IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03..04..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.13699 of 2017
and
W.M.P. Nos.14889 of 2017 and 5077 of 2018

Srila Sri Baladandayudha Mouna Guruswamy Trust
Rep. By its Chairman,
No.5/411, Sri Brammashramam,
Easwarankoil Street, Milk Dairy Post,
Old Alamathi, Chennai – 600 052. ..... Petitioner

-Versus-

1.The State of Tamilnadu
Rep. By the Collector,
Office of the Collectorate,
Tiruvallur District.

2.The Inspector General of Registration,
Santhome, Chennai.

3.The Assistant Inspector General of
Registration, Chennai District,
Chennai.

4.The District Registrar,
Chennai North, Chennai.

5.The Sub-Registrar,
Redhills Sub-Registrar Office,

Redhills, Chennai – 600 052. ..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to Demand Notice dated 10.04.2017 in Na.Ka.99/2017 issued by the 5th respondent and quash the same as being illegal, arbitrary and violative of principles of natural justice.

For Petitioner : *Mr.R.Arvind*

For Respondent (s) : *Mr.P.Anandakumar, Government Advocate*

ORDER

This writ petition has been filed challenging the demand notice issued by the 5th respondent in Na.Ka.99/2017 dated 10.04.2017.

2. **The facts leading to the filing of the present writ petition, in brief, are as follows:-** The petitioner is the Chairman of the Trust known as Srila Sri Baladandayudha Mouna Gurusway Trust [hereinafter will be referred to as "the petitioner trust"]. The petitioner is a private temple trust. One Saint His Holiness Srila Sri Baladandayudha Mouna Guruswamy founded a temple called as Sri Balambigai Sametha Sri Alamatheeswarar Temple from out of his own funds. The said temple is situated in the land in S.No.99 of Alamathy Village in the land measuring an extent of 9.94 cents. Apart from purchasing

the land in S.No.99 from out of his own funds, the founder saint had also given some monetary funds to one J.V.Jagannadhan who purchased some more properties in the name of the said private temple by way of registered deed vide Doc.No.3364 of 1980.

3. Thereafter, the petitioner trust was formed by a Deed of Private Trust dated 18.08.1988 Ivide Doc.NO.3104 of 1988 on the file of the Sub Registrar, Ponneri by its first trustee Srila Sri Baladandayudha Mouna Guruswamy along with second trustee J.V.Jagannadhan and third trustee A.R.Mohana Rangam. In the trust deed, the land in S.No.99 as well as the other lands purchased by the second trustee in the name of the above said private temple were shown as properties of the private trust. In the trust deed, the founder had also specifically mentioned that all further additions of properties in his name will be deemed to be the trust properties. Accordingly, the founder trustee had also executed a supplementary trust deed dated 18.09.1997 vide Doc.No.646 of 1997 on the file of the Sub Registrar, Red Hills and during his life time, created the trust including other properties stood in his name. Thereafter, the founder trustee on 09.08.2011 attained jeeva samathi. On 07.04.1996, the remaining trustees executed a registered supplementary deed of trust creating trust and dedicating and including some other properties stood in the name of the

deceased founder trustee to the said private trust. Though the said document was registered as Doc.No.62 of 2016 on the file of the Sub Registrar, Redhills, after the registration of the document, a notice dated 14.03.2017 was sent by the 5th respondent to the petitioner trust demanding a sum of Rs.6,80,170/- as deficit stamp duty and Rs.97,160/- as deficit registration fees in all demanding a sum of Rs.7,77,330/- . It is this demand notice which is under challenge in the present writ petition.

4. A counter affidavit has been filed by the 5th respondent *inter-alia* contending that after the registration, Additional Inspector General of Registration conducted an audit and raised an objection. It is the specific stand of the 5th respondent that inclusion of additional properties in favour of the trust under the supplementary deed of trust would amount to settlement and hence, stamp duty and registration charges have to be calculated as per Article 58 of the Stamp Act,1899. The demand notice is valid and no illegality could be attached to the same.

5. Heard both sides.

6. The learned counsel for the petitioner would submit that merely on the basis of an audit objection, no demand for deficit stamp duty and registration charges could be raised. It was only a declaration of trust in respect of

properties and therefore, stamp duty and registration charges already paid on the document cannot be questioned.

7. The learned counsel for the petitioner would further submit that it is not the case of the respondents that there was under valuation and without referring to the document for stamp collector, merely on the basis of audit objection, demand for payment of stamp duty and registration cannot be raised.

8. Per contra, the learned Government Advocate appearing for the respondents would contend that since the properties were dedicated to the temple, it should be treated as settlement. He, therefore, prayed for dismissal of the writ petition.

9. I have considered the rival submissions and perused the entire materials available on records.

10. The petitioner trust was originally founded in 18.08.1988 by way of deed of trust by one Srila Sri Baladandayudha Mouna Guruswamy, a founder trustee along with two other founder trustees viz., J.V.Jagannadhan & A.R.Mohana Rangam. The first founder trustee by the said deed created a trust in respect of a immovable property belonged to him. The first founder trustee had also executed a supplementary deed on 18.09.1997 including his other properties. The intention of the first founder trustee was, as could be seen from

the supplementary deed, that the properties that he would acquire in the future from and out of his own funds in his individual name, should also be thrown into the trust. The first founder trustee died on 09.08.2011. After his death, whatever the properties stood in the name of the first trustee were once again included in the supplementary deed and dedicated to the trust by the existing trustees. Such being the position, this court is of the view that when a declaration concerning any property is made by any writing, not being a Will, fixed stamp duty as contained in Article 64 of the Stamp Act alone to be taken note of. Therefore, the contention of the respondents that it should be treated as gift has no legs to stand.

11. Further, it is to be noted that the demand for deficit stamp duty and registration charges was made only after the document was registered on the basis of an objection raised during audit by the Additional Inspector General of Registration. Deficit stamp duty and registration charges can be collected only after proper inquiry and without conducting any such inquiry, nor referring the document as under valued for collection of deficit stamp duty and registration charges to the Stamp Collector, demanding such huge amount is without any legal basis. Therefore, in the considered view of this court, the impugned demand notice is illegal and the same is liable to be quashed.

In the result, the writ petition is allowed. The impugned demand notice of the 5th respondent is quashed. No costs. Consequently connected WMPs are closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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N.SATHISH KUMAR.J.,

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