IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.4109 of 2019
and C.M.P.No.25682 of 2019

R.Duraisamy ... Appellant

-Vs-

1.The District Registrar
Collector Office Campus
Kottai Main Road, Salem-636001
Salem District.

2.The Sub Registrar
Bazaar Street, Omalur Taluk
Salem District.

3.The Special Tahsildar (Stamps)
Sangagiri, Mettur Zonal, RDO Office
Sankari, Salem District.

4.The Special Deputy Collector (Stamps)
Office of Collectorate, Salem
Salem District.

5.The District Collector
Salem, Salem District. ... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.4600 of 2018 dated 19.09.2019.

For Appellant	:	Mr.M.Elango
For Respondents	:	Mr.R.Kumaravel Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

The appellant was the writ petitioner, who registered a document at the second respondent's office ie., Sub Registrar Office, Omalur Taluk, Salem District on 08.02.2002 as Document No.391 of 2002. The said document was withheld alleging under valuation of the market value of the property.

2. On 28.10.2002, a notice was issued to the petitioner stating total stamp duty payable for the said transaction as Rs.3,26,156/- whereas the petitioner had valued it only at Rs.60,000/-. Hence, for the differential value of stamp duty and registration charges to the tune of Rs.3,26,156/- was claimed. Concession was also given by a rebate of 40% and he was asked to pay the remaining 60%. The said communication was issued pursuant to the Government Order in G.O.No.117 dated 26.09.2002. The said communication given on 28.10.2002 is based on a Samadhaan scheme.

3. However, the petitioner / appellant did not respond to the said Samadhaan Scheme. Therefore, it seems that the registering authority had referred the matter for fixing market value of the property for fixing the correct stamp duty to be paid by the petitioner to the Collector (Stamps) under Section 47A of the Indian Stamps Act, 1899.

4. Though this claim was made by the respondents and it has been referred under Section 47A of the said Act, no notice seems to have been given to the petitioner/appellant and no communication whatsoever has been received, according to the appellant.

5. Ultimately, the market value seems to have been determined by the Tahsildar concerned, based on which the differential stamp duty has been calculated, which was demanded through the Tahsildar under the Revenue Recovery Act, wherein notices had been given by the Tahsildar and ultimately the last notice dated 14.03.2017 was issued, wherein the Tahsildar has stated that a sum of Rs.2,74,692/- is due to be recovered from the petitioner/appellant under the Revenue Recovery Act and if within the period mentioned therein the said amount is not paid and document which has been held up by the registering authority is taken back, action would be taken against him. Only this notice had been responded to by way of a writ petition.

6. The said writ petition, having been considered, was rejected by the learned Judge through the impugned order dated 19.09.2019. Assailing the same, the learned counsel for the appellant would submit that, if at all there is any deficit stamp duty for which the first step to be taken is to fix the correct market value of the property in question and for the said purpose, reference should have been made under Section 47A of the Act. If at all any such reference has been made to the Collector, he has to give notice to the party by giving reasonable opportunity of being heard and thereafter, only after conducting an enquiry in the manner as may be prescribed under the Act, the market value shall be determined by the Collector, and based on which only the difference, if any, in the amount of stamp duty shall be asked to be paid.

7. If any such order is passed, which is an appealable order, the aggrieved party can prefer an appeal and provision for a second appeal is also made under the Act. When such being the procedure as has been contemplated under the Stamp Act, none of the procedures since has been followed by the respondents / authorities, the entire proceedings initiated by them, which culminated in the impugned notice issued by the Tahsildar under the Revenue Recovery Act gets vitiated, he contended. In support of his contention he has relied upon a decision of a Division Bench of this Court made in W.A.(MD) No.1099 of 2016 dated 15.02.2017.

8. Per contra, learned Additional Government Pleader appearing for the respondents would submit that, immediately in the year 2002 ie., the year of registration itself, a notice under Samaadhaan Scheme had been issued to the appellant on 28.10.2002, where the amount to be paid has been mentioned. Therefore, if at all he has got any grievance over the said notice, he could have challenged the same and even thereafter, once the matter has been referred under Section 47A of the Act, based on which the market value of the property is fixed, and thereupon the deficit stamp duty also was fixed and demanded. All these proceedings could have been challenged in the manner known to law by the appellant, but he had not chosen to take any such legal recourse and ultimately he has come to challenge only the latest proceedings ie., the notice issued by the Tahsildar under the Revenue Recovery Act dated 14.03.2017. Therefore, the learned Additional Government Pleader would contend that the view taken by the learned Judge as reflected in the impugned order is based on the factual matrix. Hence, the order impugned is to be sustained, he contended.

9. We have heard the submissions made by the learned counsel for both sides and have perused the materials placed on record.

