IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.12970 of 2017
and
WMP.No.13840 of 2017

Suresh Babu ... Petitioner

Vs.

1.The District Registrar,
(Administration)
Registration Department Integrated Complex,
4th Gandhi Road,
Bazar Street (Near Market),
Arakonam - 631 001.

2.The District Registrar Audit,
Registration Department Integrated Complex,
4th Gandhi Road,
Bazar Street (Near Market),
Arakonam - 631 001.

3.The Sub Registrar,
Mupathuvetti village,
Kalavai Road, Arcot - 632 503. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for a writ of Certiorari to call for records in Nil dated 07.02.2017 and the check slip No.1/17 dated 05.04.2017, on the file of the 3rd respondent and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V.Lakshmi Narayanan

For Respondent Nos.1 to 3 : Mr.B.Kannan
Govt. Advocate for Registration

ORDER

This writ petition has been filed challenging the impugned (a) notice dated 07.02.2017 and (b) check slip dated 05.04.2017 issued by the third respondent.

2. It is the case of the petitioner that he is the owner of the property bearing Survey No.290A/2 measuring 61 cents and 294A/1 measuring 14 cents of Keezhminnal Village, Vellore District. According to him, the aforementioned properties were settled in his name by his father C.Renu, his brother, P.R.Chandrasekaran and his sister, Chitra under Settlement deed dated 24.02.2016 registered as document No.1162/2016 before the third respondent. According to the petitioner, to his shock and surprise, the District Registrar, Arakonam, sent a notice on 16.12.2016 alleging that on inspection, the third respondent found that a document registered as a settlement on 24.02.2016 in his name is incorrect and therefore deficit stamp duty of Rs.4,79,168/- is payable under Section 34 of the Stamp Act. According to the petitioner, he was called upon to respond to the said notice within a period of 15 days.

3. It is his case that based upon the settlement deed, he has also taken steps to raise funds through Indian Bank, Sathuvachary Branch, Vellore and accordingly, presented the records to the third respondent for registration of the memorandum of deposit of title deeds. The third respondent refused to register on the ground that deficit stamp duty is payable in respect of the release deed dated 24.02.2016 and the third respondent passed the impugned order in Nil No.1/2017, dated 05.04.2017. Aggrieved by the same, this writ petition has been filed.

4. Heard Mr.V.Lakshmi Narayanan, learned counsel appearing for the petitioner and Mr.B.Kannan, learned Government Advocate appearing for the respondents 1 to 3.

5. According to the learned counsel for the petitioner, under Section 33A or 34 of the Stamp Act, the Registering Authority is not empowered to demand further stamp duty after the document namely the release deed dated 24.02.2016 has been duly registered and returned. Further, he would submit that even without any proceeding being initiated under Section 33A for the payment of deficit Stamp duty, the impugned check slip dated 05.04.2017 has been issued preventing the petitioner from registering the memorandum of deposit of title deeds executed to secure the loan availed from Indian Bank, Sathuvachary Branch, on the ground that deficit stamp duty is payable under the release deed dated 24.02.2016 executed in petitioner's favour. According to him, without authority under law, the impugned check slip has been issued by the third respondent. Further, he would submit that the subject property was originally allotted to the share of the petitioner's father Mr.Renu under a partition deed dated 10.09.2001. Thereafter, his father Mr.Renu, his brother Chandrasekaran and his sister Chitra who are members of the Hindu Undivided family executed the release deed dated 24.02.2016 in favour of the other member namely, the petitioner herein and stamp duty was paid as per the explanation to Article 55A of the Stamp Act as the releasors

and the releasee are family members coming within the definition of a family. Further, he would submit that the said document having been released to the petitioner, the third respondent is barred from claiming deficit stamp duty in respect of the released document. Further he would contend that even without any enquiry under Section 33A of the Stamp Act and without any final order passed under the said section, the impugned check slip dated 05.04.2017 has been issued by the third respondent which is arbitrary and illegal and has been issued by total non application of mind.

6. Per contra, the learned Government Advocate for the respondents would submit that the petitioner does not have any pre-existing right over the property and hence, a release deed cannot be registered. Further, he would submit that the impugned check slip has been issued only pursuant to the circular No.2/2012 (No.251/C1/2012) of the Inspector General of Registration dated 24.05.2012. According to him, as per the circular, when the proceedings are to be initiated under Section 33A, any further registration of documents pertaining to the property cannot be entertained.

