BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.02.2023

Pronounced on : 03.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.21402 of 2015
and
M.P.(MD).No.2 of 2015

1.S.Chellamuthu

2.K.Karuppusamy

3.K.Mani

4.S.Selvaraj

5.P.Sengappan (Died)

6.P.Ashok Kumar

7.K.Sivasamy

8.Manimekalai

9.S.Dhanya

10.Chellammal ... Petitioners
(P8 to P10 are substituted vide Court order dated 20.02.2023 in W.M.P.(MD).No.3052 of 2023 in W.P.(MD).No.21402 of 2015 by KBJ)

Vs.

The Sub-Registrar,
West Karur Sub-Registrar Office,
Karur. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the impugned order passed by the respondent in Na.Ka.No.748/2015 dated 09.10.2015 and quash the same.

For Petitioner :Mr.K.Suresh for
Mr.E.K.Kumaresan

For Respondent :Mr.M.Ramesh
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the respondent calling upon the petitioners to pay the deficit stamp duty.

2. Mr.K.Suresh, learned counsel appearing for the petitioners, would submit that the petitioners had purchased certain agricultural lands to

an extent of 7.82 acres in Survey No.259, Thalapatty Village, Karur Taluk, from one N.Karuppusamy, by means of a registered sale deed dated 24.03.1975. According to the said sale deed, the value of the land was fixed at Rs.8,72,000/- (Eight Lakhs and Seventy Two Thousand only) and to that value, which was reflected in the said sale deed, necessary stamp duty and registration charges had been paid. The sale deed was executed in document No.11412/2010 on 24.11.2010. The said lands were sold by the petitioners by three registered sale deeds to third parties on 04.03.2011. While that being so, the respondent by impugned notice dated 09.10.2015 had demanded a sum of Rs.54,29,280/- (Fifty Four Lakhs Twenty Nine Thousand and Two Hundred and Eighty Only) towards the difference in stamp duty and registration charges. The reasons assigned by the respondent is that the petitioners' vendor had given a statement that the Income Tax Department, on receipt of sale consideration and had claimed that he had receive a sale consideration of Rs.6,12,00,000/- (Six Crores and Twelve Lakhs Only). He would submit that no notice had been issued by the Income Tax Department calling upon the petitioner to explain the same. He would further submit that such an order has been passed by the respondent, without jurisdiction. Under the Stamp Act, if there is a deficit of Stamp Duty, the duty is cast only upon the Special Collector by invoking Section 47(A) to determine the market value. He would also further submit that the said proceedings had been initiated much after the sale of property by the petitioners. He would further contend that on the same set of facts, the respondent had also initiated a private complaint before the Judicial Magistrate No.I, Karur in C.C.No.305 of 2016. The learned Judicial Magistrate No.I, after full-fledged trial, had held that there was no error, on the part of the petitioners and had acquitted all the petitioners. Hence, he would submit that the impugned proceeding is wholly *non-est* in the eye of law and without any basis and sought to allow this writ petition.

3.Countering his arguments, Mr.M.Ramesh, learned Government Advocate appearing on behalf of the respondent would submit that the Income Tax Department had sent a communication stating that the vendor of the petitioners had disclosed in his Income Tax Returns that through the sale deed executed in favour of the petitioners, he had received a sum of Rs. 6,12,00,000/- (Six Crores and Twelve Thousand Rupees Only) under sale consideration. Hence, he would submit that there is no infirmity or illegality in the show cause notice issued. He would also submit that no notice is required to be sent to the petitioners, calling upon them for payment of the Deficit Stamp Duty and therefore, he prays for rejection of the prayer.

4.I have considered the rival submissions made on either side.

5.The respondent had issued the impugned communication on 09.10.2015, calling upon the petitioners to pay the Deficit Stamp Duty and on the same set of facts, the respondent had also initiated a private complaint before the Judicial Magistrate No.I, Karur, contending that the petitioners have suppressed the actual sale consideration, while they have paid a sum of Rs.6,12,00,000/-(Six Crores and Twelve Lakhs Only) and therefore there arose a deficit of stamp duty to the tune of Rs.54,29,280/-(Fifty Four Lakhs Twenty Nine Thousand and Two Hundred and Eighty Rupees Only). The learned Judicial Magistrate No.I, Karur, after a full-fledged trial, had held that the respondent herein had failed to prove that the petitioners have given a sale consideration of Rs.6,12,00,000/-(Six Crores and Twelve Lakhs Only) and had rejected the complaint vide judgment dated 22.10.2022. When that be so, I do not see any reason, as to why the respondent could be permitted to proceed with the show cause notice for payment of Deficit Stamp Duty, based on the very same set of facts. Further, as rightly pointed out by the learned counsel for the petitioner, when it is found that there is a deficit in stamp duty, then the matter ought to have been referred to the Special Deputy Collector of Stamps for ascertaining the market value.

6.In view of the same, I hold that the respondent has no jurisdiction to issue the aforesaid impugned notice. In fine, the writ petition is allowed and the impugned notice date 19.10.2015 in Na.Ka.No.748/2015 is set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.03.2023

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

sbn

To

The Sub-Registrar,
West Karur Sub-Registrar Office,
Karur.

K.KUMARESH BABU, J.

sbn

W.P.(MD)No.21402 of 2015
and
M.P.(MD).No.2 of 2015

03.03.2023