IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.21976 and 21977 of 2018
and
W.M.P.Nos.25776 to 25779 of 2018

M/s.Jubilee Plot & Housing Pvt.Ltd.,
rep. by its Director
Mrs.D.Sangupathi,
Plot No.1379C, Door No.15C,
Golden villa, 6th Street,
Vallalarkudiyiruppu,
18th Main Road, I Block,
Anna Nagar West,
Chennai - 600 040 ...Petitioner in W.P.No.29176/2018

M/s. SSD Homes and Estate Developers Private Limited
Rep. by its Director
Mr.R.P.Darrmalingam,
Plot No.1379C, Door No.15C
Golden Villa, 6th Street,
Vallalar Kudiyiruppu,
18th Main Road, I Block,
Anna Nagar West,
Chennai - 600 040 ...Petitioner in W.P.No.29177/2018

Vs.

The Joint Sub Registrar No.2
Chengalpet,
Kanchipuram District. ...Respondent in both the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent relating to the order dated Nil and dated 28.12.2011 respectively pertains to Document No.9373 of 2007 and Document No.13071 of 2007 respectively on the file of the respondent, quash the same.

For Petitioners : Mr.R.Murali

For Respondent : Mr.M.Thamizharasan,
Government Advocate

COMMON ORDER

Both these writ petitions are filed challenging the order of the respondent calling upon the respective petitioner to pay the deficit stamp duty and registration charges in respect of the subject matter document. The subject matter document in W.P.No.21976/2018 is a sale deed dated 03.05.2007 registered as document No.9373/2007 before the respondent. The subject matter document in W.P.No.21977/2018 is again a sale deed dated 18.10.2007 registered as document No.13071/2007 before the respondent. The impugned demand was issued by the respondent on 28.12.2011 in both the matters.

2. The points raised before this Court against the impugned demand is that the same was issued by the respondent without having competency or jurisdiction and that the authorities failed to follow the procedure contemplated either under Section 33-A or Section 47-A of the Indian Stamp Act, 1899, before issuing this demand.

3. Two individual counter affidavits are filed in both the writ petitions wherein it is admitted that no action was taken under section 47A(3) of the Indian Stamp Act.

4. Learned counsel for the petitioners, after inviting this Court's attention to the above said two provisions under the Indian Stamp Act, 1899, submitted that the impugned demand cannot be sustained.

5. Learned Government Advocate though reiterated the contentions raised in the counter affidavits, has however, submitted that the procedures contemplated under Section 33-A or Section 47-A were not followed.

6. Heard both sides.

7. There is no dispute to the fact that the subject matter documents in both the writ petitions are dated 03.05.2007 and 18.10.2007 and registered as Documents Nos.9373/2007 and 13071/2007 respectively. If there is a deficit stamp duty payable by the petitioners, there is a procedure contemplated under Section 33-A of the Indian Stamp Act which reads as follows:

> 33-A. Recovery of deficit stamp duty- (1) Notwithstanding anything contained in section 33 or in any other provisions of this Act, if, after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such

instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty, as an arrear of land revenue.

Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard .

Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument.

(2) The certificate of the Registrar of the district under sub-section (1) shall, subject only to appeal under sub-section (3), be final and shall not be called in question in any Court or before any authority.

(3) Any person aggrieved by a certificate of the Registrar of the district under sub-section (1) may appeal to the Chief Controlling Revenue Authority. Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed.

8. Apart from the above said provision, Section 47-A also deals with the procedure for determining the market value of the property which was the subject matter conveyance and duty payable thereon and thereafter, to collect the difference, if any, in the amount of duty. Section 47-A(3) reads as follows:

47-A: Instruments of conveyance, etc. undervalued how to be dealt with.

(1)...

(2)...

(3) The Collector may, suo motu, or otherwise, within five years from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement, not already referred to him under Sub-Section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property

has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in Sub-Section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty :

Provided that nothing in this Sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

9. Perusal of Section 33-A would show that after registration of any instrument, if it is found that proper stamp duty has not been paid,a certificate from the Registrar of District has to be obtained first and thereafter, such deficit stamp duty shall be recovered from such person as arrears of land revenue. The proviso to section 33-A makes it very clear that no such certificate shall be granted, unless due enquiry is made and such person is given an opportunity of being heard. Second proviso further contemplates that no such enquiry shall be commenced after the expiry of three years period from the date of registration of the instrument. Therefore, it is apparent that the proceedings under section 33-A cannot be initiated, after expiry of three years from the date of registration of instrument. Likewise, under section 47-A, the Collector may either suo motu or otherwise take action to recover the differential stamp duty payable, within five years from the date of registration of such instrument. In this case, admittedly, the documents were registered as early as in the year 2007 and the impugned communication itself was issued on 28.12.2011 which is admittedly beyond the periods prescribed, both under section 33A and Section 47A, even assuming that the impugned proceedings can be construed as the one fall either under section 33-A or under section 47-A of the said Act.

10. Therefore, I find that the impugned proceedings is totally barred by limitation, apart from the fact that the respondent is also not a competent person to issue the impugned proceedings, assuming that the same is one made under Section 47-A. Accordingly, both the Writ Petitions are allowed. The impugned demand is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vsi

To

The Joint Sub Registrar No.2
Chengalpet,
Kanchipuram District.

+2 ccs to Mr.R.Murali, Advocate, S.R.No.17950, 17949

+1 cc to the Government Pleader, S.R.No.18897

W.P.Nos.21976 & 21977 of 2018

RSV(CO)
SSM(21/03/2019).