BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2018

CORAM:

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

W.A(MD)No.893 of 2017
and
C.M.P(MD)Nos.6019 & 8087 of 2017

1. The Sub-Registrar, Natham.

2. The Special Deputy Tahsildar for Stamp Duty,
   Old Ramanathapuram Collectorate Office,
   Room No.104,
   Madurai - 20.

3. The Inspector General of Registration,
   120, Santhome High Road,
   Chennai. ... Appellants/Respondents

Vs.

Alagurani ... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, dated 22.02.2017 made in W.P(MD)No.14348 of 2012, on the file of this Court.

Prayer in WP(MD)No. 14348/ 2012 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings in S.R. No. 41 of 2006 dated 01.04.2010 and quash the same as illegal and consequently direct the 1st respondent to release the registered document No. 1131/06 dated 06.07.2006 without demanding any more stamp duty.

For Appellants : Mr.A.K.Baskara Pandian,
Special Government Pleader.
For Respondent : Mr.V.Sukumar

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

The official respondents in W.P(MD)No.14348 of 2017 are the appellants.

2.The respondent/writ petitioner said to have purchased a property bearing Registered Document No.1311 of 2006 on 06.07.2006 in the office of the first appellant herein. The land value was at Rs.31,500/- and also paid the stamp duty of Rs.2,520/- and in the description of the property, it has been indicated as 'agricultural land'. However, the first appellant herein had forwarded the same to the second appellant, who in-turn, vide communication, dated 15.10.2009, has observed that the said instrument has been under valued. The reason for stating so is that there is a possibility of converting the agricultural land in question as a house site in the near future and accordingly, the second appellant has fixed the land value at Rs.11,24,880/- as against the value found in the sale deed at Rs.31,500/- and as a consequence, a sum of Rs.87,430/- was demanded as a deficit stamp duty. The respondent/writ petitioner challenging the legality of the said order, filed an appeal before the third appellant herein with a delay and it was rejected on 14.06.2011 stating that no sufficient reasons have been cited for condoning the said delay and challenging the said order, the Writ Petition was filed and it was entertained and notices were ordered.

3.The second appellant herein/second respondent has filed the counter-affidavit in the writ petition stating among other things that the respondent/writ petitioner had purchased the land admeasuring to an extent of 60 cents of wet lands in Survey No.211/10B of Natham Town and the value of the property was indicated at Rs.31,500/-, on which, a stamp duty of Rs.2,520/- was also paid and it was also registered as document bearing No.1311/2006. It was found that though the lands were shown as wet lands, streets have already been formed and therefore, the highest rate of Rs.48/- per sq.ft was applied and the respondent/writ petitioner was called upon to pay the deficit stamp duty of Rs.97,396/- and on refusal to pay the said amount, it was referred to under Section 47 A(1) of the Indian Stamp Act. However, the second appellant herein, in Form I, as per Rule 4 of the Tamil Nadu Prevention of Undervaluation Rules, had issued notice to the respondent/writ petitioner asking to show-cause as to why the provisional fixation of the deficit stamp duty of Rs.97,936/- shall not be confirmed. Since, no reply was received, but taking into consideration the fact that the wet land has been converted into house site, deficit stamp duty of Rs.87,430/- had been fixed and it cannot be found fault with.

4.The learned Judge, after taking into consideration the rival submissions and materials, found that the third appellant/third respondent did not adduce any reasons as to the rejection of the request of the petitioner and therefore, set aside the order with a further direction to release the said document in favour of the respondent/writ petitioner within a stipulated time and challenging the legality of the same, the officials respondents have filed the present Writ Appeal.

5.The learned Special Government Pleader appearing for the appellants would submit that admittedly, the appeal filed by the respondent/writ petitioner was rejected on account of the fact that the reasons for delay having not been properly adduced and without making challenge to the said order, the writ petition has been filed challenging the proceedings of the second respondent in S.R.No.41 of 2006, dated 01.04.2010. Admittedly, the proceedings of the third respondent, dated 14.06.2011 in Mu.Mu.No.60269/N.4/2010, having not been put to challenge and as such, the Writ Petition is not maintainable and though the respondent/writ petitioner did not avail any opportunity and as such, fixation of deficit stamp duty of Rs.87,430/- is perfectly in order and prays for dismissal of the Writ Petition.

6.Per contra, the learned counsel appearing for the respondent/writ petitioner would submit that the reasons assigned for deficit stamp duty on account of the fact that there is a possibility of 'agricultural land' being converted as house site is *per se* unsustainable and would further add that unless the jurisdiction of the Sub-Registrar believing that there was a wilful under valuation of the market value of the property, reference cannot be made and also placed reliance upon the Judgment rendered by this Court in ***G.Mary Chellathai Vs. Tamil Nadu Inspector General of Registration and others [2017 (4) LW 471].***

7.In ***State of Uttar Pradesh and others Vs. Ambrish Tandon and another [2012 (1) CTC 556],*** similar issue arose for consideration and it is relevant to extract the portion of the order in paragraph No.8:-

> "..........It is also demonstrated that at the time of execution of the sale deed, the house in question was used for residential purpose and it is asserted that the stamp duty was paid based on the position and user of the building on the date of the purchase. The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase. ***Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty*** (emphasis supplied)".

8.This Court has considered the rival submissions and also perused the materials available on record and also the Judgments cited supra.

9.As rightly pointed out by the learned counsel appearing for the respondent/writ petitioner that unless the referring officer had believed that there was a wilful under valuation of the market value of the property, reference under Section 47A(1) of the Indian Stamp Act, cannot be made and this ratio has already been dealt with by the learned Single Judge of this Court in ***G.Mary Chellathai Vs. Tamil Nadu Inspector General of Registration and others [2017 (4) LW 471]***. Since there is an error apparent on the record, the respondent/writ petitioner need not challenge the proceedings of the third respondent, dated 14.06.2011.

10.In the result, this Writ Appeal is dismissed. However, there shall be no order as to costs. The second appellant is directed to return the document in question, within a period of two weeks from the date of receipt of a copy of this order, to the respondent/writ petitioner. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Sub-Registrar,
   Natham.

2. The Special Deputy Tahsildar for Stamp Duty,
   Old Ramanathapuram Collectorate Office,
   Room No.104,
   Madurai - 20.

3. The Inspector General of Registration,
   120, Santhome High Road,
   Chennai.

+1cc to Mr.V.Sukumar, Advocate SR.No.57832

PS
TE/SKN/RSK/SAR1/28.03.2018/4P/5C

W.A(MD)No.893 of 2017 and
C.M.P(MD)Nos.6019 & 8087 of 2017
22.03.2018