BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 22.07.2022

ORDER PRONOUNDED ON : 26 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.14372 of 2012
and
MP(MD).Nos. 1 & 2 of 2012

P.Vedavalliammal ...Petitioner

Vs

1.The Secretary to Government
Revenue Department
Fort St.George
Chennai

2.The Inspector General of Registration
Santhome Main Road
Chennai

3.The Special Deputy Collector (Stamps)
Trichy

4.The Sub Registrar
Musiri, Trichy District ....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring Sub-Section 4 of Section 47A of the

Indian Stamps Act, 1899 as amended by Tamil Nadu Act 1 of 2000 as arbitrary, illegal and not valid in law.

For Petitioner : Mr.S.Venkatesh
For Mr.A.Sivaji
For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader

ORDER

The present writ petition has been filed for declaration that 47-A(4) of Indian Stamp Act as amended by the Tamil Nadu Act 1 of 2000 is arbitrary, illegal and not valid in the eye of law.

2.The petitioner had contended that she has purchased an extent 9 acres in Survey No.86 of Thottiyam Village, Trichy District under a sale deed dated 10.06.2004 under registered Document No.930/2004. Due to the allegation of deficit stamp duty, 47-A proceedings were initiated by the third respondent herein. Form-I notice was issued on 28.06.2004 and Form -II notice was issued on 31.10.2005. Thereafter, a final order was passed by the third respondent on 16.11.2005 quantifying the deficit stamp duty at Rs.44,470/-.

3.The petitioner had further contended that the fourth respondent had demanded the said amount along with interest at the rate of 24% per month from 15.01.2006 to till the date of payment and has threatened to initiate proceedings under Tamil Nadu Revenue Recovery Act, 1864. According to the petitioner, the first respondent has issued G.O.Ms.No.132, dated 31.10.2011 announcing 'Samadhan Scheme' for the instruments pending for determination of market value of proper stamp duty payable therein as per Indian Stamp Act. As per the said G.O, the remission of 1/3rd of the difference of stamp duty was granted. The scheme shall be in operation for a period of three months from 01.11.2011 to 31.01.2012. Exercising the option under the 'Samadhan Scheme', the petitioner had paid the entire amount on 30.12.2011 as demanded by the third respondent by his proceedings dated 31.08.2011. Even thereafter, the documents were not returned. Hence, the petitioner made a representation to the fourth respondent on 12.03.2012. He had further contended that the penal interest cannot be levied for the payment made under the Samadhan Scheme. However, a reply was issued on 26.03.2012 by the fourth respondent herein that there is no scope for waiving interest under the Indian Stamp Act. Thereafter. the petitioner has sent a representation on 11.09.2012 that the demand is not valid on account of the option being exercised by the petitioner under the Samadhan Scheme.

4.According to the petitioner, the proceedings under Section 47A(4) of the Indian Stamp Act provides for collection of interest at the rate of 24% per month on such amount for the entire period of default. This provision was amended under Tamil Nadu Act 13 of 2008 by which the interest rate was reduced at 1% per month with effect from 01.09.2010 onwards. Without taking note of the amendment, the third respondent has issued the proceedings 31.08.2011 demanding 24% interest per annum. However, the petitioner has contended that instead of paying 1/3rd amount of the deficit stamp duty, as per Samadhan Scheme, she has paid entire amount demanded by the third respondent herein.

5.The learned counsel for the petitioner had contended that the order dated 31.08.2011 has been passed without taking note of the amending Act namely Tamil Nadu Act 13 of 2008. She had further contended the once the entire stamp duty was paid on 30.12.2011, thereafter the interest cannot be imposed upon the petitioner. He had further further contended that the order dated 31.08.2011 has been passed with a huge delay and hence, no payment of penal interest can be made for the difference in the stamp duty. There is no willful or wanton delay on the side of the petitioner in payment of the difference stamp duty and hence, the question of payment of interest on the part of the petitioner will not arise. Hence, he prayed for allowing the writ petition.

6.The third respondent has filed a counter affidavit contending that at the time of registration, the Sub Registrar has fixed the guideline value of the property at Rs.1,33,000/- per acre and arrived at a stamp duty of Rs.95,760/-. However, the petitioner has chosen to remit only a sum of Rs.51,020/- and did not pay the balance amount of Rs.44,740/-. Hence, the documents were referred to the third respondent under Section 47-A of the Indian Stamp Act for collection of deficit stamp duty. After issuing Form-I and Form -II notices, the final orders were passed by the third respondent herein on 26.11.2005.

