IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.3952 of 2021
and
W.M.P.No.4520 of 2021

S.Naveen Chandran ... Petitioner

vs.

The District Revenue Officer (Stamps),
Office of District Collector,
No. 32, 5th Floor, Singaravelar Maaligai,
Rajaji Salai,
Chennai – 600 001. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in connection with the impugned order in Ref. No. C.P. No.110/17 dated 30.10.2020 and the consequential order passed by him in Ref. No. C.P. No. 110/17 dated 30.11.2020 and quash the same with costs.

For Petitioner : Mr.S.Shivram

For Respondent : Mr.P.Yogesh Kannadasan
Special Government Pleader

ORDER

This writ petition has been filed to issue a Writ of Certiorari, calling for the records of the respondent in connection with the impugned order in Ref. No. C.P. No.110/17 dated 30.10.2020 and the consequential order passed by him in Ref. No. C.P. No. 110/17 dated 30.11.2020 and quash the same with costs.

2. The case of the petitioner is that the petitioner had purchased an individual villa township in the name and style of 'PACIFICA AURUM' out of the total extent of 21 acres and 41 cents in the year 2015. The said sale deed was presented for registration and the same was duly registered on 09.04.2015 vide Document No.4773/2015. The petitioner has paid the entire stamp duty and registration fees at the time of registration in full.

The Registering Authority had scrutinized the documents for registration and also verified the stamp duty and registration fees paid by the petitioner and after full satisfaction registered the document in favour of the petitioner. However, the petitioner has received the provisional order dated 30.10.2020 without any show cause notice and revised stamp duty was levied at the rate of Rs.4,000/- per square feet and called upon the petitioner to pay a sum of Rs.85,750/- and to submit his objections, if any, within 15 days. In the said show cause notice, there was a reference about the notice dated 05.06.2018, which was never served upon the petitioner.

3. As per Section 47-A(1) of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act' for short), the Registering Authority is satisfied that the instrument presented is undervalued then the Registering Authority shall refer the same to the Collector for determination of market value of the property and proper duty payable thereon. On receipt of the same from the Registering Authority, the Collector has to issue Form-I notice to the concerned person to present the document for registration and for raising any objection. Thereafter, if any objections raised, the Collector has to issue Form-II notice and pass on order thereafter, in accordance with law. However, the case on hand no such Form-I was issued to the petitioner and call upon the petitioner to raise objections before Form – II notice as contemplated under Section 47-A(3) of the Act.

4. Further, the enquiry as per Rule 3(3) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instructions) Rules, 1968 has to be made before registration of the deed of conveyance and the same cannot be done after registration as the Registering Authority does not have any power to do so under the said provision. Whereas, the document which was presented for registration, the same was duly registered as Document No.4773/2015 and release the same in favour of the petitioner. On receipt of the notice dated 30.10.2020, though the petitioner raised objections, without considering the same, the impugned order came to be passed by the respondent on 30.11.2020 thereby demanded to pay the stamp duty and registration fees to the tune of Rs.85,750/- within 60 days. After lapse of 5 years and 7 months the notice had been issued and it is completely barred by limitation. Even assuming that the said exercise is bonafide, after lapse of 5 years, no enquiry can be proceeded as per Section 47(A)(3) of the Act.

5. On perusal of the counter affidavit dated 28.07.2021 filed by the respondent, revealed that after registering the sale deed which was presented for registration as Document No. 4773/2015, the Registering Authority found that it was

registered by oversight on the value set forth in the sale deed instead of collecting stamp duty on the value of Rs.4,000/- per sq.ft. Therefore, Form-I notice as contemplated under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 read with Section 47-A(2) of the Act was issued to the petitioner on 05.06.2018. Since there was no reply from the petitioner, the respondent had provisionally determined the value of Rs.4,000/- per sq.ft., and the total value of the property at Rs.49,00,000/- and the deficit stamp duty payable thereon at Rs.85,750/-. After sending the provisional order on 30.10.2020, the petitioner failed to submit any reply. Hence, the respondent passed the final order confirming the provisional order in proceedings No.110/2017 dated 30.11.2020 under Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

6. On perusal of the records produced by the respondent with regards to Form-I notice dated 05.06.2018, though it was marked to the petitioner and there is no peace of evidence to show that it was sent to the petitioner by an mode of service. Admittedly, the Form-I notice was not served to the petitioner before issuance of Form-II notice as contemplated under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Admittedly, the sale deed was presented for registration on 09.04.2015 and the same was registered vide Document No.4773/2015 and release the same in favour of the petitioner by the Registering Authority viz., the Sub Registrar, Thiruporur. Whereas, the provisional order dated 30.10.2020 was issued after a period of 5 years and 7 months from the date of registration. It is barred by limitation as per Section 47(A)(3) of the Act. It is relevant to extract the provision under Section 47(A)(3) of the Act. Accordingly, the Collector may, suo motu or otherwise, within five years from the date of registration of any instrument of conveyance, call for the instruments for the purpose of examining the same and satisfying himself as to the correctness of the market value of the property, which is the subject matter of conveyance.

7. That apart, on receipt of the provisional order and Form-II notice as contemplated under Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the petitioner had submitted detailed objections dated 18.11.2020 and the same was sent through registered post with acknowledgement due on 19.11.2020. However, the respondent did not consider the objections raised by the petitioner and passed the impugned order dated 30.11.2020.

8. The Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 provided the procedure on receipt of reference under Section 47-A of the Act.

Accordingly, on receipt of the reference from the Registering Authority, the Collector shall issue a notice in Form-I to every person in whose favour the instrument has been executed, informing him about the instrument and call upon the persons to submit objections, if any. If any objection received, the Collector shall pass order in writing provisionally determining the market value of the properties.

9. Whereas, in the case on hand, the petitioner was not served with Form-I notice and he was not given opportunity for raising objections. Therefore, it amounts clear violation of principles of natural justice and the impugned orders cannot be sustained and liable to be quashed. That apart, the provisional order passed and Form-II notice issued on 30.06.2020, that is after a period of 5 years. Therefore, the entire proceedings is barred by limitation. Therefore, the impugned orders in Ref. No. C.P. No.110/17 dated 30.10.2020 and Ref. No. C.P. No. 110/17 dated 30.11.2020 are quashed.

10. Accordingly, this writ petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dm

To

The District Revenue Officer (Stamps),
Office of District Collector,
No. 32, 5th Floor, Singaravelar Maaligai,
Rajaji Salai,
Chennai – 600 001.

+1cc to the Government Pleader, S.R.No.7411

W.P.No.3952 of 2021

EV(CO)
CT 10/03/2022