In the High Court of Judicature at Madras

Dated : 31.1.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.33409
& 33410 of 2013 & MP.Nos.1 and 2 of 2013

The South India Cine and Television Setting Workers Union rep.by its President K.G.Jeevanandam (a) K.G.Jeeva ...Petitioner in both the WPs

Vs

1.The Inspector General of Registration, Santhome High Road, Chennai. ...R1 in WP.No. 33409 of 2013

2.The Sub-Registrar, Kalavai, Arcot Taluk, Vellore District. ...R2 in WP.No. 33409 of 2013& R3 in WP.No. 33410 of 2013

3.The Deputy Inspector General of Registration, Vellore, Zone, Vellore, Vellore District. ...R1 in WP.No. 33410 of 2013

4.The District Registrar-Administration, Arakkonam, Vellore District. ...R2 in WP.No. 33410 of 2013

PETITIONS under Article 226 of The Constitution of India praying for the issuance of (i) a Writ of Mandamus directing the 2nd respondent herein to register and release the gift deeds dated 06.6.2013 pending in Document Nos.16, 17, 18, 19, 20 and 21 of 2013 to the petitioner (WP.No.33409 of 2013); and

(ii) a Writ of Certiorarified Mandamus to call upon the production of the records relating to the order dated 31.7.2013 made in pending Document No. 15 of 2013 passed by the 3rd respondent herein, quash the same and direct the 3rd respondent herein to register the rectification deed dated 06.6.2013 pending in Document No.15 of 2013 and release the same to the petitioner (WP.No.33410 of 2013).

For Petitioner : Mr.S.Shanmugasundaram

For Respondents : Mr.P.P.Purushothaman, GA both cases

COMMON ORDER

The petitioner in both the cases is one and the same. Since the facts are interconnected, both the writ petitions are heard together and are disposed of by this common order.

2. I have heard Mr.S.Shanmugasundaram, learned counsel for the petitioner and Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondents.

3. Out of the two writ petitions, W.P.No.33410 of 2013 has to be considered as the lead case because the result of the other writ petition would depend upon the result of this writ petition.

4. The petitioner union purchased an extent of 2.36 acres of agricultural lands in Nallur Village, Arcot Taluk, Vellore District from one Mr.T.Palani and others by a sale deed dated 07.2.2011 registered as doc.No.483 of 2011 on the file of the Sub-Registrar, Kalavai. Though the lands were purchased as agricultural lands, the intention behind the purchase was to develop them into layout so that they can be distributed among the members of the union by executing gift deeds so as to get the land at free of costs.

5. After the sale deed was executed, the petitioner union undertook a survey of the land with the expert and found that a mistake had crept in Schedule B to the original sale deed in respect of one survey number namely survey No.51 in the sense that the the actual land purchased by the petitioner is situated in S.F.No.50/1 whereas due to typographical error, S.F. No.51 was mentioned. On coming to know of the same, the petitioner union approached the vendors and requested them to execute a rectification deed. Accordingly, a rectification deed was executed on 06.6.2013 and it was presented for registration before the Sub-Registrar, Kalavai, Arcot Taluk, Vellore District. However, the Sub-Registrar, Kalavai, while agreeing to register the same, by notice dated 31.7.2013, directed the petitioner to pay the differential stamp duty, as there was a variation in the extent of the land, which has been mentioned in

the rectification deed and demanded that the differential stamp duty should be paid by calculating the value of the land at Rs.970/- per square meter.

6. Though the petitioner union does not have any serious objection for payment of additional stamp duty because there is a variation in the extent, which is stated to be about 3 Ares, they are aggrieved by the direction to pay the differential stamp duty at the rate of Rs.970/- per square meter. They would state that the differential stamp duty can be demanded only by treating the land as an agricultural land and that levying the stamp duty based on acre/cent rate was done at the time of execution and registration of the sale deed.

7. The learned Government Advocate has raised a preliminary objection to the maintainability of this writ petition by contending that the impugned proceedings is a notice, that the petitioner can give a reply and that thereafter, if the Sub-Registrar, Kalavai takes a decision against the petitioner, then they have an appeal remedy available under the Indian Stamp Act. It is further submitted by the learned Government Advocate that a circular has been issued by the Inspector General of Registration in Circular No.40756/N1/2014 dated 03.9.2014 and that the same was communicated to all the Sub-Registrars and that the Sub-Registrar, Kalavai issued the impugned demand indicating the directions issued in the said circular though it was issued subsequently.

8. In the considered view of this Court, the petitioner union need not be relegated to approach the Sub-Registrar, Kalavai by giving their objections to the impugned demand, because the matter is of the year 2013 and the writ petitions are pending for all these years. That apart, a counter affidavit has been filed by the Sub-Registrar, Kalavai raising his contentions. Therefore, it would be better, in the interest of justice, to decide the issue in these writ petitions instead of relegating the matter to the Sub-Registrar, Kalavai.

