IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.No.29876 of 2024
W.M.P.No.32581 of 2024

1.G.Thanikachalam

2.Gajalakshmi ...Petitioners

Vs

1.The Additional Inspector General of Registration
Office of the Inspector General of Registration
Santhome High Road, Chennai – 600 028.

2.The District Registrar Administration,
North Madras,
Kuralagam Buildings, Chennai – 600 108.

3.The Sub Registrar,
Kaveripakkam SRO, Vellore District.

4.The Sub Registrar,
Ambattur SRO,
Chennai – 600 053. ...Respondents

PRAYER :-Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent made in Letter No.33646/C2/2024 dated 28.08.2024 quash the same and direct the respondents to refund the amount that was deposited in transaction ID

Nos.REG201909086387957, REG20190 9086387970, REG 201909086387975 and REG 201909246757720 totalling to Rs.7,79, 030 within the time stipulated by this Court.

For Petitioners : Mr.M.Devaraj

For Respondents : Mr.P.Harish (For R1 to R4)
Government Advocate

ORDER

The present Writ Petition has been filed for the following reliefs:-

To call for the records relating to the proceedings of the 1st respondent made in Letter No.33646/C2/2024 dated 28.08.2024 quash the same and direct the respondents to refund the amount that was deposited in transaction ID Nos.REG201909086387957, REG20190 9086387970, REG 201909086387975 and REG 201909246757720 totalling to Rs.7,79, 030 within the time stipulated by this Court.

2.It is the case of the petitioner that one Munusamy had purchased a larger extent of the subject lands in the year 2011 and had developed the same into housing plots known as Vinayagar Nagar. Steps for regularizing said layout has also been taken out by the said Munusamy and regularization was also granted. The said Munusamy died on 24.07.2018 leaving behind him surviving his legal heirs. The legal heirs had appointed the petitioner as their power agent to deal with 72 plots comprised in S.No.436/2. The petitioner would submit that he had paid the sale consideration in respect of the plots to the owners. The sale deed was also presented for registration on 25.09.2019. It was returned with the refusal check slip stating that the sale deed cannot be received as the principal had submitted a deed cancelling the power of attorney executed in favour of the petitioner and the same was registered as pending No.1/2019. Thereafter, the cancellation deed was registered as document No.4309/2019. The petitioner filed W.P.No.29865 of 2019 questioning the cancellation since the power of attorney is one coupled with interest and therefore cannot be unilaterally cancelled. By order dated 18.07.2023, this Court had disposed of the Writ Petition giving liberty to the petitioner to approach the competent civil Court. Thereafter, the petitioner had approached the respondent by application dated 07.09.2023 for refund of registration fees and stamp duty. The petitioner was informed that the amount could be utilised for different document and requested the third respondent to give no objection to utilise the same. The third respondent had given no objection to use it in the fourth respondent's office. Consequently, the petitioner had requested the fourth respondent to utilise the said amount for registration. However, the fourth respondent informed the petitioner that the amount could not be accessed and used for a different document. Therefore, by an application dated 01.02.2024 the petitioner requested the fourth respondent to re-deposit the amount into his account. The fourth respondent also forwarded the details such as online payment and non user of the amount to the second respondent, District Registrar for returning the same.

3.The second respondent on receiving the said communication of the fourth respondent on 02.02.2024 had sought details from the Treasury and Accounts departments in respect of the four transactions and had confirmed the four remittances made by the petitioner by way of challan. After ascertaining these details by a proceeding dated 15.07.2024, the second respondent was pleased to return the application stating that as per the proceedings of the first respondent the money remitted online should be utilized for a different document within a period of one year and refund should be asked within a period of three years and as per the proceedings of the first respondent dated 12.10.2020, amount which has been wrongly deposited should have been claimed within a period of three years and therefore the request was turned down. Challenging the same the petitioner had preferred the appeal to the first respondent on 08.08.2024. The first respondent without affording an opportunity and without going into the merits of the issue observed that the orders of this Court dated 18.07.2023 related to the cancellation of power of attorney and does not deal with the refund of amount deposited online in September 2019. About five years have been lapsed and as per limitation three years have lapsed. Therefore, refund could not be granted. Challenging the same, the petitioner is before this Court.

4.Mr.M.Devaraj, the learned counsel for petitioner, appearing for the petitioner would rely upon the following judgments of the Hon'ble Supreme Court reported in ***2021 13 SCC 754 Rajeev Nowhar Vs. Chief Controlling Revenue Authority, Pune***. The Hon'ble Supreme Court was dealing with a claim for refund of stamp duty where the appellant could not proceed with the projects in view of dispute with the builder therefore, the appellant had sought for refund of the stamp duty and the same had been rejected. The learned judges after discussing Section 52 of the Act observed as follows:-

> *Section 52 deals with provision of allowance in case of stamps that are not required for use. There are two kinds of stamps that are not required for use. The first is*

where the stamp is spoiled, as covered by Section 47 of the Act. The second is where the stamp is not spoiled but the stamp is not needed since the purchaser has no use of it. Section 52 specifically excludes the first of category since it is already covered by Section 47. The provision only applies to the class in the second category. Thus, Section 52 covers stamps that are not spoiled but which are of no use to the applicant by the occurrence of any subsequent event that renders the purpose of purchase of stamp void or nugatory. For the application of Section 52A, the applicant must have purchased the stamp on the payment of full price, with a bona fide intention to use it. However, within six months from the purchase of the stamp, the purpose of the purchase has not been fulfilled. Such a situation can arise in multiple circumstances. For example, a person may have obtained a stamp paper for purchasing a building.

