IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.172 OF 2011

AND M.P.NO.1 OF 2011

P.Arthanari ... Petitioner

Vs

1. The Chief Revenue Controlling Officer,
   Inspector General of Registration,
   Santhome, Chennai-28.

2. The Special Deputy Collector (Stamps),
   Salem-636 001.

3. The Sub Registrar No.IV,
   Sub Registrar Offices,
   Salem. ... Respondents

PRAYER:-

Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of declaration that the respondents have no jurisdiction to recover the alleged deficit stamp duty if any after lapse of nearly 15 years under Section 47 A of the Indian Stamp Act in the light of the principal of law laid down in 2008(3) CTC 614 in respect of the petitioner's sale deed dated 24.04.1996 registered under W.P.Nos.1069 of 1996 and 1260 of 1996 on the file of the third respondent.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.M.R.Gokul Krishnan,
Government Advocate

O R D E R

This writ petition is filed to issue a Writ of declaration that the respondents have no jurisdiction to recover the alleged deficit stamp duty if any after lapse of nearly 15 years under Section 47 A of the Indian Stamp Act in the light of the principal of law laid down in 2008(3) CTC 614 in respect of the petitioner's sale deed dated 24.04.1996 registered under W.P.Nos.1069 of 1996 and 1260 of 1996 on the file of the third respondent.

2. The petitioner and two others had jointly purchased the property and the sale deeds were presented for registration before the third respondent. The documents were registered vide Document Nos.1069 of 1996 and 1260 of 1996 on 24.04.1996. Though the petitioner approached the third respondent on several occasions, the documents were not received and the petitioner was informed that there was deficit stamp duty. Further, it was informed that those documents were referred under Section 47-A of the Indian Stamp Act to the file of the second respondent. However, no notice was served on the petitioner on the reference made under Section 47-A of the Indian Stamp Act. Therefore, the petitioner submitted representations to the respondents for release of documents.

3. At last, the petitioner received a communication from the first respondent, dated 28.09.2005, thereby, the petitioner was directed to pay deficit stamp duty with interest pursuance to the final order passed by the second respondent under Section 47-A of the Indian Stamp Act to release the documents. The petitioner was never served any notice with the order passed under Section 47-A of the Indian Stamp Act. It is also seen from the records that the petitioner had sent representations repeatedly to the respondents to serve the copy of the order passed under Section 47-A of the Indian Stamp Act and also release all the documents which were registered as Document Nos.1069 of 1996 and 1260 of 1996 on 24.04.1996 on the file of the third respondent.

4. Therefore, the petitioner was constrained to filed a writ petition before this Court along with two others in W.P.No.8852 of 2006 and this Court passed the following order on 29.03.2006:

> "2. The first respondent is therefore, directed to serve a copy of any final orders passed under Section 47-A of the Indian Stamp Act in respect of documents bearing Nos.1069 and 1260 of 1996 within two weeks from the date of receipt of a copy of this order.
>
> 3. The third respondent shall also release the above referred to document to the first petitioner subject to the first petitioner filing an affidavit of undertaking that he will not alienate the said property till any appeal filed as against the order

passed under Section 47-A is finally disposed of. The third respondent shall also make an endorsement on the document about the orders passed under Section 47-A and that there will be a charge on the property with reference to the difference in Stamp Value determined under Section 47-A.

4.The above order is passed without prejudice to the rights of the first petitioner to work out his remedy as against the orders passed under Section 47-A of the Indian Stamp Act."

5. This Court specifically directed the third respondent to release the documents and also directed to serve the copy of the order passed under Section 47-A of the Indian Stamp Act. The petitioner was given liberty to challenge the order passed under Section 47-A of the Indian Stamp Act. However, the second and third respondents did not take any steps to release the documents and also failed to serve the copy of the order passed under Section 47-A of the Indian Stamp Act. Therefore, the petitioner issued contempt notice and thereafter only he was served the documents. However, the petitioner was not served with the final order passed under Section 47-A of the Indian Stamp Act.

6. As directed by this Court, now the third respondent made entry in the encumbrance certificate with regard to non payment of deficit stamp duty as a charge over the property with reference to difference in stamp value determined under Section 47-A of the Indian Stamp Act. The documents were presented for registration in the year 1996. However, even till today, no order was passed under Section 47-A of the Indian Stamp Act to the petitioner. Therefore, after the lapse of 15 years till the filing of the writ petition, the respondents cannot recover the deficit stamp duty, since it lapsed.

