IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.2195 of 2023
and
W.M.P.No.2272 of 2023

1.Gadhiya Trust
Represented by its Trustee,
Mr.Nirmal Anraj Gadhiya,
No.24, Dr.B.N.Road,
Chennai – 600 017.

2.A.Sushila Devi
3.Rekha Gadhiya
4.Nirmal Anraj Gadhiya ... Petitioners

Vs

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

2.The District Registrar,
The Office of the District Registrar,
Central Chennai, Bharathi Salai,
Royapettah, Chennai – 600 014.

3.The Sub Registrar,
The Office of Sub-Registrar Kodambakkam,
No.37/5, 5th Street,
100 Feet Road, Kodambakkam,
Chennai – 600 024. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the notice in Na.Ka.No.394-3/2022 dated 13.12.2022 and consequent Order in Mu.No.1/2022 dated 28.12.2022 both issued by the 3rd respondent, quash the same and consequently register the deed of transfer dated 22.11.2022 executed by the petitioners as Pending Document No.83/2022 on the file of the 3rd respondent.

For Petitioners : Mr.Niranjan Rajagopalan

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to the notice in Na.Ka.No.394-3/2022 dated 13.12.2022 and consequent Order in Mu.No.1/2022 dated 28.12.2022 both issued by the 3rd respondent, quash the same and consequently register the deed of transfer dated 22.11.2022 executed by the petitioners as Pending Document No.83/2022 on the file of the 3rd respondent.

2. The document styled as 'Transfer Deed' presented to the 3rd respondent for registration having been considered was registered as Document No.83/2022. However, according to the respondents, they found that there has been a deficit stamp duty paid in the said document,

therefore calculating the deficit stamp duty to the extent of Rs.1,06,33,150/- and registration charge of Rs.60,76,090/- after deducting the amount paid by the petitioner the due according to the respondents is Rs.1,06,33,050/- as well as the registration charges is Rs.45,57,069/-. In order to demand the said amount, the orders have been passed by impounding the document as a pending document under Section 33 of the Act by the proceedings of the 3rd respondent dated 13.12.2022 and 28.12.2022, challenging these proceedings, the present writ petition has been filed.

3. Heard Mr.Niranjan Rajagopalan, learned counsel appearing for the petitioners who would submit that, first of all it is not at all a document to be treated as a settlement on par with a sale deed of transfer of property based on which now the calculation unilaterally has been made as if that there was a huge deficit stamp duty. Secondly, if at all the document is to be considered for the purpose of paying stamp duty as well as the registration charges, it must be under Article 62(e) of the Indian Stamp Act, 1899, therefore a registration fee of 1% alone should be paid.

4. In fact, this clarification was received by the petitioners from the District Registrar concerned who is the 2nd respondent vide his proceedings dated 07.06.2021, where, the District Registrar has clearly stated that, Transfer of Property from Trustee to Beneficiary is to be chargeable under Article 62(e) of Indian Stamp Act, 1899, therefore registration fee of 1% shall be paid on the basis of the value of the property.

5. Only based on this clarification given by the District Registrar concerned, the petitioners Trust having prepared the said document for settlement towards the beneficiaries and accordingly when the same was registered after paying the 1% registration charges, thereafter the 3rd respondent unilaterally has come to the conclusion that, it should be treated as a Transfer of Property by way of sale as family settlement, therefore the stamp duty should be paid within the meaning of Article 58a(ii)(A) of the Stamp Act and accordingly that much of alleged deficit stamp duty has been demanded now through the impugned communication.

6. The learned counsel appearing for the petitioners would further submit that, the 3rd respondent before passing the impugned communications has not given any opportunity of being heard to the petitioners that itself is in violation of principles of natural justice and also against the provisions of the Stamp Act, therefore on that ground also, the impugned orders would not stand in the legal scrutiny, he contended.

7. Heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents, who, by relying upon the written instructions given by the 3rd respondent, has submitted that, as per the Transfer Deed, the property being transferred worth about Rs.15,19,02,120/- at the rate of the guideline value of Rs.7,370/- per sq.ft., therefore the deficit stamp duty as well as the registration charges comes to Rs.1,06,33,050/- and Rs.45,57,069/- respectively. Therefore this deficit stamp duty as well as registration charges since have to be paid by the petitioners, without which, the document even though got registered cannot be released, therefore it was impounded within the meaning of Section 33 of the Act.

8. The learned Special Government Pleader would also submit that, if at all the petitioners have got any grievance over the impugned communications or orders passed by the 3rd respondent, against which, appeal can very well be preferred to the Appellate Authority i.e. the Inspector General of Registration within 30 days period, therefore without exhausting such appeal remedy which is provided under the statute since the petitioners have approached this Court by filing the present writ petition against the impugned orders, on that ground itself the writ petition is to be dismissed, he contended.

9. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. The document in question though has got registered was subsequently impounded by way of exercising power under Section 33(1) of the Stamp Act for alleged deficit stamp duty as well as the registration charges.

11. Consequent upon such impounding of the document, these

proceedings have been issued under Section 33-A(1) of the Act under which a certification can be issued by the Registering Authority or a District Registrar concerned to recover such amount, this deficit stamp duty as well as the registration charges from the party concerned under the provisions of the Revenue Recovery Act.

12. However, if we look at the provisions of Section 33 as well as 33-A especially sub-section (1) of Section 33-A, it states that, if 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.

13. However, there are two provisos to Section 33-A(1) of the Act, first proviso says that, no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard.

14. Therefore, these proceedings which are impugned herein are

concerned, if at all it is a certification within the meaning of Section 33 read with Section 33-A of the Act, it should have been made only after giving an opportunity of being heard to the parties concerned against whom such an orders are to be passed. However, in the case in hand, it is the contention of the learned counsel for the petitioners that, no such opportunity has been given and the respondents especially the 3rd respondent has unilaterally decided that, there is a deficit stamp duty as well as the registration charges by the petitioners in respect of the document in question and accordingly since these impugned orders have been passed, this Court has no hesitation to hold that, on the basis of violation of principles of natural justice within the meaning of Section 33-A(1) first proviso, the impugned orders would not stand in the legal scrutiny, therefore on that ground this Court is inclined to dispose of this writ petition with the following orders:

> That the impugned orders are set aside and the matter is remitted back to the respondents especially the 3rd respondent for reconsideration. While reconsidering the same, an opportunity of being heard must be given to the petitioners, who on receipt of the same, can take whatever defence the petitioner wants to take by citing the provisions

of the Stamp Act as well as the clarification already been received by the petitioners and if the petitioners are able to satisfy the 3rd respondent that such kind of deficit stamp duty and registration charges need not be paid for the document in question, it is open to the 3rd respondent to decide such issue to be raised by the petitioners and thereafter take a decision on merits and in accordance with law.

15. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.01.2023

Index : Yes / No
Speaking Order : Yes / No
Sgl

To

1.The Inspector General of Registration,
100, Santhome High Road,
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Central Chennai, Bharathi Salai,
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R.SURESH KUMAR, J.

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