BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.24396 of 2016
and
W.M.P.(MD)Nos.17617 and 17618 of 2016

S.Indira ...Petitioner

Vs

1.The Inspector General of Registration,
Santhome High Road,
Chennai.

2.The District Registrar,
Palayamkottai Registration District,
Palayamkottai,
Tirunelveli.

3.The Sub Registrar,
Kovilpatti,
Thoothukudi District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned notice issued by the third respondent in No. Nil, dated 22.09.2016 and the remarks made in the Encumbrance

Certificate in No. Nil, dated 24.11.2016 for the property bearing Plot No. 38, S.No.32/8, Manthithoppu Village, Kovilpatti Taluk that the petitioner has to pay additional stamp duty of Rs.49,929/- and registration fee of Rs.7,135/- and quash the same.

For Petitioner : Mr.M.Saravanan

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

O R D E R

Heard Mr.M.Saravanan, learned counsel for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader for the respondents.

2. This Writ Petition has been filed challenging the notice issued to the petitioner calling upon him to pay the difference in stamp duty and registration charges based upon the audit report. This notice had been purportedly issued under pretext of Section 33-A of the Stamp Act.

3. A reading of the said order does not envisage that the same is in compliance with Section 33-A of the Act, since the same is not supported

by a certificate issued by the District Registrar concerned as envisaged under Section 33-A(2) of the Act. Further, from the facts of the case, the petitioner had presented a document for registration bearing a face value of Rs.1,78,300/- upon which the petitioner had also paid a stamp duty for a sum of Rs.12,500/- and corresponding registration charges. Section 33-A of the Act can only be applied in a case where there had been a payment of stamp duty which is either improper or insufficient on the face value of the document. From the facts of the case, the petitioner paid Rs.12,500/- as stamp duty for the document's face value of Rs. 1,78,300/-. However, the impugned order incorrectly claims a deficit stamp duty of Rs.49,929/- implying a higher face value than the actual registered document. Therefore, the impugned order is un-sustainable as it was not validly made under Section 33-A of the Act.

4. The learned Additional Government Pleader appearing for the respondents had produced a formal notice issued by the Special Deputy Collector (Stamps), who invoked his powers under Section 47(A) of the Act. The learned Additional Government Pleader submitted that under Section 47-A(3) of the Act, the Collector of Stamps has the power to act

either *suo motu* or otherwise, within 5 years from the date of registration of the document and if the document is found to be undervalued, the Collector can call upon the claimant to pay the deficit stamp duty, based on the actual market value of the property. He would submit that when the formal notice was issued to the petitioner, the petitioner responded by enclosing the interim order granted by this Court in the instant Writ Petition, directing the Special Deputy Collector (Stamps) to return the proposal of the Sub-Registrar, as the necessity for further action had not arisen.

5. Having already held that the Sub-Registrar ought not to have invoked Section 33-A of the Act, in the present facts and circumstances, it is noted that the Special Deputy Collector (Stamps), Thoothukudi, issued the formal notice on 05.04.2017, within the stipulated time under Section 47-A(3) of the Act. However, further action on this notice was not proceeded due to the interim order granted by this Court in the instant writ petition. Further proceedings on the same can be proceeded to by the a concerned authority.

6. With the aforesaid observations, the Writ Petition is allowed and the impugned order dated 22.09.2016 is set aside. The encumbrance that had been recorded pursuant to the impugned order shall also stand erased. No costs. Consequently, connected miscellaneous petitions are closed.

03.12.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

<u>To:</u>

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K.KUMARESH BABU, J.

Nsr

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