IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.07.2024**

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

AND

THE HONOURABLE MR.**JUSTICE R.SAKTHIVEL**

Writ Appeal No.1914 of 2022
and CMP Nos.14062 and 14063 of 2022

1. The Deputy Inspector General of Registration,
   Vellore Zone, Vellore,
   Vellore District.

2. The District Registrar - Administration
   Arakkonam, Vellore District.

3. The Sub-Registrar,
   Kalavai, Arcot Taluk,
   Vellore District. ... Appellants

Vs.

The South India Cine and Television
Setting Workers Union Rep. by its
President K.G.Jeevanandam @ K.G.Jeeva
having office at No.9/33, V.R.Puram,
I Street, Saligramam, Chennai 600 093. .. Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 31.01.2020 made in W.P. No.33410 of 2013.

For Appellants : Mr.L.S.M. Hasan Faizal,
Additional Government Pleader

Respondent : Mr. S.Shanmuga Sundaram

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The Appeal is by the Deputy Inspector General of Registration, who is aggrieved by the order dated 31.01.2020 made in WP Nos.33409 and 33410 of 2013.

2. The above two Writ Petitions came to be filed for the following reliefs:

Prayer in WP 33409 of 2013 was for a Mandamus direct the second respondent to register and release the Gift Deeds dated 06.06.2013 executed by the petitioner Union/first respondent herein in favour of its members.

Prayer in WP 33410 of 2013 was for a certiorarified mandamus to call for the records relating to order dated 31.07.2013 made in the pending document No.15 of 2013 passed by the appellant herein demanding *enhanced stamp duty on the Rectification Deed dated 06.06.2013.*

3. The facts that led to the filing of the Appeal are as follows:

3.1. The petitioner Union had purchased an extent of 2.36 acres of agricultural land in Nallur Village of Arcot Taluk, Vellore District, from one Mr.T.Palani and others under a Sale Deed dated 07.02.2011. The said Sale Deed was registered as Document No.483 of 2011. Though the lands were purchased as agricultural lands, the object of the Union was to lay out the lands into Housing Sites and distribute the same to the members by execution of Gift Deeds. After the execution of the Sale Deed it was found that there was a typographical error in the survey number. It was also found that in view of the mistake in the survey number, a mistake had also crept in the extent of property. Therefore, a Deed of rectification was executed by the vendors on 06.06.2013 and the same was presented for registration. Since there was a difference in the extent, the Sub Registrar directed the Union to pay differential stamp duty.

3.2. The Union agreed to pay the same. However, the Sub Registrar calculated the differential stamp duty by assuming the value of the land as Rs.970/- per square metre, since there was a reclassification of the land in question as house sites and a consequential increase in the guideline value. It was this demand that was subject matter of challenge in the second Writ Petition namely WP No.33410 of 2019. Since the rectification Deed was kept pending, subsequent Gift Deeds executed by the Union in favour of its Members were also kept pending, the second Writ Petition in WP No.33410 of 2019 also sought for release of those documents.

3.3. Before the Writ Court, it was the primary contention of the first respondent Union that the chargeability on the rectification Deed must be with reference to the nature of the land on the date of the execution of the original Sale Deed and not with reference to the nature of the land on the date of rectification. It was also contended that the chargeability of the main instrument is not affected as the vendors did not receive any further consideration. If at all there could be a demand for differential stamp duty, it could only be for the value at which the Sale Deed was executed for the excess land alone and not at a fresh guideline value that would treating the land as house sites.

4. This contention was resisted by the respondent contending that there is only a notice issued by the Registrar and the petitioner can always send a reply and invoke the remedy available in the Indian Stamp Act, therefore, the Writ Petition is premature. It was also contended that the impugned demand was issued because the character of the lands have changed in the interregnum and they have been classified as house sites and hence demand of duty on the basis that the lands are outsides is permissible.

5. The Writ Court after referring to the circular made by the Inspector General of Registration on 03.09.2014 with reference to charging of stamp duty on Rectification Deeds concluded that the present instrument cannot escape duty since it involves variation in the survey number as well as extent of land. It however held that the basis for the duty payable would be the same rate as the rate that was fixed in the Sale Deed dated 07.02.2011 and not the new guideline value on the basis that the lands are house sites.

6. On the said conclusion, the Writ Court partly allowed the Writ Petition in WP 33410 of 2013 and concluding that the stamp duty can be demanded on the guideline value that prevailed on 07.02.2011 viz. the date of execution of the first Sale Deed. As a consequence WP No.33409 of 2013 was allowed directing the Registrar to register both the documents and release the documents. Hence this Appeal.

7. We have heard Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the appellants and Mr.S.Shanmuga Sundaram, learned counsel appearing for the respondent.

8. Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the appellants would vehemently contend that the duty under Section 47(B) of the Stamp Act, would be "*the duty chargeable on the instrument of rectification and not on the Sale Deed*". Therefore, according to him, the value that prevails as on the execution of the Rectification Deed alone should be taken into account.

9. Contending contra, Mr.S.Shanmuga Sundaram, learned counsel appearing for the respondent would submit that the circular issued by the Inspector General of Registration is very clear and it only authorizes collection of stamp duty where there is a change in the extent or in the survey number, otherwise a rectification Deed is not subject to levy of additional stamp duty.

10. We are in complete agreement with the conclusion of the learned Single Judge to the effect that the document in question though termed as a rectification Deed since there is an increase in the area of the land sold and therefore, to the extent of the increase, duty has to be paid treating it as a conveyance. The learned Additional Government Pleader is not aggrieved by this finding of the Writ Court. However, it is only on the quantum of stamp duty that is leviable. He is aggrieved only by the direction of the Writ Court to collect duty at the old rate. A holistic reading of Section 47(B) of the Stamp Act, show that it is introduced only to avoid evading of stamp duty by unscrupulous elements by adopting the process of rectification. Therefore, we should adopt the holistic approach bearing in mind the object of the provision.

11. In the case on hand, there was a mistake in the survey number which resulted in a consequential mistake in the extent also. No doubt the extent as mentioned in the Sale Deed is lesser than the extent which would be conveyed after rectification. Therefore, for the difference a duty has to be paid. What would be the duty is the essential question that has to be determined.

12. The Writ Court had considered the effect of the instrument and held that duty will be payable on the consideration that was paid for the other lands on the date of the same viz. 07.02.2011 merely because the classification of the land has been changed subsequently and there is a sharp increase in the guideline value, the same cannot affect the chargeability of the instrument. We are therefore in entire agreement with the conclusion of the Writ Court and we see no merit in the Appeal.

13. The Appeal therefore fails and it is accordingly **dismissed**. Since now that we have confirmed the common order of the Writ Court, we direct the appellants to release the documents after collecting the deficit stamp duty, as per the directions of the learned Single Judge in the Writ Petition within a period of six weeks from the date of the receipt of a copy of this order, if the differential duty as per the order of the learned Single Judge has been paid the same will be adjusted. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
24.07.2024

jv
Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

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