7.In the final order, it was specifically mentioned unless the deficit stamp duty was paid within a period of 60 days from the date of receipt of the order, 24% interest will be charged. Even thereafter, the petitioner has not chosen to remit the stamp duty. Hence, proceedings were initiated by the fourth respondent under the Revenue Recovery Act on 15.12.2006. The third respondent has further contended that after a period of five years namely on 30.12.2011, the petitioner has chosen to remit the entire deficit stamp duty of Rs.44,470/-. In view of the interim order granted, the documents were released.

8.The respondent had further disputed that the petitioner has exercised her option under the Samadhan Scheme and the interest has to be paid. He had further contended that the settlement arrived at under the Samadhan Scheme does not cover the interest portion and there is no such provision for waiving interest under the Indian Stamp Act.

9.The respondents had further contended that the petitioner is bound to pay interest at the rate of 24% on the deficit stamp for the period from 26.11.2005 to 30.12.2011. The Tamil Nadu Amendment Act 13 of 2008 is with effect from 01.09.2000 and it has got only prospective effect. There is no delay on the part of the authorities in deciding the said issue. The Tamil Prohibition of Charging Exorbitant Interest At 2003 will not applicable to the proceedings under the Revenue Recovery Act. However, the charging of interest at 24% is only in accordance with the provisions of Indian Stamp Act. Hence, he prayed for dismissal of the writ petition.

10.I have given anxious consideration to the submissions made on either side and perused the documents.

11.The petitioner has registered a sale deed in her name on 10.06.2004 before the fourth respondent office. At the time of registration itself, the Sub Registrar has valued the property at the rate of Rs.1,33,000/- per acre and arrived at a stamp duty of Rs.95,760/-. However, the petitioner has chosen to remit only a sum of Rs.51020/- and did not deposit the balance amount of Rs.44,740/-, disputing the valuation of the fourth respondent herein. Hence, the matter was referred to the third respondent as contemplated under Section 47-A of the Indian Stamp Act. After conducting an enquiry and giving due to opportunity to the writ petitioner, a final order was passed by the third respondent on 26.11.2005 confirming the stamp duty arrived at by the Sub Registrar. The said order of the third respondent was not challenged before the second respondent by way of statutory appeal under Section 47-A (5) of the Indian Stamp Act. Hence, the said order has become final.

47-A(4) of the Indian Stamp Act 1899 is extracted as follows:

" Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall, pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, [interest at one per cent per month on such amount for the entire period of default:

Provided that where a person has preferred an appeal against the order under sub-section (2) or sub-section (3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that become due in accordance with the final order passed in appeal as if such amount had been determined under sub-section (2) or sub-section (3), as the case may be]"

12.A perusal of the above 47-A(4) clearly shows that whenever an order was passed under Section 47-A (2) by the third respondent herein, the said amount shall be paid within such period as may be prescribed. In default of such amount, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. If any amount remains unpaid even after it is specified for its payment, the person liable to pay the duty shall pay in addition to the amount due interest at the rate of 24% per month, on such amount for the entire period of default. However, if such a person preferred any appeal to the Chief Controller Revenue Authority or High Court as the case may be, the interest payable shall be postponed till the disposal of the appeal. In the present case, the order was passed by the third respondent herein on 16.11.2005. Though the order was communicated to the writ petitioner on 26.11.2005, she has neither paid the amount nor chosen to file a statutory appeal.

13.The Samadhan Scheme was introduced under G.O.Ms.No.132, Commercial Taxes and Registration (J1) Department dated 31.10.2011. As per the said scheme, the stamp duty remission was given to all instruments which were pending as on 31.07.2011 either before the Sub Registrar or the authorities under Section 47-A for adjudication. As per the said scheme, a remission of 1/3rd amount was granted and the beneficiary of the documents was entitled to pay only 2/3rd amount. The said scheme was in force for a period of three months between 01.11.2011 and 31.01.2012.

14.According to the petitioner, she has availed the said scheme and paid the amount of Rs.44,70/- on 30.12.2011. Since the Samadhan Scheme has been availed by the writ petitioner, the respondent authorities cannot invoke Section 47A (4) for imposing penal interest upon the petitioner.

