IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.19738 of 2017
and
W.M.P.No.21321 of 2017

R.Gopal ... Petitioner

Vs

1.The District Registrar,
Tiruppur Registration District,
No.1/3, Vignesh Complex,
Near Sivan Theatre,
Postal Colony, 60 Feet Road,
Tiruppur - 641 602.

2.The Sub Registrar,
Palladam Sub-Registration District,
No.16, Mangalam Road,
Palladam, Tiruppur District - 614 664. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent's impugned Order in Na.Ka.No.360/2017 dated 28.06.2017 passed against the petitioner herein and quash the same and consequently direct the respondents to remove the endorsement made in the entry of the Rectification Deed dated 13.04.2016 bearing Doc.No.5011 of 2016.

For Petitioner	: Mr.K.Myilsamy for M/s.Va Vu Si Vazhakagam
For Respondents	: Mr.E.Sundaram Government Advocate

ORDER

The petitioner has challenged the impugned communication of the second respondent dated 28.06.2017 bearing Ref.Na.Ka.No.360/2017 demanding a sum of Rs.59,850/- as the deficit stamp duty from the petitioner.

2. The specific case of the petitioner is that the petitioner had purchased the property vide Registered Sale Deed in Doc.No.5332/2008 dated 11.04.2008. It is submitted that by mistake, the petitioner had mentioned the extent of the land as 1800 sq.ft instead 1500 sq.ft and that in the year 2016, the Rectification Deed dated 13.04.2016 registered in Doc.No.5011/2016 was executed. It is further submitted that the second respondent has wrongly demanded the differential/deficit stamp duty from the petitioner in the exercise of power conferred under Section 47-B

of the Indian Stamp Act, 1899 (hereinafter referred to as the Act).

3. The further case of the petitioner is that the petitioner has sold the property on 20.04.2017 and therefore the petitioner cannot be saddled with deficit stamp duty under Section 47-B of the Act. It is also the contention of the petitioner that the impugned communication asking the petitioner to pay a sum of Rs.59,850/- does not contain any reason except a reference to the Audit Note and therefore it is submitted that the impugned order/communication is liable to be quashed and the petition be allowed.

4. It is further submitted that as per Section 47-A(1) of the Act, in case of any undervaluation, only the Sub Registrar has the power to make a reference to the Collector and he cannot himself issue a notice. However, in the present case, the second respondent has himself issued the impugned order/communication and thus exceeded power and therefore the impugned communication is liable to be quashed. It is further submitted that in terms of Section 47-A(ii) of the Act, the Collector shall, after giving a reasonable opportunity of being heard as the

power to decide regarding the quantum of undervaluation.

5. On the other hand, the second respondent has himself decided the quantum of undervaluation and has issued the impugned order/communication, which is abuse of process of law. It is submitted that invocation of Section 47-B of the Act is contrary to the decision of this Court rendered in **Inspector General of Registration** Vs **C.Marappan**, 2007 (1) MLJ 847 (Mad).

6. That apart, it is submitted that invocation of Section 47-B is contrary to the limitation prescribed under Section 47-A(iii) of the Act in terms of which, five years period of limitation is prescribed. It is submitted that the original documents was executed on 11.04.2008 and in case of under valuation, the power conferred under Section 47-B read with Section 47-A(iii) should have been invoked, within a period of five years and therefore on this count also, this writ petition deserves to be allowed.

7. This writ petition is opposed by the learned Government Advocate for the respondents stating that the District Registrar (Audit), Tiruppur in her proceedings dated 23.12.2016 bearing Ref.Moo.Mu.No.287/Tha Pi/2016, directing the second respondent to recover the deficit amounts from the persons including the petitioner herein. Pursuant to the above, the second respondent has sent several communications to the petitioner. However, the petitioner failed to respond, and therefore, the second respondent sent a Statutory Notice dated 28.06.2017 in order to give the petitioner an opportunity to comply with the natural justice.

8. It is submitted that earlier the documents was executed on 11.04.2008 vide Registered Sale Deed in Doc.No.5332/2008 with linear measurement on east and western side as 60 feet each and on 13.04.2016 vide Registered Rectification Deed in Doc.No.5011/2016 with linear measurement on east and western side as 50 feet each.

9. It is submitted that despite several reminders, the petitioner did not come forward and therefore, the impugned order/communication has been issued.

10. Heard both sides. I have perused the counter affidavit filed in support of the present writ petition.

11. The petitioner has earlier challenged the impugned communication dated 28.06.2017 bearing Ref.Na.Ka.No.360/2017 of the second respondent.

12. Though the power to demand differential/deficit stamp duty from the petitioner is vested with the first respondent, the facts remains that there is no final determination at this distant point of time. The impugned communication relies Audit Objections of the Audit Department.

13. Considering the same, I do not find any merits in the present writ petition. However, I direct the respondents to furnish a copy of the Audit Objections to the petitioner.

14. The petitioner is directed to file a detailed reply. The first respondent shall thereafter pass appropriate orders on merits and in accordance with law.

15. This Writ Petition is therefore dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

14.10.2022

Index : Yes/ No
Speaking/Non-Speaking Order

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C.SARAVANAN, J.

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