IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.5024 of 2011

R.Srinivasan ... Petitioner

Vs

1.The Inspector General of Registration
Santhome High Road, Chennai

2.The District Revenue Officer (Stamps)
Singaravellar Maligai, Chennai-1

3.The District Registrar, Administration
Registration Department, Chennai South
Saidapet, Chennai-15

4.The Sub Registrar, Pallavaram, Chennai-44

5.The Chief Manager, Indian Bank
Pallavaram Branch, Chennai-43 ... Respondents
6.

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of declaration to declare that the levy and collection of stamp duty and registration charges, including the levy and collection of stamp duty under Sub Rule (1) of Rule 7 of the Tamil Nadu Stamp (Prevention of Under Valuation of Instrument) Rules, 1968, in respect of the documents, bearing Document Nos.1678 to 1682 of 2010, on the file of the Sub Registrar, Pammal, Kanchipuram District, are illegal and void ab-initio and to direct the Respondents to repay the above illegally collected stamp duty and registration charges to the Petitioner with interest.

For Petitioner : Mr.N.Suresh

For Respondents: Mr.P.Purushothaman, AGP-RR1 to 4

R5-No Appearance

ORDER

The prayer in this Writ Petition is to declare that the levy and collection of stamp duty and registration charges under Sub Rule (1) of Rule 7 of the Tamil Nadu Stamp (Prevention of Under Valuation of Instrument) Rules, 1968 ,in respect of the documents, bearing Document Nos.1678 to 1682 of 2010, on the file of the Sub Registrar, Pammal, Kanchipuram District ,are illegal and void and consequently, to direct the Respondents to repay the above illegally collected stamp duty and registration charges to the Petitioner with interest.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. According to the learned counsel for the Petitioner, the Petitioner was a successful bidder of five individual flats sold in public auction held on 09.10.2006, under the SARFAEASI Act, comprised in Old S.No.378/1A, New No.378/26, measuring 37 cents, out of 1 acre and 10 cents and in Old S.No.378/1B, New S.No.378/27, measuring 37 cents out of 1 acre and 10 cents at Thiruneermalai Village, Durga Nagar Main Road, Kancheepuram District. Thereafter, the 5th Defendant Bank had issued a sale certificate in favour of the Petitioner on 28.01.2010. The 4th Respondent had scrutinised the documents and demanded the Petitioner to pay deficit in stamp duty charges, alleging that the value reflected in the sale certificate was under valuation of the market value of the property. Hence, it was referred under Section 47A of the Indian Stamp Act. During the pendency of the 47A proceedings before the Sub Deputy Collector, who is the 2nd Respondent herein, the Petitioner had requested to release the documents on payment of the deficit in stamp duty. Accordingly, the Petitioner had paid the entire deficit in stamp duty charges to the tune of Rs.91,352/-. Thereafter, the Petitioner has filed this Writ Petition, seeking the relief, as stated above.

4. The learned counsel for the Petitioner has placed reliance on the decision of the Division Bench of this Court reported in 2014-3-LW.865 (The Inspector General Registration, Chennai and others Vs. K.P.Kadar Hussain and others), wherein the Division Bench of this Court had directed the Appellant therein to refund the additional stamp duty and excess registration charges to the Respondent therein. Relying on the said decision, the learned counsel has prayed for refund of the deficit in stamp duty paid by the Petitioner.

5. On the contrary, the learned Additional Government Pleader for the Respondents has relied on an unreported judgement of the Division Bench of the Madurai Bench of this

Court, dated 21.08.2017, made in WA(MD)No.3 of 2017 (The Inspector General of Registration, Chennai and others Vs. Kanagalakshmi Ganaguru), wherein this Court had held that the sale was conducted by the Officers of the Bank and they were termed as an agent of the secured creditors and therefore, the secured creditor cannot be termed as Collector or Revenue Officers and the proceedings initiated by the lender cannot be termed as that of a civil or revenue Court under the provisions of the Articles 18 and 23 of the Indian Stamp Act and consequently, refund was refused to be returned.

6. It is the contention of the learned counsel for the Petitioner that the sale was conducted through auction and therefore, the Respondent authority cannot invoke Section 47A of the Indian Stamp Act for demanding the Petitioner to pay the stamp duty for the market value of the property. On a perusal of the said decision relied on by the learned counsel for the Petitioner, it is seen that the Respondent had purchased the properties in a Court auction conducted by the Company Court and pursuant to such sale, the sale deed was executed by the Official Liquidator. Therefore, the demand of additional stamp duty and excess registration charges were held to be illegal. Whereas the facts and circumstances of the case on hand are different. Therefore, the decision relied on by the learned counsel for the Petitioner reported in 2014-3-LW.865 (The Inspector General Registration, Chennai and others Vs. K.P.Kadar Hussain and others) is not applicable to the facts of the case on hand.

7. In the case on hand, the 5th Respondent Bank had conducted the public auction and the Petitioner herein had participated in the same. On his request, the Petitioner had paid the entire deficit in stamp duty charges and received the documents. Hence, protection under Articles 18 and 23 of the Indian Stamp Act would not be applicable to the public auction conducted by the 5th Respondent Bank, in the light of the judgement of the Division Bench of the Madurai Bench of this Court, cited supra, relied on by the learned Additional Government Pleader, dated 21.08.2017, made in WA(MD)No.3 of 2017 (The Inspector General of Registration, Chennai and others Vs. Kanagalakshmi Ganaguru).



8. Further, as rightly pointed out by the learned Additional Government Pleader for the Respondents, on the request of the Petitioner, after inspection of the property, the Respondent authority revised the demand. The Petitioner had also paid the entire deficit in stamp duty charges to the tune of Rs.91,352/- without any protest, to the Respondent authority and received the documents. After lapse of more than seven years, this Writ Petition has been filed, seeking refund of the

stamp duty already paid. When the Petitioner had already paid the demand without any protest and received the documents, the prayer in this Writ Petition, seeking refund of the stamp duty cannot be entertained and the Petitioner is estopped from claiming the stamp duty amount already paid. Therefore, the contention of the learned counsel for the Petitioner is liable to be rejected.

11. For the reasons stated above and following the judgement of the Division Bench of the Madurai Bench of this Court, dated 21.08.2017, made in WA(MD)No.3 of 2017, the impugned demand of deficit in stamp duty charges is perfectly valid and there is no infirmity or illegality in such A demand. Consequently, this Writ Petition is to be dismissed on the ground of laches.

12. In the result, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Srcm

To

1.The Inspector General of Registration
Santhome High Road, Chennai.

2.The District Revenue Officer (Stamps)
Singaravellar Maligai, Chennai-1

3.The District Registrar, Administration
Registration Department, Chennai South
Saidapet, Chennai-15

4.The Sub Registrar, Pallavaram, Chennai-44

5.The Chief Manager,
Indian Bank, Pallavaram Branch,
Chennai-43.

+1 cc to The Government Pleader, Sr.No.87478
+1 cc to M/s.N.Suresh, Advocate Sr.No.86607

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SSI(CO)
CSL/31.01.2019