7. The respondents filed counter and it revealed that as directed by this Court in W.P.No.8852 of 2006, the sale deeds were released to the petitioner. The second respondent passed final order under Section 47-A(2) of the Indian Stamp Act as to determination of the market value of the properties dealt in the sale deeds and the deficit stamp duty payable thereon. After taking charge in favour of the Government of Tamil Nadu for outstanding deficit stamp duty, the original documents returned to the petitioner. Therefore, even till today the order passed under Section 47-A of the Indian Stamp Act is not served to the petitioner.

8. In this regard, the learned counsel for the petitioner relied upon the Judgments followed hereunder:

"1. Harihar Alloys M.Ltd Vs. The Inspector General of Registration and Others passed in W.P.(MD) No.9130 of 2018.

2. K.Nachimuthu Vs. The District Registrar (Audit) and another, reported in 2015 SCC Online Mad.8022.

3. E.Jayabarathi Vs. The Chief Controlling Revenue Authority and Others, reported in 2014 SCC Online Mad 7126.

4. Thajunissa and another Vs. The Special Deputy Collector (Stamps) reported in 2013(5) CTC 577.

5. Karpagavinayaga Associates Vs.The Inspector General of Registration and Others, reported in 2014(3) 14WN Civil 508.

6. State of Uttar Pradesh and Others. Vs. Ambrish Tandon and Another, reported in 2012(5) SCC 566.

7. The Special Deputy Collector (Stamp) Cuddalore Vs. Chemicals and Plastics Ltd., Reported in 2004(1) CLC 187.

8. M/s.Kaavya Construction And -vs- The Deputy Director (Stamps) W.P.Nos.21618 & 24238 of 2019."

9. It is relevant to extract the provision under Section 47-A of the Indian Stamp Act, 1899 hereunder:

"47-A. Instruments of conveyance, etc., undervalued how to be dealt with. - If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 1908), while registering any instrument of conveyance [exchange, gift, release of benami right or settlement], has reason to believe that the market value of the property of which is the subject matter of conveyance [exchange, gift, release of benami right or settlement], has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

2. On receipt of a reference under sub-section(1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance,[exchange, gift, release of benami right or settlement], and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

3. [The Collector may, suo motto or otherwise, within five years] from the date of registration of any instrument of conveyance, [exchange, gift, release of benami right or settlement], not already referred to him under sub-section(1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, [exchange, gift, release of benami right or settlement], and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub section(2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Tamil nadu Amendment) Act, 1967."

10. Accordingly, the value of the property has not been truly set forth in the instrument and the Registrar may refer the documents to the Collector for the determination for the market value. On receipt of such reference, the Collector, after giving opportunity to the parties and after holding an inquiry, may determine the market value of the property. Difference if any, the deficit stamp duty shall be payable by the person. The Collector may, suo motu or otherwise within a

period of 5 years from date of the registration of any instrument, pass an order.

11. In the case of hand, the documents were presented for registration in the year 1996 and registered as Document Nos.1069 of 1996 and 1260 of 1996 on 24.04.1996 by the third respondent. It seems that the third respondent referred the document to the file of the second respondent under Section 47-A of the Indian Stamp Act. On receipt of the said document, the second respondent did not issue any notice to the petitioner to pass orders under Section 47(2) of the Indian Stamp Act for conducting inquiry. Even assuming that after issuance of notice, the second respondent without conducting any inquiry passed orders. Even assuming that if there was an inquiry, no final order is communicated to the petitioner even till today. Therefore, the second respondent failed to follow any of the procedures laid down under the Act and they cannot recover any deficit stamp duty from the petitioner after the lapse of 25 years, without even serving the notice and without conducting any inquiry and without even serving the copy of the order passed under Section 47-A of the Indian Stamp Act, inspite of directions issued by this Court.

12. In view of the above, this writ petition is allowed. The third respondent is directed to remove the entries made in the encumbrance certificate in respect of charge over the property with regard to deficit stamp duty forthwith. No order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rna/mka

To

1.The Chief Revenue Controlling Officer,
Inspector General of Registration,
Santhome, Chennai-28.

2.The Special Deputy Collector (Stamps),
Salem - 636 001.

3. The Sub Registrar No.IV,
Sub Registrar Offices,
Salem.

+1cc to M/S.Government Pleader, SR.NO.43403
+1cc to M/S.R.Marudhachalamurthy,Advocate SR.NO.43201

W.P.No.172 of 2011
and M.P.No.1 of 2011

JP-II(CO)
PM/28/09/2021