IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.30842 of 2013
and
M.P.No.1 of 2013

Narpavi Homes Pvt. Ltd.,
Represented by its
Managing Director,
J.Jayakrishnan,
No.19, Vellaiyan Street,
Kotturpuram, Chennai - 600 085. .... Petitioner

Vs

1. The State of Tamil Nadu
Represented by its
Secretary to Government,
Commercial Tax & Registration Department,
Fort St. George,
Chennai - 600 009.

2. The Inspector General of Registration,
120, Santhome High Road,
Mandaveli,
Chennai - 600 028.

3. The District Revenue Officer (Stamps)
Office of the District Collector,
Singaravelar Maligai,
5th Floor, 32, Rajaji Salai,
Chennai - 600 001. .... Respondents

Prayer :Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari calling for the records relating to impugned demand notice dated 22.10.2013 in A6/27/2012 and quash the same.

For Petitioner : Mr.M.Deivanandam

For Respondents : Mr.Richardson Wilson
Government Advocate

ORDER

This Writ Petition has been filed for issuance of a Writ of certiorari calling for the records relating to impugned demand notice dated 22.10.2013 in A6/27/2012 and quash the same.

2. The petitioner purchased 1/6th un-divided share of the subject property comprised in survey No.80/6 situated at Thazampur Village, Kancheepuram District ad-measuring to an extent 5 acres. The property was purchased for a total sale consideration of Rs.80,00,000/- (Rupees Eighty Lakhs only) and a sum of Rs.7,29,170/- (Rupees Seven Lakhs Twenty Nine Thousand One Hundred and Seventy only) was paid as stamp duty for the market value of Rs.1,04,16,666/- (Rupees One Crore Four Lakh Sixteen Thousand Six Hundred and Sixty Six only) of the subject property. By way of two sale deeds were presented for registration and the same were registered in document Nos. 7705 and 7706 of 2012 on the file of the Sub-Registrar, Thiruporur.

3. Thereafter, both the sale deeds were referred under Section 47A of Indian Stamp Act, 1989 to the third respondent herein for determination of market value of the subject property. The third respondent issued notice in Form-I as contemplated under Rule 4 of Tamil Nadu Stamp (Prevention of under valuation of instruments) Rules, 1968 (herein after called 'Rules') to the petitioner. On receipt of the same, the petitioner submitted a representation on 10.12.2012.

4. On perusal of the records, it is seen that representations were duly received by the third respondent herein. Thereafter, the impugned demand notice was issued to the petitioner, thereby directing the petitioner to pay deficit stamp duty at Rs.80,20,830/- (Rupees Eighty Lakhs Twenty Thousand Eight Hundred and Thirty only) in respect of the document No.7705 of 2012 and a sum of Rs.51,04,160/- (Rupees Fifty One Lakh Four Thousand One Hundred and Sixty only) in respect of document No.7706 of 2012. Both the demands were under challenge in the present Writ Petition.

5. The learned counsel for the petitioner would submit that after receipt of the representation in Form-I as contemplated under Rule 4 (4) of the Rules, the third respondent examined and recorded statements from public officers or authority concerned and in respect of the property after due notice to the parties concerned. As per Rule 4 (4) of the Rules, the third respondent shall pass provisional order determining the market value of the subject property and duty payable. Thereafter, the third respondent ought to communicate the provisional order to the parties concerned in respect of fixation of market value of the property and also duty payable under Form-II. Thereafter, the parties concerned shall be given opportunity to submit their representation in respect of determining the market value of the subject property. Thereafter, as contemplated under Rule 7 of the Rules, the third respondent shall, after considering the representation received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned, pass final order.

6. Whereas, in the case on hand, the third respondent directly issued final order without complying with Sub-Rule 2, 3, 4 of Rule 4 of the Rules, and also without following Rule 6 of Rules, which is a violation of Rules 4 and 6 of the Rules.

7. Per contra, the learned counsel for the respondents submitted that any order passed by the third respondent as appealable under Section 47(A) (5) of the Indian Stamp Act, 1989, any person aggrieved by the order passed by the third respondent under Sub-Section 2(3) of the Section 47 of the Indian Stamp Act as appealable order before the Inspector General of Registration. Therefore, the Writ Petition is not maintainable and prayed for dismissal of the writ petition.

8. Heard, Mr.M.Deivanandam, the learned counsel for the petitioner and Mr.Richardson Wilson, the learned Government Advocate appearing for the respondents.

9. A perusal of the records reveal that the Sub-Registrar of Thiruporur registered the documents presented for registration by the petitioner as document Nos. 7705 and 7706 of 2012 in respect of the subject property. Thereafter, both the documents were referred under Section 47A of the Indian Stamp Act to the third respondent herein. On receipt of the same, the third respondent issued Form-I to the petitioner as contemplated under Rule 4 of the Rules . On receipt of the same, the petitioner had sent an explanation to both the documents by a representation dated 10.12.2012. Both the representations were duly received by the third respondent on 12.12.2012. Thereafter, the third respondent failed to conduct any enquiry on the explanation submitted by the petitioner.

10. That apart, the third respondent also failed to pass any provisional order as contemplated under Rule 4(4) of the Rules. It is relevant to extract the Rule 4(4) of Tamil Nadu Stamp (Prevention of under valuation of instruments) Rules 1968, as follows :-

> "4. Procedure on receipt of reference under Section 47-A:-
>
> (4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order."

11. As per Rule 6 of the Rules, after passing the provisional order, the third respondent shall indicate the said provisional order determining the market value of the

properties and the duty payable by the parties concerned under Form-II. On receipt of the Form-II as contemplated under Section 7 of the Rules, the third respondent shall pass final order. In the case on hand, without following the Rules 4 and 6, the third respondent directly passed final order under Rule 7 of the Rules. Therefore, the impugned demand notice is vitiated and no steps can be taken further.

12. Accordingly, the impugned demand notice dated 22.10.2013 in A6/27/2012 passed by the third respondent is hereby set aside. However, the third respondent is directed to follow the procedure as contemplated under Rules 4, 5, 6 and 7 of the Tamil Nadu Stamp (Prevention of under valuation of instruments) Rules 1968 and pass fresh orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

13. In the result, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The Secretary to Government,
   Government of Tamil Nadu
   Commercial Tax & Registration Department,
   Fort St. George,
   Chennai - 600 009.

2. The Inspector General of Registration,
   120, Santhome High Road,
   Mandaveli, Chennai - 600 028.

3. The District Revenue Officer (Stamps)
   Office of the District Collector,
   Singaravelar Maligai,
   5th Floor, 32, Rajaji Salai,
   Chennai - 600 001.

+2cc to Mr.M.Deivanandam, Advocate, S.R.No.39270
+1cc to the Government Pleader, S.R.No.39784

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and M.P.No.1 of 2013

AD(CO)
GN(21/10/2021)