THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.19038 OF 2011

R.Jayaram

... Petitioner

Versus

1. The Secretary to government,
   Registration Department,
   Secretariat, Chennai-9.

2. The Inspector General of Registration,
   Santhome, Chennai.

3. The District Registrar (Administration)
   Central Chennai, District Registrar's Office,
   Chamiers Road, Chennai-18.

4. The Joint Sub Registrar-I,
   Original Documents Division,
   Central Chennai, District Registrar's Office.
   Chamiers Road, Chennai-18.

5. The Sub Registrar,
   Mylapore, Santhome,
   Chennai-4.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to refund to the petitioner the sum of Rs.24,878/- illegally collected from him as deficit stamp duty, registration charge and penalty with commercial interest thereon.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The petitioner has filed this writ petition seeking for a direction directing the respondents to refund a sum of Rs.24,878/- illegally collected from the petitioner as deficit stamp duty, registration charges and penalty with commercial interest thereon.

2. The facts of the case are as follows:

The petitioner has purchased the properties bearing Flat No. C-4, D' Monte Apartments, Door No.20, D' Monte Street, Mylapore having Plinth Area of about 800 sq. ft. with an undivided 17/760th share in land measuring 7 grounds and 1,704 sq. ft. comprised in R.S. No.2501/1 Mylapore and measuring an extent of 5 cents of land comprised in S. No. 329/4C2 in Vythiri Village, Wayanad, Kerala State by way a sale deed, which is registered as Document No.1362/1990 on the file of the Sub-Registrar of Kalpetta, Kerala. In respect of the property in D' Monte Street, Mylapore, the Sub Registrar, Kalpetta, Kerala forwarded to the third respondent for making necessary endorsement in the Books of Registration Department in Tamil Nadu and the same was misplaced by the third respondent, for which the petitioner made several representations to the third respondent seeking to make necessary entries in the records. The representation was returned with an endorsement that the petitioner is liable to pay 13% as stamp duty and 1% registration charges on the total cost of the apartment and the undivided interest in the land. The third respondent addressed the 4th respondent on 12.05.2008 to effect the necessary entries in the Books of registration after recovery of a total sum of Rs.24,878/- from the petitioner towards deficit stamp duty, registration charges and penalty. On 23.05.2008, the petitioner has paid the afore said amount as demanded by the third respondent. Thereafter, the service was effected by the respondents. During the relevant point of time, the petitioner has paid the entire registration stamp duty and registration charges in the Kerala State and there was no rule or order requiring that stamp duty be levied again in Tamil Nadu. Hence, the petitioner made several representations to the respondents to refund the afore said amount to him and there is no response from the respondents. Left with no other option, the petitioner has come up before this Court with the afore said prayer.

3. The learned counsel for the petitioner submitted that this Court may issue a direction to the respondents to consider the petitioner's representation and to refund a sum of Rs.24, 878/- as deficit stamp duty, registration charges and penalty with commercial interest thereon to the petitioner.

4. The counter affidavit has been filed on behalf of the Government. The learned Special Government Pleader appearing for the respondents submitted that Section 10-A of the Indian Stamp Act is an enabling Section and provide for collecting difference in stamp duty on the value when the original instrument is produced. In the instant case, on receipt of a copy of the document from the Sub Registrar, Kalpetta, the petitioner, without any demand paid the deficit amount of Rs.24,878/- and produced the original instrument so as to endorse the certificate as contemplated under Section 19-A read with Section 70 of the Stamp Act, since the petitioner had grossly undervalued the value of the building. Hence, the respondent levied the compounding fee as contemplated under Section 70 of the Indian Stamp Act, 1899. Once, the amount is paid without any objection, it cannot be refunded. Hence, the prayer sought for by the petitioner is liable to be rejected.

5. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing on behalf of the Government and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, the petitioner registered two properties situated at Tamil Nadu as well as Kerala before the SRO, Kalpetta during the year 1990. Thereafter, the petitioner registered the Tamil Nadu Property in the books of entries in Tamil Nadu Registration Department, for which the petitioner approached the respondents. The respondents informed that the petitioner has to pay the deficit stamp duty of Rs.24,878/- for making entires in the register. The petitioner has also accepted and paid aforesaid amount to the respondents without any protest.

7. The learned Special Government Pleader submitted that earlier, this Court, in the case of AREVA T & D Lightning Arresters Pvt. Ltd., Vs. the Additional Secretary, Department of Revenue & Disaster Management, Government of Puducherry reported in (2009) 3 CTC 34, held that it is only when the penalty or stamp duty has been paid in excess such amount be refunded under Section 45 of the Stamp Act.

8. In the present case, the petitioner claims for refund of entire stamp duty, which he was paid. As rightly contended by the learned Special Government Pleader that when the petitioner has paid the deficit stamp duty as charged by the Sub Registrar without any protest, he cannot be claimed to refund the said amount. Applying the ratio laid down by this Court as stated supra, the prayer sought for by the petitioner cannot be granted and there is no merit in the petition.

9. In view of the above discussion, this Court does not find any ground to entertain this Writ Petition. Accordingly, the same is dismissed. However, liberty is granted to the petitioner to work out his remedy in the manner known to law. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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Registration Department,
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2. The Inspector General of Registration,
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Chennai-4.

+1cc to M/s.T.M.Hariharan, Advocate, S.R.No.15780

+1cc to the Government Pleader, S.R.No.15856

W.P.No.19038 of 2011

MG(CO)
RLP(02/06/2022)