IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM

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

WP.NOS.40286 OF 2006 AND 28495 OF 2005
WPMP.NO.31094 OF 2005

WP.No.40286 of 2006

N.Shanmugaraja
...Petitioner

Vs

1. The State of Tamil Nadu, rep. by
   Secretary to Government,
   Fort St.George, Chennai 600 009.

2. The Chief Controlling Revenue Authority -
   Tamilnadu (Inspector General of Registration),
   100 Santhome High Road,
   Pattinapakkam, Chennai 600 028.

3. The Inspector General of Registration,
   100 Santhome High Road,
   Chennai 600 028.

4. The Deputy Inspector General of Registration,
   S.N.High Road,
   Tirunelveli Jn – 627 001.

5. The District Registrar,
   Collectorate Campus,
   Palayamkottai,
   Tirunelveli 627 002.

6. The Special Deputy Collector(Stamps),
   Collectorate Campus,
   Palayamkottai,
   Tirunelveli 627 002.

7. The Sub Registrar,
   Burkit Maanagar, Palayamkottai Taluk,
   Tirunelveli.

...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of respondents in connection with the proceedings of the 6th respondent in X-1/3139/2003 and to quash the order dated 13.05.2003 and consequently to direct the first respondent to refund to the petitioner the sum of Rs.2,10,000/- collected from the petitioner as deficit stamp duty and registration charges pursuant to the order of the 6th respondent.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.Richardson Wilson,
Government Advocate

WP.No.28495 of 2005

N.Shanmugaraja

...Petitioner

Vs

1. The Chief Controlling Revenue Authority -
   Tamilnadu (Inspector General of Registration),
   100 Santhome High Road,
   Pattinapakkam, Chennai 600 028.

2. The Inspector General of Registration,
   100 Santhome High Road,
   Chennai 600 028.

3. The Deputy Inspector General of Registration,
   S.N.High Road,
   Tirunelveli Jn – 627 001.

4. The District Registrar,
   Collectorate Campus,
   Palayamkottai,
   Tirunelveli 627 002.

5. The Special Deputy Collector(Stamps),
   Collectorate Campus,
   Palayamkottai,
   Tirunelveli 627 002.

6. The Sub Registrar,
   Burkit Maanagar, Palayamkottai Taluk,
   Tirunelveli.

7. The Deputy Inspector General of Registration,
   Chennai.

...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the respondents in connection with the proceedings of the 1st respondent dated 19.07.2005 in Letter No.26326/N3/U1/2003 and to quash the same.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.Richardson Wilson,
Government Advocate

COMMON ORDER

The Writ Petition in WP.No.40286 of 2006 is filed to issue a writ of certiorarified mandamus calling for the records of respondents in connection with the proceedings of the 6th respondent in X-1/3139/2003 and to quash the order dated 13.05.2003 and consequently to direct the first respondent to refund to the petitioner the sum of Rs.2,10,000/- collected from the petitioner as deficit stamp duty and registration charges pursuant to the order of the 6th respondent; and the writ petition in WP.No.28495 of 2005 is filed to issue a writ of certiorari calling for the records of the respondents in connection with the proceedings of the 1st respondent dated 19.07.2005 in Letter No.26326/N3/U1/2003 and to quash the same.

2. In respect of WP.No.28495 of 2005, the case of the petitioner is that the petitioner purchased the property comprised in survey No.149 situated at Palayamchettikulam Village by the registered sale deed dated 22.01.2001. The sale consideration was fixed at Rs.3,80,000/- for the entire extent i.e. 10 acres of the property. The sale deed was presented for registration before the sixth respondent. Thereafter, in view of the instrument was not properly valued and referred the matter to the District Registrar and the District Registrar recommended the market value at Rs.5,00,000/- per acre. The Deputy Inspector General i.e. the third respondent herein also confirmed the same and determined at Rs.5,00,000/- per acre. Accepted the recommendations made by the respondents 3 and 4 herein, the second respondent i.e. Inspector General of Registration, Chennai also fixed market value at Rs.5,00,000/- per acre in his proceedings dated 26.07.2001. Accordingly, the petitioner paid deficit stamp duty for registration of the said document on 18.10.2001. Accepted the same, the sixth respondent registered document vide document No.610 of 2001 on 22.10.2001 and released the document. Thereafter, the sixth respondent referred the document under Section 47 (A) of the Indian Stamp Act before the fifth respondent herein. The fifth respondent called upon the petitioner to appear for enquiry on 16.05.2003. Thereafter, by order dated 13.05.2003, the fifth respondent determined the value at Rs.6,50,000/- per acre. The petitioner also accepted the value determined by the fifth respondent and paid the remaining deficit stamp duty.