15.A perusal of the above said Government order reveals that for availing the benefit under the said Government order, the document should be pending before the Sub Registrar or pending in 47-A proceedings either before the original authority or before the appellate authorities as on 31.07.2011. In the present case, 47-A proceedings have got concluded on 31.10.2005. Hence, the petitioner shall not be entitled to invoke the Samadhan Scheme as contemplated under the above said Government order.

16.The Hon'ble Division Bench of our High Court in a judgment reported in ***WA.No.772 of 2013 dated 01.03.2018 (The Inspector General of Registration, Chief Controlling Revenue Authority Chennai Vs. Thiru.Ramakant Padia)*** in Paragraph Nos.5,6 and 7 has held as follows:

"5.The core question is as to whether the respondents were

eligible to the benefits of the Samadhan Scheme introduced by the Government in G.O.Ms.No.132 Commercial Taxes and Registration (J1) Department dated 31 October 2011.

6.The scheme provides that the proceedings under Sub Section(1) of Section 47-A of the said Act must be pending before the competent authority as on 31 July 2017. In the subject case, the proceedings were disposed of on 27 June 2008 itself. There was no proceedings pending before the statutory authority as on the date when G.O.Ms.No.132 Commercial Taxes and Registration (J1) Department, was notified by the Government. The respondents are therefore not eligible to make an application under the scheme.

7.The Government announced the beneficial scheme in the name and style of Samadhan Scheme to get back the registered documents early and at the same time to earn revenue without delay. The scheme should be interpreted taking into account the conditions of eligibility. There is no question of extending the benefits to the persons who are not eligible under the scheme. We are of the view that the learned single Judge was not correct in allowing the writ petition"

17. Only because of this fact, the petitioner has not paid the concessional stamp duty of 2/3rd but has chosen to pay the entire stamp duty on 30.12.2011. The very fact that the petitioner has chosen to pay the entire amount demanded by the registration authorities will disclose that the petitioner has not made the payment under the Samadhan Scheme. Hence, the contention of the writ petitioner that she is entitled to waiving of penal

interest on the ground that she has paid the amount under the Samadhan Scheme is not legally sustainable.

18.A perusal of the grounds in the writ petition does not disclose that Section 47-A(4) is in any way in conflict with the provision of the Indian Constitution. The only contention of the writ petitioner is that Section 47-A(4) is in violation of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003 (Tamil Nadu Act 38 of 2008). The interest imposed under the above said provision is pursuant to the statutory mandate and hence, the same cannot be considered to be in violation of Tamil Nadu Act 38 of 2008 which applicable only when the lending is done by the private parties. The other ground raised in the writ petition is that the rate of interest is more than what is prescribed under the Tamil Nadu Money Lenders Act 1951. The authorities under the Indian Stamp Act have imposed the penal interest upon the writ petitioner for default in making payment of the deficit stamp duty. Hence, the authorities can never be considered to be a money lender so as to attract Tamil Nadu Money Lenders Act 1951. There is no violation of the constitutional provisions so as to declare Section 47-A (4) of Indian Stamp Act 1899 is null and void.

19.The petitioner has further contended that the State Government has amended 47-A (4) with effect from 01.09.2010 reducing the rate of interest at 1% per month. Hence, according to the petitioner, payment of 24% per month relying upon the old provision is not legally sustainable. In the present case, the entire amount has fallen due on 26.11.2005. The deficit stamp duty has been paid by the petitioner on 30.12.2011. As per Section 47-A (4), the crucial date of considering the imposition of penal interest or the rate of interest is the date of order passed by the original authority. 60 days after passing of the order by the original authority, the penal interest starts running. In the present case, the original authority has passed the order on 16.11.2005 and the penal interest has started running from 16.01.2006. Hence, the petitioner cannot rely upon the subsequent amendment under Section 47-A(4) of the Indian Stamp Act to contend that she is entitled to the benefits of the said amendment. The said amendment would be applicable only for those cases where the original authorities have passed orders under Section 47-A of the Indian Stamp Act on or after 01.09.2010. Hence, the said contention of the writ petitioner is not legally sustainable.

20.In view of the above said discussion, there are no merit in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

26.07.2022

Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.14372 of 2012
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