IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.19965 of 2016
and
W.M.P.Nos.17217 & 17218 of 2016

1.Tmt.Kannammal Educational Trust,
rep. By its Managing Trustee,
Tmt.S.Lalitha Lakshmi,
New No.22 (Old No.121), G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

2.M/s.Ganesh Charitable Trust,
rep. By its present Trustee,
Shri.A.C.S.Arunkumar,
New No.22 (Old No.121), G.N.Chetty Road,
T.Nagar, Chennai – 600 017. ..Petitioners

Vs.

1.State of Tamil Nadu
rep. By its Secretary,
Department of Commercial Tax and Registration,
Fort St.George, Chennai – 600 009.

2.The District Registrar
cum District Collector (Indian Stamp Act),
Office of the District Registrar,
Kancheepuram, Kancheepuram District – 631 502.

3.The Sub-Registrar,
Sub-Registrar's Office,
Manavala Nagar,
Thiruvallur. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the records comprised in the proceedings of the 2nd respondent Reference No.6952/A2/2012 dated 29.04.2016 and to quash the same as illegal and consequently to direct the second and third respondents to return the impounded Document P.308/2012 registered in the Office of the SRO Manavalnagar to the petitioners.

For Petitioners : Mr.B .Radhakrishnan
for Mr.K.Sivasubramaniam

For Respondents : Ms.V.Yamunadevi
Special Government Pleader

ORDER

Challenge in the Writ Petition is to the order of the District Registrar purportedly passed under Section 40(1)(b) of the Indian Stamp Act, requiring the petitioner to pay stamp duty of Rs.35,92,218 along with fine of Rs.82 in all Rs.35,92,300/- as deficit stamp duty for Document No.P/308/2012 presented by the petitioner for registration, on the ground that it is the proper stamp duty payable under Section 47-B of the Stamp Act.

2.On 05.04.1995, the 2nd petitioner purchased certain lands from the 1st petitioner. A sale deed was executed by the Managing Trustee of the 1st petitioner conveying 14 items of immovable property measuring about 15.21 acres. Realising that certain property situate in four Survey numbers namely, 308/2A, 308/2B, 308/5B & 306-19B situate in Nayapakkam Village within the Sub-Registration District of Manavala Nagar, which were included in the sale deed dated 05.04.1995 did not belong to the 1st petitioner Trust and have been wrongly included in the conveyance executed by the 1st petitioner in favour of the 2nd petitioner in the year 1995, a rectification deed was executed by the 1st petitioner and the 2nd petitioner, deleting the four survey numbers stated above from the sale deed of the year 1995. This document was presented for registration along with a non-judicial stamp duty of Rs.100/-.

3.The Sub-Registrar did not register the document, kept it as a pending document and referred the same to the District Registrar for opinion on the Stamp duty payable. The District Registrar almost after four years, took up the matter and concluded that the document in question is a sale deed assessible to stamp duty under Article 23 of Schedule 1 of the Stamp Act. Consequently, a demand for a fantastic sum of Rs.35,92,300/- was made against the petitioners. The petitioners have come up before this Court, questioning the said demand.

4.A counter affidavit has been filed by the District Registrar, claiming that the document in question would amount to reconveyance of the property, which was sold in the year 1995. The order impugned also refers to levy of surcharge under Section 116-A of the District Municipalities Act.

5.Mr.B.Radhakrishnan, learned counsel for the petitioner would vehemently contend that by no stretch of imagination, can this instrument dated 04.10.2012 could treated as a sale deed chargeable with duty under

Article 23 of Schedule 1 of the Stamp Act. The learned counsel would contend that certain property to which, the Vendor did not have title was included in the sale deed realising the said mistake, the parties to the document had agreed to delete those properties from the purview of the sale. To call this transaction a sale would be a misnormar.

6.Contending contra, the learned Special Government Pleader would submit that any rectification is chargeable with duty under Section 47-B of the Stamp Act and according to her all rectifications, *de hors* the consequences should be treated as sale deed and duty would be chargeable under Article 23 of the Schedule 1 of the Stamp Act. The contention of the Government Pleader reflects the opinion of the District Registrar. I am unable to persuade myself to agree with the contention of the learned Special Government Pleader. Section 47-B of the Stamp Act which provides for stamp duty for an instrument of rectification, reads as follows:-

> ***"47-B. Stamp duty chargeable for instrument of rectification.-*** *Where an instrument purports to rectify any error in the description of property as set out in any previous instrument falling within the purview of section 47-A, then, the*

amount of duty chargeable in such instrument of rectification shall be the amount chargeable on it under Schedule I less the amount of duty, if any, already paid in respect of such previous instrument."