2.1 While being so, the first respondent issued notice under Section 47 A (6) of the Act calling upon the petitioner to appear before him on 11.07.2005. In fact, the petitioner appeared and submitted his detailed objections pointing out that the entire proceedings initiated by the fifth respondent was already complied with under Section 47 A of the Indian Stamp Act. Therefore, there is no need or occasion for the first respondent to proceed under Section 47 (A) (6) of the said Act. After filing counter in the present writ petition, the petitioner also challenged the order passed by the fifth respondent dated 13.05.2003, thereby determined the value at Rs.6,50,000/- per acre.

3. The learned counsel for the petitioner would submit that it is nothing but third round of determination of the value for the property which was purchased by the petitioner. Initially, the sixth respondent referred for determining the value of the property. Accordingly, the fourth respondent fixed the value at Rs.5,00,000/- per acre and the same was confirmed by the respondents 2 and 3 herein. The petitioner also paid deficit stamp duty and the sixth respondent registered the document vide document No.610 of 2001 on 22.10.2001. Even then, the sixth respondent again referred the document under Section 47 (A) of the Indian Stamp Act to determine the proper valuation of the subject property. Again, the fifth respondent determined the value at Rs.6,50,000/- and however the petitioner paid the same on the very next day. Therefore, the present proceedings is nothing but clear abuse of process of law and the first respondent has no jurisdiction to take the issue on suo motu under Section 47 (A) (6) of the said Act, since already the value of the property was determined on two occasions. He also submitted that the writ petition is very much maintainable under Article 226 of the Constitution of India though there is appeal remedy provided under Section 47 (A) (10) of the Indian Stamp Act. In this regard, he relied upon the judgments in the case of V.N.Devadoss Vs. Chief Revenue Control Officer-cum-Inspector and others reported in 2009 (7) SCC 438 and in the case of Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai & others reported in (1998) 8 SCC 1.

4. Per contra, the learned Government Advocate filed counter and submitted that after registration of the document vide document No.610 of 2001 referred the document under Section 47 (A) of the Indian Stamp Act. Accordingly, the fifth respondent after following due process as contemplated under Section 47 (A) determined the value of the property at

Rs.6,50,000/- per acre. Though the petitioner paid deficit stamp duty, he also challenged the same before this Court in WP.No.40286 of 2006. He further submitted that the Accountant General while auditing the accounts of the sixth respondent herein has observed that the subject land value found in the guideline value register for survey No.149/1 at Rs.14,74,700/- per acre and it could have been adopted for arriving at a reasonable value of the property. The guideline value for the land comprised in survey No.149/1 at Rs.14,74,700/- per acre and Rs.80/- per sq.ft. for survey No.149/2 was substituted as Rs.5,00,000/- per acre for both survey Nos. Therefore, the first respondent and the second respondent noticed that the value of determination by the fifth respondent was drawn considered it is a fit case involving huge revenue loss called for records caused such enquiry as deem fit in this case and initiated proceedings revising the order of the fifth respondent herein by suo motu.

4.1 He further submitted that the first respondent has got power under Section 47 (A) (6) of Indian Stamp Act to revise, modify or set aside the order passed by the sixth respondent herein by suo motu. Therefore, the first respondent on the audit objections on the accounts submitted by the sixth respondent herein rightly had taken cognizance by suo motu and determined the value, that too at Rs.11,00,000/- per acre when the guideline value of the said property valued at Rs.14,74,700/-. Therefore, he prayed for dismissal of the writ petition.

5. Heard, Mr.T.M.Hariharan, the learned counsel for the petitioner, and Mr.Richardson Wilson, Government Advocate appearing for the respondents.

