

IN THE HIGH COURT OF JIUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.Nos.4195, 4442 & 4441 of 2011

Lord Sri Venkateswara Educational Trust,
Rep.by its Managing Trustee,
R.Duraisamy,
No.23B/2. Varadhan Street,
Salem Main Road, Rasipuram.

.. Petitioner in
W.P.No.4195 of 2011

Sri Srinivasa Educational Trust,
Rep.by its Managing Trustee,
A.R.DDuraisamy,
S.R.V.Thottam, Moolakkadu village,
Masakalipatti Post, Rasipuram Taluk,
Namakkal District.

.. Petitioner in
W.P.Nos.4441 & 4442 of 2011

Vs.

1.The District Registrar,
Office of the District Registrar,
Namakkal.

2.The Sub Registrar,
Rasipuram.

.. Respondents in
all petitions

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the 1st respondent relating to his proceedings in Na.Ka.Nos.7961,7962 & 7963/B1/2010 dated 15.12.2010 quash the same and direct the 2nd respondent to register and return the decree in O.S.Nos.8, 1 & 7 of 2010 dated 22.02.2010 on the file of the Principal District Judge, Namakkal.

For Petitioner
In all petitions
For Respondent
In all petitions

: Mr.C.Jagadesh
: Mr.P.P.Purushothaman
Government Advocate

COMMON ORDER

These writ petitions have been filed for issuing a writ of certiorarified mandamus to quash the impugned order passed by the 1st respondent dated 15.12.2010 and to direct the 2nd respondent to register and return the decree in O.S.NO.8 of 2010 dated 22.02.2010 on the file of the Principal District Judge, Namakkal.

2. The brief facts necessary for the disposal of the writ petition in W.P. No. 4195/2011 are as follows:-

The petitioner in the writ petition is a trust represented by its Managing Trustee. It is stated that the petitioner is a public trust having objects in relation to promotion of education in Rasipuram Town of Namakkal Taluk and District. The Trust was created under a registered trust deed dated 09.10.2009 by the name Lord Sri Venkateswara Educational Trust.

3. One another trust by name Sri Venkateswara Educational trust was also created earlier by a registered trust deed dated 08.02.1996. The earlier trust, purchased certain lands by way of registered sale deed dated 09.02.1996 and had taken on lease vast extent of lands for a period of 30 years from several persons. The trust also constructed several buildings and running a school by name S.R.V. Girls secondary school in the properties.

4. It is stated that the previous trust by name Sri Venkateswara Educational trust found it difficult to run the school and that the objects of the trust could not be carried forward by the trustees. While so, the erstwhile trustees passed a resolution on 14.10.2009 dissolving the trust. It is stated that the resolution was passed by all the 11 trustees.

5. It is to be noted that Clause 31 of the trust deed dated 18.02.1996, reads as follows:

"31. In the event, difference of opinion among the Trustees the opinion of the majority shall prevail. If for any reason, the trust is not properly managed, the funds of the trust shall be transferred to another trust having similar objects on a decision by the majority."

6. Therefore, it is stated that in terms of Clause 31 of the trust deed dated 08.02.1996, the trustees of the dissolved trust by resolution dated 14.10.2009 resolved to handover the properties of the erstwhile trust to the petitioner trust. It is stated that the possession of the properties were also handed over to the petitioner trust on the same day. It is specific case of the petitioner that the petitioner is running the Higher Secondary school in the name of S.R.V.Girls Higher Secondary School.

7. The transfer of property is stated to have been duly recorded in the books of both the trust. It appears that the erstwhile trustees of the previous trust raised certain claims regarding certain properties and questioned the right of the petitioner trust to hold the properties which were conveyed to the petitioner by the resolution of the erstwhile trust. A suit came to be filed in O.S.No.8 of 2010 on the file of Principal District Court, Namakkal, for declaration of the petitioner's title in respect of certain land and properties which were the properties that came from the erstwhile trust. A consequential relief of injunction was also claimed by the petitioner. It is admitted that the suit was decreed as prayed for by judgment and decree dated 22.02.2010. As a matter of facts, it is seen that the defendants in the suit submitted to the decree.

