IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.NO.6042 OF 2017
AND
WMP.NOS.6475 AND 10240 OF 2017
AND
WMP.NO.7852 OF 2018

J.Jeyaraj ...Petitioner

-vs-

1. The Chief Controlling Revenue Authority,
cum Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2. The Special Deputy Collector (Stamps),
Tuticorin District, Tuticorin - 628 001.

3. The Sub Registrar,
Nazareth - 628 617.
Tuticorin District. ... Respondents

Prayer:-
Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Rc.No.37293/N5/N4/2014, dated 22.12.2016, on the file of the first respondent herein and to quash the same and direct the third respondent to release the rectification deed dated 17.11.2011 registered as Document No.1048 of 2013 on his file to the petitioner, within the time frame.

For Petitioner : Mr.S.Subbiah,
Senior Counsel
for M/s.Elizabeth Ravi

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

ORDER

Heard Mr.R.Subbiah, learned counsel for petitioner and Mr.P.P.Purushothaman, learned Government Advocate for respondents.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed challenging the order passed by the first respondent dated 22.12.2016 and for a direction to the 3^{rd} respondent to release the rectification deed dated 17.11.2011 registered as document No.1048 of 2013.

4. The petitioner purchased three items of property by registered sale deed dated 13.06.1996 registered as document No.525 of 1986 on the file of the 3^{rd} respondent herein. The petitioner's vendor is Tmt.D.Inbam Ammal. The three items of properties in the sale deed are comprised in Survey No.162/2 measuring an extent of 1 acre and 40 cents and survey No.131/1A6 measuring an extent of 28 cents and survey No.131/1A7 in Nazareth village. On 17.11.2011 the petitioner's vendor executed a deed of rectification, rectifying survey Nos. in respect of 2 items of the property namely the survey Nos. 131/1A6 and 131/1A7. There was no rectification sought for in respect of survey No.162/2. The rectification deed was presented for registration on 17.11.2011 and the 3^{rd} respondent treated the same as pending document and assigned document No.P35/2011. Subsequently, the matter was taken up by the respondent, who had invoked Section 47B of the Indian Stamp Act, 1898 (hereinafter referred to as 'the Act') and demanded additional stamp duty by valuing the properties as on the date, when the rectification deed was presented for registration. The revised valuation was not restricted to the two items of the property, where rectification was sought for but the entries in the stamp duty demanded for survey No.162/2, for which, no rectification was done.

5. Accordingly, the 2^{nd} respondent passed an order dated 12.06.2014 demanding additional stamp duty of Rs.1,70,436/-. The petitioner preferred an appeal before the 1^{st} respondent, who confirmed the order passed by the 2^{nd} respondent by referring to Section 47B of the Act. This order has put to challenge in this writ petition.

6. The question would be as to whether, when the petitioner's vendor presented a deed for rectification to rectify two survey Numbers in the sale deed, the power under Section 47B of the Act could be invoked. This issue is no longer res-integra and has been decided by the Hon'ble Division Bench

in the case of Inspector General of Registration and Ors. Vs. C.Marappan [reported in (2007) 1 MLJ 847]. In the said decision, it has been held that where no proceedings are initiated under Section 47A of the Act, the question of application of Section 47B of the Act and paying difference of stamp duty does not arise. The facts of the case before the Hon'ble Division Bench was more or less identical in the case on hand, especially to the fact that pursuant to a decree passed by the Civil Court, the Court held that on a plain reading of Section 47B, it is clearly seen that the provisions of the Section will be attracted only in case of instruments falling within the purview of Section 47A of the Act and in the absence of any proceedings having been initiated under Section 47A of the Act, the question of application of Section 47B does not arise.

7.One more decision, which would be relevant to the case on hand is in the case of P.Uthamaraj Vs. District Registrar, Chennai [reported in (2010) 1 MLJ 246]. The facts of the said case are virtually identical to the case on hand, where deed rectification was presented for registration after about 35 years after the original document was registered. The Court held that if by way of rectification deed, the extent is going to be increased, certainly for the difference in extent, the registering authority is entitled to charge stamp duty under Schedule I. But it is not open to the registering authority to reopen the original sale that took place in the year 2003 for the purpose of fresh assessment of value as on the date of rectification of error and by imposing stamp duty on the rectification deed and to seek to recover the difference of stamp duty from the petitioner. Further, it was pointed out that in as much as registering authority, at the time of presentation of the document for registration in the year 2003, did not raise any objection under Section 47A of the Act, it is not open to the respondents to raise the dispute regarding valuation when the rectification deed was presented for registration.

8. The above referred decisions will fully support the case of the petitioner. One more aspect, which has to be noted is that the authorities have demanded additional stamp duty even in respect of the land in survey No.162/2, for which, no rectification was sought for. Therefore, to that extent, the impugned order suffers from non application of law.

9. In the light of the above mentioned settled legal position, the demanding of additional stamp duty by reopening the valuation without any proceedings under Section 47A of the Act and only by invoking Section 47B of the Act is wholly unsustainable.

10. For all the above reasons, the writ petition stands allowed and the order impugned in Rc.No.37293/N5/N4/2014, dated 22.12.2016 is quashed and the 3rd respondent is directed to register and release the document. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Controlling Revenue Authority,
   cum Inspector General of Registration,
   Santhome High Road,
   Chennai - 600 028.

2. The Special Deputy Collector (Stamps),
   Tuticorin District, Tuticorin - 628 001.

3. The Sub Registrar,
   Nazareth - 628 617.
   Tuticorin District.

+1cc to M/s.Elizabeth Ravi, Advocate, S.R.No.374
+1cc to the Government Pleader, S.R.No.1302

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PM(CO)
CS/19/02/2020