IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 14935 of 2009
and
M.P.No.1 of 2009

M.Saravanan ... Petitioner

vs.

1.The District Registrar (Administration),
District Registrar Office,
Kancheepuram,
Kancheepuram District.

2.The Tahsildhar,
KancheepuramTaluk,
Kancheepuram District.

3.The Revenue Inspector,
KancheepuramTaluk,
Kancheepuram District.

4.The Joint II Sub-Registrar,
Sub-Registrar Office,
Kancheepuram,
Kancheepuram District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondents particularly that of third respondent that has culminated in the distraint notice O.M.No. 857/2009 dated 22.07.2009 and quash the same as illegal, unlawful, malafide, without jurisdiction and against principles of natural justice and consequently forbear the respondents from in any manner proceeding against the property of the petitioner situate at old Door No.6B (New Door No.6A), Vanigar Street and comprised in Town Survey No.548 of Kancheepuram Town & Taluk, Kancheepuram District.

For Petitioner : Mr. E.Omprakash, Senior Counsel
assisted by Mr.P.Ilaya Rajkumar
for Ramalingam Associates

For Respondents: Mr.E.Manoharan for R.2
Additional Government Pleader

: Mr.T.M.Papaiah for R.1, R.3 & R.4
Special Government Pleader (Registrarion)

O R D E R

The instant writ petition has been filed for a writ of certiorarified mandamus challenging the memo/order O.M.No. 857/2009 dated 22.07.2009 passed by the Revenue Inspector, Kancheepuram Taluk, Kancheepuram District for recovery of initiation Confiscation proceedings under Section 48 of the Revenue Recovery Act, under the Tamil Nadu Stamp Act for recovery a sum of Rs.1,87,801/-.

2.The facts in brief are as follows:-

The petitioner and his younger brothers had jointly purchased the property being vacant Land measuring an extent of 2106 sq.ft comprised in T.S.No.548 of Kancheepuram Taluk, from one Mr.V.N.Devaraja Chettiar and two others for a sum of Rs.50,000/-. After purchasing of the said property they were joint possession and enjoyment till 2003. In the year 2003, brothers of the petitioner who did not want to partition the said property and decided to relinquish their right over the property in favour of the petitioner who was the eldest in the family. The petitioner decided to pay a sum of Rs.25,000/- each to both of his brothers. A release deed was executed on 31.03.2003. The Stamp duty of Rs.2015/- was paid. Release deed was registered as document No.1054 of 2003 on the file of the Joint Sub-Registrar II, Sub-Registrar office, Kancheepuram. After registration, the petitioner received a memo/order in O.M.No.857 of 2009, dated 22.07.2009 which is extracted hereunder:-

"O.M.No.857/2009 Revenue Officer,
Date: 22.07.2009. Kancheepuram.

MEMO

Sub: Revenue Recovery Act, - Sub Registrar-2 Kancheepuram - Indian Stamp Act, Sec -48 Confiscation proceedings in Doc. No. No.1054/2003 Kancheepuram Taluk and Town Thiru. Saravanan S/o. Mani, recovery of Rs.1,87,801/- from him urgently under the above act - reg.

Ref: 1) District Registrar (Management) Kancheepuram
letter No.561/32/06 dt: 11.06.2007.
2)Sub Registrar, Thirukazhaukunram, letter No.83/2009 dt: 12.03.2009.
3)Tahsildar, Kancheepuram, urgent note No.1383/2009 1D dt: 22.04.2009.

Kancheepuram Taluk and Town No.63/16 Vanniar Street, against Thiru. Saravanan S/o. Mani action under Revenue Act, Sec. 48 confiscation proceedings as per 2nd reference above, for a sum of Rs. 1,87,801/- to be recovered and remitted to the appropriate head of account and the proceedings is to be undertaken by the Tahsildar, Kancheepuram without delay and if in case of delay action may be taken against you for recovery against your property.

Sd/- Revenue Officer,
Kancheepuram.

To
Thiru. Saravanan S/o. Mani,
63/16, Vanniar Street,
Kancheepuram.

Copy to: Tahsildar, Kancheepuram."

3.It is the contention of the petitioner is that the memo/order dated 22.07.2009, is bad in law in as much as no order under Section 48 of the Tamil Nadu Stamp Act can be passed in the absence of any proceedings. This memo/order is under challenge in the instant writ petition. A perusal of the material available on record discloses the proceedings were in hatred on the basis of audit objection. On notice the respondents has filed a counter affidavit in the paragraphs 4,5 and 6 of the counter affidavit reads as under:-

"4. With regard to Para 5 of the affidavit, it is submitted that subsequent to registration of the said document No.1054 of 2003, it was observed in the audit that stamp duty of Rs.12% and Registration fee of 1% on the market value of the property released are leviable and there is loss of revenue to Government. Based on the audit observation the market value of 2/3 share of property which is the subject matter of release was arrived at Rs.15,81,800/. Accordingly the stamp duty at 12% worked out to Rs.1,89,816/- and registration fee at 1% worked out to Rs.15,820/-. As stamp duty of Rs.2015/- and registration fee of Rs.500/- have already been paid, the deficit stamp duty and registration fee worked out to Rs.1,87,801/- and Rs.15,320/-

respectively.

5.With regard to Para 6 of the affidavit, it is submitted that action under Section 33-A of the Stamp Act and Section 80-A of the Registration Act was taken to recover the said deficit stamp duty and registration fees only based on the audit objection. As the deficit stamp duty and registration fee has not been paid by the petitioner, the 2nd respondent was requested to recover the deficit stamp duty and registration fee under Revenue Recovery Act. Accordingly the 2nd and 3rd respondents have initiated proceedings to recover the amount under Revenue Recovery Act. The issue whether there was levy of any deficit of stamp duty and registration fee was reviewed. According to Article 55-A, a release whereby a person renounces a claim upon another person or against any specified property, the same duty as a Bottomry Bond (4%) for such amount or value as set forth in the deed is leviable. The Inspector General of Registration has also clarified in his Letter No.45794/C5/2001 dated 11.01.2002 that it is enough stamp duty is levied on the value set forth in the Release Deed which falls under Article 55-A and guideline value need not be adopted. Accordingly no additional stamp duty and registration fee is recoverable from the petitioner.

It is submitted that the order of this respondent directing the petitioner to pay the deficit stamp duty of Rs.1,87,801/- and deficit registration fee Rs.15,320/- in not in accordance with law and consequently the proceedings under Revenue Recovery Act by the 2nd and 3rd respondent are not legally required."

4. A perusal of the reply would show that the respondents have admitted that the order directing the petitioner to pay excess stamp duty is not in accordance with law.

5.In view of the fair stand taken by the counsel and the request, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsp

To

1.The District Registrar (Administration),
District Registrar Office,
Kancheepuram,
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Kancheepuram,
Kancheepuram District.

+2cc to M/s.Ramalingam Associates, Advocate sr.no.76381
+1cc to Government Pleader sr.no.76753

W.P.No. 14935 of 2009
and
M.P.No.1 of 2009

nr 07/12/2018