IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11..07..2024
Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.4024 of 2023

S.Vasanthi
..... Petitioner

-Versus-

1.The Principal Secretary,
Registration and Commercial Tax Dept.,
State of Tamil Nadu,
Secretariat, Chennai – 600 009.

2.Inspector General of Registration,
100, Santhome High Road,
R.A. Puram, Chennai – 600 028.

3.District Registrar,
Chennai Central,
Registration Department Integrated Complex,
No.268, Bharathi Salai,
Royapettah, Chennai – 600 014.

4.The Sub Registrar,
Kodambakkam,
No.37/5, Alagiri Nagar 5th Street,
Near 100 Ft. J.N. Road,
Vadapalani, Chennai – 600 026.

5.The District Revenue Officer (Stamps),
5th Floor, Chennai District Collector Office,
Singaravelar Maligai, Chennai – 600 001. ..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent in his proceedings in Letter No.13146/C2/2021 dated 10.10.2022 and quash the same and consequently direct the second respondent to refund the excess amount collected therein.

For Petitioner(s)	:	*Mr.D.Saikumaran*
For Respondent (s)	:	*Mr.B.Vijay, Additional Government Pleader RR1 to 5*

ORDER

This writ petition has been filed challenging the order dated 10.10.2022 made by the 2^{nd} respondent in his proceedings in Letter No.13146/C2/2021 refusing to refund the excess stamp duty and registration charges collected from the petitioner.

2.0. The brief facts leading to the filing of the present writ petition are as under:-

2.1. The petitioner is General Power of Attorney of one Ms.S.Kavitha W/o K.Sampath Kumar.

2.2. The principal was the absolute owner of the property measuring to an extent 2400 square feet of land situated at Door No.32/30-A, New Door No.4, Old Door No.7, Sankarapuram Main Road, Sankarapuram, Choolaimedu, Chennai 600 094, comprised in Paimash No.285, T.S.No.151/2, Block No.14 of Puliyur Village, formerly, Egmore-Nungambakkam Taluk, known as Egmore Taluk, Chennai District, having purchased it on 16.09.2004 from one R.Usha and R.Radhakrishnan through a sale deed registered as Doc. No.3572/2004 on the file of the Sub Registrar, Kodambakkam.

2.3. At the time of purchase, some of the boundaries were wrongly typed due to oversight, and hence, it was necessitated to rectify the typographical errors in respect of boundaries, year of documents, name of the street, etc. Accordingly, a rectification deed was presented for registration before the 4th respondent, Sub Registrar, Kodambakkam, without changing the extent of land or the location of the property. However, the 4th respondent insisted Kavitha to pay a sum of Rs.16,68,094/- towards stamp duty and registration fee as if the rectification deed attracted Sections 47-A & 47-B of the Indian Stamp Act, 1899. Despite objections raised by Kavitha, the 4th respondent continued to insist on Kavitha paying the exorbitant stamp duty and registration charges. Having no other option, Kavitha paid the entire amount of Rs.16,68,094/- under protest.

2.4. According to the petitioner, the following are the details described in the principal deed registered as Doc.No.3572/2004 and rectification deed registered as Doc.No.1196/2021:-

Sale Deed Doc.No.3572 of 20094	**Rectification Deed Doc.No.1196 of 2021**
Extent of plot – 2400 sqft, Paimash NO.285, T.S..No.151/2, Block-14, Door No.32/30,Location of Property:- 4th Cross Street, Athreyapuram Main Road, Sankarapuram, Choolaimedu, Chennai-94.	Extent of Plot – 2400 sqft, Paimash No.285, T.S.No.151/2, Block-14, Door No.32/30, Location of Property:- Sankarapuram Main Road, Sankarapuram, Choolaimedu, Chennai-94.
Boundaries:- North – Srinivasan's property, South-Arunachalam Nagar Lane, East-Athreyapuram Main Road, West-Lakshmi's property	Boundaries:- North – Arunachalam Nagar 1st Street, South – Srinivasan's Property, bearing Door No.4/32-30, Sankarapuram Mian Road, East – Lakshmi's property bearing Door No.4/16, Arunachalam Nagar 1st Street, west Sankarapuram Main Road.