6. The petitioner purchased the property comprised in survey No.149, T.S. Ward No.3, Block No.25-A, TS.59/1 situated at Palayamchettikulam Village, Palayamkottai, Tirunelveli to an extent of 10 acres of land for the total sale consideration of Rs.3,80,000/-. Accordingly, the petitioner valued the property and paid stamp duty and presented the sale deed for registration before the sixth respondent herein. For determining the proper value of the property, the sixth respondent referred before the

fourth respondent. The fourth respondent on perusal of the documents, determined the value at Rs.5,00,000/- per acre. It was also confirmed by the third and second respondents herein by the order dated 22.03.2003 and 26.07.2001 respectively. Accordingly, the petitioner was directed to pay deficit stamp duty and he paid the same on 15.10.2001. On receipt of such deficit stamp duty, the sixth respondent registered sale deed vide document No.610 of 2001 on 22.10.2001. Thereafter, the sixth respondent herein referred the sale deed under Section 47 (A) of the Indian Stamps Act. On receipt of the same, the fifth respondent determined the value at Rs.6,50,000/- per acre after due enquiry. The provisional order passed and Form-I was issued to the petitioner dated 13.05.2003. Immediately on receipt of the same, the petitioner paid deficit stamp duty as the market value determined by the fifth respondent on 14.05.2003.

7. It seems that there was an audit conducted by the Accountant General. While submitting the accounts by the sixth respondent, the Accountant General observed that the land value found in the guideline value register in respect of the property comprised in survey No.149/1 at Rs.14,74,700/- per acre. Therefore, the first respondent rightly noticed that the value of the property determined by the fifth respondent causes huge revenue loss to the Government. Therefore, the first respondent issued notice under Section 47 (A) (6) of the Indian Stamp Act on his suo motu. It is relevant to extract the provision under Section 47 (A) (6) of the Indian Stamp Act as follows:

> The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit.

8. Accordingly, the first respondent has power to examine the order passed by the fifth respondent on his suo moto. In this regard, the learned counsel for the petitioner relied upon

the judgment in the case of in the case of V.N.Devadoss Vs. Chief Revenue Control Officer-cum-Inspector and others reported in 2009 (7) SCC 438, wherein it is held as follows:

> Sub-Sections (1) and (3) of Section 47-A clearly reveal the intention of the Legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to under value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is willful under valuation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

The Hon'ble Supreme Court of India held that it is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue.

9. In the case on hand, the guideline value for the property comprised in survey No.149/1 fixed at Rs.14,74,700/- per acre. Whereas initially the petitioner valued the entire extent of the property i.e. admeasuring 10 acres at Rs.3,80,000/-. Therefore, while auditing the accounts submitted by the sixth respondent, the Accountant General rightly pointed the correct value of the property. As such the first respondent had taken the issue on his suo motu and determined the value at Rs.11,00,000/- per acre.

10. As against the order passed under Section 47 (A) (6) of the Indian Stamp Act, there is appeal remedy under Section 47 A (10) of the said Act. Accordingly, any person aggrieved by an

order of the authority prescribed under sub-section (5) or the Chief Controlling Revenue Authority under sub-section (6) may, within such time and in such manner, as may be prescribed by rules made under this Act, appeal to the High Court. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai & others reported in (1998) 8 SCC 1, wherein it is held as follows:

> 14.The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

The Hon'ble Supreme Court of India held that the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies i.e. where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

11. In the case on hand, the first respondent has got jurisdiction to take up the issue on his suo motu under Section 47 (A) (6) of the Indian Stamp Act. The first respondent also passed order after issuance of notice to the petitioner and sufficient opportunity was duly given to the petitioner before passing the impugned order. Therefore, the above judgments are not helpful to the case of the petitioner herein, and this Court finds no merits in the writ petition.

12. The writ petition in WP.No.40286 of 2006 is filed challenging the order passed by the fifth respondent dated 13.05.2003, which was duly accepted by the petitioner and also paid deficit stamp duty on the document registered vide document No.610 of 2001 dated 22.10.2001. Therefore, the prayer sought for in that writ petition has become infructuous.

13. In view of the above discussion, both the writ petitions are devoid of merits. Accordingly, both the writ petitions are dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Fort St.George, Chennai 600 009.

2. The Chief Controlling Revenue Authority -
   Tamilnadu (Inspector General of Registration),
   100 Santhome High Road,
   Pattinapakkam, Chennai 600 028.

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   Tirunelveli.

8. The Deputy Inspector General of Registration,
   Chennai.

+2ccs to Mr.T.M.Hariharan, Advocate, S.R.No.39674, 39673

+1cc to the Government Pleader, S.R.No.39780, 39770

WP.Nos.40286 of 2006 and 28495 of 2005

GPL(CO)
RLP(14/09/2021)