IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.28398 of 2004
and
W.M.P.No.34480 of 2004

B.Pennarasi ...Petitioner

Vs

1.Revenue Divisional Officer,
Office of the District Revenue,
Ponneri,
Trivellore District.

2.Special Deputy Collector (Stamps),
Office of the District Collector,
5th Floor, Collectorate Buildings,
Rajaji Salai,
Chennai - 600 001.

3.Sub Registrar,
Office of the Registration,
Red Hills,
Trivellore District.
Tamil Nadu. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order made in proceedings No. ந.க.சி.ப.எண்/149/2003/2/அ2 dated 02.03.2004 and quash the same and direct the 1st respondent to return the original sale deed executed in favour of the petitioner bearing document No.4816/2001 dated 28.12.2001 together with monetary compensation for loss of benefits incurred and without any claim for payment of additional stamp duty or any other amount as demanded on her thereunder.

For Petitioner : Mr.K.S.Naryanan

For Respondents: Mr.S.Suresh Kumar, GA
for R1

Mr.P.P.Purushothaman, GA
for R2 & R3

ORDER

The order under challenge in the present writ petition is to a provisional assessment of the stamp duty to be paid on the petitioner's sale deed.

2. The grounds raised by the learned counsel for the petitioner is that under the provisions of Section 47-A of the Stamp Act, only when there is willful under-valuation of the transfer with a fraudulent intention to evade payment of proper stamp duty, the respondents are entitled to invoke the provisions. The second ground raised by the learned counsel for the petitioner is that under Rule 7(1) of the Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, the authority is required to pass an order within 3 months from the date of first notice, which has been violated in the present case.

3. It is seen that the Form I notice came to be issued by the second respondent on 11.04.2002, determining the deficit stamp duty at Rs.66,322/-. Thereafter, the provisional valuation was made by the first respondent on 02.03.2004, after a period of almost two years. When the notice under Form I was issued in the year 2002, the petitioner herein had given reply on 29.04.2002, stating that the lands in question are agricultural lands and that she had properly valued the same in her sale deed. Further, she had also brought to the notice of the authorities that the guideline value of the lands, which the respondents have adopted, are lands that are housing plots. Since the petitioner's lands are agricultural lands, the yardstick applied by the respondents is incorrect. Though such a representation has been made by the petitioner, objecting to the Form I notice, the impugned order came to be passed without consideration of the objection raised by the petitioner.

4. Insofar as the grounds raised by the petitioner is concerned, the issue has already been dealt with by the Hon'ble Apex Court in a decision reported in 2009 (3) LW 236 in the case of V.N.Devadoss vs. Chief Revenue Control Officer-cum-Ins. and others. Following the said decision, a learned brother Judge of this Court had reiterated the proposition in the decision reported in 2017 (5) CTC 173 in the case of G.Mary Chellathai vs. Tamil Nadu Inspector General of Registration & Principal Revenue Authority and others. In the said decision, the learned Judge of this Court had held that the essential requirement to make a reference under Section 47-A would be after satisfaction

that there was a willful under valuation by the authority with a fraudulent intention to evade payment of stamp duty. In the same decision, the learned Judge has also dealt with the scope of Rule 7(1) of the Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, and held that the Rule mandates for a period of 3 months for completion of proceedings and failure to complete the proceedings within the time period, will vitiate the entire proceedings. The relevant observations of the learned Judge is as follows:

> "9. The facts are not in dispute. The agreements in question are dated 06.05.1997 and 08.05.1997 respectively. The appellants were also put in possession of the properties agreed to be purchased by them on 09.05.1997 and 10.05.1997. It is seen from the agreements that a substantial part of the consideration was paid even at the time of the entering into the agreements or within a short span of time thereafter. It is not in dispute that the Debt Recovery Tribunal, Chennai, granted orders of injunction restraining the agreement-vendor from alienating the properties on 13.05.1997. The orders of injunction were vacated by the Debt Recovery Tribunal only on 30.01.2004. The said orders were appealed against by the Bank and the appeals came to be dismissed on 10.12.2004. The appellants were forced to institute suits for specific performance of the agreement in CS.Nos.40 and 41 of 2006 before this Court which came to be decreed on 24.04.2008. Justifying the saying that the troubles of a decree holder starts only after the decree, the Execution proceedings which were launched in 2009, ended in an execution of sale deeds on 24.01.2013. The sale deeds were presented for registration and the Sub-Registrar promptly referred the matters under Section 47-A. In this background, it has to be tested as to whether it could be said that there was willful under-valuation of the property with an intention to avoid Stamp duty on the part of the appellants. In V.N.Devadoss v. Chief Revenue Control Officer-cum-Ins. and Ors., refer to supra, the Honble Supreme Court has observed as follows:-
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> 7. A bare perusal of the rules make the position clear that sub-Rule (4) enumerates procedure on receipt of refernce under Section 47-A. Rule 5 speaks about the principles for determination of market value. Sub-clause (a) refers to lands; (b) house sites; (c) buildings and (d) properties other than lands, house sites and buildings. Sub Sections (1) and (3) of Section 47-A clearly reveal the intention of the

Legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to under value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is willful under valuation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

10. The above observations of the Honble Supreme Court came after having noticed the provisions of Section 47-A of the Stamp Act and the Rules made thereunder. Therefore, essential requirement to enable a Registering Officer to make reference under Section 47-A is the presence of willful under-valuation with fraudulent intention to evade payment of proper stamp duty.

