HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.26912 of 2007

ORDER :

Heard learned counsel for the petitioner and learned Government Pleader for the respondents.

2. The petitioner purchased an extent of Ac.0.96 cents of land in Sy.Nos.340/A and 341/A of Rentachintala Village on 09.09.1987 under document No.2435 of 1987 in the office of Sub Registrar, Gurazala. In the document, it was mentioned that the land is not fit for cultivation, kept fallow for several years and no agricultural operation was going on. While so, the District Vigilance and Enforcement Officer, Vijayawada, addressed a letter to the Director General of Vigilance and Enforcement, Hyderabad, pursuant to the complaint lodged by one person. During enquiry it is reveled that the above document was executed by Rev.K.Natheniel, President and Sri P.John Nelson, Treausrer of Andhra Luthern Evangetical Church, Guntur in favour of the petitioner. Later on, the petitioner subdivided the land and sold the same under four registered documents by indicating low rate when the actual rate was Rs.150/- per square yard, thereby caused loss of revenue to the Government. Without supplying a copy of the said report, a notice was issued to the petitioner for payment of the deficit stamp duty and registration fee. Thereby, the petitioner approached this Court by filing W.P.No.16862 of 1996 and the same was allowed on 21.06.2006 by setting aside the notice and directing the authorities to supply copy of the report and issue fresh

notice. Accordingly, a notice was issued on 25.08.2006 enclosing the report of the Vigilance and Enforcement Officer, Vijayawada, to the petitioner by the District Registrar-1st respondent. The petitioner earlier submitted written arguments before the 1st respondent. After considering the same, an order was passed on 06.06.2007 directing the petitioner to pay an amount of Rs.74,982/- towards deficit stamp duty in respect of the document No.2435 of 1987. The petitioner preferred an appeal to the 2nd respondent and the 2nd respondent by order, dated 07.11.2007, confirmed the order of the 1st respondent. Challenging the same, the present writ petition is filed.

3. The 1st respondent filed counter-affidavit stating that the petitioner misrepresented the land to be "beedu" and not available for cultivation instead of disclosing the nature of the land as non-agricultural property in the middle of commercial properties. It is stated that the 1st respondent issued notice to the petitioner for collection of deficit stamp duty on 27.06.1989 and fresh notices were ordered pursuant to the order of this Court in W.P.No.16862 of 1996, dated 21.06.2006.

4. In the light of the above facts, the learned counsel for the petitioner vehemently argued that the orders passed by the respondents are liable to be set aside on the following grounds.

a. The 1st respondent has no authority to issue a notice beyond the period of five years provided under Section 41-A of the Indian Stamp Act, 1899.

b. The 1st respondent has not applied his mind to the facts of the case and no verifiable material was available to the 1st respondent and hence the order of the 1st respondent is bad in law.

He relied on a decision of this Court in **Mula Rama Devi v. Collector and District Registrar, Nalgonda District, Nalgonda and another[1].**

5. The facts in this case are not in dispute. The petitioner got the land of an extent of Ac.0.96 cents and registered the same on 09.09.1987 by describing the land as an agricultural land and also stating that the land was kept fallow for several years. A notice was initially issued to the petitioner pursuant to the report submitted by the Vigilance and Enforcement Department on 27.06.1989 and the same was set aside by the order of this Court, dated 21.06.2006, in W.P.No.16862 of 1996. Thereafter, the 1st respondent issued another notice on 25.08.2006 enclosing a copy of the report of the Vigilance and Enforcement Department, which reads thus:

> "The said land in question is centrally located in the village gram panchayat of Rentachintala just by the side of commercial complexes like Medical shop, Andhra Bank, Office, etc., The land is situated within the Luthern Mission Hospital compound abutting the State National High-way which is running through the village Rentachintala. The Dist. Branch Library building is situated on its west, where as the Luthern Hospital and church etc. premises are situated on its east and north directions and the Guntur-Macherla state highway road is running from east to west ie., on the southern side of the said land. According to Gram panchayat records

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the entire church and hospital compound including the Luthern Boys Hostel, Girls High School, etc., are located at Door Nos.146 to 148 in ward No.7. The church authorities used to pay house tax to grama panchayat upto 1976 and it was discontinued afterwards as per the High Court directions. The land in question is situated between the Door No.7/147-E (Doctor's quarters) and Guntur-Macherla state Highway. As per the Rentachintala basic register maintained in the Sub Registrar's Office, Gurazala, the value per acre in D.Nos.340/A and 341/A is fixed at Rs.30,000/- which is shown as dry land, but according to the Urban Basic Register of Rentachintala Village in Door Nos.146 to 148 were given the Luthern Hospital etc., compound in block No.7 and the value per Sq. yard is fixed at Rs.150/-. Thus it is evident that the land in question is non-agriculture and urban in nature. In fact the executant of the document has clearly mentioned in the said document that the said scheduled land is not fit for cultivation and remained as waste land (Beedu).

