IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.8195 of 2020
and
WMP Nos.9772 to 9774 of 2020

1.BNT Connection Impex Limited,
Rep.by its Directed,
J.Thakur Bakshani,
1st Floor, 123,AC Block, Second Avenue,
Anna Nagar,
Chennai 600 040.

2.Supreme Art Works,
Rep.by its Partner,
J.Harish Bakshani,
123,AC Block, Second Avenue,
Anna Nagar,
Chennai 600 040.

3.J.Haresh Bakshani,
S/o.Jethanand Tarachand Bakshani,
No.14, 1 Block, 10th Cross Street,
East Anna Nagar,
Chennai 600 102.

4.J.Thakur Bakshani,
S/o.Jethanand Tarachand Bakshani,
No.:126, Nelson Manickam Road,
Chennai 600 029. ..Petitioners

.Vs.

1.The Inspector General of Registration,
Santhome High Road,
R.A.Puram, Chennai 600 028.

2.The District Registrar,
North Chennai,
No.1, Pillar Street,
Kuralagam,
Chennai 600 104.

3..The Sub Registrar,
Sembium, Perambur,
Chennai 600 011. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of a certiorari, calling for all the records in in connection to impugned notice No.4811/Aa 4/2019 dated 31.07.2019 of 2nd respondent, quash the same and directing the respondents to remove the charge entry against the property made in the records of 3rd respondent on the basis of impugned notice.

For Petitioners: Mr.P.Subba Reddy

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

ORDER

This writ petition has been filed challenging the impugned notice issued by the 2nd respondent dated 31.07.2019, wherein, the petitioner has been directed to pay a sum of Rs.2,55,04,000/- towards deficit stamp duty.

2.The 2nd petitioner which is a Partnership Firm was the owner of the subject property. The property was sold in favour of the 1st petitioner which is a Company by way of a registered Sale Deed dated 20.01.2016, for a total consideration of Rs.10,75,00,000/-. The 1st petitioner paid stamp duty and registration charges to the tune of Rs.86,00,000/-. This document was registered as D.No.154/2016. The 3rd and 4th petitioners are the Directors of the 1st petitioner Company and also the partners of the 2nd petitioner Firm.

3.The 1st petitioner on purchase of the said property also discharged the mortgage loan that was taken by the 2nd petitioner from the Federal Bank Limited. The mortgage was discharged on 07.11.2016.

4.The 3rd and 4th petitioners received the impugned notice dated 31.07.2019 from the 2nd respondent directing them to pay a sum of Rs.2,55,04,000/- towards deficiency of stamp duty and registration fee and this notice was issued in exercise of powers under Section 33(A) of the Indian Stamp Act. Aggrieved by the same, the present writ petition has been filed before this Court.

5.The learned counsel for the petitioners submitted that Section 33(A) of the Indian Stamp Act, specifically provides that such a notice can be issued only after conducting an enquiry and no such enquiry can be commenced after the expiry of three years from the date of registration of the document. The learned counsel for the petitioners submitted that the Sale Deed was registered on 20.01.2016 and the impugned notice was issued only on 31.07.2019 and it is beyond the period of limitation provided under the Act. The learned counsel for the petitioners further submitted that the 3rd respondent has made an entry in the Encumbrance Certificate, as if, the stamp duty and registration fee is due and payable and therefore, the 1st petitioner is not in a position to deal with the property. The learned counsel for the petitioners therefore submitted that the impugned notice issued by the 2nd respondent is illegal and is liable to be interfered by this Court.

6.The 2nd respondent has also filed a counter affidavit in this case. The relevant portions in the counter affidavit is extracted hereunder:

> "8. With regard to the averments made in Para 8 of the affidavit it is respectfully submitted that the petitioners extracted the provisions laid down in section 33-A of the Indian Stamp Act, 1899.
>
> 9. With regard to the averments made in Para 9 and 10 of the affidavit it is respectfully submitted that the matter of duly stamped of the sale deed in question came to knowledge of the Petitioner through Accountant General of a Nadu of audit of the accounts of the 3rd respondent office on 20 -04-2019. Hence, the statutory period of 3 years mentioned in Section 33-A of the Indian Stamp Act, 1899 starts from 20-04 2019. Hence, the contention of the Petitioner is not tenable.
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> 10. With regard to other averments it is respectfully submitted that it has not been recited anywhere in the sale deed who has to bear liabilities of the existing debt. The discharge of the said debt is the post registration of the sale deed in question and on the date of sale deed the debt was a charge over the properties which were the subject

