HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.11351 of 2008

ORDER:

Heard learned counsel for the petitioner and learned Advocate General for the respondent.

This writ petition is filed challenging the notice, dated 17.05.2008, issued by the respondent calling upon the petitioner to appear in person or through Officer before him on or before 26.05.2008 representing its case, failing which appropriate action would be initiated for recovery of loss of duty caused to the Government under the provisions of Section 48 of the Indian Stamp Act, 1899 (for short 'the Act').

The reason for issuance of the above-stated notice was that as many as five documents, which were filed with the Chairman, APHB, Hyderabad, were found to be deficitly-stamped and it came to light during the course of audit. The details of the documents were furnished as follows:

(1) Memorandum of Understanding between APHB and IJM (India) Infrastructure Limited, Hyderabad dated 15.05.2002 (hereinafter referred to as document No.1);
(2) Development & Shareholders Agreement between APHB and IJM dated 04.11.2003 (hereinafter referred to as document No.2);
(3) General Power of Attorney executed by APHB in favour of IJM dated 04.11.2003 (hereinafter referred to as document No.3);
(4) Construction Agreement dated 09.02.2004 between Swarnandhra IJMII Integrated Township Development Company and IJM India dated 09.02.2004 (hereinafter referred to as document No.4);

(5) Agreement between APHB and Swarnandhra IJMII Integrated Township Development Company and IJM (India) Infrastructure Limited dated 08.02.2006 (hereinafter referred to as document No.5)

It is also stated that the deed of development agreement was executed between APHB and M/s.Swarnandhra IJMII Integrated Township Development Company Private Limited on 08.02.2006 for development of the land admeasuring Acs.35.05 guntas in Survey No.1009/1 situated at Kukatpally Village, on payment of development fee of Rs.3.82 crores. The total development cost came to Rs.135.61 crores. The development agreement was accompanied by a deed of General Power of Attorney. It requires stamp duty of Rs.50,000/- as per G.O.Ms.No.1475 Revenue (Registration-I) Department, dated 30.07.2005. Since it was executed on Rs.100/- non-judicial stamp paper, there is loss of Rs.49,900/- occurred, and the total deficit stamp duty came to Rs.67,50,49,690/- in respect of the five documents.

The other averments in the affidavit and the counter-affidavit are not narrated in the present order in view of the disposal of the writ petition in the manner indicated below.

Learned counsel for the petitioner submits that the respondent is not having jurisdiction to issue the impugned notice and in any event, he has not followed the procedure prescribed under G.O.Ms.No.72, dated 19.04.1967, as amended by G.O.Ms.No.274, dated 29.03.1967. He further submits that though the Rules empowered the inspection of registers, books, records, papers, documents or proceedings in the custody of every public officer or any person, such procedure was not followed in the instant case.

Learned Advocate General, on the other hand, submits that the impugned notice was issued only to enquire into the matter and further steps would be taken in accordance with the provisions of the Act.

Relevant Rules framed under G.O.Ms.No.72, dated 19.04.1967, as amended by G.O.Ms.No.274, dated 29.03.1967, read as under:

(2) (i) The notes of inspection under Section 73 shall be sent to the Head of the Office through his immediate superior Administrative Officer;

(ii) The first reports of compliance shall be sent to the Inspector-General of Registration & Stamps, within one month of the receipt of the notes of inspection by the Head of the office, through his immediate superior administrative officer. Subsequent reports may be sent to the Inspector-General of Registration and Stamps direct.

(3) When deficit duties and penalties levied under the Act on insufficiently stamp documents are detected during the course of inspection, the following procedure shall be followed:

(i) The Head of the Office shall forward them to the Inspector-General of Registration & Stamps within one month from the date of receipt of the audit report. The Inspector-General of Registration & Stamps shall (impound such documents under Section 33 and) after giving an opportunity to the parties, levy the deficit duties, if any together with penalties, which shall be collected by the Head of the Office and remitted to the Treasury, under the following Heads of Account."

In the instant case, the Office of the Chairman, A.P. Housing Board was inspected by an audit party and pursuant to the report of the audit party, the impugned notice was issued by the respondent. This action does not appear to be in consonance with the Rules stated above.

Learned Advocate General does not dispute the same.

Therefore, this Court has no alternative, except to set aside the impugned notice giving liberty to the authorities to comply with Section 73 of the Act and the Rules made thereunder and take appropriate action in accordance with law.

The writ petition is accordingly allowed setting aside the impugned notice.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A.RAMALINGESWARA RAO,J

Dt:13.07.2017

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