BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22913 of 2015
and
M.P.(MD)No.1 of 2015

P.Athimoolapandian ... Petitioner

Vs.

1.The Inspector General of Registration,
Santhome High Road,
Chennai-600 003.

2.The Special Deputy Collector (Stamps),
District Collectorate office,
Virudhunagar District.

3.The Sub-Registrar,
Sub-Registrar Office, Seithur,
Virudhunagar District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 27.10.2015 in Tha.Pa.No.S1/403/2015, issued by the second respondent and quash the same.

For Petitioner : Mr.G.Mohan Kumar

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioner purchased the petition mentioned property vide sale deed dated 04.10.2011 for a sum of Rs.90,000/- The document was presented for registration before the third respondent. The third respondent registered the document as Document No.3844/2011 and also released the same after the petitioner purchased the deficit stamp duty of Rs.2,000/-. Following the audit objection, the registering authority issued an undated notice calling upon the petitioner to pay the deficit stamp duty of Rs.2,000/- within ten days. Challenging the same, the petitioner filed W.P.(MD)No.18646 of 2014. The petitioner's counsel argued that once the document is registered and released, the registering authority becomes functus officio and in order to enable the registering authority to recover the deficit stamp duty, Section 33(A) was introduced in the Stamp Act. However, limitation period of three years was prescribed for taking action under Section 33(A) of the Act.

In this case, notice came to be issued after a lapse of three years. Accepting the argument of the petitioner, the said Writ Petition was allowed and the impugned notice was set aside. Since Section 47-A (3) of the Act provides for *suo motu* action to be taken by the Special Deputy Collector (Stamps) within five years, opportunity was given. Availing the said opportunity, the impugned order dated 27.10.2015 was issued calling upon the petitioner to pay a further sum of Rs. 15,580/-. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His primary argument is that the impugned order is without jurisdiction. In the alternative, he contended that the authorities have not followed the procedure set out under Section 47-A (3) of the Act. He called upon this Court to set aside the impugned order.

4. The respondents filed counter affidavit and the learned Additional Government Pleader took me through its contents.

5. The learned Additional Government Pleader pointed out that against the impugned order, the petitioner has the right of appeal before the IG of Registration. For non-exhaustion of alternative remedy of appeal, the present writ petition is liable to be dismissed. He also would contend that even though in the earlier round, the petitioner succeeded, this Court had granted liberty to the second respondent to take action under Section 47-A(3) of the Act. In this case, the impugned order was passed within the said period. He also would point out that the authority has merely gone by the entries in the relevant records and therefore, no interference is called for. He pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record. There is no dispute that action has been taken only under Section 47-A(3) of the Act. The said provision reads as follows:-

"***47-A. Under-Valuation of the instrument***

(3) The Collector may, suo motu, or on a reference from any

Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the State Government on that behalf, within four years from the date of registration of that instrument on which duty is chargeable on the market value of the property not already referred to him under Sub-Section (1), call and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is the subject of such instrument and the duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon:

Provided that with the prior permission of the State Government an action under this sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

Explanation – The payment of the deficit stamp duty by any person under any order of the registering officer under sub-section(1) shall not prevent the Collector from initiating proceedings on any instrument under sub-section(3)."

7. If the provision is read carefully, one can notice that it contemplates satisfaction on the part of the Collector at two stages. The Collector must call and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the

property and the duty payable thereon. Only after such examination, if he has reason to believe that the market value of such property has not been truly set forth to an instrument, he must adopt the procedure set out in Sub-Section 2 of Section 47-A of the Act. Sub-Section 2 of 47-A of the Act is as follows:-

> "(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard, and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of such instrument, and the proper duty payable thereon."

In this case there is nothing on record to show that the stage-1 satisfaction was arrived at. I went through the impugned order carefully. It opens by referring to the undated notice of the registering authority. Section 47-A of the Act can be pressed into service only if there is any reference from the registering authority. The impugned order starts with reference to the notice of the registering authority. As pointed out by the learned counsel for the petitioner, this undated notice issued by the registering authority has already been set aside by this Court. Therefore, I have to necessarily come to the conclusion that the impugned order is without jurisdiction. I come to the said conclusion for two reasons:-

A. The provision itself could have been invoked not on reference to the registering authority. The impugned order starts with reference to the notice of the registering authority which was already set aside by this Court.

B. Stage-I satisfaction was not arrived at. The impugned order suffers from yet another fundamental defect. Even if such stage-I satisfaction was arrived at, still the authority is bound to follow the procedure set out in Sub-Section 2 of 47-A of the Act. In this case, the impugned order refers to Form-I notice as well as Form-II notice.

8. I called upon the learned Additional Government Pleader to show that Form-I notice was ever served on the petitioner. No proof is forthcoming. The learned counsel appearing for the petitioner relies on the Division Bench decision rendered in W.A.Nos.2607 of 2003 etc., batch dated 07.01.2009. The said decision squarely applies to the case on hand. The consequential entry made in the encumbrance register shall be deleted. The impugned order is set

aside. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

31.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To
1.The Inspector General of Registration,
Santhome High Road,
Chennai-600 003.

2.The Special Deputy Collector (Stamps),
District Collectorate office,
Virudhunagar District.

3.The Sub-Registrar,
Sub-Registrar Office, Seithur,
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G.R.SWAMINATHAN, J.

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