> matter of the sale deed in question. Further it is submitted that on the extant circular of the 1st respondent in No.2 of 2012 dated.24-05-2012, the loss of stamp duty and registration fee is noted against the sale deed in question in Index-II so as to reflect in the encumbrance certificate. Hence, the contention of the Petitioners is not sustainable in law.

7.Mr.T.M.Pappiah, learned Special Government Pleader on behalf of the respondents apart from reiterating the contentions raised in the counter affidavit, submitted that the petitioners are due and payable a huge amount towards deficiency in stamp duty and registration fee and the petitioners cannot avoid paying this amount upon raising certain technical grounds.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.The only issue that requires consideration is as to whether the impugned notice issued by the 2nd respondent dated 31.07.2019, is sustainable in law?

10.The notice has been issued by the 2nd respondent under Section 33(A) of the Indian Stamp Act. A reading of the provision shows that such a recovery cannot be done without an enquiry and such an enquiry should be commenced within a period of three years from the date of registration of the instrument. In this case, no enquiry has been conducted before the impugned notice was issued by the 2nd respondent. That apart, the Sale Deed was registered on 20.01.2016 and the impugned notice has been issued only on 31.07.2019. This is well beyond the period of limitation provided under Section 33(A) of the Indian Stamp Act.

11.The issue raised in the present writ petition is covered by the earlier Order passed by this Court in W.P.No.2148 of 2020 dt.24.08.2020. The relevant portions in the order is extracted hereunder:

> 8. This Court has carefully considered the submissions made on either side and the materials available on record. Before this Court proceeds to decide the issue that is raised in the present writ petition, it will be more beneficial to

extract Section 33(A) of the Stamp Act hereunder:-

"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".

9. A careful reading of the above provision shows that such recovery can be made only after the District Registrar issues notice and conducts enquiry after affording opportunity to the concerned party. This procedure has not been followed in the present case. It is also clear from the above provision that the enquiry should be commenced within a period of three years from the date of registration of the instrument and it is not permissible to conduct any enquiry or recover any deficit stamp duty beyond this period.

> 11.The method adopted by the second respondent to collect the deficit stamp duty and the deficit registration fees from the petitioners goes beyond his jurisdiction. In the first place, this jurisdiction has only been conferred on the District Registrar as per Section 33(A) of the Stamp Act. Therefore, the second respondent could not have exercised his power, which he did not possess and proceeded to recover the deficit stamp duty and deficit registration fees. Apart from the above reason, the recovery made by the second respondent also suffers from lack of jurisdiction, since any recovery should be made within the period of three years from the date of registration of the document. In this case, the document was registered in the year 2012 and the recovery was made in the year 2018. Therefore, the act of the second respondent suffers from both lack of authority and jurisdiction.

12.As held in the above order, the 2nd respondent has exceeded its jurisdiction and the recovery has been sought to be made after the expiry of three years from the date of registration of the document. Therefore, the impugned notice issued by the 2nd respondent requires interference.

13.In the result, the impugned notice of the 2nd respondent dated 31.07.2019, is hereby quashed. The 3rd respondent is directed to remove the entry made in the Encumbrance Certificate and permit the petitioners to deal with the property. As and when any document is presented for registration, the 3rd respondent shall accept the document and register the same, if it is otherwise in order and the necessary stamp duty and registration fee is paid.

14.This writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

KP
To

1.The Inspector General of Registration,
Santhome High Road,
R.A.Puram, Chennai 600 028.

2.The District Registrar,
North Chennai,
No.1, Pillar Street,
Kuralagam,
Chennai 600 014.

3.The Sub Registrar,
Sembium, Perambur,
Chennai 600 011.

+2cc to M/s.P.Subba Reddy, Advocate SR.29211
+1cc to the Government Pleader SR.29255

W.P.No.8195 of 2020

CA(CO)
CB(23/09/2020)