IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.6294 of 2017 and

W.M.P.Nos.6783, 6784 & 14040 of 2017

P.Baggiamani ... Petitioner

Vs.

1.The Inspector General of Registration
and the Controlling Revenue Authority,
No.120, Santhome High Road,
Chennai - 20.

2.Special Deputy Collector of Stamps,
3rd Floor, District Collectorate Complex,
Salem - 636 001.

3.District Registrar Audit,
Namakkal Collectorate Complex,
Namakkal - 627 003.

4.Joint II Sub Registrar,
Namakkal, Taluk Office Compound,
Namakkal - 637 001. ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 2nd respondent in connection with the Form No.I notice dated 06.08.2013 issued in Ci.Pi.No.2910/2013 under Rule 4 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968 and quash the same.

For Petitioner : No appearance

For Respondents : Ms.Akila Rajendran
Government Counsel

ORDER

The prayer sought for herein is for a writ of certiorari calling for the records of the second respondent in connection with the Form No.I notice dated 06.08.2013 issued in Ci.Pi.No.2910/2013 under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and quash the same.

2.The petitioner seems to have purchased four housing plots in Plot Nos.128, 129, 145 and 146 to the total extent of 4800 sq.ft. at Majra Singeelapatiyal at Vagurampatti Village, Namakkal Registration District sometime in March 2012.

3.The said document having been registered as Document No.2001/ 2012 seems to have been released by the Registering Authority. However, it seems that, subsequently, an Audit Objection was made with regard to the value of the land in question which was transferred to and in favour of the petitioner and therefore, it was found that there is a deficit of stamp duty to the extent of Rs.2,15,910/- which should be recovered from the petitioner, that seems to be the Audit objection.

4.Pursuant to the Audit objection, the issue had been referred to the second respondent i.e., Special Deputy Collector of Stamps under Section 47-A(3) of the Indian Stamp Act. Pursuant to the said reference, the second respondent issued notice in Form No.I dated 06.08.2013 under Rule 4(1) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 [hereinafter referred to as "the Rules"] seeking show cause and to give explanation as to why the deficit of the stamp duty to the extent of Rs.2,15,910/- shall not be recovered from the petitioner.

5.In this context, it is the case of the petitioner that, the said notice had been responded by reply dated 26.08.2013 and the same had been acknowledged by the second respondent on 27.08.2013 and in this regard, the copy of the reply dated 26.08.2013 and the photocopy of the postal acknowledgement card endorsing the acknowledgement dated 27.08.2013 had been filed before this Court in the typed set of papers.

6.Therefore, the further case of the petitioner is that, subsequently without passing any final order as contemplated under Rule 4(4) of the said Rules by the second respondent, the Registering Authority i.e., the fourth respondent had issued notice on 05.10.2016, 02.11.2016 and 05.12.2016 repeatedly demanding the said amount of alleged deficit stamp duty to be paid by the petitioners.

7.In this context, even though reply was given by the petitioner on 01.11.2016 and the same having been acknowledged on 07.11.2016 by the fourth respondent, no further action had been taken and therefore, without having any final order to be passed by the second respondent under Rule 4(4) of the said Rule, pursuant to the proceedings of reference made under Section 47-A of the Act, the fourth respondent cannot demand any further stamp duty as has been demanded through various notices. Therefore, the petitioner has been constrained to file this writ petition challenging the notice in Form No.I dated 06.08.2013 under Rule 4(1) by the second respondent.

