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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12503 of 2013

M.P.No.1 of 2013

(Heard through Video Conferencing)

C.S.Kesavan

...Petitioner

vs.

- 1.The District Revenue Officer (Stamps)
Office of the District Revenue Officer Stamps
Chennai-600 001.
 - 2.The Sub Registrar Utthukottai
Office of the Sub Registrar at Uthukottai,
Utthukottai Town and Taluk,
Thiruvallur District.
 - 3.The Thasildar, Utthukottai Taluk,
Office of the Thasildar Utthukottai,
Utthukottai Town and Taluk,
Thiruvallur District.
 - 4.The Village Administrative Officer,
Melkaramannur Village,
Utthukottai Taluk,
Thiruvallur District.
 5. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028
[Suo motu impleaded as per
Court order dt.04.6.2020]
- ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of impugned distraint order passed under Section 8 of the Revenue Recovery Act bearing proceedings Na.Ka.No.1164/13/A4 dated 08.04.2013 passed by the 3rd respondent seeking to attach the properties of the petitioner and subjected it to distraint sale as null and void and consequently, refrain the respondents 3 and 4 from any manner interfering with the possession and enjoyment of the property by the petitioner.



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For Petitioner : Mr.A.Palaniappan

For Respondents : M/s.A.Madhumathi
Special Government Pleader
for R3 & R4
Mr.P.P.Purushothaman
Government Advocate for R1 & R2

O R D E R

Heard Mr.A.Palaniappan, learned counsel appearing for the petitioner and Ms.A.Madhumathi, learned Special Government Pleader appearing for the third and fourth respondents and M/s.P.P.Purushothaman, learned Government Advocate appearing for R1 & R2.

2. The petitioner has challenged a distraint proceedings initiated by the third respondent on the ground that the petitioner has not paid the deficit stamp duty as determined by the first respondent in Order Na.Ka.C.P.No.110/AH/20 [undated].

3. The petitioner's case is that no show cause notice was issued by the first respondent before passing order and the order said to have passed is undated and was not communicated to the petitioner. But came to know only when the distraint proceedings were initiated by the third respondent. It is submitted by the learned counsel appearing for the petitioner that during the pendency of the writ petition, the petitioner filed an appeal before the Inspector General of Registration on 29.04.2013 along with petition for condonation of delay. But, however the appeal has not been entertained and the delay has not been condoned.

4. In the counter affidavit filed by the first respondent, it is pointed out in paragraph No.6 that the petitioner has not availed the statutory appeal remedy. The question which would fall for consideration is whether the stamp duty as demanded by the department is payable or value as set out by the petitioner in the document has to be accepted. This involves the factual adjudication. Therefore, this Court is of the considered view that the petitioner should avail the alternate remedy, for which purpose, this Court is inclined to issue appropriate directions.

5. When this writ petition was entertained on 29.04.2013, an order of interim stay was granted. Therefore, in the considered view of this Court, if liberty is granted to the petitioner to file an appeal, then the appellate authority should not reject the appeal on the ground of limitation, but should consider the same on merits. To facilitate such purpose, this Court suo motu impleads the Inspector General of Registration, No.100, Santhome High Road, Chennai-600 028, as the 5th respondent.



6. In the result, the writ petition is disposed of by directing the petitioner to file statutory appeal before the 5th respondent within a period of eight weeks from the date of receipt of a copy of this order. Since the petitioner has not furnished with an original impugned order passed by the first respondent, this Court grants liberty to the petitioner to file the appeal along with Photostat copy of the order, which permission was also granted by this Court, when the writ petition was entertained. As observed earlier, the writ petition was pending since April 2013 and an order of interim stay is also in force. Therefore, the fifth respondent should not reject the appeal on the ground of limitation, but should take a decision on merits. Till the final orders are passed, no coercive action shall be initiated against the petitioner. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

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- 4.The Village Administrative Officer,
Melkaramannur Village,
Utthukottai Taluk,
Thiruvallur District.
5. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028

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W.P.No.26348 of 2013