BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)No.2547 of 2019
and
W.M.P.(MD)Nos.1956 of 2019 & 3383 of 2020

M/s.Sowma Educational & Social Welfare Trust,
Through its Secretary,
Having Office at Kovilpatti Road, escalation
Manapparai, Tiruchirappalli. ... Petitioner

Vs.

1.The Inspector General of Registration cum
Chief Revenue Controlling Authority,
No.100, Santhome High Road, Chennai.

2.The Special Deputy Collector (Stamps),
District Collector Office, Complex,
Tiruchirappalli. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings in த.பா.எண்.338/2017, dated 17.04.2017 and த.பா.எண்1085/17, dated 09.11.2017 on the file of the 2nd respondent and quash the same as incompetent, arbitrary and without jurisdiction and consequently, to forbear the respondents from initiating any further proceedings under Sec 47(a) of the Stamp Act in respect of document number 2555/2012, dated 26.03.2012 on the file of the Sub Registrar, Manapparai and return the document.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : Mr.P.Subbaraj,
Special Government Pleader

ORDER

According to the petitioner, the petitioner Trust originally was the lessee of the lands in S.Nos.738/3A, 738/3B, 738/4 in Sevalur Village of Manaparai Taluk and had put up construction of school buildings therein. The lease was periodically renewed and it was lastly extended for a period of 30 years under the registered lease deed dated 25.05.2010. Thereafter, the petitioner Trust purchased the lands through a registered sale deed dated 26.03.2012 under Document No.2555/2012 and the document had been registered, however, after registration, the document had been retained on the ground of calculating the value of the buildings that were standing in the land.

2.When the matter stood thus, all of a sudden, on 17.04.2017, ie., after five years from the date of registration, the 2nd respondent issued Form I notice for the first time under Section 4 of Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, claiming deficit stamp duty. Therefore, the petitioner has sent a reply on 04.05.2017 to the 2nd respondent. However, without considering the same, once again, the 2nd respondent issued Form I notice dated 09.11.2017.

3.Therefore, challenging the said two Form I notices dated 17.04.2017 and 09.11.2017, the petitioner has filed this Writ Petition with a consequential relief to forbear the respondents from initiating any further proceedings under Section 47-A of Indian Stamp Act in respect of Doc.No.2555/2012, dated 26.03.2012 on the file of the Sub Registrar, Manapparai and return the document.

4.The learned counsel appearing for the petitioner would submit that the entire action has been initiated by the 2nd respondent beyond the period of 5 years from the date of registration, which is not permissible under law. Even the Collector can exercise the *suo motu* power under Section 47-A(3) of Indian Stamp Act, only within five years from the date of registration, whereas Form I notice has been issued much beyond the period of five years and the second Form I notice had also been issued, indicating the very same details and reasons as stated in the first Form I notice.

5.It is the further contention of the learned counsel for the petitioner that as per Section 47-A of Indian Stamp Act, if the Sub Registrar has reason to believe that the instrument has been under valued, he ought to have referred the matter to the Collector, after registering the document, which has not been done in this case. All of a sudden, the impugned notice has been issued on 17.04.2017 much beyond the period of five years. Hence, the very initiation of the proceedings under Section 47-A of Indian Stamp Act is not permissible under law.

6.The learned Special Government Pleader appearing for the respondents would submit that admittedly, the document has been registered on 26.03.2012 and after the registration, the document has been retained for the purpose of assessing the value of the buildings in the land. Therefore, in this regard, a communication has been sent to the Executive Engineer, Public Works Department, who in turn, after valuation of the buildings, sent a communication dated 01.12.2016. Thereafter, the Sub Registrar has valued the buildings and determined the deficit stamp duty and referred the matter to the Sub Collector, Stamps, under Section 47-A of Indian Stamp Act. Pursuant to the reference made by the Sub Registrar, Form I notice has been issued by the 2nd respondent on 13.04.2017. However, the petitioner, instead of giving any reply or objections along with necessary documents, has simply sent a representation dated 04.05.2017. Therefore, once again the Form I notice has been issued on 09.11.2017. However, the petitioner has filed this Writ Petition challenging the Form I notices. Hence, this Writ Petition is to be dismissed.

7.Heard both sides and perused the materials available on record carefully.

8.It is not in dispute that the document has been registered on 26.03.2012 and after registration of the document, the same has not been referred to the Collector, as contemplated under Section 47-A of Indian Stamp Act. It is relevant to note that whenever any document is presented for registration, if the Sub Registrar at the time of registration has any reason to believe that the document has been undervalued, he has to register the document and immediately thereafter, refer the document to the Collector for determination of the true market value of the property and proper stamp duty payable thereon. However, no such reference whatsoever had been made by the Sub Registrar, after registration of the document. He had retained the document for more than five years.

9.When Rule 3(5) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, mandates that a reference has to be made within 15 days, though that amendment has been introduced in the year 2017, prior to that, reference ought to have been made within a reasonable period, which does not exceed six months, the document has been pending for more than six years without making any reference. On such reference, the Collector (Stamps) has to issue Form I notice within 15 days from the date of reference.

10.In the present case, in the impugned notice, there was no reference, indicating that when such reference has been made, whereas for the first time, notice has been issued on 17.04.2017 beyond the period of five years.

11.It is relevant to note that the *suo motu* power has to be exercised by the Collector within a period of five years from the date of registration. In case, if such power has not been exercised within five years from the date of registration, it cannot be exercised by the Collector thereafter.

12.Admittedly, in this case within a reasonable time, the document has not been referred to for determination of the correct value. Therefore, Form I notice issued by the 2nd respondent, after five years cannot be sustained in the eye of law for the simple reason that the Collector (Stamps) has not applied his mind and has just copied the value arrived by the Sub Registrar, though there is a rule for determining the value by the Collector and the Sub Registrar has no authority whatsoever to determine the value after registration of the document. At any event, after the period of five years, Form I notice has been issued, therefore, the same is liable to be quashed, accordingly, it is quashed. Resultantly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

20.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva

To

1.The Inspector General of Registration cum
Chief Revenue Controlling Authority,
No.100, Santhome High Road, Chennai.

2.The Special Deputy Collector (Stamps),
District Collector Office, Complex,
Tiruchirappalli.

N.SATHISH KUMAR, J

Yuva

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