IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.07.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.23871 of 2004 and
W.P.M.P.No.28944 of 2004

1. M/s.Karpaga Vinayaga Industries
   Rep. by its Managing Partners
   V.Rajendran,
   S/o.G.Veeriaya,
   1/923, 10th Street,
   Jothi Nagar, Padiyanallur,
   Chennai - 600 052.

2.K.Parthiban
3.V.Sekar
4.V.Rajkumar ... Petitioners

Vs.

1.The Inspector General of Registration,
  Santhome High Road,
  Chennai - 600 028.

2.The District Revenue Officer (Stamps),
  O/o. Collectorate,
  5th Floor, M.Singaravellar Maligai,
  No.32, Rajaji Salai, Chennai - 600 001.

3. The Sub Registrar,
   Redhills, Chennai - 600 052. ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings made in Tha.Ka.No.202/03/A4 dated 20.9.2003 issued by the second respondent and quash the same and forbear the second respondent from proceedings with the enquiry.

For Petitioners : Mr.G.Ethirajulu
For Respondents : Mr.Richardson Wilson
Government Counsel

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus calling for the records relating to the proceedings made in Tha.Ka.No.202/03/A4 dated 20.9.2003 issued by the second respondent and quash the same and forbear the second respondent from proceedings with the enquiry.

2.The case of the petitioners is that the property situated in S.No.114/13, 114/11, 112/18 and 114/12 to the extent of 1.43 acres at No.8 Padiyanallur Village, Ponneri Taluk was allotted to one M/s.Vega Foods Private Limited by the Tamil Nadu Industrial Investment Corporation Limited (in short "TIIC").

3.Subsequently, the said company seems to have obtained loan from the TIIC and the said company defaulted as the loan has not been paid back to the TIIC. Therefore, invoking the provisions especially Section 29 of the State Financial Corporations Act, 1951, the property in question had been brought for auction sale.

4.In the auction, the petitioner had taken the property in auction. In other words, he has become successful bidder for a sum of Rs.45,00,000/-. Having accepted the said auction amount, the property has been executed by way of sale deed by the TIIC and the said sale deed having been registered as Document No.4341/2003 dated 15.09.2003 by the concerned registering office i.e., Sub Registrar, Redhills, Chennai, had been released.

5.However, the Registering Authority thereafter having found some deficiency in stamp duty paid by the petitioner for the said instrument dated 15.09.2003 had referred the matter to the second respondent under Section 47-A of the Registration Act.

6.On such reference, the second respondent as per the Rules, especially under Rule 4(4) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 in Form No.I issued notice dated 20.09.2003. The said notice issued by the second respondent under Rule 4(4) of the said Rule in Form No.I is under challenge in this writ petition.

7.Heard Mr.G.Ethirajulu, learned counsel appearing for the petitioner, who would submit that, the petitioner had not purchased the property by private negotiation from the vendor. It had taken the property by public auction from the TIIC where the highest bid amount has been accepted by the TIIC, sale deed has been executed and that was registered as Document on 15.09.2003. At the time of registration, the stamp duty calculated for the said sale consideration had been fully paid.

Therefore, after having receipt of the stamp duty paid and after registering the document, once again the third respondent ought not to have referred the matter under Section 47-A of the Act thereby the further action on the part of the second respondent to issue notice in Form No.I, which is impugned herein, by invoking the aforesaid Rule, especially under Rule 4(4) through the present impugned proceedings dated 20.09.2003 is unwarranted, unlawful and without jurisdiction, therefore, the impugned proceedings is liable to be quashed, he contended.

