BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

W.P.(MD) No.20618 of 2021
and
W.M.P.(MD) No.17251 of 2021

A.Muthukumar .. Petitioner

Vs.

1.The Deputy Director (Stamps),
Singaravelar Maligai,
District Collector Office, Chennai.

2.The Inspector General Registration (Documents),
Santhome High Road, Mylapore,
Chennai.

3.The Sub Registrar,
Sub-Registrar Office,
Ambasamudhiram,
Tirunelveli District. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 3rd respondent bearing Doc.No. 1037/2014 dated 14.09.2021 and quash the same and consequentially direct the 3rd respondent to remove the deficit stamp duty entries made in the Encumbrance Certificate in respect of the petitioner's property which is registered vide Doc.No.1037/2014 with the office of the 3rd respondent.

For Petitioner	:	Ms.Porkodi Karnan
For Respondents	:	Mr.A.K.Manikkam Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the 3rd respondent dated 14.09.2021 and for a consequential direction to the 3rd respondent to remove the entry made in the Encumbrance Certificate with reference to the deficit stamp duty to be paid by the petitioner for the document that was registered as Document No.1037/2014.

2. Heard Ms.Porkodi Karnan, learned counsel for the petitioner and Mr.A.K.Manikkam, learned Special Government Pleader appearing on behalf of the respondents.

3. The case of the petitioner is that he has purchased the subject property through a registered sale deed dated 23.07.2014, registered as Document No.1037/2014. At the time of registration of the document, sufficient stamp duty and registration charges were paid. Thereafter, the petitioner was in possession and enjoyment of the property.

4. The grievance of the petitioner is that the 3rd respondent, through the impugned proceedings dated 14.09.2021, all of a sudden, demanded for the payment of deficit stamp duty of Rs.1,53,990/- and deficit registration charges of Rs.22,005/-. The same has been put to challenge in the present writ petition.

5. The 3rd respondent has filed counter affidavit and has justified the demand made on the ground that the petitioner had paid lesser stamp duty and registration charges and the same was objected during the audit and pursuant to the query that was made by the Audit Team, the demand was made against the petitioner. The 3rd respondent has taken a further stand that the deficit stamp duty and the registration charges runs along

with the property and hence, there will be a charge over the property till this amount is paid and that is the reason why the entry has been made in the Encumbrance Certificate. Accordingly, the respondents have sought for the dismissal of this writ petition.

6. The issue, that is, involved in the present writ petition is squarely covered by the earlier order passed by this Court in ***M/s.Kaavya Constructions and Developers Pvt. Ltd. vs. The Deputy Director (Stamps) and others [W.P.Nos.21618 and 24238 of 2019, dated 27.08.2020].*** The relevant portions in the order are extracted hereunder:

> *"10. A careful reading of the above provision shows that when the market value of the property, which is the subject matter of the conveyance, has not been truly set forth, it is open to the Sub Registrar to refer the document to the Collector for determination of the market value of the said property. In the present case, the third respondent at the time of registration of the document did not raise any such objections and had proceeded to register the sale deeds and the documents were also released. This had happened in the year 2013.*

11. Only during the audit, the objection was raised by the Accountant General of Tamilnadu in the year 2014-2015. The objection seems to be that the property was treated as an agricultural land, whereas it was used for the purpose of developing a layout and therefore appropriate site value should have been determined by taking into account the market value and the stamp duty and registration fee should have been paid thereon. Therefore, the next question is, on such audit objection, what will be the recourse for the respondent to be followed for the purpose of recovering the stamp duty. Section 47A (3) gives sumotto power to the Collector to deal with such a situation and the said provision itself fixes the period of limitation of five years from the date of registration of the instrument. Even though the audit objection was made in 2014-2015, admittedly no proceedings have been initiated under section47A (3) of the Act till date. Even in the counter affidavit it is stated that a notice will be sent to the petitioner.

12. In this case, the period of limitation comes to end on 13.05.2018, even considering the last sale deed that was executed in favour of the petitioner.

13. The learned counsel for the petitioner relied upon the following judgments to substantiate his submissions :

1. Harihar Alloys M. Ltd., Vs. The Inspector General of Registration and Others passed in W.P.(MD).No.9130 of 2018

2. K.Nachimuthu Vs. The District Registrar (Audit) and another, reported in 2015 SCC OnLine Mad 8022

3. E.Jayabarathi Vs. The Chief Controlling Revenue Authority and Others, reported in 2014 SCC Online Mad 1726

4. Thajunissa and another Vs. The Special Deputy Collector (Stamps), reported in 2073 (5) CTC 577

5. Karpagavinayaga Associates Vs. The Inspector General of Registration and Others, reported in 2014 (3) l4WN Civil 508

6. State of Uttar Pradesh and Others Vs. Ambrish Tandon and Another, reported in 2012 (5) SCC 566

7. The Special Deputy Colledor (Stamp), Cuddalore Vs.Chemlcals and Plastics Ltd., reported in 2004 (1) CLC 187

The learned counsel for the petitioner submitted that in all the above judgments, this Court had taken *note of the sumotto power under section 47A (3) of the Act and it has been held that the said power cannot be exercised beyond the period of limitation. The above judgments will squarely apply to the facts of the present case also.*

14. If the respondents have not exercised their power and authority to recover the deficit stamp duty from the petitioner, by initiating appropriate proceedings, the same cannot be attempted to be recovered indirectly by making an entry in the encumbrance certificate and thereby preventing any transactions from taking place without payment of the deficit stamp duty and registration fee. This Court cannot allow the respondents to indirectly achieve their purpose which they cannot directly achieve under the provisions of the Stamp Act. Therefore, the entries made in the encumbrance certificate will have to be reversed by the respondents."

7. In the instant case, the registration was done in the year 2014, whereas the demand for the deficit stamp duty and registration charges was made in the year 2021. The Sub Registrar does not have the jurisdiction to make this demand. That apart, even assuming that a *suo*

motu power can be exercised by the Special Deputy Collector (Stamps), it can be done within a period of five years and that period is also over long back. Hence, just because there was an audit objection, the 3rd respondent cannot straightaway issue the demand even without putting the petitioner on notice. At the best, the Sub Registrar could have taken recourse to Section 47-A(3), after receiving the audit objection and even this option is not available in the present case, since the limitation period has expired.

8. In the light of the above discussion, this Writ Petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2023

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

ABR

To

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N. ANAND VENKATESH, J.

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