BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22914 of 2015
and
M.P.(MD)No.1 of 2015
and
W.M.P.(MD)No.2787 of 2016

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.S1/404/2015, 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 land vide sale deed dated 24.10.2011. The document was registered and released after the petitioner paid the deficit stamp duty of Rs.224/-. After release of the document, the impugned order dated 27.10.2015 was issued by the second respondent. 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 and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He raised three objections:-

A. The writ petition has to be dismissed for non-exhaustion of appeal remedy.

B. The impugned order is within limitation period.

C. All the procedures set out in the Stamp Duty Act have been duly adhered to.

He pressed for dismissal of the writ petition.

5. 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

rmi

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,
Virudhunagar District.

G.R.SWAMINATHAN, J.

rmi

W.P(MD)No.22913 of 2015

31.07.2023