IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2019

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THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

W.P.No.4600 of 2018
AND
WMP.No.5666 & 5667 of 2018

R.Duraisamy ... Petitioner

.vs.

1.The District Registrar,
Collector Office Campus,
Kottai Main Road,
Salem - 636 001.
Salem District.

2.The Sub Registrar,
Bazaar Street, Omalur Taluk,
Salem District.

3.The Special Tahsildar (Stamps)
Sangagiri,
Mettur Zonal, RDO Office,
Sankari, Salem District.

4.The Special Deputy Collector (Stamps)
Office of Collectorate,
Salem, Salem District.

5.The District Collector,
Salem,
Salem District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari or any other appropriate Writ or order or direction in the nature of Writ calling for the records in pursuant to notice dated 14.03.2017 issued by the third respondent, quash the same in so far as it relates to imposing interest and invoking Revenue Recovery Act 1864.

For Petitioner : Mr.M.Elango
For Respondents : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

Heard the learned counsel appearing on behalf of the petitioner and the learned Special Government Pleader appearing on behalf of the respondents.

2. The case of the petitioner is that he purchased an agricultural land to an extent of 2.82 acres at Semandampatti Village, Salem District, for sale consideration of Rs.60,000/-, on 08.02.2002. The sale deed was registered before the second respondent, vide Doc.No.391/2002. The Registrar / second respondent herein, withheld the document, alleging undervaluation of the market value of the property. On 28.10.2002, a notice was issued to the petitioner stating total stamp duty payable for the said transaction as Rs.3,26,156/- whereas, the petitioner has valued it at Rs.60,000/-. Hence for the differential value, the stamp duty and registration charges, to a tune of Rs.3,26,156/- was claimed. Concession in it was also given by rebate of 40% and he was asked to pay the remaining 60%. The said communication was issued to him pursuant to G.O.No.117 dated 26.09.2002 and it is not clear as to how the said G.O. can be applicable to the document presented by him.

3. The petitioner's contention is that if the Registrar has any doubt regarding the valuation of the property, he has to refer the matter to the District Collector to fix the market value in respect of the property as per Section 47(A) of the Indian Stamp Act, 1899 (hereinafter referred as Act). Whereas, the second respondent, without following the said procedure, issued notice to pay the differential stamp duty. Later, the third respondent on 23.04.2016, has caused notice to pay a sum of Rs.2,74,692/- with interest. The petitioner, due to ignorance, could not challenge the said order of fixing the market value, by relying upon the Government Order. While fact being so, notice dated 14.03.2017 has been issued by the third respondent ordering recovery of the said amount under the provisions of Revenue Recovery Act.

4. The further contention of the petitioner is that as per Section 33-A of Revenue Recovery Act cannot be invoked after expiry of three years from the date of registration. More so, before invoking the provisions of Revenue Recovery Act, the Registrar ought to have given a certificate and for issuing such certificate, the Registrar should have conducted enquiry. In this case, neither enquiry was conducted nor Registrar has given a certificate as contemplated under Section 33-A of the Act.

5. It is the case of the petitioner that the respondent has not followed the procedure contemplated under Section 47 (A) of the Act. Hence, questioning of claiming interest for

differential amount will not arise and the respondent cannot take recourse to recover the money under Revenue Recovery Act.

6. The third respondent had filed a counter, wherein it is stated that the petitioner purchased the property from one Ramasamy, under sale deed dated 08.02.2002 and the sale deed was registered as Document No.391 of 2002 on the file of Sub Registrar, Omalur. Since the petitioner paid lesser stamp duty to be than actual stamp duty, as per guideline value, the said document was referred to Special Tahsildar (Stamps) Sangagiri, under Section 47 A(1) of Indian Stamp Act, to determine the correct value of the property and the stamp duty to be recovered from the petitioner. Accordingly, deficit stamp duty amount was arrived and calculated as Rs.3,18,956/- along with deficit registration fees of Rs.26,580/- to be paid.

7. In the meanwhile, the Government announced Samadana Scheme in G.O.Ms.No.117, dated 26.09.2016 and as per the said G.O, the petitioner was informed by the second respondent through notice 28.10.2002 that 60% of the stamp duty and registration fee may be paid to get back the document and the said scheme will be in force till 29.11.2002. However, the petitioner failed to avail the scheme.

8. Later, the Special Deputy Collector (Stamps), Salem, initiated action against the petitioner, for recovery of deficit stamp duty and registration fee, by causing notice to the petitioner on 30.08.2011. The petitioner was informed that if he failed to pay deficit stamp duty and registration fee, action will be taken against him under Revenue Recovery Act. Again, on 23.04.2015, a notice was issued by the Special Tahsildar (Stamps), Sangagiri, to the petitioner calling upon him to remit a sum of Rs.2,74,692/-. However, the petitioner failed to pay the said amount. Again, the said Tahsildar issued notice on 14.03.2017 to the petitioner demanding payment of deficit stamp duty and registration fee. Challenging that notice, the petitioner has preferred the present writ petition, challenging the Revenue Recovery proceedings on untenable grounds suppressing the facts.

9. The specific case of the petitioner is that the Sub Registrar has not initiated any proceedings under Section 47 (A) of the Indian Stamp Act and the demand for payment of deficit stamp duty and deficit registration fee was unilaterally fixed by the respondents, without following the procedure. This contention of the petitioner appears to be not correct. It appears that the Sub Registrar, having found that there is undervaluation, referred the matter to his Higher Official viz., District Registrar. The Special Tahsildar (Stamps), Sangagiri who has determined the market value. It may be correct that the petitioner was not given adequate opportunity while ascertaining the market value during the said enquiry. Even if it is so, the petitioner had an opportunity of questioning the assessment when

the samadan scheme given was offered to him by the second respondent as early as on 28.10.2002. For the reasons best known, the petitioner has not availed that opportunity. Thereafter, on several occasions viz., from 2002 to 2017, for nearly 15 years, the Department had caused notices to the petitioner, expecting him to come and pay the deficit stamp duty and deficit registration fee to get back his document. But he never availed those opportunities.

10. The contention of the petitioner is that the privilege given to the parties in G.O.No.117 is not applicable to the petitioner. It is his misplaced contention. G.O.No.117 was issued in order to arrive at amicable settlement between the executant and the department, wherever there was dispute regarding the valuation.

11. This Court is unable to countenance the said fact. When the petitioner herein has presented the sale deed in the year 2002 and knowing fully that the document is withheld for deficit stamp duty, he has not taken any care to get back the document till filing of this Writ Petition, in the year 2018. He has not even preferred any representation to the concerned authorities regarding withholding of the document by the Registrar. Only after the coercive step for collecting deficit stamp duty under Revenue Recovery Act was initiated against him, and that too after the issuance of third notice, the petitioner has came with an idea of challenging that the procedures under Section 47 (A) of the Act has not followed and G.O.No.117 is not applicable to this case are baseless and untenable.

12. This Court has no other option, except to dismiss this Writ Petition. Having held so, the party who has presented the document, has to get back his title deed, provided he pays the deficit stamp duty and registration fee. Therefore if the petitioner intend to get back the document and want to avoid Revenue Recovery proceedings, an opportunity may be given to him to make a representation to the concerned authorities and on such representation the deficit stamp duty and registration charges may be collected and document be released condoning the delay.

13. In the result, this Writ Petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

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Salem District.

+1cc to Mr.Elango, Advocate, S.R.No. 81242
+1cc to the Government Pleader, S.R.No. 81566

W.P.No.4600 of 2018
AND
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NMI(CO)
GN(01/11/2019)