IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No12762 of 2023
and WMP.No.12557 of 2023

1. P.Mani
2. M.Mahendran ... Petitioners

-Vs-

1. The District Registrar (Audit),
   Thiruvallur.

2. The Sub-Registrar,
   Poonamallee … Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order made by the 2nd respondent in notice dated 28.03.2023 and quash the same and consequently direct the respondents herein to remove the entry made in the encumbrance certificate pertaining to the impugned order.

For Petitioners : Mr.P.Dinesh Kumar

For Respondents : Mr.G.Krishnaraja
Additional Govt. Pleader

ORDER

The order impugned is the notice issued by the Sub-Registrar asking the petitioner to pay the deficit stamp duty, failing which, action will be taken and the entries will be made in the encumbrance records.

2. The petitioner presented a document for registration, which was registered on 25.04.2013. The said document was registered vide document No.1577/2013, which is a sale deed. The Sub-Registrar based on the internal audit objection issued the impugned notice stating that the issue has already been referred under Section 47-A of the Registration Act, 1908 and therefore, the petitioner has to pay the deficit stamp duty, failing which, further action will be initiated.

3. Learned counsel for the petitioner mainly contended that the Sub-Registrar has no charge to issue such a notice, more so, beyond the period of five years and the action initiated beyond the prescribed period of limitation is untenable.

4. However, the learned Additional Government Pleader has brought to the notice of this Court that the issue has already been referred

under Section 47Aof the Registration Act, 1908 to the Deputy Collector (Stamps) holding jurisdiction over the issue. That being the factum, the petitioner ought to have approached the Deputy Collector (Stamps) for adjudication of issues.

5. The learned counsel for the petitioner reiterated that no Form-I notice was issued to the petitioner and therefore, he was not aware of any such proceedings pending before the Deputy Collector (Stamps).

6. May that as it be, this Court is of the considered opinion that there is a reference about 47-A proceedings in the order impugned and in any event, the deficit of stamp duty or otherwise has to be adjudicated before the competent authority under the provisions of the Act. Once the stamp duty is determined then the parties will be at liberty to take an appropriate decision. This being the principles to be followed, the impugned order passed by the second respondent in proceedings dated 28.03.2023 shall kept in abeyance, till such time, the 47-A proceedings are concluded. In this regard, the competent authority shall issue form – I notice or otherwise to the petitioner and conduct an enquiry and thereafter, determine the stamp duty payable in respect of the document

registered by the petitioner and thereafter, the petitioner is at liberty to take a decision appropriately. The petitioner is at liberty to raise all grounds including the limitation while conducting an enquiry before the competent authority. The competent authority shall conclude the proceedings as expeditiously as possible.

Accordingly, this writ petition stands disposed of. No costs. Connected miscellaneous petition is closed.

07.06.2023

Index : Yes
Speaking order: Yes
Neutral Citation:Yes
mp
To

1. The District Registrar (Audit),
   Thiruvallur.

2. The Sub-Registrar,
   Poonamallee

S.M.SUBRAMANIAM, J.

mp

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