8.When the case is called, there is no representation for the petitioner. However, Ms.Akila Rajendran, learned Government Counsel appearing for the respondents has made submissions. She would submit that, according to the instructions received from the respondent, which has been reflected in the counter affidavit filed by the fourth respondent that, pursuant to the impugned notice dated 06.08.2013 in Form No.I, there has been response from the petitioner and therefore, in the meanwhile, already there has been an Audit objection pursuant which only the loss to the extent of Rs.2,15,910/- being the deficit stamp duty have been demanded and in this context, the Section 47-A reference also had been made to the second respondent and the same since has not been responded despite the show cause notice which is impugned order herein having been received by the petitioner, the fourth respondent having no other option except to demand deficit stamp duty which is a loss sustained by the Department and that is how the subsequent demand notices have been issued by the fourth respondent. Therefore, justifying their action, the learned Government Counsel would submit that, pursuant to the said demand made by way of notices issued in this regard, in the year 2016 by the fourth respondent, the said deficit amount of Rs.2,15,910/- should be paid by the petitioner instead of paying the same, since the petitioner had challenged only the Form No.I dated 06.08.2013, the said challenge is unsustainable. Therefore, on that ground, the writ petition is liable to be dismissed, she contended.

9.I have heard the learned Government Counsel appearing for the respondents and have perused the materials placed before this Court.

10.In order to sustain the action made by the respondents 1, 2 and 4, the fourth respondent in his counter has stated the following.

> "5.It is submitted that the petitioner had executed the said Sale Deed by valuing the said property as Rs.200/- per sq.ft. and accordingly he paid the 8% stamp duty of Rs.77,000/- and 1% Registration fees. It is submitted that subsequent to the registration of the said document, the original sale deed was returned to the petitioner.
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> 6.It is submitted that during the 2012 an audit conducted by the authorities and an Audit objection was raised in Item No.1(6), Part 2 of March 2012 stating that the above said document has been registered with under valuation and there is loss of Rs.1,91,920/- towards deficiency of stamp duty and Rs.23,990/- towards deficiency of registration fees (In total there is loss of Rs.2,15,910/-) and directed to collect the said amount from the petitioner.
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> 7.It is submitted that on the basis of the said Audit objection, this respondent initiated action under section 47A(3) of the Indian Stamp Act to recover the said amount from the petitioner herein and a copy of the said Sale Deed Document No.2001/2012 was forwarded to the Special Deputy Collector (Stamps), Salem for further action.
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> 8.It is submitted that the 2nd respondent herein issued a Notice to the petitioner in Form I dated 06.08.2013 in Ci.Pi.No.2910/2013 under Rule 4 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968 directing the petitioner to remit a sum of Rs.1,91,920/- towards deficiency of stamp duty and Rs.23,990/- towards deficiency of registration fees (In total there is loss of Rs.2,15,910/-) for the said document.

9.It is submitted that though the said notice in Form I was sent on 06.08.2013, the petitioner did not respond the notice and failed to pay the deficit stamp duty and deficit registration fees.

Hence, this respondent initiated action to recover the said amount by issuing Notice to the petitioner on 02.11.2016 and 05.12.2016 reminding him to pay the said amount. At this stage, the petitioner has approached this Hon'ble Court by filing the present Writ Petition and obtained an order of interim stay till 13.04.2017 in WMP.No.6784 of 2017 in W.P.No.6294 of 2017."

11.From the said averments, it can be culled out that, the document in question was registered and released by the Registering Authority. Subsequently, it seems that Audit objection has been raised, pursuant to which, matter has been referred to the second respondent under Section 47-A(3) of the Act. Once such reference is made, it is the duty of the Special Deputy Collector (Stamps) who is the second respondent herein to act upon as per the Rules as referred to above. Rule 4 is the relevant Rule, where, it contemplates that under Rule 4(1) notice has to be issued to the vendor as well as the purchaser giving 21 days time to reply to the show cause notice in Form No.I. Once such notice is issued, within the time, if there has been no response by the vendor or purchaser, the Collector can proceed the matter by considering the reply or otherwise and to pass a final order determining the provisional market value of the land in question or property in question. Once such final order is passed under Rule 4(4) of the Rules determining the provisional market value of the property in question, based on which, the Registering Authorities can demand the deficit stamp duty.

