WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.33052 of 2022
and WMP.No.32464 of 2022

M.Karthe ... Petitioner

-Vs-

1. The Inspector General of Registration &
   Chief Controlling Revenue Authority,
   Registration Department,
   Santhome, Chennai – 600 004.

2. The District Registrar,
   Salem West Registration District,
   Office of District Collectorate,
   Salem – 636 001, Salem District.

3. The Special Deputy Collector,
   Stamps, Office of District Collectorate,
   Salem – 636 001, Salem District.

4. The Joint I Sub-Registrar,
   Salem West Sub-Registration Office,
   District Collectorate Campus,
   Salem – 636 001, Salem District. … 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 passed by the 1st respondent dated

WEB COPY

14.03.2016 in Ka.No.36385/Oo1/09 and its consequential refusal slip dated 14.10.2022 issued by the fourth respondent and quash the same, consequently direct the fourth respondent to register the Exchange Deed of the petitioner dated 11.10.2022 forthwith.

For Petitioner	:	Mr.M.R.Jothimanian
For Respondents	:	Mr.Yogesh Kannadasan Special Government Pleader

ORDER

The prayer sought for herein is for a writ of Certiorarified Mandamus to quash the impugned order passed by the 1st respondent dated 14.03.2016 in Ka.No.36385/Oo1/09 and its consequential refusal slip dated 14.10.2022 issued by the fourth respondent and consequently direct the fourth respondent to register the Exchange Deed of the petitioner dated 11.10.2022 forthwith.

2. The document No.1397/2007 registered on the file of the Joint I Sub-Registrar, Salem West i.e., fourth respondent is the subject matter.

3. The document in question was registered at the said fourth respondent office on 08.04.2007 and the petitioner was the purchaser, at

WEB COPY

that time itself, the document was not released as according to the Registering Authority there was deficiency of stamp duty, therefore, it has been referred to the Collector Stamps under Section 47-A (3) of the Indian Stamp Act, 1899.

4. Thereafter, after inspecting the property, the Collector has fixed the value of the property, based on which, the stamp duty as well as the Registration charges was fixed and the difference of stamp duty and registration charges also had been paid by the petitioner, thereafter only the registration was completed and the document was released.

5. After several years, now when a part of the property, for the purpose of exchange, was presented for registration before the fourth respondent, the same has been refused by citing an order passed by the first respondent dated 14.03.2016, which according to the learned counsel appearing for the petitioner never been served on the petitioner and the petitioner has no knowledge about the same.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. In the said order dated 14.03.2016, the first respondent has fixed a fresh rate for value of the property on square feet basis and accordingly, the stamp duty as well as the registration charges have been calculated and therefore, the amount, which is deficiently paid by the petitioner said to be recovered, which was quantified according to the first respondent was at Rs.12,92,572/-(Rupees twelve lakhs ninety two thousand five hundred and seventy two only).

7. Citing this order, since the document now presented by the petitioner before the fourth respondent was refused for registration, since the petitioner has not paid the said amount as per the order of the first respondent dated 14.03.2016, aggrieved over the same, the petitioner has chosen to challenge the order dated 14.03.2016 passed by the first respondent that is how this writ petition has come.

8. Heard Mr.M.R.Jothimanian, learned counsel appearing for the petitioner and Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. Learned Special Government Pleader appearing for the respondents would contend that under Section 47-A(6) of the Stamp Act, the Chief Controlling Revenue Authority i.e., first respondent is empowered to take *suo motu* action, call for and examine an order passed under Sub-Section (2) or sub-section (3) and if such order is prejudicial to the interests of the revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit. By invoking such *suo motu* power under Sub-Section (6) of Section 47-A, the first respondent initiated *suo motu* proceedings against the petitioner and accordingly, an opportunity was given to the petitioner and that opportunity was not utilized by the petitioner and thereafter, the property was inspected. At the time of inspection, it was found that some lay out work in the land in question was undertaken and considering the locality of the property in question and taking into account the growing nature of the area or developed nature of the area, where the property is located, the first respondent has come to a conclusion that the property shall be valued on the basis of the square feet, which the first respondent has quantified at

