IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.23333 of 2017
and
M.P.No.24428 of 2017

C.Pachaiammal ... Petitioner

Vs.

1.The Sub-Registrar,
District Registrar Office,
Saram, Puducherry.

2.The Deputy Collector (Revenue) North,
Government of Puducherry,
Puducherry. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records and quash the order dated 18.05.2017 passed by the 2nd respondent in his proceedings No.3247/DC(R)/REV/C2/SSP/e-Stamp/2017/1340 and consequently direct the respondents to refund the amount of Rs.2,72,500/- affixed as e-Stamp for the registration 2 sale deeds dated 06.11.2015.

For Petitioner : Mr.D.Baskar
for M/s.Manjula Baskar

For Respondents : Mr.J.Kumaran
Additional Government Pleader

ORDER

The petitioner has filed this writ petition to quash the impugned order dated 18.05.2021 passed by the second respondent, Deputy Collector (Revenue) North, Government of Puducherry in his proceedings bearing reference No.3247/DC(R)/REV/C2/SSP/e-Stamp/2017/1340 and consequently direct the respondents to refund the amount of Rs.2,72,500/- being the Stamp affixed for registration of two sale deeds both dated 06.11.2015.

2.The specific case of the petitioner is that the petitioner had purchased properties vide two Sale Deeds both dated 06.11.2015 for which the petitioner was required to pay a Stamp Duty of Rs.1,45,000 and Rs.1,27,500/-. However, the first respondent by a communication dated 17.11.2015 had declined to register the document on the ground that the documents did not reveal the boundaries shown in the relevant Field Map.

3.The reasons stated for rejecting the documents furnished by the petitioner is extracted below from the impugned order of the first respondent dated 17.11.2015:

> *"WHEREAS, the Sub-Registrar while examining the documents also verified the relevant boundaries mentioned wherein it was revealed that the boundaries shown in the document are not tallying with the FMB sketch and the relevant Field Map. The presentant has not produced the latest field map authenticated by the Survey Department, to prove the genuinity of the boundaries set forth in the document. As such the undersigned is unable to sufficiently identify the schedule mentioned property in its entirety as per the provision laid down under Section 21 of the Registration Act, 1908.*
>
> *WHEREAS, the undersigned having thoroughly examined the documents has found out two infirmities which would make the documents not fit for registration is as given below:*
>
> *i. The title of the Vendor is not in conformity with "Communaute Legale" in as much as the vendor is French National.*
>
> *ii. It is very clearly laid down under Section 21 of the Registration Act, 1908 the proper identification of the property in its entirety is mandatory before registration which is not sufficiently described in the document presented.*
>
> *Therefore, the documents presented for registration on 13.11.2015 is REFUSED FOR REGISTRATION in the context of the reason mentioned above."*

4.By the impugned order dated 18.05.2017, the second respondent, The Deputy Collector (Revenue) North, Government of Puducherry has declined to refund the Stamp Duty with the following observations:

> Sir/Madam,
>
> Sub: DCR (N) – Indian Stamp Act, 1899 – Refund of the value of the Spoiled e-Stamp Paper – Returned – Reg.
> Ref: Your Letter No.Nil dated 04.05.2017.
>
> With reference to the letter cited on the subject mentioned above, I am to inform that your request for the refund of Spoiled Non Judicial e-Stamp paper could not be considered as the claim is made after expiry of the statutory period of six months from the date of purchase.
>
> Yours faithfully,
> Deputy Collector (Revenue) North

5.Under these circumstances, the petitioner rushed to this Court and filed W.P.No.38212 of 2015. However, ultimately decided to withdraw the same on 23.03.2017 and thereafter, filed an application for refund of spoiled Non Judicial e-stamp paper on 04.05.2017.

6.The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Committee-GFIL** Vs. **Libra Buildtech Private Limited and Ors.,** in 2015 Legal Eagle (SC) 1006.

It is submitted that though the limitation prescribed under Section 50 of the Indian Stamp Act, 1899 has expired under similar circumstances, the Hon'ble Supreme Court invoked the maxim of equity, namely “actus curiae neminem gravabit” indicating that act of the Court shall not prejudice a litigant in any manner.

7.In this case, it is submitted that the petitioner could not file an application for refund of the Stamp Duty immediately as the petitioner was pursuing a legal remedy in W.P.No.38212 of 2015 but later decided to withdraw the same seeing the futility and therefore opted for refund.