15. Mr.K.Bijay Sundar, learned counsel appearing for the appellants would invite my attention to Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, and contend that it is incumbent upon the Original Authority, namely the 2nd respondent to conclude the proceedings and pass final orders within a period of three months from the date of the 1st notice. He would also contend that the said requirement is mandatory and any violation would result in the entire proceedings being vitiated. On the other hand, Mr.Venugopal, learned Special Government Pleader would submit that the requirement cannot be said to be mandatory and in any event, the delay was occasioned due to administrative reasons and hence the same cannot be taken as a vitiating factor. Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules, 1968, reads as follows:-

7. Final order determining the market value:-

(1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in

any case after careful consideration of all the relevant factors and evidence available with him pass an order within three months from the date of first notice determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any.

(2) A copy of the order shall be communicated to the registering officer concerned for his record.

(3) The difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under Sub-section (2) or sub-section (3) of section 47-A.

(4) The Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under section 47-A, give a certificate in Form III by endorsement on the instrument.

16. A reading of the above Rule would make it clear that a duty is imposed on the Original Authority, namely the Deputy Collector (Stamps) to pass a final order within a period of three months from the date of the 1st notice. The 1st notice is the Form I notice. From the order of the 2nd respondent dated 13.06.2014, it is seen that the Form I notice was issued on 09.12.2013 and the period of three months which is to be reckoned from the said date, expires on 09.03.2014. Admittedly, the final order was passed on 13.06.2014, which is well beyond the period of three months prescribed under the Rules.

17. In Tata Coffee v. State of Tamil Nadu, reported in 2008 (3) CTC 614, this Court, after elaborately discussing the procedure to be followed by the Authorities under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, has observed as follows:

2. As it is stated above the procedure for such suo motu power is also contemplated in Rules 4 to 7 of the Rules, however it is also relevant note that in respect of the powers of the Collector to conduct enquiry under Section 47A (2) and also in respect of the time within which of the registering authority should refer the matter for determination for market value to the Collector, nothing stipulated under the

Act, either Under Section 47 A (1) or 47 A(2), even though the Rules as stated above namely Rules 4,5,6 and 7 the Collector is bound to give 21 days notice while asking for representation in Form-1: the Collector, after assessment of the provisional market value while sending Form 2, can fix the date of its choice calling for objection in respect of provisional market value, the Collector has pass final order determining the market value, within three months from the date of 1st notice namely notice in Form I.

18. The above decision of this Court was cited and followed in Vijayalakshmi v. Chief Controlling Revenue Authority cum Inspector Genral of Registration, reported in 2012 (3) LW 27, Honble Mr.Justice B.Rajendran, in the said decision had, after referring to Tata Coffee v. State of Tamil Nadu, cited supra, concluded that the non completion of the proceedings within a period of three months as mandated by Rule 7 would vitiate the entire proceedings. Therefore, the second question has also to be necessarily answered in favour of the appellants."

5. The above observations made by this Court are self explanatory and answers the grounds raised by the petitioner herein, in her favour. As such, the present impugned order made after more than 3 months from the first notice and in the absence of any subjective satisfaction of the authorities that the instrument has been presented with a fraudulent intention to evade payment of stamp duty, the impugned order cannot be sustained.

6. For all the foregoing reasons, I am of the view that the petitioner is entitled to succeed. Consequently, the order dated 02.03.2004 on the file of the 1st respondent relating to the impugned order made in proceedings No.ந.க.சி.ப.எண்/149/2003/2/அ2, is quashed.

7. Accordingly, the Writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jas/hvk

To

1.The Revenue Divisional Officer,
Office of the District Revenue,
Ponneri,
Trivellore District.

2.The Special Deputy Collector (Stamps),
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5th Floor, Collectorate Buildings,
Rajaji Salai,
Chennai - 600 001.

3.The Sub Registrar,
Office of the Registration,
Red Hills,
Trivellore District.
Tamil Nadu.

+1 cc to Mr.Narayanan, Advocate, Sr.No. 32330
+1 cc to The Government Pleader, Sr.No. 33408,32012

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MG(CO)
CSL/07.06.2019