12.This is the provision of the Act as well as the Rules made thereunder and in this regard, by invoking the said provision under Section 47-A, the Registering Authority fourth respondent referred the matter to the second respondent under Section 47-A. On receipt of such reference, the second respondent issued notice in Form No.I on 06.08.2013 which is in consonance with the Rule 4(1) of the Rules.

13.In this context, it is the definite case of the petitioner that, the said notice had been responded by the petitioner on 26.08.2013 and this could be evidenced from the documents filed in the typed set of papers, where, the copy of the response dated 26.08.2013 along with the postal acknowledgment of the second respondent office to establish that, the said response had been received at the second respondent office, had also been filed.

14.Therefore, it can be easily taken up as if that the petitioner had responded to the impugned notice dated 06.08.2013.

15.However, it is not known whether the second respondent has passed any final order as contemplated under Rule 4(4) as referred to above.

16.However, from the notice issued by the fourth respondent dated 05.10.2016, 02.11.2016 and 05.12.2016, it can be ascertained that, the fourth respondent Registering Authority has proceeded to issue these notices to demand from the petitioner to pay the deficit stamp duty as that deficit stamp duty has been fixed based on the Audit objection.

17.It has not been stated in those demand notices by the fourth respondent that, pursuant to the 47-A reference, the second respondent, after having considered the response made by the petitioner, has passed any final order as contemplated under Rule 4(4) of the Rules.

18.If that is the fact, as there can be no contra fact has been brought to the notice of this Court that, where there has been no final order has been passed by the second respondent under Rule 4(4) of the Rules, the subsequent demand notices issued on various dates, as referred to above, by the fourth respondent, in the considered opinion of this Court, cannot be said to be an acceptable one.

19.The proper procedure to be adopted by the respondents is that, pursuant to the impugned notice dated 06.08.2013 since reply had been filed by the petitioner on 26.08.2013, the same should be considered and after considering the same, it is open to the second respondent to pass an order under Rule 4(4) of the Rules and once such final order is passed provisionally determining the value of the property concerned, the deficit stamp duty if any can very well be demanded and pursuant to which, the demand can be made by the Registering Authority i.e., the fourth respondent.

20.Here in the case in hand, no such procedure as contemplated under the Act as well as the Rules, as referred to above, seems to have been adopted either by the second respondent or by the fourth respondent. Therefore, in this context, this Court feels that, a direction can be given by remanding the matter back to the second respondent to pass final order under Rule 4(4), if not any final order passed so far and pursuant the order to be passed in this regard by the second respondent, further follow up action or consequential action to make the demand of the deficit stamp duty if any can be made by the fourth respondent.

21.Accordingly, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned notice in Form No.I dated 06.08.2013 issued by the second respondent under Rule 4(4) of the said Rules need not be challenged, therefore, the same cannot be quashed as sought for in this writ petition. Since reply has been sent to the impugned show cause notice by the petitioner on 26.08.2013 which has been received and acknowledged by the second respondent office on 27.08.2013 based on which, final order shall be passed by the second respondent as per Rule 4(4) of the Rules, within a period of eight weeks from the date of receipt of a copy of this order, if not already been passed.

(ii) On passing such order, based on the outcome of the order to be passed, as indicated above, the fourth respondent Registering Authority shall take follow up action to demand and recover the deficit stamp duty if any thereafter.

22.With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

Sgl

To

1.The Inspector General of Registration
and the Controlling Revenue Authority,
No.120, Santhome High Road,
Chennai - 20.

2.The Special Deputy Collector of Stamps,
3rd Floor, District Collectorate Complex,
Salem - 636 001.

3.The District Registrar Audit,
Namakkal Collectorate Complex,
Namakkal - 627 003.

4.The Joint II Sub Registrar,
Namakkal, Taluk Office Compound,
Namakkal - 637 001.

+1CC to The Government Pleader, SR.No. 33548

W.P.No.6294 of 2017

GPL(CO)
B.VC (25/08/2021)