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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.5877 of 2017
and
W.M.P.(MD) No.4659 of 2017

M.Noor Mohamed .. Petitioner

Vs.

The Sub-Registrar,
(In the cadre of District Registrar),
Woraiyur, Trichy-620 003. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the respondent in his proceedings Doc.No. 8052/2013 dated 27.03.2017 and quash the same as illegal and without jurisdiction and in violation of provisions of Indian Stamp Act 1899.

For Petitioner : Mr.B.Saravanan
Senior Counsel
assisted by Mr.D.Kirubakaran

For Respondent : Mr.D.Sadiq Raja
Additional Government Pleader

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ORDER

This writ petition has been filed challenging the demand made by the respondent calling upon the petitioner to make good the deficit stamp duty.

2. The learned Senior Counsel appearing for the petitioner would submit that the petitioner had been granted with a Power of Attorney to deal with the property belonging to one T.G.Ponurathinam, under Document No.8052 of 2013. He would submit that under the said Power of Attorney, there was no consideration passed. Only if a consideration is passed under the Power of Attorney, the stamp duty for such Power of Attorney could be leviable under Article 48(e) of the Indian Stamp Act, 1899 (hereinafter referred to as “the Act”). He would submit that under the impugned proceedings, the respondent had called upon the petitioner to remit a sum of Rs.14,00,237.50 being deficit stamp duty as arrived at by the audit team. He would submit that the authority has power either to invoke Section 33A in respect of deficit stamp duty or unpaid stamp

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duty or Section 47A for an undervalued property. In the present case, he would submit that after registration of the Power of Attorney, since it being Power of Attorney, there can be no question of undervaluation of the property, but would only come under Section 33A of the Act. He would further submit that the document was registered on 29.11.2013 and therefore, for invocation of Section 33A, only three years period has been provided under second proviso to Section 33A. Hence, the demand is without jurisdiction. Hence, he would seek this Court to set aside the order impugned in this writ petition.

3. Countering his arguments,the learned Additional Government Pleader would submit that under the Power of Attorney registered, it has been indicated that the developer was entitled to alienate 88 flats and therefore, the Power of Attorney had been made on the basis of a consideration *viz*, the entitlement of the power holder to sell the flats that is sought to be developed in the property for which, Power of Attorney has been executed. He would contend that when that be so, only proviso to Section 33A is chargeable. Hence, an action is sought to be initiated

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under Section 33A of the Act. Therefore, he would submit that the petitioner is liable to pay the stamp duty as prescribed under Article 48(e) of Schedule-I to the Act.

4. I have considered the submissions made by the learned counsel appearing on either side.

5. Admittedly, an action is sought by invoking the power under Section 33A and not under Section 47A. This has been categorically stated in the counter filed by the respondent. For better appreciation, the relevant paragraphs are extracted hereunder:

> *"8. With regard to averments made in para 5, 6 and 7 of the affidavit, it is submitted that total deficit Stamp duty and Registration Fee of Rs. 14,00,237.50 was worked out as per article 48 (e) of the Indian Stamp Act, 1899 and according a notice was issued. Further action under section 33 A of Indian Stamp Act 1899 will be taken and enough opportunity will be given to the petitioner to put forth the case. After the final order if he feels aggrieved, then he can appeal to Chief Controlling Revenue Authority under*

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section 33 A (3) of Indian Stamp Act, 1899. Again if he feels aggrieved then he can approach this Hon'ble court. Without utilizing the opportunity given in the act, he directly approached this highest forum.

9. With regard to averments made in para 8 to 13 of the affidavit, it is submitted that the section 47 A of Indian Stamp Act 1899, will not apply to this case since, the document is power of attorney. The section 47 A of Indian Stamp Act 1899, only applies to the instruments of conveyance, exchange, gift, release of benami right or settlement where market value of property is under dispute. This instrument is being a power of attorney and the dispute is not market value the above section would not applicable."

6. When Section 33A of the Act empowers the Sub Registrar to recover deficit stamp duty, provided that such invocation is made on the strength of a certificate to be issued by the Registrar of the District, after an enquiry made in that regard. The second proviso to Section 33A(1) would indicate that no such enquiry shall be commenced after the expiry of three years from the date of registration of the instrument. Admittedly,

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the Power of Attorney was registered on 29.11.2013 and the present impugned order had been passed on 27.03.2017.

7. A perusal of the order impugned would also show that the same was also not accompanied by a certificate issued by the District Registrar under Section 33A. That apart, the said impugned order had been issued beyond the period of three years. On that ground itself, the impugned order is liable to be set aside.

8. It was the further contention of the learned Additional Government Pleader that during the pendency of this writ petition, the amount had been paid as demanded. The learned Additional Government Pleader would also submit that the entire writ petition had become infructuous for the simple reason that the amount has been paid by the petitioner and his Principal. He would also contend that the writ petition, at the instance of the petitioner is not maintainable, as only the executant has the liability to make the payment and the payment has been received. To that submission, the learned counsel for the petitioner would submit

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that the amount has been paid under protest and the Power of Attorney has right to institute or defend suit also on behalf of the Principal.

9. It is to be noted that the said amount had been paid under protest by the petitioner and his Principal. Therefore, when the impugned order itself is bad, the respondent cannot contend that since the amount had been paid, the entire claim become infructuous that too in the light of the payment under protest. A further claim had also been made by the learned Additional Government Pleader that for payment of the stamp duty in respect of the Power of Attorney, it is the Power Attorney's liability. When the executant has not challenged the said demand, the Power Agent does not have right to challenge the said demand. It is to be noted that the power had been given to the petitioner by the Principal also to institute litigation or defend litigation. Therefore, the said contention is rejected.

10. In fine, this writ petition is allowed, the impugned demand is set aside and the respondent is directed to refund the sum of Rs.

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14,00,237.50 (Fourteen Lakhs Two Hundred and Thirty Seven Rupees and Fifty Paise only) with interest at the rate of 9% per annum from the date of the said payment till the date of payment to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

16.12.2024

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

abr

To

The Sub-Registrar,
(In the cadre of District Registrar),
Woraiyur, Trichy-620 003.

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K.KUMARESH BABU, J.

abr

W.P.(MD) No.5877 of 2017

Dated: 16.12.2024