IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.14506 OF 2012
AND
M.P.NO.1 OF 2012

P.Mohanraj ... Petitioner

.Vs.

1. The District Registrar,
   Namakkal.

2. The Sub Registrar,
   Mohanur, Namakkal. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd respondent relating to his proceedings in Na.Ka.No.44/2012 dated 30.04.2012, quash the same.

For Petitioner	:	Mr.C.Jagadish For Mr.N.C.Ashok Kumar, M/s.S.Umamaheswari Mr.K.P.Suresh Kumar
For Respondents	:	Mr.Richardson Wilson Government Advocate

O R D E R

This writ petition is filed to issue a Writ of Certiorari, calling for the records of the second respondent relating to his proceedings in Na.Ka.No.44/2012 dated 30.04.2012 and quash the same.

2. The case of the petitioner is that the petitioner had purchased the property by way of registered Sale Deed dated 07.09.2010 vide Document No.2193/2010 to an extent of 22 Acres

78 Cents in various Survey Numbers. According to the petitioner, the said lands are agricultural lands and there is no construction at the time of purchasing the said lands. However, he purchased the subject lands and presented it for registration before the second respondent and the same was registered on 07.09.2010 vide Document No.2193/2010. The petitioner valued the property at Rs.35,01,000/- and accordingly, he paid stamp duty. Thereafter, one A.V.Ramasamy lodged complaint and on his complaint, the first respondent inspected that property and found that the property had not been properly valued and the Petitioner suppressed the fact that the said property consisting of poultry farm. Thereafter, the first respondent directed the second respondent to collect deficit stamp duty in accordance with law. On receipt of the letter from the first respondent, the second respondent issued impugned letter dated 04.04.2012 thereby demanded the petitioner to pay deficit stamp duty of Rs.96,30,884/-.

3. The learned counsel for the petitioner would submit that the petitioner presented a document for registration and the same was duly registered vide Document No.2193/2010. If at all the second respondent felt that the property is not properly valued, the second respondent can very well impound the document as contemplated under Section 33 of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act' for short).

4. Whereas, in the case on hand, the property was registered vide Document No. 2193/2010. Thereafter, the second respondent found that the property was not properly valued. The second respondent can very well refer the matter to the first respondent for initiating proceedings under Section 47-A of the Act. However, the impugned notice was issued by the second respondent without impounding the document before registration. He also submitted that subsequent to the impugned notice, departmental proceedings were initiated as against the officer of the second respondent in which the Inspector General of Registration passed order dated 30.03.2017 thereby concluded that at the time of registration of the subject property, there was no building and only in the month of May - 2012 the poultry farm was constructed and completed. Therefore, the disciplinary proceedings initiated as against the officer concerned was dropped.

5. Mr.Richardson Wilson, learned Government Advocate appearing for the respondents has filed counter affidavit and submitted that the first respondent has power under Section 33-A of the Act to recover the deficit stamp duty even after the registration of document. The said provision provides that if, after the registration of any instrument, 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 deficit, as the case may be, may, on a certificate from the Registrar of the District be recovered from the person liable to pay the stamp duty, as an arrear of land revenue.

6. He further submitted that aggrieved by the said order, the petitioner can very well file an appeal before the Inspector General of Registration as per Section 33-A(3) of the Act. Only on the orders passed by the first respondent, the second respondent issued demand notice to the petitioner thereby called upon the petitioner to pay deficit stamp duty as ordered by the first respondent.

7. It is seen that the petitioner presented the document for registration on 07.09.2010 and the same was registered vide Document No.2193/2010 for the vacant property. A perusal of the sale deed also revealed that it was an agricultural property and no construction was there at the time of registration of the document. According to the respondents, on the complaint on one A.V.Ramasamy, the first respondent inspected the subject property and found that there was poultry farm. Therefore, initiated proceedings and issued impugned demand notice to the petitioner to pay deficit stamp duty. In this regard, it is relevant to extract proviso to Section 33-A of the Act:-

> "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.”

8. Accordingly, the first respondent after due enquiry, issued certificate of arrears of land revenue payable by the person, who presented the document for registration. Whereas, in the case on hand, though an enquiry was conducted by the first respondent, the first respondent did not issue any certificate as contemplated under Section 33-A(1) of the Act. It is evident from the impugned order that no such certificate was referred in the impugned order and only on the letter issued by the first respondent, the second respondent issued demand notice to call upon the petitioner to pay deficit stamp duty. Therefore, it amounts to clear violation of principles of natural justice. On this ground alone, the impugned notice is liable to be set aside.

9. In view of the above, the impugned notice in Na.Ka.No.44/2012 dated 30.04.2012 passed by the second respondent is set aside and the writ petition is allowed. The enquiry is remitted back to the first respondent for passing fresh orders after giving notice and full opportunity to all parties concerned in the light of the order passed by the Inspector General of Registration dated 30.03.2017 in the disciplinary proceedings initiated as against the officer of the second respondent viz., G.Senthilkumar, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dm

To

1. The District Registrar,
Namakkal.

2. The Sub Registrar,
Mohanur, Namakkal.

+1cc to Mr.C.Jagadish, Advocate, S.R.No.51880

W.P.NO.14506 OF 2012

JP-II(CO)
PBS/30/11/2021