IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/11/2022

C O R A M

THE HONOURABLE Mr.JUSTICE **N. SATHISH KUMAR**

Writ Petition No.29390 of 2015
a n d
M.P.No.1 of 2015

M. Srinivasan ... Petitioner

Vs

1. The State of Tamil Nadu
   rep. By the Chief Controlling
   Revenue Authority-cum-
   Inspector General of Registration
   100 Santhome High Road
   Mylapore
   Chennai 600 004.

2. The Sub-Registrar
   Yercaud
   Salem District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the first respondent, vide Letter No.24471/Vu1/08 dated 31/8/2015 and quash the same.

For Petitioner ... Mr.S.Sithirai Anandam

For respondents ... Mr.K.Tippu Sulthan
Government Advocate

O R D E R

This writ petition has been filed to quash the order, dated 31/8/2015, passed by the first respondent, in Letter No.24471/Vu1/08.

2. Brief facts leading to the filing of the instant writ petition are as follows:-

The petitioner had purchased an agricultural land in S.No.179/1A1 in Yercaud Taluk, Salem District, on 3/8/2005, which was registered as Document No.298/2005, on the file of the Sub-Registrar, Yercaud, for a total sale consideration of Rs.4,55,000/-. However, the Deputy Collector (Stamps) have collected another sum of Rs.16,800/-, by an order, dated 29/9/2005, on the ground that there was a deficit in payment and after payment, document was released. After purchase of the property, the petitioner has sold the property in the year 2007.

3. When the matter stood thus, the first respondent has initiated suo motu proceedings and issued impugned Notice, dated 31/8/2014. Hence the same has been challenged, by way of instant writ petition, on the ground

that suo motu proceedings cannot be initiated by the first respondent, that too beyond the period of five years.

4. Counter has been filed, wherein it is stated that the first respondent suo motu reviewed the issue under Section 47 A (6) of the Indian Stamp Act and found that the document No.298/2005 has been executed with under valuation and issued a notice on 31/8/2015 in Lr.No.24471/U/8 to the petitioner to appear for an enquiry on 15/9/2015 at 11.00 a.m., in the office of the first respondent. Without appearing for an enquiry, the petitioner has come forward with the instant writ petition and hence prays for dismissal of the writ petition.

5. Heard Mr.S.Sithirai Anandam, learned counsel for the petitioner and Mr.K.Tippu Sultan, learned Government Advocate for the respondents.

6. The learned counsel appearing for the petitioner submitted that suo motu proceedings cannot be initiated by the first respondent, after a period of five years from the date of registration. Whereas, the document was registered in the year 2005 and deficit stamp duty has been paid in the same year. If at all any suo motu proceedings to be initiated, the same ought to

have been initiated, within a period of five years, whereas, notice has been issued, on 30/8/2015. Hence, the same cannot be sustained in the eye of law.

7. In support of his submissions, he has relied on a judgment of Division Bench in ***SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE, SINGARAVELAR MALIGAI, CHENNAI Vs. THAJUNNISA (2015) 6 MLJ 129.***

8. The learned Government Advocate appearing for the respondents submitted that on receipt of the notice, the petitioner, ought to have appeared before the first respondent and submitted the statements. Without exhausting such remedy, the petitioner has straight away approached this Court.

9. Perused the entire materials available on record.

10. At the time of execution of sale deed, second respondent had scrutinized the entire document and collected necessary stamp duty. Thereafter, the said land was classified as agricultural land. On 31/8/2015, as per Section 47 – A (6) of Indian Stamps Act, 1899, first respondent had issued impugned notice, for fixation of stamp duty, and conducted enquiry

on 15/9/2015 at about 11.00 a.m., in the office of the first respondent. At the time of inspection, the Deputy Collector (Stamps), had fixed differential stamp duty at Rs.16,800/-. Immediately, the petitioner had paid the said amount to the Sub-Registrar and returned the instrument.

11. It is not in dispute that the petitioner purchased the property in the year 2005 and sale price was fixed at Rs.4,55,000/-. At the time of inspection, the Deputy Collector, estimated deficit value at Rs.16,800/- towards stamp duty. Thereafter, the first respondent has issued a notice, dated 31/8/2015, for fixation of stamp duty and conducted enquiry on 15/9/2015 for the appearance of the petitioner for personal hearing.

12. It is relevant to note that sub-Clause (6) of Section 47 A of the Indian Stamp Act, 1899, makes it very clear that the Chief Controlling Revenue Authority, may, suo motu call for and examine an order passed under sub-Section (2) or sub-Section (3) and if such order is prejudicial to the interests of revenue, he may take such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to

revise, modify or set aside such order and may pass such order thereon as he thinks fit.

13. From the above provision of law, suo motu powers can be exercised by the Chief Controlling Revenue Authority only when the orders were passed either under sub-Section 2 or 3 of Section 47 A of the Indian Stamp Act. No doubt, in this case, Deputy Collector (Stamps) had determined the market value of the property and fixed the market value of the property as Rs.4,65,000/- per acre and collected deficit Stamp duty at Rs.16,800/- on 29/9/2005. Therefore, if at all the order according to the first respondent is prejudiced to the interest of the revenue, suo motu powers for recalling that order ought to have been exercised, within a period of five years from the date of order passed by the authority.

14. Though it is the contention of the learned Government Advocate that suo motu proceedings was entered much prior to the issuance of notice. The very counter filed by the respondents does not refer any such reference within a period of five years. Whereas the impugned notice dated 31/8/2015 itself indicate that suo motu powers have been invoked for the

first time in the year 2015 i.e., about 10 years after the registration of the document.

15. In such being a position, initiation of suo motu power of the first respondent beyond the period of five years is against the very provision of law. Suo motu power should be initiated within a period of limitation. If any such power is exercised beyond the period of limitation, the same is not valid in the eye of law.

16. Accordingly, this writ petition is allowed and order dated 31/8/2015 passed by the first respondent in Letter No.24471/Vu1/08, is quashed. No costs. Consequently, the connected Miscellaneous Petition is closed.

23/11/2022

Index : Yes / No
Internet: Yes
Speaking/non speaking order

mvs.

N. SATHISH KUMAR, J

mvs.

To

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