8.The writ petition is opposed by the learned counsel for the respondent on the ground that when the petitioner withdrew the writ petition, the petitioner did not seek leave of the Court for refund of the Stamp Duty for the two Sale Deed dated 06.11.2015 and therefore, submits that the decision of the Hon'ble Supreme Court in the above case cited by the learned counsel for the petitioner cannot be applied to the facts and circumstances of the case.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

10.Section 50(3) deals with limitation six months from the date of instrument therefore ordinarily, the petitioner should have filed an application within six months from 06.11.2015. The application for refund was made only on 04.05.2017 which is admittedly beyond limitation. Though, Section 50(3) contemplates with limitation for six months to file application for refund of amount towards spoiled stamp, the fact remains that petitioner had filed a writ petition before this Court and later decided to withdraw the same noting futility in pursuing the remedy further. The refund of the Court fee therefore cannot be denied, as it is on account of the proceedings that were pending before this Court.

11.The Hon'ble Supreme Court has given reasons in the case of **Committee-GFIL** Vs. **Libra Buildtech Private Ltd & Ors** 2015 Legal Eagle (SC) 1006 in Para 38 to 46. They are reproduced below:-

> "*38. It is thus a settled principle of law based on principle of equity that a person cannot be penalized for no fault of his and the act of the court would cause no prejudice to any of his right.*

39. In our considered opinion, the aforesaid maxim would apply with full vigour in the facts of this case and if that is the position then applicants, in our opinion, are entitled to claim the refund of entire amount of stamp duty from the State Government which they spent in purchasing the stamp duty for execution of sale deed in relation to the properties in question. Indeed in the light of six reasons set out supra which, in our considered opinion, in clear terms attracts the principle contained in the aforesaid maxim, the State has no right to defend the order of SDM for retaining the amount of stamp duty paid by the applicants with them. The applicants' bona fide genuine claim of refund cannot be denied on such technical grounds.

*40. This case reminds us of the observations made by the Chief Justice M.C. Chagla in a case reported in **Firm Kaluram Sitaram** vs. **The Dominion of India,** (AIR 1954 Bombay 50).*

41. The learned Chief Justice in his distinctive style of writing observed as under in para 19:

> *".....we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."*

42. We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

43. Even apart from what we have held above, when we examine the case of the applicants in the light of Sections 49 and 50 of the Act, we find that the case of the applicants can be brought under Section 49 (d)(2) read with Section 50(3) of the Act to enable the State to entertain the application made by the applicants seeking refund of stamp duty amount. The interpretation, which advance the cause of justice and is based on the principle of equity, should be preferred. We hereby do so.

44. As mentioned above, it is not in dispute that this Court on 26.09.2012 cancelled the transaction in question, and hence by reason of the orders of this Court, the stamps used for an instrument executed by the applicants were found unfit thereby defeating the purpose originally intended. This occurred either due to some error or mistake therein. Since the execution of sale deeds and its implementation was subject to the orders of the court, the parties were required to apply the court for appropriate orders for every step. It is due to this reason, the right to claim the refund of the amount of stamp duty arose for the first time in applicants' favour on 26.09.2012. The applicants had accordingly filed their applications within 6 months from the date of this order, as provided in Section 50. In the light of these facts, the applications should have been entertained treating the same to have been filed under Section 49 (d)(2) read with Section 50 of the Act for grant of refund of stamp duty amount claimed therein by the applicants.

45. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law *may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above.*

46. In view of the foregoing discussion, I.A. Nos. 9 and 10 filed by the applicants deserve to be allowed and are accordingly allowed. The State of Punjab through the SDM, Dera Bassi is directed to refund the entire stamp duty amounting to Rs.6.22 crores spent by the applicants for purchasing of stamps papers for execution of sale deeds in relation to purchase of the properties in question. Let the refund of money as directed above be paid to the applicants within four weeks from the date of this order."

12.The law is clear. Refund cannot be denied. Under these circumstances, the impugned order dated 18.05.2017 is quashed with a consequential relief to the petitioner. The respondents are directed to refund the amount to the petitioner within a period of 45 days from the date of receipt of a copy of this order.

13.This writ petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
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To

1.The Sub-Registrar,
District Registrar Office,
Saram, Puducherry.

2.The Deputy Collector (Revenue) North,
Government of Puducherry,
Puducherry.

C.SARAVANAN, J.
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