IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. Nos. 31298 and 31300 of 2018
and
W.M.P. Nos. 36482 and 36485 of 2018

N.Dev Balaji ... Petitioner in W.P. No. 31298 of 2018

N.Prabhu Devan ... Petitioner in W.P. No. 31300 of 2018

-vs-

1. The District Revenue Officer (Stamps),
   Singaravelar Malaigai 5th Floor,
   No.32, Rajaji Salai,
   Chennai - 600 001.

2. The Sub-Registrar,
   Guduvancharry. ... Respondents in both W.Ps

PRAYER in W.P. No. 31298 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the second respondent herein in notice dated 13.10.2016 and remainder-I notice dated 24.10.2016 and the consequential Form-I notice issued by the first respondent herein in i) R.C.No.82/7880 dated 08.12.2016; ii) R.C.No.83/7881 dated 08.12.2016; iii) R.C.No.84/7882 dated 08.12.2016 and iv) R.C.No.88/7886 dated 08.12.2016 respectively and quash the same and consequently direct the second respondent herein to release the Document No.3863/16; Document No.3864/16; Document No.3865/16 and Document No.3869/2016 dated 11.04.2016 respectively pending before the SRO Guduvancherry the second respondent herein.

PRAYER in W.P. No. 31300 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the second respondent herein in notice dated 13.10.2016 and remainder-I notice dated 24.10.2016 and the consequential Form-I notice issued by the first respondent herein in i) R.C.No.80/7878/A5 dated 23.12.2016; ii) R.C.No.80/7879 dated nil signed on 08.12.2016; iii) R.C.No.85/7883 dated nil signed on 08.12.2016 and iv) R.C.No.86/7884 dated nil signed on 08.12.2016 and in R.C.No.87/7885 dated nil signed on 08.12.2016 respectively and quash the same and consequently direct the second respondent herein to release the Document No.3861/16; Document No.3862/16; Document No.3866/16, Document No.3867/2016 and Document No.3868/2016 dated 11.04.2016 respectively pending before the SRO Guduvancherry the second respondent herein.

For Petitioners in both W.Ps : Mr.R.S.Anandan

For Respondents in both W.Ps : Ms.Akila Rajendran Counsel for Government

COMMON ORDER

Since the prayer sought for herein and the issue raised in both these Writ Petitions are same and similar and arising out of the same issue between the parties, with the consent of the learned counsel appearing for both sides, both the Writ Petitions have been heard together and are disposed of by this common order.

2. In the first Writ Petition, i.e., W.P. No. 31298 of 2018, the petitioner purchased four housing plots by four separate documents of the sale deed, i.e.,

S.No.	Extent	Document No.	Sale Value	Stamp Duty Paid
1	1360	3863/16	12,24,000	85680
2	640	3864/16	5,76,000	40320
3	717	3865/16	6,45,300	45180
4	710	3869/16	6,39,000	44730

and the said documents were registered on 11.04.2016. At that time, according to the petitioner, the guideline value was Rs.900/- per sq.ft., based on which, a stamp duty has been calculated and paid and accordingly, the documents were registered.

3. Insofar as the second Writ Petition, i.e., W.P. No. 31300 of 2018 is concerned, the petitioner in that Writ Petition also had registered five such documents on the same day, i.e., on 11.04.2016, where also the guideline value that was prevailing at that time was only Rs.900/- per sq.ft. and accordingly, the stamp duty was calculated and paid and having receipt of the

same, the documents in question were registered in the second respondent's Registrar Office on 11.04.2016.

4. Therefore, all together, all the documents, i.e., 4+5=9 documents were registered on 11.04.2016.

5. After six months of registration, the second respondent has issued notices in W.P. No. 31298 of 2018 on 13.10.2016 and 24.10.2016 and in W.P. No. 31300 of 2018, similar notices were issued by the second respondent on the same day.

6. In the said notices, the second respondent / Sub-Registrar has stated that, in respect of those documents registered in April 2016 are concerned, there has been an audit objection that there was a deficit stamp duty of Rs.3,01,560/- in respect of W.P. No. 31298 of 2018 and the deficit stamp duty of Rs.3,63,235/- in respect of W.P. No. 31300 of 2018. Therefore, the said deficit stamp duty shall be paid otherwise it will be reflected in the encumbrance as if that, the document is defective. Since it has not been paid the full stamp duty following the said notices dated 13.10.2016 in both cases, remainder notices have been sent by the second respondent on 24.10.2016. Though, as against these notices, appeal to the first respondent had been filed on 14.12.2016, the same has not been considered. In the meanwhile, challenging the said notices dated 13.10.2016 and 24.10.2016 in both the cases, the respective writ petitioners have filed the present Writ Petitions with the aforesaid prayer.

7. Mr.R.S.Anandan, learned counsel appearing for the petitioners would submit that, in both the cases, the property are in the same area and it was having the guideline value during the month of April 2016 only at Rs.900/- per sq.ft. and this has been taken into account and the stamp duty has been paid in each documents and accepting the stamp duty documents were registered on 11.04.2016. Therefore, the question of claiming any additional stamp duty as if that, there has been a deficiency of stamp duty paid by the petitioners based on the guideline value does not arise.