8. Later the petitioner presented the decree in O.S.No.8 of 2010 for registration on 26.04.2010. Though the 2nd respondent accepted the document for registration, however, insisted that the petitioner should pay a sum of Rs.22,14,632/- towards deficient stamp duty and further a sum of Rs.2,76,829/- towards the deficiency in registration charges. It was specifically mentioned that upon determination of the amount payable towards deficient stamp duty and charges on the basis of guide line value, further amount will be collected from the petitioner.

9. Challenging the order passed by the 1st respondent directing the petitioner to pay a sum of Rs.24,00,000/- and informing the petitioner that a further sum will be collected from the petitioner, the above writ petition has been filed.

10. The learned counsel appearing for the petitioner submitted that the impugned order is passed without even issuing a show cause notice to the petitioner. It is stated that the order though styled as a notice, is infact an order demanding payment and therefore, the impugned order is liable to quashed on the short ground of violation of principles of natural justice. The learned counsel then submitted that the 1st respondent cannot treat the decree of Court as a conveyance. He referred to Section (2) (10) of the Indian Stamp Act and contended that the decree cannot be termed as conveyance and that in the absence of transaction between two parties, the judgment and decree of Court cannot be treated as conveyance. Since the nature of decree clearly indicates that the property has been recognized as the property of the petitioner by judgment of the Court and that there is no instance of transfer inter vivos, he submitted that the demand is not authorised and that the 1st respondent has raised demand without any jurisdiction or authority. The counsel also submitted that a sum of Rs.2,76,829/- has already been collected from the petitioner and that further demand towards registration charges is unauthorised and without any application of mind.

11. The learned counsel appearing for the respondents relied upon the counter affidavit filed by the respondents 1 and 2. In the counter affidavit, the respondents have supported the demand by stating that a new right is created in favour of the petitioner by way of conveyance and therefore, the 2nd respondent kept the document pending registration and referred the same to the 1st respondent who is the Collector to decide the amount towards deficit stamp duty. The respondents further stated that there is no other document to prove any pre existing right and that the decree obtained from the Civil Court is the only document by which the transfer was effected and possession was handed over.

12. Stating that the decree should be construed as a document or instrument under 2(14) of Stamp Act, the respondents contends that as per Article 33 r/w. Article 23 the decree should be construed as a conveyance (settlement of Gift). In the counter affidavit, justifying the stand taken by the 1st respondent to treat the decree as conveyance it is also stated that the property has been conveyed without any formal document which would prove the title or possession of the transferee. Since the decree has come into existence to recognize that the title had passed on from the erstwhile trust, it is contended that the decree should be treated as a conveyance as it was obtained collusively for the purpose of avoiding stamp duty and to avoid the execution of Gift deed. The respondents further stated that under Section 40 of the Indian Stamp Act, no notice is required to be given to the petitioner. The respondents are not required to give notice or personal hearing to the petitioner and that the order of the 1st respondent treating the decree as an instrument is in accordance with judgment of the Apex Court in *Hindustan Lever and Anr. Vs. State of Maharashtra* reported in [2004 AIR (SC) 326.]

13. Section (2)(10) of Indian Stamp Act defines "Conveyance" as follows:-

"Conveyance" includes a conveyance on sale and every instrument by which property whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. From the statutory definition a conveyance refers to an instrument by which the properties are transferred inter vivos. "Instrument" under Section 2(14) of the Indian Stamp Act includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or record;

14. Article 23 of the Indian Stamp Act refers to conveyance.

15. It is relevant to refer to Section 17 (2) (VI) of Registration Act, 1908. Section 17 (2) refers to transactions which are exempted. A decree or order of Court, except a decree

or order made on a compromise and comprising immovable property is not required to be registered. In this case the relief was on the basis of a prior transaction (A resolution) and the decree cannot be construed as one based on a compromise.