As such the Market Value of the non agricultural land @ Rs.150/- per Sq. yard has to be adopted for the property in question.

Thus the document is chargeable with a Stamp duty of Rs.76668+3735. Hence the deficit of Stamp duty is provisionally determined to be Rs.71718+3264=74982/-. A copy of the above report is here with enclosed in compliance to the orders of the Hon'ble High Court, dt.21.6.2006 in W.P.No.16862 of 1996."

6. The petitioner appeared before the 1st respondent and raised two grounds stating that the report of the Vigilance and Enforcement Department is in violation of the principles of natural justice and the action was barred by limitation was taken beyond the period of five years. He further stated that the value mentioned in the document was

Rs.40/- per sq. yard as per the basic value register and in view of the same, no further action is required. The said contention was repelled by the 1st respondent, by order dated 06.06.2007. In rejecting the contention of the petitioner, the 1st respondent observed as follows:

> "The said land in question is centrally located in the village grampanchayat of Rentachintala just by the side of commercial complexes like Medical Shops, Andhra Bank office etc., The land is situated with in the limits of Hospital compound abutting state national high way which is running through the village Rentachintala. The District Branch Library Building situated on its west where as the Lutheran Hospital and the Church etc. premises are situated on its east and north directions and the Guntur-Macherla state high way road running from each to west i.e., on the southern side of the said land. According to the Grama Panchayath records the entire church and hospital compound including Lutheran boys hostel, Girls High School etc. are located at D.No.146 to 148 in ward No.7. The church authorities used to pay house tax to grampanchayat upto 1976 and it was discontinued afterwards as per High Court directions. The land in question is situated between the D.No.7-147/E (Doctor's Quarters) and Guntur-Macherla state highway. According to the Urban Basic Register of Rentachintala village maintained in Sub Registrar Office, Gurazala Door Nos.146 to 148 were assigned to the Lutheran Hospital etc. compound which falls in block No.7 and the value for the same is fixed at Rs.150/- per Sq.yard. Thus it is evident that the land in question is non-agricultural land and urban in nature. In fact the executant of the document himself has clearly mentioned in the said document that the said scheduled land is not fit for cultivation and remained as waste land (Beedu). As such there is suppression of the fact that it is in the midst of the commercial locality of the village in the document.
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> Therefore, after careful examination of the recitals of the said document along with the papers enclosed to it, the representation

> received through the reference 2nd cited and other connected material and also after hearing the parties concerned and facts and circumstances of the case, the undersigned came to a conclusion that the document under reference is a sale of non-agricultural property which is located in the prime locality of the Rentachintala village, as per the physical site inspection report of the Vigilance and Enforcement authorities Vijayawada and District Registrar, Narasaraopet. The argument that the property is recorded as Agricultural land and has to be charged accordingly is not tenable as the property is clearly a non-agricultural property commercial complexes and activity in and around it. The party has infact suppressed the fact with intent to evade payment of proper stamp duty on the instrument. As such the document under reference is chargeable to a stamp duty of Rs.76,668/- + 3,735/- as per the provisions of Indian Stamp Act, 1899. As the document bears a stamp of Rs.4950/- +471/- only, the duty required to make up the deficit is here by determined as Rs.71718 + 3264/- total Rs.74,982/- for the document in question."

7. The 2nd respondent, on the appeal preferred by the petitioner, opined that the 1st respondent acted in accordance with law and the case was not barred by limitation since the case was initiated on 27.06.1989 itself, which is within the period of five years from the date of registration of the document.

8. Since initial notice was issued on 27.06.1989 itself, I am of the opinion that the initial action was taken within the period of limitation mentioned under Section 41-A of the Indian Stamp Act, 1899. With regard to the second contention of the learned counsel for the petitioner that there is no verifiable material for the 1st respondent to come to the conclusion, from the above extract of order dated 06.06.2007, it makes clear with regard to the location of the site and

the incorrect description of the property in the document which enable the authority to take action under Section 41-A of the Indian Stamp Act, 1899. In view of the same, the decision relied on by the learned counsel for the petitioner is not applicable to the facts of the case.

9. Accordingly, the writ petition is dismissed.

10. Miscellaneous Petitions pending, if any, shall stand closed. No costs.

A. RAMALINGESWARA RAO, J

29th June 2017.

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