BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.10625 of 2017
and
W.M.P.(MD)Nos.8112 and 8113 of 2017

K.Vijayalakshmi ...Petitioner

1.The District Registrar,
Thanjavur District,
Thanjavur.

2.The Sub-Registrar,
Thiruvidaimarudur,
Thanjavur District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notice passed by the second respondent vide document No.2424/2014 dated 03.05.2017 and quash the same and consequently direct the second respondent to remove the encumbrance made on the document No.2424/2014 dated 18.09.2014.

For Petitioner : Mr.G.Gomathi Sankar

For Respondents : Mr.M.Sarangan
Additional Government Pleader

ORDER

Heard Mr.G.Gomathi Sankar, learned counsel for the petitioner and Mr.M.Sarangan, learned Additional Government Pleader for the respondents.

2. This Writ Petition has been filed challenging the impugned notice passed by the second respondent vide document No.2424/2014 dated 03.05.2017 under which a claim had been made as if there was a loss or deficit stamp duty with an observation that the document could be sent for further process under Section 47-A(3) of the Stamp Act.

3. The case of the petitioner is that she had executed a release deed in Document No.2424/2014 on 18.09.2014 in favour of her father-in-law. However, the present impugned order had been passed. He would submit that the release deed cannot be referred to under Section 47-A(3) of the Act and that the petitioner had also paid the necessary charges as required. Furthermore, the impugned notice does not specify the

provisions of law under which it was issued. He would submit that with reference to insufficiently stamped document, the respondents can invoke the provisions under Section 33-A of the Act for which a certificate of District Registrar concerned should have been obtained. He would further submit that a reference under Section 47-A(3) requires an indication that the property has been undervalued. However, the impugned order does not make any such allegation regarding the under-valuation of the property. Therefore, he would submit that this Court should interfere with the impugned order.

4. The learned Additional Government Pleader appearing for the respondents submitted that the impugned order was issued based on audit objections raised during the audit process. Therefore, the petitioner cannot contend that the impugned order is without authority. He would further submit that the petitioner paid only Rs.25,000/- towards stamp duty and registration, whereas the petitioner is liable to pay Rs.2,96,400/- as the appropriate stamp duty for the said document. Hence, the notice should be treated as one issued under Section 33-A of the Act.

5. I have considered the submissions made on either side and perused the materials available on record.

6. By invoking the provisions of Section 33-A of the Act, a certificate from the District Registrar under the Registration Act ought to have been obtained for recovering the amount from the persons liable to pay the duty. However, in the present case, the reference is only to the audit conducted by the District Registrar Audits, and no certificate has been issued by the District Registrar concerned specifying the amount to be recovered from the persons liable. Moreover, no such certificate has been served on the petitioner. Had a certificate been issued, it would have been subject to an appeal before the Chief Controlling Revenue Authority. It is to be noted that such a certificate cannot be issued after a period of three years from the date of registration. In the present case, as noted earlier, the second respondent has relied solely on an audit report from the concerned Registrar of Audit for issuing the notice. However, no certificate as mandated under Section 33-A(1) has been served on the petitioner or produced before this Court. In view of the same, the impugned order is liable to be set aside.

7. In fine, the Writ Petition is allowed and the impugned order dated 03.05.2017 passed by the second respondent is set aside. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

13.12.2024

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

To:

1.The District Registrar,
Thanjavur District,
Thanjavur.

2.The Sub-Registrar,
Thiruvidaimarudur,
Thanjavur District.

K.KUMARESH BABU, J.

Nsr

W.P.(MD).No.10625 of 2017

13.12.2024