BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.01.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)No.1512 of 2017
and
C.M.P(MD)No.12110 of 2017

The Sub-Registrar,
Pudukkottai,
Tuticorin District. ... Appellant/Respondent

Vs.

J.Mathan ... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, against order made in W.P(MD)No.20367 of 2017, dated 07.11.2017 on the file of this Court.

Prayer in WP(MD). 20367/ 2017 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to delete the charge create in respect of the petitioners property in S.No.511/1C, in patta No. 3488, to an extent of 3.24 Cents, situated at Plot No. 1, PMS Nagar, Kumarakiri @ Pudukkottai Vilalge, Tuticorin District from the list of Encumbrance within the time frame stipulated by this Honble court.

For Appellant : Mr.A.K.Baskara Pandian, Special Government Pleader
For Respondent : Mr.R.Vijayakumar

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

The respondent/writ petitioner claims that he purchased the property admeasuring to an extent of 3.24 cents in Survey No.511/1C in patta No.3488, situated at Plot No.1, PMS Nagar, Kumarakiri @ Pudukkottai Village, Tuticorin District, through a registered sale deed bearing Document No.4939 of 2013, dated 17.12.2013 and claims to be in possession and enjoyment of the same right from the date of purchase. However, to his shock and surprise, he found that a charge has been created for a sum of Rs.95,372/- towards deficit stamp duty and it is also reflected in the Encumbrance Certificate and according to the first respondent/writ petitioner, the charge has been created without following the due process of law and therefore, he came forward to file a Writ Petition in W.P(MD)No.20367 of 2017 praying for issuance of a Writ of Mandamus, directing the respondent therein to delete the charge created in respect of the said property.

2.The learned Single Judge vide order, dated 07.11.2017 found that in the absence of initiation of proceedings under Section 47(A) of the Indian Stamp Act, 1899, such a charge, is wholly illegal and therefore, allowed the Writ Petition with a cost of Rs.10,000/- and to recover the same from the salary of the official, who has illegally created such a charge. Challenging the legality of the order, the respondent in the Writ Petition has filed the present Writ Appeal.

3.Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the appellant/respondent would submit that in the absence of a specific provision, it is open to the Inspector General of Registration to issue a circular for creation of a charge. The appellant being a Subordinate to the I.G of Registration, merely followed the circular and further that the imposition of cost of Rs.10,000/- would definitely result in adverse and serious consequences of the service career of the appellant/respondent herein and prays for interference.

4.Per contra, the learned counsel appearing for the respondent/writ petitioner has drawn the attention of this Court to Section 47(A)(4) of the Indian Stamp Act, 1899, and would submit that before creation of any charge, notice should be issued to the purchaser to pay deficit stamp duty and admittedly, notice under Section 47(A) has not been issued and as such, creation of the charge over the property in question by the appellant/respondent, was found to be illegal and therefore, the learned Single Judge has rightly allowed the Writ Petition with costs.

5.This Court has heard the rival submissions and perused the materials available on record.

6.It is relevant to extract Section 47(A)(4) of the Indian Stamp Act, 1899:-

> “4.Every person liable to pay the difference in the amount of duty under sub-Section (2) or sub-Section (3) shall pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, [interest at one per cent per month on such amount for the entire period of default: Provided that where a person has

preferred an appeal against the order under sub-Section (2) or sub-Section (3), the interest payable under this sub-Section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-Section (2) or sub-Section (3), as the case may be.]"

7.It is the specific case of the respondent/writ petitioner that no notice has been issued for initiation of the proceedings under Section 47(A)(1) of the Indian Stamp Act, 1899 and unless proceedings has been initiated in an order, charge cannot be created. The learned Single Judge has also taken note of the legal position and set aside the proceedings creating charge on the property and therefore, this Court finds no infirmity in the said findings. Insofar as the imposition of the cost to the appellant/respondent is concerned, it is the submission of the learned Special Government Pleader that it may have serious consequences of the service career of the appellant/respondent, who is the subordinate officer of the IG Registration and he merely followed the circular and as such, he cannot be found fault.

8.This Court heard Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the appellant and Mr.R.Vijayakumar, learned counsel appearing for the respondent.

9.In the considered opinion of this Court, in the absence of any statutory provisions in respect of creation of charge based on the circular issued by the Inspector General of Registration, is wholly unsustainable. However, taking note of the submission made by the learned Special Government Pleader appearing for the appellant that the appellant, who is the subordinate officer, has left no other option to follow the circular, is of the opinion that the imposition of cost of Rs.10,000/- warrants interference.

10.In result, this Writ Appeal is dismissed confirming the order made in W.P(MD)No.20367 of 2017, dated 07.11.2017. However, in the light of the reasons assigned, the imposition of cost of Rs.10,000/- to the appellant/respondent in the Writ Petition is set aside. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Sub-Registrar,
  Pudukkottai,
  Tuticorin District.

2.The Inspector General of Registration,
  100, Santhome High Road,
  Chennai – 28.

W.A.(MD)No.1512 of 2017
and
C.M.P(MD)No.12110 of 2017
02.01.2018

PS
JM/KKR/SAR 1/22.01.2018/4P/3C