However, before the agreement of sale could be executed, the building turns to shambles after an earthquake hits the area. In such a case, the stamp paper has no use. This may also cover a case where the seller has taken back his consent to sell the property after the purchase of the stamp paper. In such cases, the stamp purchased will not have any use since the purpose for which it was purchased could not materialize.

22 It could be argued that the use of the words, "for which he has no immediate use" in Section 52 would only covers cases where the purpose for the purchase of the stamp is still valid but the execution of the purpose if delayed and not "immediate". Such an interpretation, however, is erroneous in view of the holistic reading of the provision. The use of the phrase "immediate" must be read in the context of the limitation period prescribed by the provision. Since a six month limitation period has been imposed in Section 52 for the cases that fall within its purview, the use of the phrase "no immediate use" should be interpreted to mean either the permanent abandonment of the purpose or a delay (of more than six months from the purchase of the stamp) in the execution of the purpose.

23 However, Section 52 would only apply to those cases where the applicant had knowledge that the stamp purchased was not be required for use within six months from the date of purchase. The provision cannot be arbitrarily applied to cases where the purchaser of the stamp had no knowledge that the stamp would not be required for use within six months from the purchase of the stamp. In the instant case, the appellant had no knowledge of the fact that the stamp was not needed within six months from the purchase of it. He was in a bona fide contest over his rights with the builder. Therefore, the *case of the appellant would not fall under Section 52 of the Act as well.*

5.The instant case also is of similar nature. The petitioner who had been appointed as a power agent had purchased the property by paying the entire sale consideration. Thereafter, his principals who had received the entire sale consideration had reneged on the contract. Therefore, the stamp duty and registration fees that he had paid for the sale deed was of no use as the principals who had to execute the deed were not willing to go ahead with the authority given to the petitioner. No doubt the petitioner has been asked to establish his right before the Civil Court. However, the stamp duty that has been paid which is a huge amount would continue to lie with the Registering Authority without deed being executed. As stated by the Hon'ble Supreme Court such a situation does not fall within the purview of Section 52 of the Act and consequently, the time prescribed therein would not apply. Therefore, the petitioner is entitled to refund. Bombay High Court in case reported in ***2024 (1) Cur CC 268 Ramesh Chandra Kalra Vs. Union of India*** was also dealing with the case of refund of stamp duty. The division Bench observed as follows:-

The Court also observed that the stamp duty was in the nature of a tax and therefore, the respondents could not collect tax as the taxing event had not occurred. The Court noted that stamp duties are payable on instruments and where the instruments are not executed there is no levy of stamp duty. And, in absence of levy, the tax could not be collected. The court thus held that the respondents could not retain the amount paid towards anticipated stamp duty.

6.The Bombay High Court in the judgment reported in ***2024 3 MH LJ 293 Sathish Buba Shetty Vs. Inspector General of Registration and Collector of Stamps and others*** observed that authorities had not appreciated the impossibility of the performance of the condition while rejecting the request for refund of stamp duty and ultimately in paragraph No.24 had stated as follows:-

24.The authorities under the Stamp Act, 1958 may be justified in rejecting the application in strict adherence to the letter of the law. The statutory provision does not vest any discretion in the authorities. It is trite, refund of the amount paid under any enactment is a matter of a statutory right. Reading down the proviso to sub section (1) of Section 48 of the Stamp Act, 1958 as directory may have serious repercussions on the revenue. But, the High

Court in exercise of the extraordinary writ jurisdiction cannot be denuded of the power to delve into the question as to whether the non-compliance of the stipulation as to time was brought about by factors which were beyond the control of the affected party and to insist performance would have amounted to compelling such party to do impossible and, thus, relieve such party of the hardship in deserving cases, where injustice is writ large.

7.Therefore, on a conspectus of the above facts and also taking note of the fact that the petitioner in no way can be held responsible for not proceeding to have a sale deed executed on the strengths of the sale agreement as it is the principals who have now cancelled the power and refused to execute the sale deed. It is these reasons that the refund is sought for. The impugned proceedings of the 1st respondent in Letter No.33646/C2/2024 dated 28.08.2024 is set aside. Refund amount Rs.7,79,030/- to be given to the petitioner within a period of four weeks from the date of receipt of copy of this order.

8.Accordingly, the Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
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