9. The undisputed facts are that there is a difference in the survey number of the property and there is also a difference in the extent of the property as mentioned in the rectification deed dated 06.6.2013. However, there is no change in the four boundaries of the property. Therefore, it has to be seen as to whether the same would fall under any one of the four Clauses of the said circular dated 03.9.2014. The following Clauses would be of relevance, which read as follows :

> "I) In a rectification deed, where the rectification is sought to be made does not affect the chargeability of the principal deed, then such rectification deed should be

treated as a mere rectification deed which does not warrant stamp duty as prescribed under Section 47B.

For example, in a rectification deed when there is no change in boundaries and extent of property already conveyed, if the rectification is sought to be made by changing door number/ plot number/E.B. Service connection number/ reference pertaining to the previously registered document number or year or volume No./ registration district/sub-registration district, then such cases should be treated as a mere rectification deed, which does not warrant collection of additional stamp duty as prescribed under Section 47B.

II) In a rectification deed, while the total extent conveyed in the principal deed remains the same and there is no change in boundaries, if rectification is sought to be made only by interchanging the linear measurements alone, then the same should be treated as a mere rectification deed, which does not warrant collection of any additional stamp duty as per Section 47B."

10. In terms of the above circular, where the rectification is sought to be made does not affect the chargeability of the principal deed, then such rectification should be treated as a mere rectification deed, which does not warrant stamp duty as prescribed under Section 47B of the Act. This has been explained by way of illustration in cases where there is change of boundaries, no change of extent, but only change of door number or plot number or E.B. Service connection number. The second category of cases is where, in the rectification deed, there is no change in the total extent, no change in the boundaries, but only interchanging of linear measurements alone.

11. In the case on hand, there is change of survey number and there is also a change of extent of the property, but there is no change in the boundaries. Therefore, the rectification deed cannot be treated as a mere rectification deed because there is change in the extent of property. Hence, for the differential extent, the petitioner has to pay stamp duty. In fact, the petitioner union does not object to payment of stamp duty for the differential extent and the question is at what rate, they should be called upon to pay.

12. The Sub-Registrar, Kalavai, in the impugned order, demanded stamp duty on square meter basis. The question is as to whether this would be sustainable or not. Admittedly, the vendors of the petitioner have not accepted any additional consideration for executing a rectification deed though there is

a change in the extent. The fact that the four boundaries remain the same is a clear indication to show that the mistake in survey number is a typographical error. Because of the mistake in the survey number, a mistake occurred in the extent as well. Therefore, while being liable to pay the stamp duty for the differential extent of the property in S.F. No.50/1, the petitioner cannot be called upon to pay stamp duty on square meter basis prevailing on the date of execution of the deed because chargeability of the principal deed does not stand affected.

13. For the above reasons, W.P.No.33410 of 2013 is partly allowed and while confirming the finding of the Sub-Registrar, Kalavai that the petitioner should pay the differential stamp duty in S.F.No.50/1, the demand of stamp duty at the rate of Rs.970/- per square meter is set aside and the Sub-Registrar, Kalavai is directed to collect the differential stamp duty based on the valuation, which was prevailing on the date of execution of the sale deed dated 07.2.2011 on acre/cent basis because the property in question was purchased as an agricultural land by the petitioner union. In this regard, the Sub-Registrar, Kalavai is directed to issue a demand to the petitioner after adjusting any payment, which has been effected by the petitioner. On receipt of the demand, the petitioner shall remit the same and after such remittance, the rectification deed shall be registered and released to the petitioner within a period of three weeks from the date, on which, the stamp duty is remitted. No costs.

14. In W.P.No.33409 of 2013, the petitioner seeks a direction to the Sub-Registrar, Kalavai to register and release the gift deeds dated 06.6.2013 pending with the Sub-Registrar, Kalavai. The reason for not releasing the gift deeds is on account of pendency of registration of the rectification deed, for which, the petitioner filed W.P.No.33410 of 2013. In the preceding paragraph, this Court has partly allowed W.P.No.33410 of 2013 with certain directions. Therefore, on compliance of such directions and registration and release of the rectification deed dated 06.6.2013, the Sub-Registrar, Kalavai is directed to register and release the gift deeds, if the same are otherwise in order and accordingly, W.P.No.33409 of 2013 stands disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Inspector General of Registration,
Santhome High Road, Chennai.

2.The Sub-Registrar,
Kalavai, Arcot Taluk,
Vellore District.

3.The Deputy Inspector General of Registration,
Vellore, Zone, Vellore,
Vellore District.

4.The District Registrar-Administration,
Arakkonam, Vellore District.

+1cc to Mr.S.Senthilnathan, Advocate, S.R.No. 7478
+1cc to the Government Pleader, S.R.No. 8639

W.P.Nos.33409 & 33410 of 2013 & MP.Nos.1 and 2 of 2013

SSI(CO)
GN(03/03/2020)