8. The learned counsel appearing for the petitioners would further submit that, if at all any subsequent enhancement is made in the guideline value after the documents in question were presented and registered, the same cannot affect the documents of the petitioners, which have been properly stamped with the stamp duty and had been registered. Therefore, the learned counsel would further submit that, the impugned notices issued in both the cases are liable to be interfered with and quashed, he contended.

9. I have heard Ms.Akila Rajendran, learned counsel for the Government appearing for the respondents, she has relied upon the following averments made in the counter affidavit:

> "4. With regard to para 2 of the affidavit, it is submitted that Document Nos.3863/16; 3864/16; 3865/16 and 3869/2016 have been registered under which the petitioner has purchased the vacant house site mentioned therein. The petitioner has valued the property at Rs.900/- per sq.ft. and paid stamp duty on that amount only. But the District Registrar, Chennai South has fixed the guideline value of Rs.2000/- per sq.ft. in proceedings No.8950/C1/2016 dated 22.07.2016. As the said four documents are undervalued, the documents were referred under Section 47-A of the Indian Stamp Act, 1899 to the first respondent for determination of market value and collection of difference in stamp duty if any on such determination. The other documents mentioned by the petitioner has also been subjected to proceedings under Section 47-A of the Indian Stamp Act."

10. This averment has been made in the counter affidavit in W.P. No. 31298 of 2018 and a similar averment has been made in the counter affidavit filed in the other Writ Petition also.

11. Therefore, the sum and substance of the said averments made in the counter affidavit as submitted by the learned counsel for the Government appearing for the respondents is that, as per the proceedings dated 22.07.2016 issued by the District Registrar, Chennai South, the guideline value for the property concerned has been fixed at Rs.2,000/- per sq.ft. Therefore, enhancement of guideline value from Rs.900/- to Rs.2,000/- shall be taken into account. Therefore, based on the said guideline value alone, stamp duty should be paid by the petitioners. Since they have paid the stamp duty by calculating the erstwhile amount of Rs.900/- per sq.ft., it was found by the audit that, there has been deficiency of stamp duty and that was pointed out, based on which only, the notices were issued. Therefore, the said notices have to be acted and responded by the petitioners, by paying the remaining stamp duty, without which, the documents in question cannot be construed as a proper and valid documents. Unless and until it is paid, the non payment of the deficit stamp duty would also reflect in the encumbrance of the property concerned, she contended.

12. 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.

13. It is an admitted fact that, the documents in question were presented sometime in March 2016 for registration and after verifying all aspects, all those documents were registered on 11.04.2016 admittedly.

14. However, according to the respondents as has been averred in para 4 of the counter as quoted herein above, the District Registrar, Chennai South has fixed the guideline value of Rs.2,000/- per sq.ft in proceedings dated 22.07.2016.

15. Therefore, if at all any proceedings was issued on 22.07.2016, i.e., after four months of the registration of the documents in question, the new guideline value cannot be expected to be applied to the documents which have already been registered.

16. Therefore, based on such fixation of fresh guideline value sometime in July 2016, if at all any objection has been raised by the audit department as if that document registered in April 2016 shall carry the revised stamp duty in accordance with the revised guideline value, such objection raised by the audit is totally untenable and unacceptable.

17. Therefore, on that basis, the second respondent / Registration Department ought not to have issued notices to the petitioners as if that the petitioners paid deficit stamp duty on the documents / instruments which were executed sometime in March 2016 and registered on 11.04.2016.

18. Therefore, absolutely, there is no plausible reason attached with the said notices to sustain the same and in fact, the respondents having known the fact that, subsequent proceedings were issued only on 22.07.2016, where the guideline value had been increased or enhanced from Rs.900/- to Rs.2,000/- per sq.ft, had issued these notices on the pretext of audit objection, which is also unsustainable. Therefore, this Court has no hesitation to hold that, the impugned notices cannot be proceeded further as they are liable to be interfered with and quashed.

19. Accordingly, the impugned orders are quashed and consequently, there shall be a direction to the respondents to release the documents in question to the petitioners, if there is no impediment except the alleged reasons of deficiency of stamp duty as claimed through the impugned orders, within a period of two weeks from the date of receipt of a copy of this order.

20. With these directions, these Writ Petitions are ordered. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vji

To

1. The District Revenue Officer (Stamps),
   Singaravelar Malaigai 5th Floor,
   No.32, Rajaji Salai,
   Chennai - 600 001.

2. The Sub-Registrar,
   Guduvancharry.

+2ccs to Mr.R.S.Anandan, Advocate, S.R.No.31885,31886.
+1cc to the Government Pleader, S.R.No.32586.

W.P. Nos. 31298 and 31300 of 2018 and
W.M.P. Nos. 36482 and 36485 of 2018

UM(CO)
HS(18/08/2021)