BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.16321 of 2018

T.Egammal ... Petitioner

Vs.

1.The Inspector General of Registration,
Chennai.

2.The Additional Collector (Stamps),
Collectorate,
Trichy – 1.

3.The District Registrar (Administration),
Trichy – 1.

4.The Sub Registrar,
Mannachanallur,
Trichy District. .... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Letter No.13501/C2/2018 dated 11.07.2018 passed by the 1st respondent and quash the same and consequently directing the respondents 1 and 4 to refund the stamp duty of Rs.11,41,330/- paid by the petitioner for registering the sale deed in Documet No.4947/2014 on the file of the 4th respondent, with appropriate interest.

For Petitioner	: Mr.T.Antony Arul Raj
For Respondents	: Mr.C.Satheesh, Govt Advocate.

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Letter No. 13501/C2/2018 dated 11.07.2018 passed by the 1st respondent and quash the same and consequently, directing the respondents 1 and 4 to refund the stamp duty of Rs.11,41,330/- paid by the petitioner for registering the sale deed in Document No. 4947/2014 on the file of the 4th respondent, with appropriate interest.

2. The case of the Writ Petitioner is that on 12.03.1993, she has entered into an agreement with one Shenbagammal for purchase of the land in S.No. 126/41. As her vendor has failed to perform her part of contract, she has filed a suit for specific performance in O.S.No.1 of 1996 on the file of Additional

Subordinate Court, Trichy. The said suit was decreed in favour of the petitioner on 30.04.1999. As against the said judgment and decree, an appeal was filed in A.S.No.489 of 1999 on the file of this Court and the same was dismissed on 12.06.2009. Thereafter, the petitioner filed an Execution Petition in E.P.No.20 of 2013 on the file of the Additional Subordinate Court, Trichy and deposited the balance sale consideration on 03.06.2013. In the Execution Petition, an *ex parte* order was passed on 25.06.2014 and thereafter, a sale deed was executed in favour of the petitioner on 01.12.2014. After registration of the sale deed, a proceeding under Section 47-A was initiated and deficit stamp duty of Rs.9,70,564/- was recovered from the petitioner, which has been paid by the petitioner on 31.03.2015 by way of Demand Draft. Accordingly, the petitioner paid the total stamp duty to the tune of Rs.11,41,330/-,

3. In the meanwhile, challenging the *ex parte* order in the execution proceedings, one of the judgment debtors has filed an application in E.A.No.317 of 2015 and the said application was also dismissed on 28.10.2015. As against which, C.R.P(MD)No.122 of 2016 was filed before this Court and this Court by an order dated 20.03.2017, allowed the Civil Revision Petition, by setting aside the sale deed itself, executed in pursuance of the decree of the Court. As against the said findings, a Special Leave Petition was filed in S.L.P.(C)No.17929 of 2017 and the same was also dismissed on 21.07.2017. After that, the petitioner has filed an application before the authorities for refund of stamp duty paid by her. However, the same has been rejected by way of the impugned order. Therefore, the petitioner has filed this Writ Petition.

4. The first respondent has filed the counter affidavit, in which it is stated that the sale deed in question was cancelled by this Court due to the fault of the petitioner. According to them, there is no provision in the Act to the effect that in the event of cancellation of an instrument by a decree of the Court, the liability to pay stamp duty would cease. Hence, the order of the respondent dated 11.07.2018 holds good and the petitioner is not entitled to seek refund of stamp duty that too paid for a registered instrument.

5. The learned counsel appearing for the petitioner mainly contended that when the document itself was cancelled by this Court, the petitioner is certainly entitled to refund of stamp duty, as the document cannot be used for any other purposes. Hence, the order impugned in this Writ Petition cannot be sustained in the eye of law.

6. The learned Government Advocate appearing for the respondents would submit that this Court has set aside the sale on the ground of fault of the petitioner. Therefore, once the document has already been registered and later on cancelled by the Court, there is no provision under the law to refund the stamp duty. Hence, opposed the Writ Petition.

7. The facts, as narrated by the petitioner, are not disputed. Now, the only issue that arise for consideration is that whether the respondents are liable to refund the stamp duty collected on the instrument, which was cancelled by this Court. It is relevant to note that the very purpose of registration and payment of stamp duty is to make the document admissible in evidence and also to claim any right based on such document. Any document, in the absence of stamp duty for registration, cannot be used for any other purpose. When their intended purpose of the document registered has failed and that the said document cannot be used for any other purposes, then the question will arise whether still the authority can retain the same on the ground that the document has already been registered. It is relevant to note that very purpose of the Indian Stamp Act is to collect the revenue on the documents, which the parties seek to use for any other purposes, for example claiming right and liability etc. When that intended purpose itself is failed by operation of law or by act of the Court, this Court is of the view that stamp duty paid cannot be retained by the authorities and it has to be refunded. This view is fortified by the very provisions of the Indian Stamp Act. Section 49 of the Indian Stamp Act, 1899 reads as follows:

> *"**49. Allowance for spoiled stamps.**- Subject to such rules as may be made by [the [State Government] [Substituted by A.O.1937, for "the L.G." .]] as to the evidence to be required or, the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:*
>
> *(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;*
>
> *(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;*
>
> *(c) in the case of bills of exchange payable otherwise than on demand or promissory notes*
>
> *(1) the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance:*
>
> *Provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon;*
>
> *(2) the stamp on any promissory note signed by or on behalf of*

the maker which has not been made use of in any manner whatever or delivered out of his hands;

(3) the stamp used or intended to be used for any such bill of exchange or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange may have been presented for acceptance or accepted or endorsed, or being a promissory note, may have been delivered to the payee:

Provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill or note;

(d) the stamp used for an instrument executed by any party thereto which-

(1) has been afterwards found to be absolutely void in law from the beginning;

(2) has been afterwards found unfit, by reason of any error or mistake therein for the purpose originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the

intended purpose;

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled."

8. Section 49 (d) of the Indian Stamp Act, 1899 makes it clear that when the document was found to be void in law from the beginning or very intended purpose failed, the stamp duty has to be refunded. Therefore, when the intended purpose of the document was failed or document was found to be void later, the person, who paid the stamp duty, is entitled to refund the said amount.

9. In such view of the matter, this Court is of the view that the impugned order passed by the first respondent cannot be sustained in the eye of law. Accordingly, the same stands quashed and the first respondent is directed to refund the amount paid on the instrument viz., sale deed registered on 01.12.2014, vide Document No.4947/2014, on the file of the fourth respondent, within a period of one month from the date of receipt of a copy of this order. Considering the fact that there was no fault on the part of the authorities, this Court is not inclined to order interest and only the principal amount is directed to be paid by the authorities.

10. With the above direction, this Writ Petition is allowed. There shall be no order as to costs.

08.08.2024

NCC : Yes/No
Index : Yes/No
vsm

N.SATHISH KUMAR, J.

vsm

To

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