BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.4004 of 2019
and W.M.P.(MD)No.3094 of 2019

R.Vaithialingam Nadar ... Petitioner

Vs.

1.Government of Tamil Nadu,
Represented through its Secretary,
Revenue Department,
St. George Fort,
Chennai – 600 009.

2.The District Registrar,
Tenkasi Registration District,
Tenkasi Registration Office,
Tenkasi,
Tirunelveli District.

3.The Sub Registrar,
Alangulam Registration Office,
Alangulam Taluk,
Tirunelveli District. .... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records comprised in the impugned notice of the 3rd respondent's letter No.13/1/2019 dated 21.01.2019 and quash the same.

For Petitioner : Mr.N.Ganagasapapathy

For Respondents : Mr.C.Satheesh,
Govt. Advocate

ORDER

Challenging the impugned notice issued by the third respondent demanding a sum of Rs.45,000/- as deficit stamp duty and a sum of Rs.15,000/- as impounding registration fee of Rs.15,000/-, the petitioner has filed this Writ Petition.

2. It is the case of the Writ Petitioner that the petitioner has entered into a memorandum of title deed in favour of the City Union Bank on 27.03.2017, for availing loan to his partnership business. At the time of registration of said agreement, the petitioner has paid a sum of Rs.25,000/- as stamp duty and a sum of Rs.5,000/- as registration fee. However, now through the impugned order, the third respondent demanded a sum of Rs.45,000/- as deficit stamp duty and a sum of Rs.15,000/- as registration fee. Challenging the same, the petitioner has filed this Writ Petition.

3. It is the contention of the learned counsel for the petitioner that as per G.O.Ms.No.79, Commercial Taxes and Registration (J1) Department, dated 11.07.2011, the stamp duty for registration of mortgage deposit of title deed is Rs. 25,000/- and the registration fee is Rs.5,000/- and the same has been properly paid by the petitioner. However, after two years, merely on the basis of audit objection, the impugned notice has been issued demanding a sum of Rs.45,000/- as deficit stamp duty and a sum of Rs.15,000/- as registration fee and therefore, the same cannot be sustained in the eye of law.

4. The learned counsel for the petitioner further submitted that in the impugned order no reasons whatsoever have been assigned except stating that at the time of auditing, it was found that there is a deficit stamp duty of Rs.45,000/- and a sum of Rs.15,000/- as registration fee and therefore, the impugned order is liable to be set aside.

5. The learned Government Advocate appearing for the respondents submitted that the petitioner has availed loan for different four partnership firms viz., M/s.R.V.V.High Tech Rice Mills, M/s.R.V.V.Minerals, M/s.Vaithiyalingam Traders and M/s.Varshini Traders. Therefore, according to them, all the four documents should have been treated as four documents, whereas it has been treated as one document and collected stamp duty in respect of one document. Therefore, the impugned order has been passed correctly, demanding deficit stamp duty of Rs.45,000/- and a sum of Rs.15,000/- as registration fee. Hence, opposed this Writ Petition.

6. Heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

7. As far as stamp duty for the agreement of memorandum of title deed is concerned, the same is governed under Schedule I and Article 6 of the Indian Stamp Act, 1899. As per G.O.Ms.No.79, Commercial Taxes and Registration (J1) Department, dated 11.07.2011, the maximum stamp duty in respect of agreement relating to deposit of title deed is Rs.25,000/- under Article 6(1)(a) and Article 6(1)(b). Thereafter, only in the year 2018, the stamp duty has been increased at the rate of Rs.30,000/-. Till such time, the Government Order in G.O.Ms.No.79, Commercial Taxes and Registration (J1) Department, dated 11.07.2011 was governing the field. Therefore, the stamp duty for deposit of title deed on the date of present case was Rs.25,000/-. The impugned order has been passed after two years of the registration, citing the audit objection. This Court is of the view that merely on the basis of audit objection, the respondents cannot demand deficit stamp duty. Having stated in the impugned order that deficit stamp duty has to be recovered as per the audit report, now a different stand has been taken in the counter affidavit to the effect that since the petitioner executed the mortgage and availed loan for four firms, the document should be treated as four documents.

8. It is well settled that in the absence of any reason in the impugned order, the counter cannot substitute new reasons other than the one found in the impugned order rejecting or claiming any right. Be that as it may. The very assumption of the authorities that there was four transactions in a single document itself is misconceived for the simple reason that the petitioner mortgaged the individual property at the request of the firms and when the Bank themselves admitted to sanction the loans to the firms on the guarantee of the petitioner, the said document cannot be construed to mean that there are four different transactions. For recovery of stamp duty, there is a procedure under the Indian Stamp Act, 1899. Before embarking any action to recover the deficit stamp duty, a certificate ought to have been issued by the Registrar in this regard. Such certificate could be issued only after due enquiry being conducted. Section 33A of the Indian Stamp Act, 1899 deals with the recovery of deficit stamp duty. Therefore, before recovery of any deficit stamp duty, a certificate ought to have been issued by the Registrar and the said certificate also ought to have been issued after due enquiry made in this regard that too after giving proper opportunity to the parties concerned. In the present case, none of the procedure has been followed. Therefore, the impugned order, demanding stamp duty merely on the basis of audit objection, cannot be sustained in the eye of law and the same has to be quashed.

9. Accordingly, the impugned order dated 21.01.2019, passed by the third respondent stands quashed and the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.08.2024

NCC : Yes/No
Index : Yes/No
vsm

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