BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2024**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)Nos.22723 and 22724 of 2024
and
W.M.P(MD).No.19240 and 19243 of 2024

W.P(MD).No.22723 of 2024

1.N.Jegatheesan
2.J.Harini ... Petitioners

Vs.

1.The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, Raja Annamalaipuram,
Chennai 600 028.

2.The District Registrar,
Madurai South Registration District,
Madurai.

3.The Sub Registrar,
Office of the Sub Registrar of Tirupparankundram,
Madurai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the entire records pertaining to the impugned notice dated 05.09.2024 of the third respondent issued to the petitioners pertaining to Document No. 7211/2023 and quash the same.

W.P(MD).No.22724 of 2024

1.N.Jegatheesan
2.J.Hariharan ... Petitioners

Vs.,

1.The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, Raja Annamalaipuram,
Chennai 600 028.

2.The District Registrar,
Madurai South Registration District,
Madurai.

3.The Sub Registrar,
Office of the Sub Registrar of Tirupparankundram,
Madurai. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the entire records pertaining to the impugned notice dated 05.09.2024 of the third respondent issued to the petitioners pertaining to Document No. 7210/2023 and quash the same.

In both petitions

For Petitioners : Mr.I.Abrav Mohamed Abdullah
for Mr.P.Parthikannan
For Respondents : Mr.P.Subbaraj
Special Government Pleader

COMMON ORDER

Challenge has been made against the impugned notice issued by the third respondent on 05.09.2024 directing the writ petitioners to pay the deficit stamp duty of Rs.17, 77, 528/- (Rupees Seventeen Lakhs Seventy Seven Thousand Five Hundred and Twenty eight only).

2. The brief fact leading to filing these writ petitions is that on 20.10.2023, the first petitioner gifted undivided $1/3^{rd}$ share of the property in R.S.No.64/2A to an extent of 1.40 cents acres situated at Valayapatty Village, Tirupparankundram Taluk (hereinafter referred to as 'subject property'), to his son/second petitioner herein vide Doc.No.7210 of 2023. Similarly, he gifted undivided $1/3^{rd}$ share of the subject property to his daughter vide Doc.No.7211 of 2023. Now, the grievance of the first petitioner is that the impugned notices have been issued by the third respondent on 05.09.2024 demanding to pay a sum of Rs.17, 77, 528/- based on the internal audit objection that there is a deficit stamp duty. Challenging the same, these writ petitions have been filed.

3.Heard both sides. By consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

4. The learned Special Government Pleader, on instructions, would submit that the subject property originally belonged to the company, namely M/s.Yes Yen Aroma. However, the document has been registered as it is the private property. Therefore, exemption provided under the Stamp Act will not be applicable to the facts of the case on hand. Stamp duty will be governed under Article 58(ii) of the Indian Stamp Act. Therefore, the petitioner has to pay the deficit stamp fee.

5. As far as the recovery of any deficit stamp duty is concerned, the same is governed under Section 33A of the Indian Stamp Act. It is relevant to note that Section 33A of the Stamp Act reads as follows:

> "*Notwithstanding anything contained in Section 33 or in any other provisions of this Act, if, after the registration of any instrument under the Registration Act, 1908(Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered*

from the person liable to pay the duty, as an arrear of land revenue: "

6. A perusal of the above provisions makes it very clear that if there is any deficit stamp duty, the Registrar of the District under the Registration Act has to issue certificate in this regard. Before issuing such certificate, due inquiry is contemplated after giving proper opportunity to the parties concerned. Further, no such enquiry is also permitted, after expiry of three years from the date of registration of the instrument. Therefore, *sine quo non* for issuing certificate under Section 33A for recovery of deficit stamp duty is the enquiry followed by order certifying the deficit stamp duty. The order of the District Registrar is also appealable to the Chief Controlling Revenue Authority as per Section 33A Sub Clause 3 of the Act.

7. In view of the above, without following any such procedure, after registration of the document, the notice in both writ petitions for recovery of deficit stamp duty issued by the Sub Registrar merely on the basis of internal audit report cannot be sustained. Hence, the same is quashed and the matter is remanded back to the District Registrar to decide the matter afresh after giving opportunity to the parties.

N.SATHISH KUMAR, J.

Rmk

8. With the above observation, these Writ Petitions stands allowed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

25.09.2024

(2/2)

Index : Yes / No
NCC : Yes / No
Rmk

To
1.The Inspector General of Registration,
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