IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2787 OF 2016
and
C.M.P.NO. 20185 OF 2016

1.G.Jawahar
2.G.Aswini ...Appellants

Vs.

1.The Inspector General of Registration/
Office of the Registration,
No.100, Santhome High Road,
Chennai - 600028.

2.The District Revenue Officer,
Office of the District Revenue Office,
M.Singara Velar Maligai (Stamps),
23, Rajaji Salai,
Chennai - 600001.

3. The Sub Registrar,
Adyar,
Chennai - 600020.

4. The Accountant General (Audit),
Anna Salai, Teynampet,
Chennai - 600018.

... Respondents

PRAYER: Civil Miscellaneous Appeal under Section 47(A) (10) of the Indian Stamps Act praying to set aside the order passed by the first respondent through his proceeding in Ka.No.3674/U1/08-1 dated 13.04.2016.

For appellant : Mr.T.Karunakaran
For respondents 1-3 : Mr.T.M.Pappiah
Special Government Pleader

J U D G M E N T

Aggrieved over the order passed by the first respondent dated 13.04.2016, the appellants have preferred the above appeal.

2. According to the appellants they purchased the property on 16.02.2004 and presented the documents to the third respondent / Sub Registrar on the same date. It was registered as document No.468 of 2004 and referred for determination of market value to the second respondent. The second respondent has determined the market value and demanded the deficit stamp duty of Rs.1,70,024/- and a sum of Rs.21,285/- towards registration fee. The appellant has paid the deficit stamp duty as well as registration charges on 21.04.2004 and 28.04.2004 respectively. An endorsement was made to that effect and the document was returned to the appellant in the year 2004 itself.

3. After a period of nine years, the respondent issued a show cause notice on 07.08.2013 under Section 47-A (6) of the Indian Stamp Act. The appellant submitted his reply on 24.02.2014 and objection was rejected in the impugned order passed on 13.04.2016.

4. The appellant contended before this Court that the action of the first respondent is contrary to Section 47 A (7) of the Act.

5. Heard both sides.

6. On a perusal of materials placed before this Court, it is seen that the document was registered on 16.02.2004 and deficit stamp duty as well as deficit registration charges were paid on 21.04.2004 and 22.04.2004 respectively. Endorsement in form III was made and document was returned to the appellant.

7. It is seen that show cause notice was issued by the first respondent on 07.08.2013 and suo moto revision was initiated under Section 47-A (6) of the Act, pursuant to the audit objection made on 20.01.2005. Section 47 A (6) of the Act confers power on the first respondent to initiate suo moto proceedings and examine the order passed under sub section 2 or sub section 3 of the Section 47-(A) of the Act, and if he finds that the order is prejudicial to the interest of the revenue, he can conduct an enquiry, intiate proceedings to revise, modify or set aside the order passed by the Sub Ordinate authorities.

8. In the instant case, the second respondent passed an order demanding deficit stamp duty and it was paid on 21.04.2004 and 28.04.2004. Even assuming the date of order as 28.04.2004, as the second respondent, suo moto proceedings by the first respondent should have been initiated within five years from the date of the order passed by the second respondent under Section 47-A (3). It is beneficial to refer Section 47 A (7) on this aspect which reads as follows:

"(7) The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if,

(a) the time for appeal against that order has not expired; or

(b) more than five years have expired after the passing of such order."

9. From a reading of this provision, it is clear that the Chief Controlling Revenue Authority shall not initiate the proceedings on and order after five years from the date of passing of such order. In the instant case, the order of the second respondent was on 28.04.2004 but the show cause notice was initiated on 07.08.2013 i.e. after a period of nine years.

10. Even assuming the power exercised by the first respondent is correct, that should have been exercised within a reasonable period, when it came to his knowledge. From the show cause notice stated supra, it is seen that the audit objection was made on 20.01.2005. In that event, within a period of five years i.e. on or before 19.01.2010, the first respondent should have initiated action. But there is no explanation as to why it was initiated after a period of eight years from the date of audit objection.

11. Considering the above, it is very clear that the exercise of power of the first respondent under Section 47-A (6) of the Act, is hopelessly barred by limitation and it was exercised without jurisdiction in view of Section 47-A (7) of the Act. Therefore, this Court has no hesitation to set aside the impugned order passed by the first respondent dated 13.04.2016.

12. The learned counsel for the appellant would submit that pursuant to the order passed by the first respondent dated 13.04.2016, he deposited the revised deficit amount to the tune of Rs.1,74,314/- towards Stamp duty and Rs.45,345/- towards registration charges for the purpose of preferring the appeal.

13. He would also submit that as per the explanation under Section 47-A (11), he is entitled to get refund of the amount. The submission made by the learned counsel is valid and therefore direction is issued to the first respondent to refund the amount of Rs.1,74,314/- collected towards the deficit stamp duty and Rs.45,345/- collected towards registration charges on 18.05.2018, to the appellant within a period of six weeks from the date of receipt of a copy of this order.

14. The Civil Miscellaneous Appeal is disposed of with the above directions. No costs. Consequently, connected civil miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

bkn
To

1.The Inspector General of Registration/
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No.100, Santhome High Road,
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4.The Accountant General(Audit)
Annasalai, Teynampet
Chennai 600 018.
+1 CC to Govt. Pleader sr 31018.

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VGI(CO)
SP(26/08/2019)