16. When a decree contains the verdict in a lis between two parties, it cannot be termed as a voluntary transfer between two parties. In such circumstances, it cannot be treated as a document of conveyance between two parties. Absolutely no provision is relied upon to show that the petitioner is required to pay the stamp duty. In the present case, by the impugned order the petitioner is directed to pay a sum around Rs.25,00,000/- when the petitioner, went to Sub-Registrar to register a decree. In a partition suit, if there is a compromise by which the parties have agreed to share the properties, it is possible for the parties to agree to give some property even to the person who has no pre-existing right. However, when a Civil Court decides the lis between two different parties, it cannot be said that there is transfer of interest from one party to another so as to attract the Stamp Duty or compulsory Registration. The suit in O.S.No.8 of 2010 on the file of the District Court, Namakkal is for declaration of title and consequential injunction against certain individuals. The relief is based on a resolution dated 14.10.2009 passed by the trustees of the trust which was dissolved. The plaintiff in the suit relied upon the resolution of the Trust which is a transaction according to the plaintiff to vest the property in the plaintiff Trust. The plaintiff Trust is the successor in interest of the transferor trust as permissible.

17. In the case on hand, the decree is a decision by Court in a lis and by no stretch of imagination, by construing or interpreting any of the Provisions of Act, it is possible to make the petitioner liable to pay the stamp duty or penalty for registering a decree which is between the trust on the one side and other private parties on the other side. The impugned order is illegal and unconstitutional. The 1st respondent has limited jurisdiction under the statute to scrutinize the decree as in the present case whether it attracts deficit stamp duty or penalty. He cannot interpret the decree for declaration as conveyance like other instruments.

18. In the present case by the impugned order, the respondents have also threatened the petitioner that the petitioner may have to pay not only the charges that are demanded, but also further charges which may be found due from the petitioner towards under-valuation. When an order of demand directing the petitioner to pay a substantial amount by referring to a statute is passed, it is to be noted that the petitioner's Civil rights will be effected. Hence, the impugned order without issuing a show cause notice is certainly in violation of principle of natural justice and such an order is

not only unconstitutional but should be treated as void. It has now become the order of day that the statutory authorities and Revenue Officials are passing orders affecting the rights of the individual without even observing principles of natural justice. The impugned order demanding a substantial amount from the petitioner is casually made without reference to any provision of law and without issuing prior notice or show cause notice. The conduct of the 1st respondent is determined and the attitude of the Officials in circumstances like this makes this Court to think that orders are passed with corrupt motive without adherence to the statute or following the principles of natural justice just to harass the public. This practice has to be deprecated. Hence the impugned order is liable to be quashed on merits and also for violation of principles of natural justice.

19. The quasi judicial authority and the Government servants exercising statutory function are not liable to be prosecuted for their actions in official capacity as there is a statutory presumption in favour of the respondents that they have done their duty in good faith. This Court is unable to see any good faith in the proceedings initiated. The stand taken by the respondents in the counter affidavit is again unsustainable and this Court is unable to countenance the stand taken by the respondents after passing an illegal and unconstitutional order behind the back of the petitioner.

20. In the other two writ petitions, namely, W.P. Nos.4441 & 4442 of 2011 similar order that is impugned in the W.P.No.4195 of 2011 is under challenge. The facts are similar and therefore it is not necessary to elaborate. Having regard to the fact that this Court has elaborately considered the issues in W.P.No.4195 of 2011, the same reasoning squarely applies to petitions in W.P.Nos.4441 & 4442 of 2011.

21. Accordingly, these writ petitions are allowed. However no costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge, Namakkal.
- 2.The District Registrar,O/o.District Registrar, Namakkal.
- 3.The Sub Registrar, Rasipuram.

+9cc to Mr.N.C.Ashok Kumar, Advocate SR.NOs..6102 to 6104

+1cc to The Government Pleader SR.NO..6301

AKM/15.04.21/6P- 14C/

W.P.Nos.4195, 4442 & 4441 of 2011

04.02.2021