IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.9060 of 2014
and
MP No.1 and 2 of 2014

N.Srinivasan ... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by the
Secretary to Govt.,
Commercial Taxes & Registration
Department,
Fort St. George,
Chennai - 600 009.

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

3. The Special Deputy Collector (Stamps)
Office of the Collector,
Vellore.

4. The District Regsitrar - Cheyyar,
Kancheepuram Road,
Tiruvetipuram - 604 407. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 4th respondent in its order dated 20.01.2014 in Form 2 passed under Section 70 (2) of the Indian Stamps Act and Standing Order No.746 and quash the same and consequently direct the 4th respondent to return back the Partition Deed dated 05.06.2009 registered as document No.4584 of 2009 on the file of Sub-Registrar, Arani executed by the Petitioner.

For petitioner : Ms.R.Maheswari

For respondents : Mr.P.P.Purushothaman
Government Advocate

ORDER

This writ petition has been filed challenging the order of the fourth respondent dated 20.01.2014 in Form 2 passed under Section 70 (2) of the Indian Stamp Act and Standing Order No.746.

2. It is the case of the petitioner that he and his friend Sivanandam purchased the lands measuring 7.34 acres in E/1 Block, T.S. No.51/1 at Arani Town from the legal heirs of Y.N.Govindarajulu and the legal heirs of T.C.Ramakrishna Mudaliar under four Sale deeds registered as document No.2557/92, dated 14.08.92, Document No.3321/92, dated 28.10.92, Document No.63/2001, dated 08.01.2001 and Document No.1853 of 2000, dated 24.05.2000.

3. It is the case of the petitioner that subsequent to the purchase, R.Sivanandam one of the purchasers settled his share absolutely in favour of his wife Selvarani under a settlement deed, registered as Document No.1992 of 2007 on the file of SRO, Arani. It is the case of the petitioner thereafter, the petitioner and Selvarani partitioned the property by executing the partition deed, dated 05.06.2009 registered as Document No.4584 of 2009 on the file of the Sub Registrar, Arani partitioning the lands amongst themselves by allotting separate shares to each of them. It is the case of the petitioner that the third respondent withheld the partition deed dated 05.06.2009 registered as Document No.4584 of 2009 by passing Order No.Si.Pa.821/2009/ANI, dated 13.10.2012 demanding a sum of Rs.88,20,080/- as the deficit stamp duty by unilaterally treating the partition deed as sale deed for the purpose of registration.

4. According to the petitioner, by total non application of mind and without any reason whatsoever, the third respondent has arbitrarily arrived at the figure of Rs.88,20,080/- as the market value of the property.

5. Aggrieved by the order dated 13.10.2012 passed by the third respondent under Section 47(A) (1) of the Indian Stamps Act, calling upon to pay a sum of Rs.88,20,080/- as the deficit stamp duty, the petitioner preferred an appeal before the second respondent. The second respondent by order dated 20.06.2013 set aside the order passed by the third respondent for the reason that the third respondent does not have power to pass any order under Section 47 (A) of the Indian Stamp Act. In the same order, the second respondent directed the District Registrar, Cheyyar, the fourth respondent herein to pass appropriate orders as per Standing Order No.746 and also made it clear that the petitioner is liable to pay 4% on the value of the property.

6. It is the case of the petitioner that the fourth respondent thereafter issued notice under Section 27 of the Indian Stamp Act and the Standing Order No.746 to show cause why a sum of Rs.86,93,116/- should not be levied as the deficit stamp duty arising out of non furnishing of the full details about the transaction and the consequential revenue loss to the Government.

7. It is the case of the petitioner that he submitted a representation dated 30.12.2013 to the fourth respondent within the stipulated period of fifteen days from the date of the aforesaid show cause notice furnishing all details and giving the necessary explanation for treating the instrument as a partition deed executed within the family.

8. By order dated 20.01.2014, the fourth respondent directed the petitioner to pay a sum of Rs.86,93,116/- as the deficit stamp duty and contemplated action under Sections 27 & 64 of the Indian Stamp Act, if the deficit stamp duty is not paid by the petitioner.

9. Aggrieved by the order dated 20.01.2014 passed by the fourth respondent calling upon the petitioner to pay a sum of Rs.86,93,116/- as the deficit stamp duty, the petitioner has filed this writ petition.

10. Heard Ms.R.Maheswari, learned counsel for the petitioner and Mr.P.P.Purushothaman, learned Government Advocate appearing for respondents.

11. According to the learned counsel for the petitioner, arbitrarily the fourth respondent has demanded a sum of Rs.86,93,116/- as deficit stamp duty payable for the partition deed, registered on 05.06.2009 as Document No.4584 of 2009. She submitted that the petitioner and Mr.R.Sivanandam purchased the property jointly in their names vide the Sale deeds dated 14.08.1992, 28.10.1992, 08.01.2001 and 24.05.2000. According to her, R.Sivanandam one of the purchasers settled his share absolutely in favour of his wife Selvarani under a settlement deed registered as Document No.4584 of 2009.

