BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2023

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THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

W.P.(MD)No.16220 of 2020
and
W.M.P.(MD)Nos.13562 and 13564 of 2020

K.Vijaya Gomathi ... Petitioner

vs.

1.The Inspector General of Registration,
No.100, Santhome High Road, Chennai-600 028.

2.The District Registrar,
Combined Registration Building,
St. Mark Stree, Palayamkottai, Tirunelveli -627 002.

3.The Joint Sub Registrar No.II,
Tirunelveli District, Tirunelveli. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in his proceedings in Nir. 2503 and 2504/2015 dated 04.02.2016, 21.05.2020 and 07.07.2020 and quash the same as non application of mind and consequently direct the respondents to remove the encumbrance made in the register pertaining to the property in Survey No.605/1 in Tirunelveli Village, to an extent of 66 cents within the time stipulated by this Court.

For Petitioner : Ms.Ananthi C.Rajesh
For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader

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ORDER

This Writ Petition has been filed challenging the impugned proceedings of the third respondent, dated 04.02.2016, 21.05.2020 and 07.07.2020 and to remove the encumbrance shown in the records, as if there is deficit stamp duty payable by the petitioner.

2.Heard Ms.Ananthi C.Rajesh, learned Counsel appearing on behalf of the petitioner and Mr.K.S.Selvaganesan, learned Additional Government Pleader appearing on behalf of the respondents.

3.The case of the petitioner is that she is the absolute owner of the subject property. This property was given for cultivation to one Murugan and Paramasivam. The petitioner decided to cultivate the property on his own and they decided to vacate the land by executing a release of tenancy right. This document, dated 23.07.2015, was registered as Doc.Nos.2503 and 2504 of 2015. Necessary stamp duty and registration fees had also been paid before the third respondent.

4.The grievance of the petitioner is that the third respondent through notice dated 04.02.2016 by quoting an audit objection, found that there was a deficit stamp duty and registration charges of 28,500/- with respect to both the documents. The petitioner was directed to pay a total sum of Rs.57,000/- towards deficit stamp duty and registration fees. On receipt of the said notice, the petitioner issued a legal notice, dated 17.02.2016 by refuting the claim made by the third respondent. Thereafter, the third respondent issued yet another notice dated 21.05.2020 reiterating the earlier notice. Once again, a notice dated 07.07.2020 was issued for the same reasons. Aggrieved by the same, the present Writ Petition has been filed before this Court.

5.The third respondent has filed a counter affidavit and has taken a stand that a release deed falls under Article 55A of the Indian Stamp Act, 1889 and there was an amendment pursuant to which, it underwent change whereby, one rupee for every Rs.100/- or part thereof of the market value of the property must be paid as stamp duty in case of release deed. In the instant case, a sum of Rs.24,750/- must be paid towards stamp duty and Rs.3,750/- must be paid towards registration charges for both the documents. Since there was deficit stamp duty paid by the petitioner, the same was sought to be recovered from the petitioner. Hence, the third respondent has justified the issuance of notices to the petitioner seeking for payment of deficit stamp duty.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The case of the petitioner is that the documents that were registered as Doc.Nos.2503 and 2504 of 2015 will fall under Article 61 of the Indian Stamp Act, 1889, which require only Rs.40/- to be paid as stamp duty. On the other hand, the third respondent claims that the stamp duty has to be paid under Article 55A of the Indian Stamp Act, 1889, at the rate of 1%. While taking this decision, the third respondent has not even chosen to issue notice to the petitioner and call for his explanation before passing the order. That apart, the impugned demand has been made by the third respondent only based on the audit objection made subsequently.

8.Even assuming that there was deficit stamp duty to be collected from the petitioner, the only option that is available to the third respondent is to resort to Section 33-A of the Indian Stamp Act, 1889. Once this procedure is followed, there will be an opportunity for the petitioner to putforth her case before the concerned authority and the concerned authority can decide upon the same.

9.The Sub Registrar becomes a *functus officio* after the document is registered. In order to overcome this difficulty, Section 33-A was introduced in the year 1987, which enables the recovery of deficit stamp duty. Therefore, at the best, steps should have been taken for recovery of the deficit stamp duty by invoking Section 33-A of the Indian Stamp Act, 1899. The Sub Registrar cannot directly issue a notice and call upon the petitioner to pay the deficit stamp duty as was done in this case. The third respondent is acreature of statute and the third respondent can derive the right only under the statute. If the statute does not provide any power, the third respondent cannot raise any demand against the petitioner. If the audit objection has been made, either the third respondent has to give an explanation to the auditor for the justification given on the part of the petitioner, who paid the stamp duty under Article 61 of the Act or if the third respondent feels that the petitioner has paid deficit stamp duty, the matter ought to have been dealt with under Section 33-A of the Act.

10.In the considered view of this Court, the impugned proceedings initiated by the third respondent for recovery of deficit stamp duty and the registration charges lacks jurisdiction and on this ground, the entire proceedings are set aside and this Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

14.12.2023

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
cmr

To

1.The Inspector General of Registration,
No.100, Santhome High Road, Chennai-28.

2.The District Registrar,
Combined Registration Building,
St. Mark Stree, Palayamkottai, Tirunelveli -2.

3.The Joint Sub Registrar No.II,
Tirunelveli District, Tirunelveli.

N.ANAND VENKATESH, J.

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