7.The essential requirement therefore is the instrument must purport to rectify an error in the description of property set out in any previous instrument falling within the purview of Section 47-A of the Stamp Act. Section 47-A of the Stamp Act deals with instrument of conveyance etc., which are under valued. The words exchange, gift, release of Benami right or settlement were added to the Section by Act 42 of 1981. Therefore, in order to apply 47-B, the instrument executed must be a conveyance or an exchange or a gift or release of Benami right or a settlement.

8.Needless to point out that such a conveyance or gift or exchange or relese of Benami right or settlement must be a valid instrument and the person executing it should have had valid title to convey under that instrument otherwise, the said instrument will not fall within Section 47-A of the Stamp Act. Once it is found that there is no conveyance or transfer under the original instrument itself or the Vendor had no right over certain properties, such an instrument cannot be termed a conveyance under Section 47-A so as to attract 47-B.

9.The interpretation placed by the District Registrar is rather mechanical and without application of mind. The reference to Section 116-A, which was repealed even in the year 2009, in an order of the year 2016 would show the mechanical manner in which the District Registrar, who has been invested with powers of determination of Stamp Duty has acted. Section 116-A of the District Municipalities Act was repealed by the Tamil Nadu Duty and Transfer of Properties in Municipal Areas (Tamil Nadu Act 32 of 2009). This shows that the District Registrar, who had passed the impugned order has mechanically signed an order prepared by her Sub-ordinates without any application of mind.

10.This Court in **Thirumaran Vs. CCRA** passed in **W.P.No.11413 of 1989** held that if there is no change in the extent of the land conveyed or increase in the extent of land conveyed, the authorities cannot demand stamp duty under Article 23 of Schedule 1 of the Act, treating it as a sale deed. In **Utham Raj Vs. District Registrar, Chennai South** reported in (**2010**) **3 LW 252**, this Court had held that if by way of rectification, extent is increased, the authorities would be justified in demanding stamp duty under Schedule 1 for a rectification deed otherwise, it is not open to a Registering Officer to re-open a registration done and claim stamp duty once over again.

11.In the case on hand, a result of the rectification, the extent that is dealt with under the 1995 sale deed namely, the sale deed dated 05.04.1995 is reduced and it is not increased. The stamp duty has been paid for the sale, while the 1995 document was registered. But, that sale itself was invalid because, the Vendor did not have title to the property. Therefore, there is no conveyance of property in respect of the four survey numbers over which, the Vendor did not have title. Once it is held that there is no conveyance, a rectification, which merely seeks to remove those survey numbers from the original sale deed cannot amount to a conveyance chargable with duty under Article 23 of Schedule 1 of the Stamp Act.

12.Another plea is raised about the availability of alternative remedy. The said plea has also been raised on a wrong understanding of the provisions of Section 56 of the Stamp Act. 56(1) of the Stamp Act places the powers of the Collector subject to the control of the Chief Controlling Revenue Authority. 56(2) enables the Collector, who has a doubt about the duty chargeable on instrument to refer the matter to the Chief Controlling Revenue Authority. Therefore, a person aggrieved by a demand made by a District Registrar cannot move the Controlling Revenue Authority under the provisions of Section 56(2). I am therefore, of the considered opinion, that the demand made is illegal and beyond the powers of the District Registrar.

13.This Writ Petition will stand allowed, the order impugned in the Writ Petition dated 29.04.2016 is quashed. There will be a direction to the Sub-Registrar, Manavala Nagar to register the instrument of rectification without demanding duty and release the same within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

13.07.2022

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Index:No
Internet:Yes
Speaking

To:-

1.The Secretary,
State of Tamil Nadu,
Department of Commercial Tax and Registration,
Fort St.George, Chennai – 600 009.

2.The District Registrar
cum District Collector (Indian Stamp Act),
Office of the District Registrar,
Kancheepuram, Kancheepuram District – 631 502.

3.The Sub-Registrar,
Sub-Registrar's Office,
Manavala Nagar,
Thiruvallur.

R.SUBRAMANIAN, J.

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