2.5. Those errors were only due to typographical mistake. On the western side of the property, the road bisects Sankarapuram Main Road on the north side and Arthreyapuram Main Road on the south side. Hence, the street name was changed in the previous document before registering the sale deed in question. But, the location of the property as well as the extent of the property remains unchanged.

2.6. In the patta for the property issued in favour of R.Radhakrishnan and Usha by Tahsildar, Nungambakkam Taluk in CA No.973/98-99 dated 23.02.1999, street name was mentioned as Athreyapuram 4th cross street and whereas, in the patta issued for the very same property in the name of S.Kavitha in CA.No.899/2006 dated 25.07.2006, street name has been mentioned as Sankarapuram. Except the street name, all other details regarding Survey Number, Door Number were correctly mentioned in the pattas. There was no error in respect of description of the subject property.

2.7. There was no alteration with respect to basic nature of the document made in the rectification deed in question, except alteration in respect of valuation of the property which was wrongly mentioned due to typographical error which is the subject matter in the sale deed. Therefore, Kavitha made a representation on 05.07.2022 to the respondents 2 to 5 requesting to refund the excess stamp duty and registration charges collected from her. The 2nd respondent however turned down the request of Kavitha by passing order dated 10.10.2022 in letter No.13146/C2/2021 placing reliance on the circular No.40756/N1/2004 dated 03.09.2014. It is this order which is now under challenge in the present writ petition.

3.1. A counter affidavit has been filed by the 4th respondent opposing the writ petition and *inter alia* contending that when the rectification deed was compared with the original sale deed Doc.No.3572 of 2004, the office noticed the following discrepancies in respect of boundaries of the subject property:

As in Original Sale deed	As in Rectification Deed
North by: Srinivasan's property	North by: Arunachalam Nagar 1st street
South by: Arunachalam Nagar lane	South by: Srinivasan's property bearing Door No.4/32-30
East by: Athreyapuram Main Road	East by : Lakshmi's property bearing Door No.4/18, Arunachalam Nagar 1st Street
West by: Lakshmi's property	West by: Sanakarapuram Main Road

3.2. All four boundaries of the subject property in the sale deed were corrected. As per circular dated 03.09.2014, only in case where there is no change in the boundaries and extent of property already conveyed and rectification deed sought to be registered to rectify the mistake in respect of

Door Number, Plot Number, E.B. Service Connection Number or reference pertaining to prior document number, year or volume, registration district, sub registration district, does not warrant collection of additional stamp duty as prescribed under Section 47-B. As per the circular, if there is no change in extent of property conveyed or boundaries and if the rectification is made by interchanging the linear measurement also, the rectification deed shall be treated as mere rectification deed and the same does not warrant collection of additional stamp duty as prescribed under Section 47-B.

3.3. The 4th respondent further contended that if an instrument purports to rectify any error in the description of property as set out in any previous instrument falling within the purview of Section 47-A, the stamp duty shall be paid as prescribed therein. Since the rectification deed was to correct description of all four boundaries, rectification deed is chargeable under Section 47-B.

4. This court has heard both sides.

5. The learned counsel appearing for the petitioner would submit that there was no change in respect of extent of the property already conveyed but, there were mistakes only in respect of description of four boundaries. Only in those circumstances, rectification deed came to be executed and registered. When there is no change in respect of extent of the property ready conveyed,

Section 47-B of the Indian Stamp Act, 1889 would not at all apply.

6. The learned counsel for the petitioner in support of his submission relied upon the judgement of this court in the case of **S.Albert Royen and another v. The Inspector General of Registration, Tamil Nadu** [W.P.NO10367 of 2020 dated 03.09.2020].

7. Per contra, the learned Additional Government Pleader, would contend that there was an error in respect of description of the property already conveyed. The error in respect of street name was also corrected. Therefore, the market value guideline applicable to the property is totally different for the street.

