BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2022

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.17625 of 2018
and
W.M.P.(MD).No.15506 of 2018

M.Balasubramanian ... Petitioner

Vs.

1.The Inspector General of Registration,
Door No.120,
Santhome High Road,
Chennai – 600028.

2.The District Registrar,
Sivagangai – 630 561.

3.The Special Collector of Stamp Duty,
Virudhunagar.

4.The Sub Registrar,
Thirupuvanam,
Ramanathapuram District. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned notices dated 23.04.2018 and 23.07.2018 in Thapa.S.2/460/2015 issued by the third respondent and quash the same.

For Petitioner : Mr.J.Barathan
For Respondents : Mr.S.Shanmugavel,
Additional Government Pleader.

ORDER

This Writ Petition has been filed challenging the impugned notices dated 23.04.2018 and 23.07.2018 issued by the third respondent calling upon the petitioner to pay a sum of Rs.3,20,400/- as the deficit stamp duty payable by the petitioner under Section 47 A of the Stamp Act, failing which, revenue recovery proceedings will be initiated against the petitioner. Aggrieved by the same, this Writ Petition has been filed.

2. The petitioner has obtained release of the sale deed presented for registration on 02.04.2014 itself, which is the date of the execution of registration of the sale deed. However, after a lapse of two (2) years, the impugned notices have been received stating that after audit, the respondents have found that there is undervaluation in the sale deed and therefore, the petitioner will have to pay the sum demanded under the impugned notices, failing which the third respondent has cautioned the petitioner that revenue recovery proceedings will be initiated against him.

3. The grounds raised by the petitioner in this Writ Petition for challenging the impugned notices are as follows:

A) The third respondent has not issued any notice in Form I to the petitioner under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

B) The third respondent has not determined the market value of the subject property under the parameters mentioned in Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

C) The third respondent has not communicated the provisional order in Form II to the petitioner under Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

D)The third respondent had mentioned the name of the petitioner as seller and the name of the seller, Veerayee as purchaser in the notice in Form II dated 15.10.2015.

E) The third respondent had not considered the objections sent by the petitioner to the notice in Form II.

F) The third respondent had not passed any final order under Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

G) The third respondent had not communicated any final order to the petitioner in spite of the repeated representations.

H) The third respondent had issued the impugned notices without passing any final order determining the stamp duty payable for the subject property and hence, there is no basis for invoking the Revenue Recovery Act.

4. A counter-affidavit has been filed by the third respondent denying the allegations of the petitioner. According to the third respondent, only after the audit objections were raised, proceedings were initiated against the petitioner under Section 47 A of the Stamp Act seeking recovery of the deficit stamp duty, even though the document was released to the petitioner two (2) years back. In Paragraph No.4 of the counter-affidavit, it is stated that the third respondent has issued Form I notice to the seller instead of buyer (petitioner) on 06.07.2015. According to the third respondent, subsequently, Form II notice was also issued to the seller on

15.10.2015. In the counter-affidavit, the third respondent has stated that final order was passed under the provisions of Tamil Nadu Revenue Recovery Act, 1864 for enquiry.

5. Heard Mr.J.Barathan, learned counsel for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader, who accepts notice for the respondents.

6. Learned counsel for the petitioner submits that even without passing of any final order pursuant to the issuance of Form II notice, the impugned notices have been sent by the third respondent calling upon the petitioner to pay the demanded amount, failing which, cautioned the petitioner that revenue recovery proceedings will be initiated against him. According to the learned counsel for the petitioner, the impugned notices have been issued by violating the principles of natural justice and even without passing the final order, such notices cannot be issued. He would also submit that the third respondent has himself admitted in the counter-affidavit that Form I notice was issued to the seller instead of the buyer (petitioner). He has also brought to the attention of this Court, the Form II notice issued by the third respondent dated 15.10.2015 and would submit that, in the said Form II notice, though the petitioner's name is mentioned, it is disclosed that the petitioner was a seller, whereas, actually, he is the purchaser. Learned counsel for the petitioner also drew the attention of this Court to the objections raised by the petitioner to the Form II notice dated 15.10.2015 issued by the third respondent. According to him, even though detailed objections were raised with regard to the demand made by the third respondent for payment of the deficit stamp duty under Section 47 A of the Stamp Act, the said objections have not been considered and without passing any final order, the impugned notices have been sent to the petitioner.

7. This Court, after hearing the submissions made by the respective counsels, notices the following:

A) Even in the counter-affidavit filed by the third respondent before this Court, the date of the final order passed by the third respondent under Section 47 A of the Stamp Act has not been mentioned. The objections raised by the petitioner to the Form II notice dated 15.10.2015, on 18.01.2016 and 19.02.2016 have not been considered by the third respondent as seen from the counter-affidavit. Unless and until, a final order has been passed under Section 47 A of the Stamp Act, the question of calling upon the petitioner to pay a sum of Rs.3,20,400/- towards the deficit stamp duty will not arise and the initiation of revenue recovery proceedings for the failure to make the said payment will also not arise.

B) The name of the petitioner has been disclosed as seller in the Form II notice dated 15.10.2015, which is incorrect, which has also been admitted in the counter-affidavit filed by the third respondent.

C) The proceedings have been initiated by the third respondent under Section 47 A of the Stamp Act only after a lapse of two years from the date of the sale deed dated 02.04.2014 executed in favour of the petitioner. Without demur, the sale deed dated 02.04.2014 was released to the petitioner immediately after registration of the said document.

D) The petitioner, in reply to the proceedings initiated against him under Section 47 A of the Stamp Act requesting him to pay the deficit stamp duty, has sent detailed objections denying his liability to pay the deficit stamp duty. As seen from the counter-affidavit filed by the third respondent, the same has not been considered.

E) The principles of natural justice have been violated, since no opportunity of hearing has been granted to the petitioner in the proceedings initiated against him under Section 47 A of the Stamp Act.

8. The impugned notices pertain to demand made against the petitioner for the alleged deficit stamp duty payable by him under Section 47A of the Stamp Act and failure to pay the same within the stipulated date, the third respondent has cautioned the petitioner that revenue recovery proceedings will be initiated against him. Such an exercise cannot be done unless and until final orders have been passed under Section 47 A of the Stamp Act determining the deficit stamp duty payable by the petitioner. The date of the final order has also not been mentioned in the counter-affidavit filed by the third respondent before this Court. The final order referred in the counter-affidavit refers to the final order passed under the provisions of Tamil Nadu Revenue Recovery Act, 1864 and not under Section 47 A of the Stamp Act. Therefore, no revenue recovery proceedings can be initiated against the petitioner without passing a final order under Section 47 A of the Stamp Act.

9. Hence, for the foregoing reasons, the impugned notices dated 23.04.2018 and 23.07.2018 issued by the third respondent have to be necessarily quashed and the Writ Petition has to be allowed. Accordingly, the the impugned notices dated 23.04.2018 and 23.07.2018 issued by the third respondent are hereby quashed and the Writ Petition is allowed. However, in case the respondents deem fit to initiate action against the petitioner under Section 47 A of the Stamp Act, they may do so by adopting due process of law. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar(AE)

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Ramanathapuram District.

+1 CC to M/s.SPL GP (SR-12710[F] dated 17/03/2022)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-12627[F] dated 17/03/2022)

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SA/28.03.2022/5P/7C