IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.38697 of 2016 and
W.M.P.Nos.33150 of 2016 & 9473 of 2017

M/s.Sumangali Homes Private Limited
Represented by its Director S.Prabhu
No.1/97, Perumal Kovil Street
Medavakkam
Chennai – 600 010. .. Petitioner

vs

1. The Sub-Registrar
   Office of the Sub-Registrar
   Selaiyur, Chennai – 600 073.

2. The District Registrar
   Office of the District Registrar (South Chennai)
   Saidapet, Chennai – 600 015.

3. The Collector of Stamps
   Registration Department
   Chennai – 600 028.

4. The Statutory Revenue Controlling Authority
   Office of the Registrar General of the
   Registration Department
   Chennai – 600 028.

5. Johnson .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records pertaining to the proceedings in Ref.Doc.No.12377/2013 dated 30.03.2016 on the file of the first respondent so as to quash the same.

For the Petitioner	:	Mr.N.Jothi Senior Counsel for Mr.S.Vinod
For the Respondents	:	Mr.T.Arunkumar Additional Government Pleader for respondents 1 to 4 No Appearance for respondent 5

ORDER

The order dated 30.03.2016 issued by the Sub-Registrar Selaiyur / first respondent is sought to be quashed in the present writ petition.

2. The writ petitioner is a Company involved in construction business. With reference to the documents registered by the petitioner Company, the first respondent issued an impugned order stating that there is differential stamp duty, which is to be paid to the petitioner to the tune of

Rs.19,72,470/-. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the petitioner mainly contended that the impugned order was issued without providing any opportunity to the writ petitioner to defend his case, which is in violation of principles of natural justice. When the provision of the Indian Stamp Act, 1899 contemplates certain procedures to be followed, even in case of recovery of deficit Court fee, such procedure contemplated is violated and thus, the order impugned is to be set aside.

4. The learned counsel for the petitioner further contended that in the event of providing the opportunity, the petitioner would have placed all the records and defended their case. However, in the present case, no such opportunity was provided and there is no reference to that effect. The impugned order has been passed merely based on the audit report of the year 2014-15 by the Principle Accountant General of Tamil Nadu.

5. The learned Additional Government Pleader appearing for the respondents 1 to 4 raised an objection by stating that the order impugned was passed to recover the differential stamp duty and even if the petitioner is aggrieved from and out of the order passed by the Sub-Registrar, an appeal is to be preferred before the Chief Controlling Revenue Authority under Section 33 A of the Indian Stamp Act. Therefore, the writ petition is to be rejected.

6. The order impugned reveals that no enquiry was conducted by affording opportunity to the writ petitioner to defend their case. Thus, it is in violation of the principles of natural justice. Whether the case of the petitioner is to be referred under Section 47A(3) / 80(a) / 33(a) is to be determined by adjudication of the facts by the competent authority. The grievance of the petitioner is that the statutory requirements, as contemplated, were not followed while passing the order impugned and therefore, this Court is of the considered opinion that the adjudication must

be done with reference to the facts and circumstances and by affording opportunity to the writ petitioner.

7. Since the order impugned was issued based on the audit report submitted by the Principal Accountant General of Tamil Nadu and the audit report refers that there is differential stamp duty, which is to be recovered by the authority competent, it is preferable that the adjudication is to be done by the Chief Controlling Revenue Authority under Section 33A of the Indian Stamp Act to give quietus to the issue. Accordingly, the fourth respondent Chief Controlling Revenue Authority is directed to call for the entire files relating to the impugned order dated 30.03.2016 passed by the first respondent and conduct an enquiry by affording an opportunity to the writ petitioner, including personal hearing. After conducting the enquiry, the final decision is directed to be taken by the fourth respondent within a period of three months from the date of receipt of a copy of this order.

8. The petitioner is directed to cooperate for the early disposal of the

enquiry by the fourth respondent by availing the opportunity, which is to be provided by the fourth respondent to defend their case in the manner known to law.

9. Till such time, i.e., the fourth respondent passing the final order, the impugned order passed by the first respondent is kept in abeyance.

10. With these directions, the writ petition stands disposed of. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

08.03.2023

Index : Yes/No
Neutral Order:Yes/No
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To:

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S.M.SUBRAMANIAM,J.

(drm)

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