case of alleged under valuation. In this regard, the learned counsel appearing for the petitioner would vehemently contend that, the document in question is mere release deed of rights between the family members and therefore, at no stretch of imagination, it can be construed as a release of benami right or settlement. Therefore, the document itself could not have been referred by the registering authority to the Collector (stamps) for adjudication.

9. It is the further contention of the learned counsel appearing for the petitioner that, the third respondent's office does not have a jurisdiction even to adjudicate the matter, in view of the embargo under Section 47-A of the Act, unless the document is decided by the registering authority that it is a case of benami right. Therefore, no reply had been given by the third respondent's office nor the said objection given by the petitioner had been taken into account.

10. The learned counsel for the petitioner would also contend that, the fundamental issue since has been raised by the petitioner and the same having not been decided either way by the authority ie., third respondent, such authority does not have any power to proceed further under Section 47-A of the Act. Therefore, in this regard, the very notice of show cause issued by the said authority to the petitioner asking the show cause, is either without jurisdiction or unlawful or beyond the scope of Section 47-A of the Act. Therefore, the learned counsel appearing for the petitioner would submit that the impugned notice has to be quashed and all further proceedings pursuant to the said notice, since vitiated, would also to be quashed.

11. Per contra, Mr.Elumalai, learned Government Advocate appearing for the respondents would submit that, once the document has been referred to third respondent for adjudication, it is the duty of the third respondent to issue notice as per the procedure contemplated under the Act. Accordingly, the notice was issued to the petitioner to give show cause as to why the adjudication can not be completed and the value be determined. The learned Government Advocate would further submit that, instead of giving reply to the said show cause notice, the petitioner had given a legal notice, therefore once again further show cause notice had been issued, except the said objection by way of legal notice, no reply had been given by the petitioner. Therefore, the third respondent being the authority under the said provisions of the Act to decide the correct value of the document referred to him, had no option except to proceed further and decide the value on the basis of the available records. After having adjudicated the matter basis on the objection or reply given by the petitioner, a final order fixing the value of the property as well as the stamp to be paid, had been decided by the order of the third respondent

dated 14.02.2003 and the said order admittedly has not been questioned by the petitioner in the manner known to law.

12. In this regard, the learned Government Advocate would submit that, since the said final adjudication order fixing the stamp value was passed already as on 14.02.2003 and the same admittedly has not been questioned by the petitioner, the said order has become final and therefore, the earlier show cause notice cannot be questioned or the merits and demerits of the said show cause notice cannot be canvassed at this stage in this writ petition and therefore, the learned Government Advocate appearing for the respondents would submit that the writ petition is liable to be rejected.

13. I have considered the said rival submissions made by the learned respective counsel appearing for the parties and perused the materials placed before this Court.

14. It is an admitted fact that the final order of fixing the stamp duty had been passed by the third respondent on 14.02.2003 and the copy of the said order also had been filed by the petitioner in the typed set of papers. However, the said order is not put under challenge. Since the petitioner maintained her stand through the learned counsel for the petitioner that, the very reference of the document in question to the third respondent for adjudication itself is unlawful and without jurisdiction and on that strength, the petitioner claimed that she has challenged the show cause notice only, that is prior to the final order passed by the third respondent.

15. It is settled proposition of law that once show cause notice issued, the same cannot be questioned without replying the same and the said principle got some exceptions. One of the such exceptions is that, if the show cause notice issued by the authority without jurisdiction. Here in this case, though it was claimed by the petitioner that the impugned show cause notice was issued without jurisdiction, on perusal of the show cause notice, this Court finds that once a document has been referred by the registering authority to the Collector, Stamps, who is the authority to act as an adjudicator, within the meaning of Section 47-A of the Act, can very well issue such show cause notice seeking objections if any, from the concerned person. The Collector (Stamps) is empowered to issue such notice under the provisions of Section 47-A of the Act. Once such power has been vested with the authority under the statue, it cannot be said that such authority does not have jurisdiction to issue such notice. If at all, the petitioner has got grievances over the proposed adjudication, on the document which is in question, the said objection can very well be made before the third respondent by way of giving reply and in that case, if need be, further documents could have also been supplied by the

petitioner as additional documents along with the reply to substantiate her claim that it is not the document which can be referred under Section 47-A of the Act for adjudication. Instead of meeting the issue through a right track, as has been contemplated under the provisions of the law, the petitioner had chosen the way to challenge the very show cause notice itself, that too, after the final order was passed. Therefore, this Court is of the considered view that the challenge now made against the impugned show cause notice is not sustainable and therefore on that count, the prayer sough for in this writ petition cannot be granted.

16. However, the learned counsel appearing for the petitioner would submit that, the very issue of the power of the registering authority to refer the document in question to the third respondent for adjudication itself is at stake, and the said power, according to the petitioner, is not available with the registering authority and the issue goes to the route of the matter. The same since has been agitated all along right from the beginning and ultimately, the detailed representation to that effect has also been made by the petitioner to the third respondent in March 2003, the said request made by the petitioner to decide the main issue can also be considered by the third respondent.

17. The learned counsel for the petitioner, in support of his contention, has relied upon the judgment of this Court reported in 2003-3-L.W. 201 in the matter of "Smt. Chhaya Gupta and others Vs. The District Registrar, T.Nagar, Chennai - 600 017".

18. Though against the final order of adjudication made by the third respondent under Section 47-A of the Act, other remedies under the Act is available to the petitioner, since this writ petition has been pending for several years before this Court and being disposed of only now, and even at the time of the filing of the writ petition, the said representation dated March 2003, since had been made by the petitioner and admittedly no disposal has so far been given on the said representation of the petitioner by the third respondent, this Court is of the view that a suitable direction to the third respondent to decide the said request of the petitioner including the issue raised therein, can be given.

19. In the result, the following orders are passed in this writ petition :- (1) The impugned show cause notice since has subsequently been culminated in the final order of adjudication, it cannot be, at this moment, challenged and therefore, the prayer sought for in this writ petition cannot be granted, accordingly the writ petition is rejected.

(2) However, even before filing this writ petition, the petitioner has raised the legal issue and sent a representation to that effect in March, 2003 to the third respondent and admittedly there is no order, disposing the said representation, so far, has been passed by the third respondent office, the third respondent is hereby directed to decide the said request of the petitioner made in March 2003, and pass orders thereon on merits and in accordance with law, within a period of two months from the date of the receipt of a copy of this Order, of course, after affording an opportunity of being heard to the petitioner and on such opportunity, the petitioner shall be at liberty to put forth his case with supporting documents.

(3) Since the said representation is of the year 2003, a copy of the same shall be forwarded by the petitioner along with the copy of this order for immediate disposal of the same by the third respondent.

20. With these directions, the writ petition is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Secretary,
   State of Tamilnadu rep.
   Commercial Taxes and
   Religious Endowment Department.

2. Inspector of General of Registration,
   Santhome High Road,
   Chennai - 600 028.

3. The Special Deputy Collector (Stamps),
   (District Revenue Officer)
   In the Office of
   The Collector of Chennai -1.

4. The Sub Registrar of Assurances,
Bharathi Salai,
Chennai - 600 014.

+1 cc to Mr.A.S.Narasimhan Advocate sr 91239
+1 cc to Government Pleader sr 91434

W.P.No.17842 of 2003

vsn(co)
aa22/02/2018