8.Heard Mr.Richardson Wilson, learned Government Counsel appearing for the respondents who would submit that, even after registration of the document, the Registering Authority is empowered to refer the matter to the Collector (Stamp Duty) who is the second respondent herein (District Registrar) under Section 47-A of the Act. Therefore, that power vested with the Registering Authority to refer the matter under Section 47-A in case if any doubt arises and if any objection come and defect have been noticed by the Registering Authority that there has been a deficit stamp duty paid in a particular instrument, is always available to him. Therefore, such a power vested with the Registering Authority to refer the matter to the District Registrar/Collector (Stamp Duty) under Section 47-A cannot be questioned. He would also submit that, nevertheless, once the matter is referred to the District Registrar under Section 47-A, there is a procedure contemplated under Rules based on which only an enquiry would be conducted and accordingly, the decision has to be made by the Registrar as to the correct value of the property concerned and accordingly, if there is any deficit stamp duty, that would be calculated and be declared by the proceedings to be issued by the District Registrar. Therefore, when such procedure is contemplated under the Rule, against the said Rule no mandamus can be sought for and no writ can be filed by the petitioner seeking any quashment of the notice issued by the second respondent District Registrar in Form No.I, which is exactly the impugned notice herein, therefore, the learned Government Counsel seeks dismissal of this writ petition.

9.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10.It was submitted by the learned counsel appearing for the petitioners that, it was not the property purchased through private negotiation and it was purchased by public auction from a Government owned or subsidised company especially, under the provisions of the State Financial Corporations Act, where, the highest bid/offer of the petitioners having been accepted as a sale price, the sale deed was executed. Having accepted the sale price as the value of the property and also the calculated stamp duty and after registering the document, once again the Registering Authority cannot invoke the power under Section 47-A of the Act to refer the matter further to the second respondent, the said argument, in the considered opinion of this Court, may not hold good because, such a power is always vested with the Registering Authority as even after the registration of the document, they can refer the matter under Section 47-A of the Act.

11.Therefore, such reference made in this regard by the Registering Authority to the second respondent cannot be found fault with.

12.Once such reference is made under Section 47-A(1), under Section 47-A(3), the District Registrar is empowered to take up the reference and conduct an enquiry and decide the same. While deciding the same, the procedure to be adopted by the District Registrar has been spelt out in the Rule as referred to above, where, especially under Rule 4(4) notice under Form No.I shall be issued to the vendor or the purchaser or both. In this case, since the purchaser has been issued only Form No.I notice under Rule 4(4), the said notice cannot said to be an action on the part of the second respondent authority, transgressing the jurisdiction of the second respondent. Therefore, the challenge now made by the petitioners against the impugned proceedings dated 20.09.2003, in the considered opinion of this Court, shall not stand in the legal scrutiny, therefore, the present prayer of writ of certiorarified mandamus fails, hence, it is liable to be dismissed.

13.However, since the writ petition has been admitted in the year 2004 and rule nisi was issued and it had been pending before this Court for 17 years and there has been a procedure contemplated under the aforesaid Rule where whatever the case to be projected in order to substantiate the contention of the petitioners that value fixed of the property concerned covered under instrument and the consequential stamp duty is not a correct one, that chance is always available before the petitioners to put forth before the second respondent who is the authority under Section 47-A(3) of the Act. Hence, pursuant to the impugned notice, it is open to the petitioners to make their representation by way of reply or defense to the said show cause notice to the second respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, that shall be considered by giving an opportunity of being heard to the petitioners by the second respondent and a final decision shall be made on the reference made by the Registering authority under Section 47-A(1) on the said issue. It is made clear that, if already any final order is passed on the reference by the second respondent during these years, where, this writ petition had been pending before this Court, a copy of such final order shall be communicated to the petitioner and on receipt of the same, the further course of action if any can be undertaken by the petitioners in the manner known to law. The needful as indicated above, shall be undertaken by the second respondent within three months from the date of receipt of reply from the petitioners as indicated above.

14.With these directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Sgl
To
1.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2.The District Revenue Officer (Stamps),
O/o. Collectorate,
5th Floor, M.Singaravellar Maligai,
No.32, Rajaji Salai, Chennai - 600 001.

3.The Sub Registrar,
Redhills, Chennai - 600 052.

+1 CC to The Government Pleader sr 33553.

W.P.No.23871 of 2004

RSV(CO)
SP(13/08/2021)