https://www.mhc.tn.gov.in/judis

WEB COPY

Rs.82/- per sq.ft., with the result, the worth of the property would come about Rs.1,72,61,303/- and the earlier value fixed by the District Collector, Stamps was at Rs.28,99,500/-. Therefore, the difference was Rs.1,43,61,803/-, based on which, if the deficit stamp duty and registration charges are calculated, it would come to Rs.12,92,572/-, therefore, that amount with 1% interest should be paid by the petitioner i.e., the order, which is impugned herein. Hence, the learned counsel appearing for the respondents wants to sustain the impugned order.

10. However, Mr.M.R.Jothimanian, learned counsel appearing for the petitioner would contend that insofar as the power exercised by the first respondent under his *suo motu* power by invoking sub-section (6) of Section 47-A is concerned, the petitioner cannot have any grievance, as such a power is always vested with the first respondent. However, in the case in hand, according to him, at that time of registration, the issue was referred under Section 47-A(3) to the Collector i.e., Sub-Collector concerned, who in fact inspected the property in question and thereafter, he fixed the value of the property to the extent of Rs.28,99,500/-, this was happened sometime in 2007.

https://www.mhc.tn.gov.in/judis

WEB COPY

11. This fixation was made based on the market value of the property in question that was prevailing at the time of registration i.e., in the year 2007.

12. However, the Inspector General of Registration, who is the first respondent while exercising his *suo motu* power has passed the order recently in 2016 by taking into account the market value and other aspects of the property in question or the locality in question, where the property is situated as prevailed in the year 2015 or 2016 that is almost a decade after, therefore, that cannot be the sole basis, under which, such a fixation can be made. In fact, according to the learned counsel for petitioner, this is against the explanation provided under Section 47-A of the Stamp Act, therefore, learned counsel for the petitioner would contend that entire proceedings taken by the first respondent and calculated the same by twelve lakhs and odd from the petitioner as deficit stamp duty as well as the registration charges is absolutely without any substance or material and also against the spirit of the explanation given to Section 47-A of the Stamp Act, he contended.

https://www.mhc.tn.gov.in/judis

WEB COPY

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

14. Even though it was contended by the learned Special Government Pleader appearing for the respondents that the first respondent has exercised his *suo motu* power under Section 47-A(6) of the Stamp Act and to make such an order as impugned herein is empowered to act under the said sub-section, the issue now to be considered and decided before this Court is that at the time of considering the *suo motu* proceedings, whether the first respondent has taken into account that the documents which were recently registered prior to the registration date of the document in question i.e., 08.04.2007 or documents which are subsequent to 08.04.2007.

15. The reason being that, in paragraph 5 and 6 of the impugned order, the first respondent has stated that, when an inspection was conducted some lay out work was taken place that was also recorded by him, if that being so, the lay out work might have taken place some time

WEB COPY

in 2015 or 2016, whether that could be the criteria to be followed by the first respondent to fix the market value of the property is the question. Consequently, in paragraph 6 of the order, the first respondent has stated that so many documents, under which various lands at survey numbers in the same locality registered in the fourth respondent office having been considered and taken into account, whether those documents were registered prior to 08.04.2007 or after 08.04.2007 is also a question and that has not been stated by the first respondent in the impugned order.

16. If at all any document in the same locality, which has been registered on or before 08.04.2007, certainly those documents can be taken as a guidance for the purpose of fixing the market value of the property in question. This in fact exactly given in the explanation as rightly pointed out by the learned counsel for petitioner and the said explanation to Section 47-A of the Act is extracted hereunder for easy reference:

> "***Explanation._*** *For the purpose of this Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Chief*

https://www.mhc.tn.gov.in/judis

WEB COPY

Controlling Revenue Authority or the High Court, as the case may be such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, [exchange, gift, release of benami right or settlement."

