IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.7181 of 2010

RG AGRI EXPORTS (P) LTD.
REP.BY ITS DIRECTOR, T.CHINNADURAI,
NO.47, 6TH CROSS STREET,
INDIRA NAGAR, ADYAR, CHENNAI-20. ..PETITIONER

Vs.

1 THE INSPECTOR GENERAL OF REGISTRATION-CUM-CHIEF CONTROLLING REVENUE AUTHORITY (STAMPS), 120 SANTHOME HIGH ROAD, CHENNAI-28

2 THE DISTRICT REGISTRAR,
CHENGALPATTU.

3 THE SUB REGISTRAR,
THIRUKAZHUKUNDRAM. ..RESPONDENTS

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari Mandamus, calling for the records relating to the order of the 2nd respondent dated 20.8.2008 made in No.2647/A1/2008 as confirmed by the order of the 1st respondent by its order dated 9.12.2009 in Pa.Mu.No.49658/P1/2008 and quash the same and direct the 3rd respondent to register the Rectification Deed bearing Document No.P.11/2008 without demanding any additional payment as deficit stamp duty and to release the document.

For Petitioner : Mr.S.Abubacker Sidhic for Mr.D.Kumar

For Respondents : Mr.P.Purushothaman, G.A.

O R D E R

The petitioner company intended to purchase agricultural lands in S.No.175/1 measuring 59 Cents, S.No.175/2 measuring 49 Cents, S.No.175/3 measuring 49 Cents, S.No.175/4 measuring 69

Cents, S.No.175/5 measuring 2 Cents, in total measuring an extent of 2.28 Acres in No.81, Nallathur Village, Thirukazhukundram Taluk, Chengalpattu District situated within the jurisdiction of the third respondent. The vendors of the aforesaid property had executed sale deed for sale consideration of Rs.3,42,000/- and the said sale deed was registered on the file of the Sub Registrar, Thirukazhukundram, Chengalpattu District. At the time of execution of sale deed, stamp papers were purchased in the name of M/s.Rose Agro Farms Private Limited and at the time of preparing sale deed, due to mistake inadvertantly typed M/s.Rose Agro Farms Private Ltd. as purchaser of the aforesaid property. According to the petitioner, the said mistake was committed at the time of preparing the document and purchasing stamp duty. Further, it is submitted that the sale deed was signed by impressing the seal RG Agri Exports Private Ltd. Hence, rectification deed has been filed before the Sub Registrar, Thirukazhukundram and the same was impounded on 26.2.2008. Subsequently, the second respondent had issued show cause notice, dated 5.6.2008 by stating that rectification deed was referred under Section 38(2) of the Stamp Act by the third respondent by impounding the same under SEction 33 of the Stamp Act as the stamp duty chargeable to the Document is under Article 23 of the Stamp Act as the stamp duty chargeable to the document is under Article 23 of the Stamp Act and the stamp duty was determined at Rs.1,09,420/- and fine is Rs.80/- under schedule I of the Article 23 of the Stamp Act and called upon the petitioner to submit his explanation within 21 days as to why it should not be collected from them. The said show cause notice, dated 5.6.2008 was despatched by the second respondent on 23.6.2008 and received by the petitioner on 25.6.2008. The petitioner submitted reply on 7.7.2008 and the same was received by the second respondent on 8.7.2008. The second respondent by proceedings No.1637/A1/2008 dated 14.7.2008 passed the final order without considering the petitioner's explanation. The second respondent passed the final order without providing an opportunity to the petitioner, nor the second respondent considered the explanation submitted by the petitioner. Therefore, the final order passed by the second respondent violates the principle of natural justice.Therefore, the writ petitioner has preferred an appeal before the first respondent and the first respondent confirmed the order of the second respondent without considering the grounds raised in the appeal. The first respondent rejected the appeal by stating that the stamp papers were purchased in the name of Rose Agro Farms Private Ltd. Therefore, the contention of the writ petitioner was rejected by the appellate authority. Assailing the aforesaid order, the present writ petition has been preferred by the petitioner to set aside the same.

2. The learned counsel for the petitioner mainly contended that the second respondent has not duly considered the explanation submitted by the writ petitioner and no opportunity was granted to produce the relevant documents to establish that the mistake was committed at the time of execution of the sale deed is only due to inadvertent mistake, not intentionally. It is further submitted that the writ petitioner viz., RG Agro Export Private Ltd. has paid the entire sale consideration to the vendors of the property and if necessary, the petitioner is ready to produce the relevant documents before the first respondent to establish that the said amount was paid from the accounts of the R.G. Agro Exports Private Ltd. Therefore, the said mistake is only due to the error committed at the time of typing of the sale deed. Hence, opportunity may be granted to the writ petitioner to place all the relevant records by showing that the said property purchased only for R.G. Agro Exports Private Ltd. and not for Rose Agro Farms Private Ltd. In fact, the same person is the Director of both companies. Therefore, there is confusion while preparing the sale deed by the licensed document writer and the said mistake has been rectified by the writ petitioner by submitting the rectification deed. But, the respondents misunderstood and treated the rectification deed as another sale deed under Article 23 of the Indian Stamp Act and impounded the document and determined the stamp duty. The action of the respondent is totally contrary to the provisions of the Indian Stamp Act. Therefore, the impugned order is liable to be set aside.

