IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.11009 &10384 of 2021
and W.M.P.Nos.11661 & 10960 of 2021
(Through Video Conference)

R. Vel Selvi ...Petitioner in W.P.No.11009 of 2021
G.Subramanian ...Petitioner in W.P.No.10384 of 2021

Vs.

1) The Inspector General of Registration,
No. 100, Santhome High Road,
Chennai - 600 028.

2) The Deputy Inspector General of Registration,
Near Collectorate,
Tanjavur.

3) The District Registrar - Administration,
Court Complex,
Nagapattinam.

4) The Sub-Registrar,
Mannargudi,
Tiruvarur District. ...RR 1 to 4 in W.P.No.11009 of 2021 & RR 1-3 & 5 in W.P. No.10384 of 2021

5) The District Registrar (Audit),
Court Complex,
Nagapattinam. ... R4 in W.P.No.10384 of 2021

PRAYER in W.P.No.11009 of 2021: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Fourth Respondent in Sl.No.29, Document No.846 of 2013 dated 22.08.2019 and quash the same as illegal, arbitrary, without Authority of Law and against the provisions of the Act and Rules and also against the principles of natural justice and further direct the fourth respondent to delete the endorsement made in the Encumbrance Register in respect of the Rectification Deed dated 05.03.2013 vide Document No.846 of 2013.

PRAYER in W.P.No.10384 of 2021: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Fourth Respondent in Na.Ka.No.91/Tha.P./2020 dated 15.03.2021 and quash the same as illegal, arbitrary, without jurisdiction and without Authority of Law and against the provisions of the Act and Rules and also against the principles of natural justice and further direct the fifth respondent to delete the endorsement made in the Encumbrance Register in respect of the Partition Deed dated 02.11.2011 vide Document No.3754 of 2011.

In both cases:

For Petitioners: Mr.R.Soundara Rajan

For Respondents: Mr.K.M.D. Mukilan,
Government Advocate

COMMON ORDER

Since the issue involved in both the writ petitions are one and the same, they are disposed of by this common order.

2. The petitioner in W.P.No.11009 of 2021 has filed this petition seeking for a Writ of Certiorarified Mandamus to quash the order passed by the fourth respondent in Sl.No.29, Document No.846 of 2013, dated 22.08.2019 which is against the principles of natural justice and also against the Provisions of Act and for a consequential direction to the fourth respondent to delete the endorsement made in the Encumbrance Register in respect of the Rectification Deed dated 05.03.2013 vide Document No.846 of 2013.

3. The case of the petitioner is that he purchased a house plot bearing No.34 measuring an extent of 2919 sq.ft (271.18 sq meters) in Thendral Nagar Layout in Town Survey No.856/4A1 of Mannargudi Town, Tiruvarur District situated within the jurisdiction of Mannargudi Sub Registration District and Nagapattinam Registration District on 30.11.2011 from one Tmt.D.Manjula for a sale consideration of Rs.3,66,100/- registered as Document No.4207 of 2011. He is in possession of the said property till date and after registration of the sale deed, the survey number was wrongly mentioned as "854/4A1" instead of "856/4A1", which was not noticed by any of the parties or the Registering Authorities.

4. A portion of the land was sold on 28.09.2012 and registered as Document No.3796 of 2012 on the file of the fourth respondent to one Mr.E.Desinghu by mentioning the wrong survey

number. Only in the year 2013, the petitioner proposed to sell the remaining portion to one Chitra, the proposed purchaser, who noticed the mistake in the survey number mentioned in the sale deed and thereafter, a Rectification Deed was registered as Document No.846 of 2013 on 05.03.2013 on the file of the Sub Registrar, Mannargudi, the fourth respondent herein to rectify the mistake made in the Sale Deed vide Document No.4207 of 2011 which was purchased by the petitioner. Another Rectification Deed was also registered as Document No.1465 of 2013 in respect of the property which was sold to one Mr.E.Desinghu. After the same, no sale consideration was involved and the Rectification Deeds were registered under Section 47 B of the Indian Stamp Act, without any stamp duty and the documents were also released by the fourth respondent herein. Thereafter, the sale deed, dated 11.03.2013 has been registered as Document No.921 of 2013 on the file of the fourth respondent in favour of one Chithra.

5. Since there was no under valuation, the documents executed by the petitioner were registered without referring the documents to valuation under Section 47 A of the Indian Stamp Act and the documents were also released. Thereafter, the impugned notice was issued by the fourth respondent in Sl.No.29, Document No.846 of 2013 dated 23.08.2019 after a period of five years from the date of execution of the Rectification Deed and directed the petitioner to pay the differential stamp duty of Rs.61,320/- and registration fee of Rs.8,750/- totalling an amount of Rs.70,070/- was demanded by the fourth respondent. The fourth respondent has relied on the Audit Report sent by the District Registrar (Audit), Nagapattinam for issuing the demand notice. The said dues were endorsed in the encumbrances of the properties rectified by the petitioner and the fourth respondent also informed that no further dealings would be made in respect of the property and no loan could be obtained by mortgaging the said property and also transfer of patta could not be effected without paying the said amounts, failing which, the further proceedings would be initiated under Section 47A(3) of the Act and the differential duty would be recovered through distraint proceedings.