17. The explanation has made it very clear that market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Chief Controlling Revenue Authority or the High Court, as the case may be such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance.

18. The words "on the date of execution of the instrument of conveyance", gives such importance to the said estimate, which means that, on the date of execution, if the property in question whenever been sold to open market whatever been the price earned by the property shall be the criteria to be followed by either the Collector under Sub-Section (3) of the Stamp Act or the Chief Controlling Authority i.e., Inspector

WEB COPY

General of Registration under Sub-Section (6) of Section 47-A of the Stamp Act for fixing the market value.

19. If that is the guidance, which is mandatorily to be followed by both the Authorities viz., Deputy Inspector General of Registration under Sub-Section(3) of Section 47-A or Inspector General of Registration i.e., Chief Controlling Revenue Authority under Sub-Section (6) of Section 47-A it cannot be given a go-by and in this context, it is highly doubtful whether the first respondent has taken up any of the document on the date of registration i.e., 08.04.2007 or prior to that to form an opinion to fix the market value of the property in question. When that being the position, this Court has no hesitation to hold that the reason given by the first respondent to arrive at such a market value of the property in question followed by the demand to an extent of Rs.12,92,572/- as a deficit stamp duty as well as the registration charges from the petitioner is untenable and cannot be sustained in the eye of law.

20. In that view of the matter, this Court is inclined to dispose of

WEB COPY

this writ petition with the following order:

- That the impugned order is set aside and the matter is remitted back to the first respondent for reconsideration.
- While reconsidering the same, notice shall be given to the petitioner, who on receipt of the same, shall appear before the first respondent to put forth his case and it is open to the first respondent to take into account any documents, which have already been registered at the fourth respondent office in respect of various lands, which are adjacent or nearby in the same locality particularly on 08.04.2007 or prior to 08.04.2007. If those documents give any guidance to arrive at the market value of the property in question belongs to the petitioner, the same shall be taken as a guidance and accordingly, a re-fixation can be made by the first respondent.
- Suppose the documents, which has to be relied upon by the first respondent do not suggest any higher rate than the rate already fixed by the third respondent under Section 47-A(3) of the Stamp Act, which has already been accepted and paid by the petitioner, no further fixation need to be fixed by the third respondent, which

https://www.mhc.tn.gov.in/judis

WEB COPY

shall also be borne in mind by the first respondent while deciding the issue as per this remand order.

- During the admission stage, for the benefit of granting the interim order, this Court directed the petitioner to pay the demand amount of Rs.12,92,572/-, the petitioner claimed to have paid according to the learned counsel for petitioner, therefore, the fourth respondent is hereby directed to return back the said amount to the petitioner forthwith.
- It is made clear that as per the remand, the aforesaid needful shall be undertaken by the first respondent, for which, the petitioner shall co-operate, on receipt of summon, within a period of eight(8) weeks from the date of receipt of a copy of this order.

With these directions, this writ petition is ordered accordingly. No costs. Connected miscellaneous petition is closed.

14.02.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation:Yes/No
mp

R. SURESH KUMAR, J.

https://www.mhc.tn.gov.in/judis

WEB COPY

mp

To

1. The Inspector General of Registration &
   Chief Controlling Revenue Authority,
   Registration Department,
   Santhome, Chennai – 600 004.

2. The District Registrar,
   Salem West Registration District,
   Office of District Collectorate,
   Salem – 636 001, Salem District.

3. The Special Deputy Collector,
   Stamps, Office of District Collectorate,
   Salem – 636 001, Salem District.

4. The Joint I Sub-Registrar,
   Salem West Sub-Registration Office,
   District Collectorate Campus,
   Salem – 636 001, Salem District.

Writ Petition No.33052 of 2022

14.02.2023