IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.23374 of 2017
and
W.M.P. Nos.24465 and 24466 of 2017

M. Rajendra Bhoopathy .. Petitioner

Versus

1. The Sub Registrar,
Office of the Sub-Registrar,
No.104, Taluk Office Campus,
Coimbatore Road,
Pollachi – 642 001.

2. The Assistant Commissioner of Income Tax,
Non Corporate Circle – 4,
Room No.509, 5th Floor,
Race Course Road,
Coimbatore – 641 018. .. Respondents

Second respondent was Suo motu impleaded
as per order dt. 30.08.2017.

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari, to call for the records relating to the proceedings of the first respondent in Na.Ka.No.208/2016, dated 06.09.2016 and to quash the same.

For Petitioner : Mr. R. Syed Mustafa
For Respondents : Mr. B. Vijay
Addl. Govt. Pleader for R1
Dr. B. Ramaswamy for R2

ORDER

This writ petition has been filed to call for the Proceedings relating to the order of the 1st respondent in Na.Ka.No.208/2016, dated 06.09.2016 and to quash the same.

2. It is stated that on 27.12.2010 the petitioner purchased lands in S.Nos. 40/1, 23/b/41/1 and 22/C2 to an extent of 16.39 acres for a total consideration of Rs.81,20,000/-, vide two documents (Document Nos.10563 of 2010 and 10564 of 2010) for Rs.61,62,502/- and Rs.19,57,498/- respectively, which are registered on the file of SRO, Pollachi, Coimbatore District. The petitioner also converted the said plots in to layouts and thereafter promoted and sold certain plots to prospective buyers. At this stage, a dispute arose between the petitioner's vendor and his partners, which culminated in arbitration proceedings in the year 2011. During the pendency of such proceedings, a surprise inspection was conducted by the Income Tax authorities and seized some documents. Thereafter, an enquiry was conducted by the Income Tax department and appropriate action was initiated against the petitioner. Subsequently, the Assistant Commissioner of Income Tax, Coimbatore passed an Assessment Order, dated 29.03.2015, thereby issued a

demand notice under Section 156 of the Income Tax Act, 1961 to the petitioner. Challenging the same, the petitioner preferred appeal before the Appellate Authority and the said appeal was allowed on 17.11.2015. Aggrieved by the order dated 17.11.2015, the Income Tax department preferred an appeal before the Income Tax Appellate Tribunal, Chennai Bench in Appeal No.397 of 2016 and the same is pending. During the pendency of the appeal, the 1st respondent permitted the petitioner to register documents for sale of certain housing plots. But subsequently, to the shock and surprise of petitioner, the respondent issued the impugned order, dated 06.09.2016 under Sections 27 & 64 of the Indian Stamp Act, thereby directed the petitioner to pay the deficit stamp duty and differential value of the registration charges by referring to the letters of the State Accountant General, dated 18.03.2016 and 29.03.2016. After issuance of the impugned order, dated 06.09.2016, the petitioner was unable to register the housing plots in favour of prospective purchasers and therefore, this writ petition has been filed seeking for quashment of the impugned order, dated 06.09.2016.

3. Learned counsel appearing for the petitioner submitted that on the date of registration of the Sale Deed i.e., on 27.12.2010, the petitioner paid the stamp duty on the basis of the guideline value prevailed thereof. When that being so, after a lapse of five years, without any authority or jurisdiction, the

1st respondent issued the impugned order. Further, he submitted that before passing the impugned order, the procedures contemplated under Section 47A of the Indian Stamp Act have not been followed. It is also argued that without affording an opportunity to the petitioner to submit his explanation / objection, the impugned order was passed by the 1st respondent, which amounts to gross violation of principles of natural justice. On the aforesaid score, he prays for allowing of this writ petition by remanding the matter to the 1st respondent for fresh consideration after considering the petitioner's objections and to pass orders on merits and in accordance with law, within a time frame to be fixed by this Court.

4. Per contra, Mr.B. Vijay, learned Additional Government Pleader appearing for the 1st respondent placed his submissions based on the counter and submitted that audit objections were raised, which led to the passing of the order which is impugned in this writ petition. He vehemently argued that the declaration submitted by the petitioner before the registration authorities and the income tax authorities are contradictory in nature. Also he submitted that erroneous application of provision or mere wrong quoting of provision in the impugned order will not vitiate the petitioner from his liability in any way and thus, he strongly submitted that the petitioner has done the acts of wilful omission and this is the case of escaped assessment by submitting the accounts

which has huge variation. Hence, the order passed by the 1st respondent ordering the petitioners to make payment of deficit stamp duty as well as differential registration fee is sustainable. However, he fairly conceded that no show cause notice was issued prior to passing of the order impugned herein by the 1st respondent. In view of the above, he prays for issuance of appropriate directions in this regard.

5. Heard the learned counsel on either side and perused the materials placed on record.

6. Admittedly, on payment of stamp duty, the registration of the subject lands were effected in favour of the prospective buyers by the registration department. Later, based on the audit report it was found that the petitioner has given two values, one before the registration department and another before the Income Tax authorities in respect of the value of the aforesaid lands and due to the said contradictory values, demand was made for payment of deficit stamp duty and differential registration charges by the petitioner. From the aforesaid submissions, it is noted that based on the own declaration submitted by the petitioner before the Income Tax authorities, the 1st respondent came to know about the difference in values and thereafter the

order impugned was passed and thus, the 1st respondent can recover the difference amount from the petitioner.

7. However, it is the contention of the learned counsel for the petitioner that if there is any deficit stamp duty the 1st respondent has to initiate proceeding either under Section 33A or 47A of The Indian Stamp Act, but without doing so, the 1st respondent has invoked Section 27A and 64 of the Indian Stamp Act, that too without providing an opportunity to the petitioner, On a careful perusal of the impugned order, it is seen that there was no reference to any notice or show cause issued by the 1st respondent, prior to issuance of the order impugned herein, which amounts to flagrant violation of principles of natural justice. Therefore, the impugned order, dated 06.09.2016 passed by the 1st respondent is unsustainable and non-est in law.

8. For the aforesaid reasons, the impugned order, dated 06.09.2016 passed by the 1st respondent is hereby set aside and the matter is remanded to the 1st respondent for fresh consideration. The 1st respondent is directed invoke appropriate provision and proceed further with the matter after compliance of due procedures contemplated under law.

9. In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.09.2024

Index : Yes / No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
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M.DHANDAPANI, J.

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