IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.03.2019

CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.2078 of 2019

R.C.Gokulakrishnan ... Petitioner

Vs

1.The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai - 600 028.

2.The District Registrar,
Thiruvannamalai Road,
Krishnagiri - 635 001.

3.The Sub Registrar,
Kelamangalam,
Krishnagiri District - 635 113.

4.MDK Developers Bangalore Pvt. Ltd.,
Rep. by Mr.Elango, Managing Director
12/85, Titan Township, HCF, Post
Mathigiri, Hosur - 635 110. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in respect of his proceedings Letter No.169/2016 dated 06.01.2018, i.e., "Deficit Stamp Duty and Registration Charges" imposed on Document No.5694/2011 under Section 47A of Indian Stamp Act, 1899, to quash the same and consequentially direct the 3rd respondent to remove Annexure 1A from the said Document No.5694/2011.

For Petitioner : Mr.D.Manimaran
For Respondents: Mr.P.P.Purushothaman,
Government Advocate for R1 to R3
R4 - Service awaited(left)

O R D E R

The petitioner is aggrieved against the proceedings of the 3rd respondent dated 06.01.2018 demanding the deficit stamp duty from the petitioner in respect of the document registered with Registration No.5694 of 2011 under Section 47(A) of the Indian Stamp Act, 1899. Consequently, the petitioner seeks for a direction to remove the Annexure-1A from the said Document No.2214 of 2011.

2. The main contention raised against the impugned demand is that the same was barred by limitation, since the subject matter document was admittedly registered as early as on 15.09.2011 in Document No.5694 of 2011.

3. In the counter affidavit filed by the respondents, it is stated that the 3rd respondent issued a notice on 21.01.2016 to the petitioner informing that the said document was registered with deficit stamp duty and consequently, to remit the said amount of Rs.49,680/-.

4. Heard both sides.

5. There is no dispute to the fact that the subject matter document was registered as Document No.5694 of 2011 on 15.09.2011. If there is a deficit stamp duty payable by the petitioner, procedures are contemplated under Sections 33A and 47A of the Indian Stamp Act, 1899, to recover the same.

6. Perusal of Section 33-A would show that after registration of any instrument, if it is found that proper stamp duty has not been paid, a certificate from the Registrar of District has to be obtained first and thereafter, such deficit stamp duty shall be recovered from such person as arrears of land revenue. The proviso to section 33-A makes it very clear that no such certificate shall be granted, unless due enquiry is made and such person is given an opportunity of being heard. Second proviso further contemplates that no such enquiry shall be commenced after the expiry of three years period from the date of registration of the instrument. Therefore, it is apparent that the proceedings under section 33-A cannot be initiated, after expiry of three years from the date of registration of instrument. Likewise, under section 47-A, the Collector may either suo motu or otherwise take action to recover the differential stamp duty payable, within five years from the date of registration of such instrument. In this case, admittedly, the documents were registered as early as in the year 2011 and the impugned communication itself was issued on 06.01.2018 which is admittedly beyond the periods prescribed, both under section 33A and Section 47A, even assuming that the impugned proceedings can be construed as the one fall either under section 33-A or under section 47-A of the said Act.

7. No doubt, a notice was issued by the 3rd respondent on 21.01.2016. However, such notice cannot be construed as proceedings initiated under section 47A, since only the Collector, under the said provision, either suo motu or otherwise within five years from the date of registration of the document can call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property and if he has reason to believe

that the market value has not been truly set forth in the instrument and determine the market value of such property and the duty as aforesaid in accordance with the procedure provided under Section 47A, Sub Clause 2.

8. In this case, admittedly, the Collector has not issued any proceedings within the period of five years. Hence, it has to be held that the notice issued on 21.01.2016 by the 3rd respondent cannot be construed as proceedings initiated under Section 47A. Therefore, I find that the present demand is undoubtedly barred by limitation. Consequently, the impugned demand cannot be sustained.

9. Accordingly, this Writ Petition is allowed in part and impugned proceedings is set aside. However, in respect of other limb of the prayer with regard to the removal of Annexure 1A from the subject matter Document No.5694 of 2011 is concerned, the learned counsel for the petitioner submitted that he is not pressing the said relief. The said statement is recorded. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsi/vsi

To

1.The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai - 600 028.

2.The District Registrar,
Thiruvannamalai Road,
Krishnagiri - 635 001.

3.The Sub Registrar,
Kelamangalam,
Krishnagiri District - 635 113.

+1cc to Mr.D.Manimaran, Advocate, S.R.No.26703
+1cc to the Government Pleader, S.R.No.28055

W.P.No.2078 of 2019

SSI(CO)

RRS(27/04/2019)