6. The petitioner states that the said documents were registered only after satisfying the requirement of payment of stamp duty and thereafter, registered the documents and released the same without referring to the documents under Section 47 A of the Indian Stamp Act and further submitted that there cannot be revocation of powers under Section 47A(3) of the Act to examine the instruments for the purpose of satisfying himself as to the correctness of the market value of the property. It was also accepted by the fourth respondent in the impugned notice that the document for valuation under Section 47A(1) of the Act nor the Collector, suo moto has taken up the documents for

ascertaining the correct duty payable and therefore, the impugned notice demanding the differential duty and the registration fee based on the report of the District Registrar (Audit) was issued to the petitioner.

7. Further it was submitted by the learned counsel for the petitioner that as per Section 33A of the Indian Stamp Act, which grants power to the District Registrar to fix the deficit stamp duty after conducting enquiry and after affording an opportunity of personal hearing, the said action can be taken under Section 33 A of the Indian Stamp Act. But in the present case on hand, the District Registrar had not conducted any enquiry by granting personal hearing and also has not issued any Certificate to recover the deficit stamp duty within a period of three years from the date of registration of the instrument as contemplated under Section 33 A of the Indian Stamp Act. In reply to the same, the petitioner submitted his objections on 05.09.2019 to the respondents herein, through registered post, informing that the impugned notice is illegal and barred by limitation.

8. The Additional Inspector General of Registration (Investigation)/ the first respondent herein had forwarded the letter sent to the petitioner on 05.09.2019 to the third respondent for taking appropriate action. He sent a reminder letter on 13.11.2019 by registered post and the third respondent sent a reminder letter on 14.11.2019 to the fourth respondent directing him to furnish the explanation with documents. The petitioner also sent a reminder letter dated 06.01.2020 to the fourth respondent by marking copies to the other respondents and requested him to delete the encumbrance made in respect of the property without passing any order Under Section 47 A (3) of the Act. The Additional Inspector General of Registration (Investigation) also sent a letter to the third respondent on 30.01.2020 asking him the reasons for the delay in taking action and further directed him to consider the representation within a period of fifteen days. But till date, the petitioner's grievance has not been addressed and the said endorsement in the document has not been removed till date.

9. The petitioner further submitted that the fourth respondent failed to note that even the Collector has no authority to determine the market value after a period of 5 years from the date of registration of the document as per Section 47 A (3) of the Act and he further submitted that the action taken by those Authorities, is without any basis and the Audit Report of the District Registrar (Audit), cannot be followed after a period of five(05) years and that too, without giving him an opportunity of hearing.

10. Learned Government Advocate appearing for the respondents submitted that the averments in the grounds raised by the petitioner is accepted on the Ground of Limitation and the same may be considered by the Court in accordance with law. On going through the said averments in the petition as well as the impugned order, it can be seen that the rectification document has been registered in the year 2013 and other documents in favour of the Chithra was registered on 11.03.2013. After this registration, the said documents have been released in favour of the party concerned and the said documents are registered as 846/12 and they have demanded money, failing to pay the same, judicial proceedings under Section 47 A of the Act will be initiated.

11. On going through the averments made by the petitioner, it could be seen that for the sale that had taken place in the year 2013, now the Authorities cannot demand more money as the differencial cost in stamp duty and registration fee, totalling an amount of Rs.70,070/-. For claiming any differential stamp duty, the same should be determined within a period of five years. But here is the case where the impugned order has been issued on 22.08.2019 which is beyond the period of five years. That being the case, these Writ Petitions have to be Allowed on the only ground that the said claim has been made after a period of five(05) years and the Law of Limitation applies and accordingly, the Writ Petitions are Allowed. No costs. Consequently, connected miscellaneous petitions are closed. The Authorities are hereby directed to remove the endorsement made in the said documents to enable the petitioners to enjoy the same.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sts
To:

1) The Inspector General of Registration,
No. 100, Santhome High Road,
Chennai - 600 028.

2) The Deputy Inspector General of Registration,
Near Collectorate,
Tanjavur.

3) The District Registrar - Administration,
Court Complex,
Nagapattinam.

4) The Sub-Registrar,
Mannargudi,
Tiruvarur District.

5) The District Registrar (Audit),
Court Complex,
Nagapattinam.

+2 Ccs to Mr.R.Soundara Rajan, Advocate sr 42718 & 42719
+1 CC to The Government Pleader sr 43399.

W.P.Nos.11009 &10384 of 2021

SJ(CO)
SP(01/11/2021)