IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **19.10.2022**

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.4416, 5462 and 5537 of 2017
and
W.M.P.Nos.4625, 16413, 5817, 24875 and 5882 of 2017

1. V.Dhanasekaran ...Petitioner in W.P.No.4416 of 2017

2. P.S.Sundaravel ...Petitioner in W.P.No.5537 of 2017

3. S.Sridevi ...Petitioner in W.P.No.5562 of 2017

Vs.

1. Inspector General of Registration,
   100, Santhome High Road,
   Chennai – 600 028.

2. The District Registrar,
   Tiruporur.

3. Sub Registrar,
   Thirupporur. ...Respondents in all W.P.s

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the third respondent's demand notice dated 20.06.2016 and quash the same.

For Petitioners : Mr.P.T.Asha
(all W.P.s) for M/s.K.Venkata Subban

For Respondents : Mr.G.Krishna Raja
(all W.P.s) Additional Government Pleader

COMMON ORDER

The petitioners have filed this Writ petition seeking issuance of a Writ of Certiorari to quash the demand notice of the third respondent dated 20.06.2016.

2. The case of the petitioners is that they purchased the properties comprised in S.Nos.351/1 and 351/2 to an extent of 4800 sq.ft and 2400 sq.ft. respectively from one M/s.Olive Beach Promoters vide sale deeds dated 18.03.2014 and 12.03.2014 respectively. Thereafter, the third respondent registered the above said sale deed and returned the original sale deed after payment of necessary stamp duty and registration charges as per the guide line value fixed by the District Registrar. While that being so, the third respondent vide notice dated 20.06.2016, called upon the petitioners to pay deficit stamp duty and registration charges in respect of the above mentioned sale. Challenging the same the present writ petition has been filed

seeking the aforesaid relief.

3. Learned counsel for the petitioners submitted that the power to recover the deficit stamp duty vests only with the second respondent and not the third respondent. Hence the impugned demand notice issued by the third respondent is not permissible. Further, it is pointed out that without following the procedure contemplated u/s 33A of the Indian Stamp Act, 1899 (for short 'the Act) issuance of demand notice dated 20.06.2016 cannot be allowed to subsist. Hence, the impugned demand notice is liable to be quashed.

4. Learned Additional Government Pleader appearing for the respondents referring paragraph No.4 of the counter affidavit stated that the impugned notice issued by the third respondent is only an informal notice which is not covered under the Act and the petitioners have every right to discard such notice and if the petitioners have not honoured the said notice, the second respondent will take appropriate action as provided under the Act to recover the deficit stamp duty as empowered under the Indian Stamp Act by adhering to the procedures laid down in the above said Act.

5. Heard learned counsel on either side and perused the materials available on record.

6. It is the trite that the third respondent has no authority to recover deficit stamp duty inasmuch as the Authority conferred with the power to recover deficit stamp duty u/s 33A or 47A of the Act is only the District Registrar and, that too, after issuing notice and holding due enquiry. Further, the demand notice issued by the third respondent is totally contrary to the provisions u/s 33A of the Act and for better appreciation, the same is quoted hereunder:

> *“**33-A.Recovery of deficit stamp duty.**-(1) Notwithstanding anything contained in section 33 or in any other provisions of this Act, if, after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be*

recovered from the person liable to pay the duty, as an arrear of land revenue:

Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard:

Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument.

(2) The certificate of the Registrar of the district under sub-section (1) shall, subject only to appeal under sub-section (3), be final and shall not be called in question in any Court or before any authority.

(3) Any person aggrieved by a certificate of the Registrar of the district under sub-section (1) may appeal to the Chief Controlling Revenue Authority. Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed."

7. In view of the above and also in view of the fair stand taken by the learned Additional Government Pleader appearing for the respondents adverting to the counter affidavit, that the impugned notice issued by the third respondent is only an informal notice, and that for recovering the deficit stamp duty, the competent authority will adhere to the procedures

laid down in the above said Act, this Court is inclined to allow the writ petition with the following directions :

> (i) The impugned demand notice issued by the third respondent dated 20.06.2016 is set aside.
>
> (ii) The second respondent is at liberty to initiate proceedings u/s 33A of the Act and upon such initiation, if so advised, conclude the same after providing opportunity to the petitioner within a period of six months from the date of receipt of a copy of this order.
>
> (iii) The period during which the writ petition was pending before this Court shall be excluded while computing the period of limitation.

8. This writ petition is allowed with the aforesaid observations and directions. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.10.2022

RAP
Speaking Order : Yes/ No
Index : Yes/ No

To

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M.DHANDAPANI, J.

RAP

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