7.DISCUSSION:

Admittedly, the release deed dated 24.02.2016 in favour of the petitioner has been registered and released to the petitioner by the third respondent. It is also an admitted fact that the petitioner has paid the stamp duty in accordance with Article 55 A of the stamp Act. The petitioner, who is the releasee and his father, sister and brother, who are the releasors, come within the definition of a family as per the explanation to Article 55 A of the Stamp Act. Having released the document to the petitioner, even without any prior notice, the third respondent has issued the impugned check slip dated 05.04.2017 preventing the petitioner from registering the memorandum of deposit of title deeds executed to secure the loan availed by the petitioner from Indian Bank, Sathuvachary Branch. The Stamp Act does not contain any provision which enables the third respondent to issue the impugned check slip even before any order for payment of deficit stamp duty has been passed under Section 33 A of the Stamp Act. Section 33 A of the Stamp Act makes it mandatory that before a certificate is issued for recovery of deficit stamp duty, inquiry will have to be conducted and the person against whom recovery is sought to be made has to be given opportunity of being heard. Section 33A of the Stamp Act reads as follows:

> "33-A. Recovery of deficit stamp duty:- (1) Notwith-standing 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:”

In the case on hand, no opportunity of hearing has been given to the petitioner as per the proviso to Section 33 A of the Stamp Act and till date, inquiry has not been conducted and final orders passed as per the provisions of Section 33 A of the Stamp Act. Only after inquiry as contemplated under Section 33 A of the Stamp Act, the exact amount if at all payable towards deficit stamp duty is determinable. However, without any prior notice and without determining the quantum of deficit stamp duty as per the procedure laid down in Section 33 A, the third respondent has issued the impugned check slip dated 05.04.2017 calling upon the petitioner to pay the deficit stamp duty and registration fees totally amounting to Rs.5,75,353/- and also prevented the petitioner from registering the memorandum of deposit of title deeds executed to secure the loan availed by him from Indian Bank, Sathuvachary Branch. Without a certificate issued under Section 33 A of the Stamp Act, no action for recovery of deficit stamp duty can be taken for recovering any deficit stamp duty. The third respondent has not followed the due procedure contemplated under Section 33 A of the Stamp Act for coming to the conclusion that the release deed dated 24.02.2016 is liable for payment of deficit stamp duty as the petitioner does not have any pre-existing right over the property. Further the third respondent has also failed to take note of the fact that explanation to Article 55 A of the Stamp Act which deals with the stamp duty payable for release deeds and explanation to Article 58 of the Stamp Act which deals with stamp duty payable for settlement deeds are identical and makes it clear that the definition of family for the purpose of release deed as well as settlement deed is same. Excepting for the nomenclature of the subject document, the stamp duty payable for a settlement deed as well as a release deed between family members is one and the same. All these factors have not been considered by the third respondent before passing the impugned check slip dated 05.04.2017. The third respondent has not followed the procedure established under law as contemplated under Section 33 A of the Stamp Act before issuing the impugned check slip. A departmental circular cannot override the statutory procedure contemplated as per the provisions of Indian Stamp Act, 1899. The third respondent has also violated the principles of natural justice by not affording any opportunity to the petitioner before issuing the impugned check slip. The impugned check slip has been issued without authority under law.

8. For the foregoing reasons, this Court is of the considered view that the impugned (a) notice dated 07.02.2017 and (b) check slip dated 05.04.2017 issued by the third respondent against the petitioner is illegal, incompetent and is hereby quashed and the writ petition is allowed with a consequential direction to the third respondent to receive the memorandum of deposit of title deeds executed in favour of Indian Bank, Sathuvachary, Vellore, which was presented by the petitioner before him on 28.04.2017. However, it is made clear that if the petitioner is found liable to pay deficit stamp duty after holding a proper inquiry as contemplated under Section 33 A of the Stamp Act, 1899, the petitioner shall pay the determined amount to the third respondent and if the said payment is not made, the respondents are permitted to take action against the petitioner for the payment of deficit stamp duty and registration fees in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

sms

To

1.The District Registrar,
(Administration)
Registration Department Integrated
Complex,
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3.The Sub Registrar,
Mupathuvetti village,
Kalavai Road, Arcot - 632 503.

+1cc to Mr.V.Raghachari, Advocate SR.No.4555

+1cc to Government Pleader SR.No.5356

W.P.No.12970 of 2017
and
WMP.No.13840 of 2017

SSD(CO)
GMY(28/02/2020)