3. The learned Government Advocate appearing for the respondents on instruction submitted that the explanation of the writ petitioner was considered and the appeal preferred by the writ petitioner was also rejected by the first respondent. According to the learned Govt. Advocate, the sale deed was executed by the vendor of the writ petitioner, now, rectification deed submitted by the petitioner cannot be entertained. The petitioner has to execute fresh sale deed or the rectification deed would be treated as sale deed under Article 23 of the Indian Stamp Act. Hence, the respondents rightly rejected the claim of the writ petitioner.

4. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and perused the materials available on record.

5. By examining the submissions made by the parties, sale deed was executed by the vendors viz., Sivakami Ammal and 7 others and the writ petitioner in Rose Agro Farms Private Ltd. by registered sale deed in Doc.No.5145/2007, dated 18.6.2007.

Admittedly, the stamps papers were purchased in the name of Rose Agro Farms Private Ltd. on 18.6.2007 and the deed of sale was executed on 18.6.2007 and the same was registered on the same day. The writ petitioner came to know the inadvertent mistake committed by them and therefore, the rectification deed was presented before the Sub Registrar, Thirukazhukundram, third respondent on 26.2.2008 and the said rectification deed was not accepted and directed the writ petitioner to pay stamp duty of Rs.1,09,420/- and impounded the document by the Sub Registrar, Thirukazhukundram.

6. On perusal of the sale deed, dated 18.6.2007, the purchaser name was shown as Rose Agro Farms Private Ltd. and the stamp papers were also purchased in the aforesaid company name viz., Rose Agro Farms Private Ltd. But it was not signed and sealed by one Chinnadurai, Director of the R.G. Agro Exports Private Ltd. The Sub Registrar, Thirukazhukundram entertained the sale deed despite discrepancy in the sale deed and the same was registered on 8.6.2007, however, the sale deed was returned to rectify the defects found in the sale deed. The petitioner has filed rectification deed before the Sub Registrar, Thirukazhukundram to rectify the defects in the sale deed. The learned counsel appearing for the petitioner mainly canvassed before this Court that the writ petitioner submitted explanation that the said mistake was committed inadvertently and due to oversight of the licensed document writer and the writ petitioner also undertake to file an affidavit before the authority that the writ petitioner so far not encumbered the said property to any third party and also submit the original sale deed to the authority concerned if necessary. Secondly, the writ petitioner is ready to produce relevant records to satisfy the authority that total sale consideration amount has been paid to the vendor by mobilizing the funds from R.G.Agro Exports Private Ltd. Therefore, the contention of the writ petitioner seems to be reasonable, as such, an opportunity shall be granted to the writ petitioner to produce relevant records before the first respondent. As rightly pointed out by the counsel appearing for the petitioner, explanation, dated 7.7.2008 was not duly considered by the second respondent while passing the final order. On the aforesaid ground, the impugned order passed by the second respondent is set aside and remitted back to the first respondent to consider afresh.

7. After analysing the facts and circumstances of the case, this Court is inclined to pass the following order:

(i) The impugned order passed by the first respondent, dated 9.12.2009 is quashed and remitted to the first respondent to consider afresh and pass final order in accordance with law.

(ii) The writ petitioner has to file an undertaking before the first respondent that the writ petitioner so far not encumbered the said property and produce relevant documents, before the first respondent for enquiry.

(iii) The writ petitioner has to file original sale deed as and when required by the first respondent.

(iv) The first respondent shall proceed with enquiry by serving notice to all the parties concerned and to pass final orders on merit and in accordance with law, as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of a copy of this order.

8. In fine, the writ petition is allowed with the above directions. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 THE INSPECTOR GENERAL OF REGISTRATION-CUM-CHIEF CONTROLLING REVENUE AUTHORITY (STAMPS),120 SANTHOME HIGH ROAD, CHENNAI-28

2 THE DISTRICT REGISTRAR, CHENGALPATTU.

3 THE SUB REGISTRAR, THIRUKAZHUKUNDRAM.

+1 cc to M/s.S.Vadivel Murugan,Advocate Sr.No. 89019
+1 cc to The Government Pleader Sr.No. 89967

AKM/11.12.19/5P-6C /