IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9461 of 2023
and
W.M.P.No.9537 of 2023

1.K.Shenbagam

2.S.Mohan Kumar ... Petitioners

Vs.

1.The District Registrar
No.10, kanchipuram Main Road,
Chengalpet – 603 002.

2.The Sub Registrar
Sriperumbudur
No.27, Chetty Street
Sriperumbudur – 602 105.

3.Deputy Accountant General/ AMG-II
O/o Principal Accountant General (Audit1)
Tamil Nadu
Lekha Pariksha Bhavan
No.361, Annasalai
Teynampet
Chennai – 600 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the impugned audit report made by the 3rd respondent in his proceedings in No. PAG(Audit1)/ AMG- II/AMS28/Unit-I/20-44/2020- 21/01 dated 12.04.2021, more particularly in Para. 3/IIA (a) concerning Lease deed in Document No.1856/ 2018, culminating into the impugned order of the 2nd respondent dated 23.01.2023 and quash the same.

For Petitioners	: Mr.P.Dinesh Kumar
For R1 & R2	: Mr.T.Arun Kumar Additional Government Pleader
For R3	: No Appearance

ORDER

The notice issued by the Sub Registrar, Sriperumbudur intimating the petitioners about the audit objection raised with reference to the documents registered by him vide Document No.1856 of 2018 is under challenge in the present writ petition.

2. The petitioners had registered a Sale Deed on 05.04.2018 vide Document No.1856 of 2018. The internal audit party of the Registration Department raised an objection with reference to the stamp duty paid for the registration of the sale deed. The Sub Registrar, Sriperumbudur informed the petitioners about the audit objection stating that the petitioners shall pay the

deficit stamp duty as per the audit objection within the period of 15 days, failing which legal action will be taken under the provisions of the Statutes and Rules in force.

3. The learned counsel for the petitioners mainly contended that the Sub Registrar has no authority to issue any such notice. The notice was issued beyond the period of 5 years and therefore, it is hit by the limitation. It is further contended that the Sub Registrar has directed the petitioners to pay the deficit stamp duty within a period of 15 days without providing any opportunity to the writ petitioners and therefore, the notice is to be set aside.

4. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 objected the said contention by stating that notice impugned was an intimation given to the petitioners enabling the petitioners to take a decision either to pay the deficit stamp duty or to face legal action. However, no legal action has been initiated so far and in the event of failure on the part of the petitioners, further course of action will be decided and taken by the competent authority under the provisions of the Act.

5. Regarding the audit objection, the respondents have stated the grounds in paragraph 4 of the counter affidavit, which reads as under:

> *"**4.** Without prejudice to the above submission it is respectfully submitted that the averments of the petitioners that lead to filing of this writ petition is that the petitioners, herein, with another as Lessee entered into a Lease agreement dated 05.04.2018 with Mrs.Devaki, the Lessor for the lease of the property in question for a period of 29 years and 11 months commencing the rent payable period from 01.08.2018 to 30.06.2048 and the possession was given to the petitioners/Lessee, herein, from 05.04.2018. The period from 05.04.2018 to 31.07.2018 being a rent free period. The observation of the audit by the 3rd respondent, herein, is that the Lease period shall be calculated from 05.04.2018 to 30.06.2048 as such the total term of lease is 30 years and 3 months. Hence, the 2nd respondent instead of charging stamp duty at the rate of 4% on the total rent payable under Article 35(b) of Schedule-I to the Indian Stamp Act, 1899 erroneously charged*

at the rate of 1% under Article 35(a) ibid which lead to loss of Rs.18,04,638/-. Further in condition No.2 of the said deed it was recited that the Lessee kept the security deposit in a separate account and the same will be refunded at the time of surrender of the lease. The quantum of security deposit was not stated. But, in a subsequent Rectification deed registered as Doct.No.7865 of 2019 the period of lease was rectified as from 01.08.2018 and not from 05.04.2018. But this Rectification Deed was treated as fresh lease deed and stamp duty was collected for 29 years and 11 months. But there is a recital that the security deposit paid by the Lessee was Rs.2,86,84,000/- for which the stamp duty at the rate of 4% ought to have collected by the 3rd respondent to the original lease amount to Rs.11,47,360/-. Hence, the 3rd respondent issued a Notice dated 23.01.2020 which is an informal notice not covered under the Indian Stamp Act, 1899 to pay the deficit stamp duty of Rs.18,04,638/- Aggrieved on the said notice the petitioner filed this Writ Petition constructing that the notice is an order."

6. Therefore, it is left open to the writ petitioners either to comply with the notice or face the legal action to be initiated by the competent authority. However, such notice would not provide any cause for filing of any writ petition. Petitioners cannot be construed as aggrieved persons as of now, since the Sub Registrar has intimated about the audit objection enabling the petitioner to comply with the objections or to contest the legal action, if any instituted pursuant to the audit objections.

7. This being the nature and scope of the impugned notice, the present writ petition at this stage is not only premature, but also the petitioners have not established any cause for institution of the present writ petition.

8. As far the respondents are concerned, in event of not complying with the demand made in the notice they are at liberty to institute legal action by following the procedures as contemplated and by affording opportunity to writ petitioner to defend his case. The petitioners are at liberty to raise all factual and legal grounds in support of the documents or otherwise.

9. With these observations, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

08.06.2023
(3/3)

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

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S.M.SUBRAMANIAM, J.

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(3/3)