10. As has been rightly pointed out by the learned counsel appearing for the appellant, if at all there is deficit stamp duty, that has to be determined in the manner known to law, for which the procedure to be adopted by the Registrar is provided under Section 47A of the Stamp Act, under which the Registrar should have referred the matter to the Collector to fix the correct market value of the property. Once such a reference has come to the Collector, he has to issue a notice to the party and a reasonable opportunity of being heard should be given and after holding enquiry only in the manner as contemplated under the Act, market value shall be fixed.

11. Here in the case in hand, no such document has been produced on behalf of the respondents that proceedings under Section 47A was initiated and that has been concluded by following the procedure as contemplated under the provisions of the Act as well as the rules made thereunder.

12. Even this aspect has been referred by the learned Judge in the impugned order in Paragraph 9 to the following effect that, the Special Tahsildar (Stamps) Sangagiri, has to determine the market value. It may be correct that the petitioner was not given adequate opportunity while ascertaining the market value during the said enquiry. Even such a finding has been given by the learned Judge that no opportunity had been given admittedly by the respondents to the petitioner while concluding the Section 47A proceedings. Even on that ground, the Section 47A proceedings whether could be initiated or not also could have been decided by the learned Judge.

13. However, the learned Judge has proceeded to say that in 2002 itself the Samaadhaan notice has been sent, which has not been utilized by the appellant and subsequently also he has not acted upon for several years, and belatedly he has approached this Court only in the year 2017. All these actions would go to show that the proceedings initiated against him under the provisions of the Act including the proceedings under Section 47A of the Act was correctly followed and accordingly the learned Judge has come to the conclusion that he has to respond to the notice impugned before the writ Court and to pay the additional stamp duty to get back the document which has been withheld by the registering authority.

14. However, we feel that insofar as the procedure contemplated under Section 47A of the Act is concerned, the procedures contemplated therein have to be strictly followed. But, admittedly that has not been followed, and no such document has been filed by the respondents to show that they have followed the said procedures. Therefore, for any proceedings to conclude in determining the market value of the property concerned, prior notice has to be given. Once the very fixation of the market value itself goes, the question of determination of additional stamp duty does not arise. Hence, it cannot be recovered from the petitioner.

15. At the same time, since the document was presented for registration at the Sub Registrar Office in the year 2002, thereafter if at all the document was held back by the registering authority, immediately or within a reasonable time the appellant / petitioner should have approached the authorities viz., the registering authority and find out whether any reference has been made under Section 47A of the Act and if so the authority who is empowered to decide the issue under Section

47A could have been approached by the petitioner / appellant. But, it seems that none of the efforts has been taken by the appellant. Therefore, on the part of the petitioner / appellant he has not at all acted upon and he has simply ignored the matter since 2002 and only in the year 2017, after getting the last notice dated 14.03.2017 he has rushed to this court by filing the present writ petition.

16. Therefore taking notice of all these aspects, we are inclined to pass the following orders:

(a) That the impugned order of the writ Court dated 19.09.2019 since is liable to be interfered with, it is set aside.

(b) As a sequel, the notice dated 14.03.2017 impugned before the writ Court also is set aside.

(c) The matter is remitted back to the authority under Section 47A of the Act, before whom if already the matter has been referred, the said issue can be re-heard by giving an opportunity of being heard to the petitioner / appellant and complete the same within a period of three months, based on which if there is any deficit stamp duty payable by the petitioner, that can also be determined and be communicated to the petitioner / appellant.

(d) On completion of the same, depending upon the outcome of the proceedings under Section 47A of the Act, as has been stated herein above, which we have remanded, any further course of action with or without any additional stamp duty, whether the document or instrument in question belongs to the petitioner / appellant shall be returned or not can be decided by the registering authority.

(e) The needful to be done thereafter would be undertaken by the registering authority depending upon the decision to be made by the Collector or Tahsildar under Section 47A of the Act within a period of two months thereafter.

(f) It is to be noted that from 2002 to 2017, admittedly the petitioner has not acted upon and after several years he has approached this Court by filing the writ petition challenging the notice dated 14.03.2017. This kind of attitude on the part of the petitioner / appellant has only led to this kind of complications and by virtue of the same, considerable time of this Court has been consumed.

(g) Hence, we are of the view that, while allowing this writ appeal filed by the petitioner / appellant, in the peculiar circumstances of the case, a cost of Rs.10,000/- (Rupees Ten Thousand only) can be imposed on the appellant which he shall pay to the High Court Legal Services Authority within a period of two weeks from the date of receipt of a copy of this order.

17. With the above directions, this writ appeal is allowed. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (G.A.M.,J.)
18.12.2023

Index : Yes/No
Internet : Yes/No
KST

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