IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2019

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.A No.676 of 2018 and
CMP No.6498 of 2018

1.The Government of Tamil Nadu,
Represented by the Secretary.
Commercial Taxes and Registration (H) Department,
Secretariat, Chennai - 600 009.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028. ...Appellants

Vs

A.Duraisamy ...Respondent

Prayer:- Writ Appeal filed under clause 15 of Letters Patent, against the order made in W.P.No.27876 of 2016 dated 02.09.2016.

Prayer in WP.27876 of 2016 :

Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus by calling for the records of the 2nd Respondent in his proceedings No.9430/B3/2007 dated 02/12/2014 and quash the same and consequently direct the respondents to disburse all terminal benefits including Death-Cum-retirement gratuity with interest and special provident fund from the date of his retirement.

For Appellants : Mr.A.SriJayanthi
Special Government Pleader

For Respondent : Mrs.E.Renganayaki

J U D G M E N T

(Delivered by K.K.SASIDHARAN,J.)

The writ petition filed by the respondent in W.P.No.27876 of 2016 challenging the order passed by the disciplinary authority was allowed by the learned single Judge and a direction was issued to disburse the retirement benefits to him.

Feeling aggrieved by the said order, the State has come up with this appeal.

2. The respondent functioned as a Sub-Registrar in the office of the District Registration, Namakkal. He was placed under suspension with effect from 28.02.2007, which is the last day of his service as per proceedings dated 28.02.2007 on the ground that the Government is contemplating to take disciplinary proceedings against him. He was permitted to retire without prejudice to the initiation of disciplinary proceedings.

3. The disciplinary authority framed a charge against the respondent indicating that he had caused a loss of Rs.17,17,472/- to the Government by way of collecting deficit stamp duty and registration fees describing a particular document as a Deed of Partition and without charging the applicable fees treating it as a Document of Sale. The explanation submitted by the respondent was not found satisfactory resulting in conducting a domestic enquiry. The Enquiry Officer submitted a report indicating that the charges were proved. The disciplinary authority therefore imposed the punishment of cut in DCRG besides deduction of one third of the monthly pension. It is the said order which was challenged before the Writ Court in W.P.No.27876 of 2016. The learned single Judge placed reliance on the judgment of the Division Bench in the case of Inspector General of Registration, Chennai Vs. A.Shanmugavadivu, W.A(MD) No.93 of 2010 dated 08.07.2010 and allowed the writ petition.

4. We have heard the learned Special Government Pleader on behalf of the appellants. We have also heard the learned counsel for the respondent.

5. The respondent functioned as the Sub-Registrar and exercised a statutory function under the provisions of the Registration Act. It was essentially a quasi-judicial function. Before the respondent, in his capacity as the Sub-Registrar, a document was produced styling it as a Deed of Partition. The document was registered by the respondent as a Partition Deed vide Document No.2970 of 2006. The said document was the subject matter of proceedings under Section 47 of the Indian Stamp Act. The authority under the Stamp Act opined that there is an element of sale involved in the matter and as such, the party should have paid the stamp duty applicable to a sale. The authority assessed the deficit stamp duty at Rs.9,87,896/- and registration fee of Rs.1,20,990/- The disciplinary authority found that only on account of the order passed by the respondent registering the document as a partition deed, the State lost the stamp duty. The disciplinary authority therefore initiated proceedings against the respondent.

6. The respondent registered the document treating it as a Deed of Partition taking into account the fact that there was a partition among 15 persons describing them as co-owners. Even if it was found that the applicable stamp duty was not collected, it could only be an error in judgment. The appellants have no case that the respondent with an ulterior motive entertained the document and registered it without collecting proper stamp duty. The charge proceeds as if on an interpretation of the document, the authority under the Stamp Act arrived at a finding that the document was in the nature of a Sale Deed and not a Partition Deed. The fact that the respondent failed to collect proper stamp duty alone cannot be the basis for framing charge against him unless it is demonstrated that the Sub-Registrar knowingly registered the document either on receipt of illegal gratification or on any other valid ground. However, that is not the case here. The Disciplinary Authority proceeded as if on account of the registration of the document, the respondent caused loss to the Government and as such, the loss should be recovered from the delinquent employee. There are no evidence adduced against the respondent to prove that it was with a mens rea that the act of registration of document treating it as a partition deed was made by the respondent.

7. The charge framed against the respondent does not contain any indication of malafides or abuse of his position as a Sub-Registrar. The respondent exercised a quasi-judicial function and appears to have committed an error in judgment which would not amount to a misconduct. We are therefore of the view that the learned single Judge was justified in quashing the order passed by the disciplinary authority.

8. In the upshot, we dismiss the intra court appeal. No costs. We direct the appellants to disburse the retirement benefits to the respondent within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

svki

1.The Secretary,
The Government of Tamil Nadu,
Commercial Taxes and Registration (H) Department,
Secretariat,
Chennai - 600 009.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

+2ccs to Mrs.E.Ranganayaki, Advocate, S.R.No.17093
+1cc to the Government Pleader, S.R.No.17655

W.A No.676 of 2018

PP(CO)

RRS(22/04/2019)