BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.11.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.3450 of 2017
and
W.M.P.(MD) Nos.2805 and 2806 of 2017

M.Sitharthan ... Petitioner

/vs./

1.The Inspector General of Registration,
No.120, Santhome High Road,
Pattinapakkam,
Chennai 600 028.

2.The District Registrar,
Tiruchirapalli, having its Office at
District Court Complex,
Tiruchirapalli 620 001.

3.The Sub Registrar,
Sub Registrar's Office,
Srirangam 620 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in his communication dated 09.02.2017 in respect of document No.

2148/2009 dated 05.08.2009, consequently direct the 3rd respondent to remove the entry entered in the encumbrance certificate and register the documents executed respect of the property.

For Petitioner : Mr.K.S.Vamsidhar
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

The challenge in this writ petition is to the order of the third respondent calling upon the petitioner to make good the deficit stamp duty of a document registered in the year 2009 bearing Doc.No.2148 of 2009.

2. It is the case of the petitioner that as per the provisions of Section 33A of the Indian Stamp Act, 1899, the Sub Registrar cannot firstly issue such orders without a certificate from the District Registrar and that such a certificate is issued only after conducting due enquiry with the petitioner, that too within 3 years from the date of registration of the said document. In the present case, the document had been executed in the year 2009 and the present impugned order had come to be passed by the third respondent on 09.02.2017, that too without a certificate from the District Registrar.

3. The learned Additional Government Pleader appearing for the respondents would submit that since an audit objection had been raised by the audit team, the impugned order had been passed and pending this writ petition, the petitioner had made good the payment of deficit stamp duty by presenting the cheque dated 08.03.2017 and therefore, he would submit that since the amount had already been paid, nothing would survive in the writ petition to be adjudicated.

4. The same had been repudiated by the learned counsel for the petitioner by contending that the said amount had been paid under protest subject to the result of the writ petition, as he was not permitted to register the subsequent sale deed with regard to the property.

5. I have considered the rival submissions made by the learned counsel on either side.

6. Admittedly, the document had been registered by the petitioner as early as in the year 2009. The counter does not indicate as to when the audit objection had been raised. Be that as it may, even if the objections had been raised by the audit just prior to the impugned order, the second proviso to Section 33A of the Act contemplates that no enquiry can be conducted after the expiry of 3 years from the date of registration of the document for recovery of deficit stamp duty for a registered document. In the present case, as already stated, the document had been registered in the year 2009 and after a lapse of 8 years, the impugned order had been passed, which is much beyond the time period granted for the authorities to invoke the provisions of Section 33A of the Act.

7. In such view of the matter, the demand made by the third respondent is wholly unjustified, non-est and is liable to be set aside. In fine, the Writ Petition stands allowed and the impugned communication dated 09.02.2017 issued by the third respondent in respect of document No.2148/2009 dated 05.08.2009 is set aside. The third respondent is directed to refund a sum of Rs.13,32,850/- with interest at the rate of 9% per annum till the date of payment.

However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
mm

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To

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K.KUMARESH BABU, J.

mm

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