BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.01.2023

DELIVERED ON : 22.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.14542 of 2016
and W.M.P.(MD)No.10806 of 2016

V.Krishnamoorthy ... Petitioner

vs.

1.The Sub Registrar,
Sattur,
Virudhunagar District.

2.The District Registrar (Administration),
Registration Department,
Virudhunagar,
Virudhunagar District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.Aa1/1552/2015 dated 23.05.2016 and consequential order passed by the 2nd respondent in Na.Ka.No.1552/Aa1/2015 dated 23.06.2016 and quash the same and further direct the 2nd respondent to initiate fresh proceedings offering opportunity to the petitioner to present the case.

For Petitioner : Mr.N.Tamilmani

For Respondents: Mr.M.Ramesh for R1 & R2
Government Advocate

ORDER

The instant writ petition has been filed challenging the order passed by the second respondent dated 23.05.2016 as well as the consequential order dated 23.06.2016 and consequently direct the second respondent to initiate fresh proceedings by offering opportunity to the petitioner to present the case.

2.Heard Mr.N.Tamilmani, learned counsel appearing for the petitioner and Mr.M.Ramesh, learned Government Advocate appearing for the respondents.

3.Mr.N.Tamilmani, learned counsel for the petitioner would submit that the petitioner had purchased a property in S.No.83/1C measuring an extent of 5 cents under a registered Sale Deed bearing Document No.11903 of 2011 dated 02.11.2011. After his purchase, the petitioner had put up a residential house and has been in possession and enjoyment of the same and is also paying necessary taxes to the concerned Panchayat. While that being so, the second respondent on 01.09.2015 issued a show-cause notice based upon a complaint from one K.Kondusamy alleging that the petitioner had suppressed the availability of a building in the said land purchased by the petitioner. A reply through the petitioner's Advocate was sent on 20.11.2015. Thereafter, the second respondent had issued a further notice on 23.11.2015 calling upon the petitioner to attend the enquiry on 19.01.2016. Since the petitioner was not able to attend the enquiry, he had made a request for adjournment and the enquiry had taken place on subsequent dates where the petitioner's Advocate had appeared before the second respondent. Thereafter, no orders were passed in the said proceedings. However, the second respondent by his proceedings dated 23.05.2016, had called upon the petitioner to pay the deficit stamp duty, failing which action would be initiated against the petitioner under the provisions of Section 82(a) and (d) of the Registration Act, 1908, this was again followed up. A further proceedings dated 23.06.2016, reiterating the said demand and calling upon the petitioner to produce the receipt on payment of such stamp duty before the first respondent and produce the receipt evidencing such payment failing which, action would be initiated. Hence, the petitioner had approached this Court.

4.Learned counsel for the petitioner would contend that the petitioner had originally registered a Sale Deed as early as in the year 2011 and thereafter, he had put up a construction of a residential house. Now what the second respondent seeks to impose as deficit stamp duty is on the construction put up by the petitioner which cannot be permitted. He would further submit that the registration of the Sale Deed took place in the year 2011 and after nearly four years, the second respondent is trying to initiate the action based upon an undated complaint given by the third party. The petitioner had submitted various documents pertaining to his purchase bills for putting up construction and a certificate from Panchayat President evidencing the construction, these were all not considered. He would further submit that after the initiation of the enquiry by the show-cause notice dated 01.09.2015, no order has been made by the second respondent rejecting the claim of the petitioner. But, however, proceeded to issue the demand notice. In the first demand notice dated 23.06.2016, the second respondent had categorically stated that the Advocate of the petitioner was directed to make the payment, this according to the learned counsel for the petitioner, is wholly arbitrary and contrary to the statute. He would further contend that when the second respondent had not passed any orders rejecting the claim of the petitioner by adducing reasons the impugned demand notices, according to him, will have to fall. Hence, he would request this Court to interfere with the impugned demand notices issued by the second respondent.

5.Countering his arguments, Mr.M.Ramesh, learned Government Advocate appearing on behalf of the respondents would contend that the case of the petitioner would have to be dismissed on the sole ground of suppression of material facts. He would further submit that the purchase of the property will have to in all fairness give the detailed description of the property which he had purchased. The Schedule in the Sale Deed under which the petitioner purchased a property describes a property as a vacant property. But, however, in his reply before the second respondent and also in the affidavit, he admits that there was a mud house measuring 80 sq.ft., this itself would show that the petitioner is trying to evade necessary stamp duty as contemplated under the Indian Stamp Act, for which he is liable to be prosecuted under the Registration Act, 1908, as he had caused loss to the State. He would also submit that the petitioner had not produced any proof that he had constructed a house only in the year 2013 after his purchase. The house standing in the disputed land is measuring an extent of 129.17 sq.mtr. He would submit that a field inspection was conducted and a notice of such inspection had also been given to the petitioner only based upon such inspection an estimate of the building standing therein and the petitioner was called upon to pay the deficit stamp duty. Hence, he prayed this Court to dismiss the Writ Petition.

6.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.

7.The case of the petitioner is that he had purchased a vacant land in the year 2011. Even in the affidavit, he admits that there was a mud house construction measuring an extent of 80 sq.ft. which according to the petitioner, is worthless of any value. After his purchase, he had removed the said mud house and put up a new construction for his use. The second respondent had initiated an enquiry by issuing a notice dated 01.09.2015. As rightly contented by the learned counsel for the petitioner, the second respondent seems to have not passed any order pursuant to the enquiry. But, however under the impugned demand notices had called upon the petitioner to remit the stamp duty, this in my view cannot be permitted. In such view of the matter, I am inclined to interfere with the orders impugned in this Writ Petition.

8.In fine, the Writ Petition is allowed. The impugned demands are set aside and the second respondent shall conduct a proper enquiry based upon the show-cause notice dated 01.09.2015 after affording an opportunity to the petitioner and thereafter pass orders on such enquiry and if he finds that the petitioner is liable to pay any stamp duty, then it is always open to him to initiate further action. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

22.02.2023

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No
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To

1.The Sub Registrar,
Sattur,
Virudhunagar District.

2.The District Registrar (Administration),
Registration Department,
Virudhunagar,
Virudhunagar District.

K.KUMARESH BABU, J.

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order in
W.P.(MD)No.14542 of 2016

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