12. According to the learned counsel for the petitioner, the second respondent having set aside the order dated 13.10.2012 passed by the third respondent, the fourth respondent does not have the authority to claim the original sum, as demanded by the third respondent under the order dated 13.10.2012 calling upon the petitioner to pay the deficit stamp duty of Rs.88,20,080/-.

13. Further, the learned counsel for the petitioner would submit that in the impugned order, there is no explanation as to

how the fourth respondent has arrived at the figure of Rs.86,93,116/-. According to her, the fourth respondent can demand payment of deficit stamp duty only based on the guideline value, as applicable as on 05.06.2009 when the partition deed was registered. According to her without any basis, the fourth respondent has demanded a sum of Rs.86,93,116/- as the deficit stamp duty payable by the petitioner.

14. Per contra, the learned Government Advocate appearing for the respondents would submit that only in accordance with the standing order No.746, the fourth respondent, is empowered to call the petitioner to pay the deficit stamp duty, as directed by the second respondent in the order dated 20.06.2013. According to him, only in accordance with law, the impugned demand has been made by the fourth respondent. Further, he also drew the attention of this Court to the settlement deed, dated 20.03.2007 registered as Document No.1992 of 2007 executed by SRO, Arani in favour of Selvarani, wherein it has been mentioned that the market value of the property is Rs.16,75,00,000/-. According to him, since the petitioner has voluntarily disclosed the market value of the property settled in favour of Selvarani to be Rs.16,75,00,000/-, the stamp duty will have to paid only based on the said value.

Discussion :

15. This Court has perused and examined the impugned demand dated 20.01.2014 issued by the fourth respondent under Section 70(2) of the Indian Stamp Act and standing order No.746. Under the impugned demand, the petitioner has been called upon to pay a sum of Rs.86,93,116/- as the deficit stamp duty. However, the fourth respondent has not disclosed as to how he has arrived at the figure of Rs.86,93,116/-. Whether the said figure was arrived on the basis of the guideline value or on any other basis has not been disclosed. Admittedly, the petitioner has also not been heard in the Proceedings initiated by the fourth respondent under Section 70(2) of the Indian Stamp Act and standing order No.746, though notice of hearing was issued to the petitioner by the fourth respondent. Originally, the third respondent by its order dated 13.10.2012 called upon the petitioner to pay a sum of Rs.88,20,080/- as deficit stamp duty. Thereafter, the said order was challenged and the second respondent by order dated 20.06.2013 set aside the order dated 13.10.2012 passed by the third respondent. As seen from the impugned demand even though the order of the third respondent dated 13.10.2012 was set aside by the second respondent, the petitioner has been once again called upon to pay the sum of Rs.86,96,116/- as the deficit stamp duty, which is approximately less by only Rs.2,00,000/- than what was demanded under the order dated 13.10.2012 passed by the third

respondent. There is no reason given whatsoever in the impugned demand of the fourth respondent for arriving at the claim of Rs.86,93,116/- from the petitioner towards deficit stamp duty. The fourth respondent while making the demand is legally bound to give reasons for arriving at the figure of Rs.86,93,116/-. In the case on hand, the impugned demand is bereft of any details.

16. For the foregoing reasons, this Court is of the considered view that principles of natural justice has been violated by the fourth respondent by not affording sufficient opportunity to the petitioner to raise all objections relating to the demand and no explanation whatsoever has also not been given by the fourth respondent in the impugned demand for arriving at the figure of Rs.86,93,116/- as the amount of deficit stamp duty.

17. In the above circumstances, this is a fit case to remand the matter back to the fourth respondent for fresh consideration after giving sufficient opportunity to the petitioner to raise all objections available to her under law including granting her the right of personal hearing.

18. In the result, the impugned demand dated 20.01.2014 passed by the fourth respondent under Section 70(2) of the Indian Stamps Act and standing order 746 is hereby quashed and the matter is remanded back to the fourth respondent for fresh consideration and the fourth respondent shall pass final orders after affording sufficient opportunity to the petitioner to raise all objections relating to the demand and also grant her the right of personal hearing and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

19. It is represented by the learned counsel for the petitioner that at the time of admission of this writ petition, as directed by this Court a sum of Rs.40,00,000/- has been deposited by the petitioner with the District Registrar, Cheyyar on 10.05.2014. The said amount shall continue to remain in deposit with the fourth respondent and his subject to the outcome of the enquiry to be conducted by the fourth respondent pursuant to the directions issued by this Court today.

20. With the aforesaid directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Secretary to Govt.,
State of Tamil Nadu,
Commercial Taxes & Registration
Department,
Fort St. George,
Chennai - 600 009.

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

3. The Special Deputy Collector (Stamps)
Office of the Collector,
Vellore.

4. The District Regsitrar - Cheyyar,
Kancheepuram Road,
Tiruvetipuram - 604 407.

+1cc to Mr.R.Maheswari, Advocate, S.R.No. 1686
+1cc to the Government Pleader, S.R.No. 2257

W.P. No.9060 of 2014

SAI(CO)
GN(23/01/2020)