8. When this court posed a question to the learned Additional Government Pleader as to what was the nature of stamp duty and registration charges payable at the time of registration of the principal deed in 2004 for Athreyapuram Main Road, it was stated that guideline value was Rs.1051/- per square feet. Whereas guideline value for Sankarapuram Main Road was Rs.889/- per square feet.

9. Now, according to the learned Additional Government Pleader, as per market value guidelines 2021, the guideline value for both Sankarapuram Main Road and Atheryapuram Main Road is Rs.3886/-.

10. According to the learned counsel appearing for the petitioner, subsequent to the rectification deed, the parties entered into several transactions. The above documents would go to show that there was no change in respect of Survey Number or total extent of the property already conveyed. There was an alteration made only with respect to description of four boundaries. Therefore, when there is no change in respect of description regarding the extent of land or Survey Number of the property already conveyed, there was no fresh transfer of property or transfer of additional extent, it cannot be said that rectification deed would fall within the purview of section 47-A.

11. It is relevant to note that at the time of registering the principal deed, the market value of the land conveyed as mentioned in the deed was Rs.25,22,400/- and the guideline value per square feet for Athreyapuram Main Road at the relevant point of time, i.e., on 16.09.2004, was Rs.1051/- per square feet. According to the learned Additional Government Pleader, the property which was the subject matter of the document was not undervalued. The market value for the property situated at Sankararapuram Main Road was Rs.889/- per square feet at the relevant point of time. Therefore, even if it had been taken that street name was correctly mentioned in the principal deed, the market value of the property conveyed under the document could have been only Rs.889/-

per square feet at the relevant point of time. Whereas the property conveyed under the principal deed was valued based on streetwise market value guidelines at Rs.1051/- per square feet at the relevant point of time. Therefore, it cannot be said that the principal deed, even if correct boundaries were given in the principal deed, would have fallen under Section 47A as higher value for Athreyapuram Main Road was adopted at the relevant point of time. Therefore, section 47-B cannot be pressed into service to insist for higher market value raised later.

12. A learned single Judge of this court in S.Albert Royen and another v. The Inspector General of Registration, Tamil Nadu [W.P.No10367 of 2020 dated 03.09.2020] has held as follows:-

> "8. A close look at the proposed changes sought to be made by the petitioners in the Rectification Deed shows that there is no change in the Survey Number or in the total extent of the property. There is only a change in the dimension of the property. Insofar as the boundary description is concerned, there is only a change on the Southern side and all the other sides remain to be the same. When it comes to the measurements, the sum total of the entire change in measurements does not in any way increase the extent of the total property. Therefore, the respondents were not right in coming to a conclusion that the change in the measurements with regard to the

> boundaries changes the extent of the property and thereby enhances the title over the property. There is a genuine mistake while describing the boundaries and the extent thereto and therefore the parties have rightly executed a Rectification Deed and presented it for registration. 9. This Court has categorically held that when the Rectification Deed does not seek to make any fresh transfer or add to the total extent and merely seek for rectification of a mistake, the same should not be subjected to any fresh assessment of stamp duty. Useful reference can be made to the judgement of this Court in "P.Uthamaraj -vs- The District Registrar Chennai South & Others" (2010) 1 M.L.J.246."

13. The above said judgement would squarely apply to the facts of the present case. Therefore, the impugned order passed by the 2nd respondent rejecting to refund the excess stamp duty and registration charges paid on the rectification deed is liable to be quashed.

In the result, the writ petition is allowed. The order of the 2nd respondent impugned in the writ petition is quashed. The competent authority among the respondents 1 to 4 are directed to refund the excess stamp duty and registration charges collected from the petitioner at the time of registration of rectification deed vide Doc.No.1196 of 2021 on the file of the 4th respondent. The above said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

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Index : yes / no
Neutral Citation : yes / no
kmk

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N.SATHISH KUMAR.J.,

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