IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.24368 of 2006

R.Vellaichamy ... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by its Secretary,
Registration Department,
Fort St. George,
Chennai-600 009.

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

3.The Deputy Inspector General of Registration,
Cuddalore Zone, Cuddalrore.

4.The Accountant General(ISR Branch),
No.61, Greams Road,
Chennai-600 006.

5.The District Register,
O/o the District Registrar,
Chidambaram,
Cuddalore District.

6.The District Register,
O/o the District Registrar,
Kallakurichy,
Villupuram District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 4th Respondent relating to Audit Objections in Parts 1/IIA, 3/IIA, 4/IIA, 5/IIA and 2/IIB of the No.A.G.(AU) II/ISR IV/Regn - V/20-308/02-03/383 dated 07.02.2003 and quash the same in so far as the Petitioner is concerned and consequently direct the Respondents to repay a sum of Rs.1,52,673/- together with interest at the rate of 24% p.a. to the Petitioner with effect from 26.10.2005 till the date of realization.

For Petitioner : Mr.K.Raja

For Respondents : Mr.T.M.Pappiah
Spl. Govt. Pleader

ORDER

This Writ Petition has been filed for a Writ of Certiorari cum Mandamus to quash the Audit Objections of the 4th Respondent dated 07.02.2003 in so far as the Petitioner is concerned and consequently to direct the Respondents to repay a sum of Rs.1,52,673/- together with interest at the rate of 24% p.a. to the Petitioner with effect from 26.10.2005 till the date of realization.

2.The facts of the case necessary for deciding this Writ Petition are fairly simple. The Petitioner was employed as a Joint Sub-Registrar in the Registration Department and attained superannuation on 31.10.2005. During his tenure, the Petitioner had permitted the registration of certain documents in respect of which Audit Objections were raised by the 4th Respondent in the Impugned Proceedings dated 07.02.2003. Based on the Impugned Proceedings, a letter dated 17.09.2003 was issued to the Accountant General (Audit - II), Chennai stating that the Petitioner caused revenue loss to the Department by wrongly classifying the aforementioned documents. Upon receipt of the communication, the Petitioner paid the aggregate amount of Rs.1,52,673/- so as to ensure that he is able to retire with all benefits and without any undue difficulties.

3.At the hearing, the learned counsel appearing for the Petitioner referred to each of the charges against him in respect of the alleged incorrect classification of documents for the purposes of payment of stamp duty and registration fees. In particular, he referred to the Release Deed bearing Document No.615 of 2002 (Page No.6 of the typed set of papers), Release Deed bearing Document No.665 of 2002(Page No.8 of the typed set of papers), Release Deed bearing Document No.1888 of 2002(Page No.10 of the typed set of papers) and Release Deed bearing Document No.1135 of 2002 (Page No.13 of the typed set of papers). In addition, he referred to the Sale Deed bearing Document No.88 of 2002(Page No.11 of the typed set of papers). With regard to all the above mentioned Release Deeds, he pointed out as to how the Release Deeds are as between members of a family and that, therefore, the said instruments are not liable to be stamped as conveyances under the Stamp Act. Accordingly, he submitted that the Petitioner had determined that the appropriate stamp duty payable on the release deeds would be at 4%. In respect of the Sale Deed bearing Document No.88 of 2002, he submitted that he had recommended that a sum of Rs.13,105/- be imposed differential stamp duty and registration fees, whereas a lower amount was imposed by his successor and that, therefore, he is not responsible for the shortfall. In order to substantiate the submission, the learned counsel handed over the copy of the proceedings dated 29.01.2002 issued by the Petitioner as Joint Sub-Registrar, Chidambaram. In addition, the learned counsel invited the attention of the Court to the judgment in W.P.(MD).No.4996 of 2007 wherein this Court after considering the law on payment of stamp duty in transactions among family members, in paragraph 24 held as follows:

> "24.Government Letter in Lr.No.4860/J1/, dated 01.03.1999 Commercial Taxes(J), Tax Secretariat, Chennai states that family includes brothers and sisters. Therefore, in the case of release by an instrument between the brothers and sisters, a concession is given in the payment of stamp duty considering their relationship, as family members. An instrument of partition, settlement and release of execution in favour of brothers and sisters is an instrument in favour of a member of a family as defined under Article 58 of the Indian Stamp Act. The effect of the clarification of the Inspector General in his letter dated 11.10.2000, addressed to all the District Registrars and to all the Deputy Inspectors General of Registration to the effect is that in the case of release under Article 55A and 55A(1) is between the members of the family, the stamp duty that is attracted is one rupee or every 100 part thereof of the market value of the property subject to maximum of Rs.10,000/-."

Accordingly, the learned counsel for the Petitioner submitted that the Impugned Order dated 07.02.2003 is liable to be quashed and consequently, the amount of Rs.1,52,673/- which was paid by him is liable to be refunded with interest.

4.In response, the learned counsel appearing for the Respondents referred to paragraphs 4 and 5 of the counter affidavit and submitted that the demand was made for shortfall in revenue on account of incorrect classification of the registered document on the basis of Audit Objection in this regard. Accordingly, he submitted that the Impugned Proceedings dated 07.02.2003 of the 4th Respondent is valid.

5.The affidavit, counter affidavit, relevant documents on record and oral submissions of the parties were carefully considered.

6.It is very evident on examining the relevant documents that all the Release Deeds that were registered were among family members. Accordingly, the stamp duty and registration fee levied thereon is appropriate and these documents are not liable to be stamped as conveyances under the Indian Stamp Act. In this case, as correctly contended by the learned counsel for the Petitioner, the judgment of this Court in W.P.(MD).No.4996 of 2007 is squarely applicable. As regards the sale deeds, the recommendation of the Petitioner to charge a sum of Rs.13,152/- towards differential/shortfall in stamp duty and registration fees was not followed by his successor. As such, the Petitioner cannot be held responsible for the same. For the above reasons, the Writ Petition is liable to be allowed.

7.In the result, this Writ Petition is allowed by quashing the Impugned Order dated 07.02.2003. Consequently, the amount of Rs.1,52,673/- which was paid under protest by the Petitioner on 26.02.2005 is liable to be refunded. However, the rate of interest claimed by the Petitioner cannot be accepted. Accordingly, the Second Respondent is directed to refund the said amount with interest thereon at 9% per annum (from 26.10.2005 till the date of payment thereof) within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Rrg

TO

1.Secretary,
The Government of Tamil Nadu
Registration Department,
Fort St. George,Chennai-600 009.

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

3.The Deputy Inspector General of Registration,
Cuddalore Zone, Cuddalrore.

4.The Accountant General(ISR Branch),
No.61, Greams Road, Chennai-600 006.

5.The District Register,
O/o the District Registrar,Chidambaram,Cuddalore District.

6.The District Register,
O/o the District Registrar,
Kallakurichy, Villupuram District.

+2cc to Mr.N.Kolandaivelu, Advocate, S.R.No.25359
+1cc to the Government Pleader, S.R.No. 36341

W.P.No.24368 of 2006

KAN (CO)
GN(29/04/2019)