IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.30189 of 2013
and
M.P.Nos.1 & 2 of 2013

Leo Muthu Educational Trust,
Rep.by its Chairman,
M.Jothi Prakasam @ MJF Ln.Leo Muthu,
No.31, Madley Road, T.Nagar,
Chennai – 600 017. ...Petitioner

-Vs-

1.The Secretary to Government,
Commercial Taxes & Registration Department,
Govt.of Tamil Nadu,
Secretariat, Chennai-09

2.The Inspector General of Registration,
Officer of the IG (Registration),
Chennai-600 028.

3.The Accountant General
(Commercial and Receipt Audit),
Lekha Paksha Bhavan,
No.361, Anna Salai, Teynampet,
Chennai-18

4.The District Registrar (Admin.),
Office of the District Registrar,
Nagapattinam,
Nagapattinam District.

5.The Sub Registrar,
Office of the Sub Registrar,
Thiruthuraipoondi,
Thiruvarur District. ...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, calling for the records in respect of the impugned order issued by the 1st respondent vide his letter No.10756/J2/2013-1, dated 24.08.2013 and quash the same and direct the respondents especially the respondents 4 and 5 to release the documents of cancellation of lease deeds submitted by the petitioner at the office of the 5th respondent as Document Nos.P201200001 and P201200002 against Receipt No.2012154 and 2012155 respectively dated 24.01.2012.

For Petitioner : Mr.Perumbulavil Radhakrishnan for Mr.V.Balaji

For Respondents :
(for R1, R2, R4 & R5): Mr.Abishek Murthy, Govt.Advocate
(for R3) : No Appearance

O R D E R

The writ on hand has been instituted challenging the letter dated 24.08.2013, passed by the first respondent, directing the petitioner to pay the deficit stamp duty for the execution of the lease deed vide Document Nos.1944 of 2007 and 193 of 2008 in the Sub-Registrar Office Thiruthuraipoondi.

2.The petitioner is Leo Muthu Educational Trust, running a Matriculation School at Thiruthuraipoondi. The petitioner, in order to secure recognition from the competent educational authorities, registered two lease deeds vide documents numbers 1944 of 2007 and 193 of 2008 for 25 years and 29 years respectively, on the file of the Sub-Registrar Thiruthuraipoondi. The lease deeds were executed for establishing an Educational institution in the favour of M/s.Leo Muthu Educational Trust. Registration of lease deed is required for the purpose of fulfilling the norms and conditions fixed by the educational department for the purpose of granting recognition. After registering the lease deeds, the petitioner found that the lease must be for a period of 30 years or more and therefore, the lease deed is not in compliance with the conditions imposed by the Educational Department for granting recognition. Thus, the petitioner has again executed one lease deed on 28.4.2009 vide Document No.833 of 2009. In respect of the said document, the authorities of the Registration Department demanded stamp duty. Thereafter, the petitioner executed two cancellation deeds in respect of the lease deeds, originally executed in the year 2007 and 2008.

3.The audit party of the department raised certain objections to recover the requisite stamp duty and accordingly, a demand was issue to the writ petitioner and the petitioner submitted an appeal to the first respondent/Government and the Government rejected the said appeal and thereafter, the petitioner has filed the present writ petition.

4.The learned counsel for the petitioner mainly contended that the procedures as contemplated under Section 33(A) of the Indian Stamp Act, 1899, has not been followed by the authorities and the petitioner was not afforded with an opportunity to defend their case and thus, the order impugned is in violation of the principles of Natural justice.

5.The learned Government Advocate appearing on behalf of respondents raised an objection by stating that for each registration, the authorities competent are bound to recover stamp duty and in the present case the demand was issued based on the audit objections raised to recover the deficit stamp duty in respect of the lease deed and cancellation deeds registered by the petitioner. However, the learned Government Advocate could not establish that an opportunity was afforded to the writ petitioner before taking a final decision to recover the deficit stamp duty in consonance with Section 33(A) of the Indian Stamp Act, 1988.

6.Pertinently, Section 17 of the Indian Stamp Act stipulates instruments executed in India. Accordingly, all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. Thus, it cannot be disputed that the petitioner is liable to pay stamp duty for every registration whether pertains to same property or otherwise. All the instruments chargeable with duty and executed by any person shall be stamped. Therefore, the petitioner cannot draw any inference in respect of the nature of the document or otherwise for the purpose of payment of stamp duty under the provisions of the Indian Stamp Act. However, there is an audit objection in the case of the petitioner to recover the deficit stamp duty. Once there is an audit objection to recover the stamp duty as ordered, then the procedures as contemplated under Section 33 (A) of the Indian Stamp Act is to be followed.

7.Section 33(A) of the Indian Stamp Act unambiguously stipulates that an inquiry is to be conducted before recovering the deficit stamp duty from a person. The recovery certificate is to be issued by the Registration Department and shall be granted after conducting a due inquiry and by affording the opportunity to the persons aggrieved. The petitioners while conducting an inquiry shall raise their objections regarding the quantum of stamp duty demanded or the manner through which a decision is taken by the competent authorities and other grounds if any available.

8.In the present case, the respondents are unable to establish that an opportunity, as contemplated under Section 33(A) of the Act, was afforded to the petitioner to defend their case. Thus, the writ petition is to be considered on the ground of non-compliance of the rules of natural justice. Accordingly, the order impugned passed by the 1st respondent in letter No.10756/J2/2013-1, dated 24.08.2013 is quashed. The matter is remanded back to the second respondent who is the head of the Department of Registration. The second respondent Inspector General of

Registration shall issue notice to the petitioner by following the procedures and accordingly, conduct an inquiry as contemplated under Section 33(A) of the Indian Stamp Act, 1899, by affording opportunity to the writ petitioner and thereafter take a decision and pass final orders on merits and in accordance with law within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9.Accordingly, the writ petition stands **allowed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(sha) 11.04.2023
Index : Yes
Speaking Order
Neutral Citation : Yes

To

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S.M.SUBRAMANIAM. J.,

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