BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.21079 of 2018

V.Selvam ... Petitioner

Vs.

1.Government of Tamil Nadu,
Represented through its Secretary,
Revenue Department, St. George Fort,
Chennai – 600 009.

2.The District Registrar,
Tenkasi Registration District,
Tenkasi Registration Office,
Tenkasi, Tirunelveli District.

3.The Sub Registrar,
Alangulam Registration Office,
Alangulam Taluk,
Tirunelveli District. .... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the 3rd respondent to refund the excess stamp duty of Rs.45,000 and registration fee of Rs.15,000 collected by the respondents from the petitioner along with 12 % interest, in respect of memorandum of deposit of title deeds registered on 30.03.2017 vide Doc.No.1184 of 2017 by the petitioner in favour of City Union Bank private Limited.

For Petitioner : Mr.N.Ganagasapapathy
For Respondents : Mr.C.Satheesh,
Govt. Advocate

ORDER

The petitioner has filed this Writ Petition seeking a direction to the third respondent to refund the excess stamp duty and registration fee paid by him.

2. It is the case of the petitioner that the petitioner has entered into a memorandum of title deed in favour of the City Union Bank on 27.03.2017, for availing loan to his partnership business. At the time of registration of said agreement, the petitioner has paid a sum of Rs.25,000/- as stamp duty and a sum of Rs.5,000/- as registration fee. However, in the encumbrance certificate, it was mentioned as there is a deficit stamp duty of Rs.45,000/- and impounding registration fee of Rs.15,000/-. When the petitioner approached the Bank for extension of deposit of title deeds, he was forced to pay the deficit stamp duty. Thereafter, the petitioner obtained an information from RTI stating that the stamp duty is only Rs.25,000/- and the registration is only Rs.5,000/-. Based on the same, the petitioner sent a notice to the respondent bank seeking refund of the excess stamp duty and registration fee paid by him along with interest. Since the same was not proceeded, the petitioner has filed this writ petition.

3. It is the contention of the learned counsel for the petitioner that as per G.O.Ms.No.79, Commercial Taxes and Registration (J1) Department, dated 11.07.2011, the stamp duty for registration of mortgage deposit of title deed is Rs. 25,000/- and the registration fee is Rs.5,000/- and the same has been properly paid by the petitioner. However, merely on the basis of audit objection, the excess stamp duty was collected from the petitioner and the same cannot be sustained in the eye of law.

4. The learned counsel for the petitioner further submitted that while demanding deficit stamp duty, no reasons whatsoever have been sated by the respondent bank except stating that at the time of auditing, it was found that there is a deficit stamp duty of Rs.45,000/- and a sum of Rs.15,000/- as registration fee.

5. The learned Government Advocate appearing for the respondents submitted that the petitioner has availed loan for different four partnership firms viz., M/s.R.V.V.High Tech Rice Mills, M/s.R.V.V.Minerals, M/s.Vaithiyalingam Traders and M/s.Varshini Traders. Therefore, according to them, all the four documents should have been treated as four documents, whereas it has been treated as one document and collected stamp duty in respect of one document.

Therefore, the deficit stamp duty of Rs.45,000/- and a sum of Rs.15,000/- as registration fee was demanded. Hence, opposed this Writ Petition.

6. Heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

7. As far as stamp duty for the agreement of memorandum of title deed is concerned, the same is governed under Schedule I and Article 6 of the Indian Stamp Act, 1899. As per G.O.Ms.No.79, Commercial Taxes and Registration (J1) Department, dated 11.07.2011, the maximum stamp duty in respect of agreement relating to deposit of title deed is Rs.25,000/- under Article 6(1)(a) and Article 6(1)(b). Thereafter, only in the year 2018, the stamp duty has been increased at the rate of Rs.30,000/-. Till such time, the Government Order in G.O.Ms.No.79, Commercial Taxes and Registration (J1) Department, dated 11.07.2011 was governing the field. Therefore, the stamp duty for deposit of title deed as on the date of registration was Rs.25,000/-. The deficit stamp duty has been collected after two years of the registration, citing the audit objection. This Court is of the view that merely on the basis of audit objection, the respondents cannot demand deficit stamp duty. Having stated that deficit stamp duty has to be paid as per the audit report, now a different stand has been taken in the counter affidavit to the effect that since the petitioner executed the mortgage and availed loan for four firms, the document should be treated as four documents.

8. The very assumption of the authorities that there were four transactions in a single document itself is misconceived for the simple reason that the petitioner mortgaged the individual property at the request of the firms and when the Bank themselves admitted to sanction the loans to the firms on the guarantee of the petitioner, the said document cannot be construed to mean that there are four different transactions. For recovery of stamp duty, there is a procedure under the Indian Stamp Act, 1899. Before embarking any action to recover the deficit stamp duty, a certificate ought to have been issued by the Registrar in this regard. Such certificate could be issued only after due enquiry being conducted. Section 33A of the Indian Stamp Act, 1899 deals with the recovery of deficit stamp duty. Therefore, before recovery of any deficit stamp duty, a certificate ought to have been issued by the Registrar and the said certificate also ought to have been issued after due enquiry made in this regard that too after giving proper opportunity to the parties concerned. In the present case, none of the procedure has been followed. Therefore, the demand of stamp duty merely on the basis of audit objection, cannot be sustained in the eye of law and the same is liable to be rejected.

9. Accordingly, the this writ petition is allowed and the respondents are directed to refund the excess stamp duty and the registration fee collected from the petitioner forthwith. There shall be no order as to costs.

10.09.2024

NCC : Yes/No
Index : Yes/No
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N.SATHISH KUMAR, J.

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