In the High Court of Judicature at Madras

Reserved on : **10.2.2025**	Delivered on: **13.2.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.20282 of 2024
& WMP.No.22208 of 2024

M.A.Shivakumaran, Director,
M/s.Sree Rajeswari Mill Ltd. ...Petitioner

Vs

1.The Inspector General of Registration-cum-Chief Controlling Revenue Authority, 100, Santhome High Road, Mylapore, Chennai-4.

2.The District Registrar (Administration), (Assistant Inspector General Grade), Vellore District, Vellore.

3.The Sub-Registrar, Gudiyattam, Thangam Nagar, Gudiyattam, Vellore District. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the second respondent's order made in Na.Ka.No.4266/Aa1/2023 dated 29.2.2024 so as to quash the same and consequently direct the second respondent to confirm the levy of stamp duty and the registration fees only on the advance amount made by the purchaser to the petitioner/vendor under the subject sale agreement dated 16.12.2020 vide doc.No.9893 of 2020 registered on the file of the Sub-Registrar, Gudiyattam.

For Petitioner	:	Mr.K.A.Ravindran
For Respondents	:	Mr.B.Vijay, AGP

ORDER

This writ petition has been filed challenging the proceedings of the second respondent dated 29.2.2024 and for a consequential direction to the second respondent to confirm the levy of stamp duty and the registration charges that were originally paid towards the sale agreement dated 16.12.2020 registered as doc.No.9893 of 2020 on the file of the third respondent.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The case of the petitioner is as follows :

(i) A sale agreement dated 16.12.2020 came to be executed by the petitioner in favour of one Mr.K.Rakesh Kumar with respect to certain properties belonging to the petitioner company. As per the said sale agreement, the total sale consideration was fixed at Rs.29.49 Crores. A sum of Rs.10 lakhs was payable towards advance. The balance amount was payable at various stages towards discharging the liability of the petitioner company owed to a financial institution.

(ii) For this purpose, the agreement holder was given the right of collecting the original title documents from the financial institution on settling the dues. That apart, the agreement holder was permitted to enter into the properties and take control of the same for carrying out the preparatory process and to make the properties marketable to sell them to prospective buyers. The agreement holder was also given the right of getting necessary approvals and clearance from the competent authority. This document was treated to be a sale agreement and it was registered on payment of necessary stamp duty under Article 5(j) of the Indian Stamp Act, 1899. It was registered as doc.No.9893 of 2020 on the file of the third respondent.

(iii) The above document was scrutinized by the departmental audit and they came to the conclusion that the document has to be treated as an instrument comprising of two distinct matters viz. (i) agreement of sale by delivery of possession; and (ii) power for consideration coupled with interest. Accordingly, the audit came to the further conclusion that there has been a short levy towards both the stamp duty as well as the registration fee, totaling a sum of Rs.1,76,88,860/-. Pursuant to that, the second respondent initiated proceedings under Section 33A of the Indian Stamp Act and through the impugned proceedings dated 29.2.2024, directed the petitioner to pay the deficit stamp duty to the tune of Rs.1,17,99,180/-.

(iv) The third respondent independently issued a show cause notice dated 24.7.2023 under Section 80A of the Registration Act towards levy of the deficit registration fee. After inquiry, a certificate was issued under Section 80A of the Registration Act, 1908 and the petitioner was directed to pay the deficit registration fee of Rs.58,89,680/-. Aggrieved by that, the petitioner filed an appeal before the second respondent on 09.12.2023 and the same is still pending.

(v) Incidentally, the petitioner had filed an appeal, against the order dated 29.2.2024 passed by the second respondent levying the deficit stamp duty, before the first respondent on 30.4.2024 under Sub-Section (3) of Section 33A of the Indian Stamp Act. After filing such appeal, the above writ petition came to be filed before this Court on 10.7.2024 challenging the very same order dated 29.2.2024 passed by the second respondent.

4. The third respondent has filed a counter affidavit and justified the levy of deficit stamp duty by the second respondent. That apart, the third respondent has also questioned the maintainability of the writ petition on the ground that the petitioner already filed an appeal before the first respondent. According to him, without waiting for the outcome of the appeal, the above writ petition has been filed before this Court. Hence, the third respondent sought for dismissal of this writ petition.

5. The learned counsel for the petitioner has submitted that there is a gross procedural irregularity on the part of the second respondent by not following the procedure as provided under Section

33A of the Indian Stamp Act, that there is a violation of the principles of natural justice by not affording sufficient opportunity to the petitioner and that therefore, the availability of an appeal remedy is not a bar for maintaining the above writ petition.

6. The other ground raised by the learned counsel for the petitioner is that the audit report was the basis for initiating the proceedings and that in so far the proceedings initiated under Section 80A of the Registration Act are concerned, a show cause notice was issued by the third respondent, which resulted in the issuance of a certificate for the levy of deficit registration fee, that since this procedure was not followed, the appeal has been filed before the second respondent against that order, that in so far as the levy of deficit stamp duty is concerned, there was no show cause notice and straight away, the second respondent issued the notice dated 03.8.2023 placing reliance upon the audit report, that the second respondent was only completing the formality after deciding to levy of the deficit stamp duty without considering the grounds raised by the petitioner and that no certificate was issued as contemplated under Section 33A of the Indian Stamp Act.

7. The further ground raised by the learned counsel for the petitioner is that even in the impugned proceedings dated 29.2.2024, what have been shown in the reference column are only (i) the show cause notice issued by the third respondent under Section 80A of the Registration Act; (ii) the report submitted by the departmental audit dated 08.8.2022; (iii) the proceedings of the Deputy Inspector General of Registration, Vellore dated 02.3.2023 while dealing with the petition submitted by the Sub-Registrar, Gudiyatham; and (iv) the proceedings of the Additional Inspector General of Registration (Investigation), Chennai-28 dated 07.7.2023 directing recovery of the deficit stamp duty and the deficit registration fee.

8. It is also contended by the learned counsel for the petitioner that the second respondent did not independently issue any show cause notice and proceed further as per the procedure mandated under Section 33A of the Indian Stamp Act, that the sale agreement dated 16.12.2020 was ultimately canceled vide document dated 03.2.2022 registered as doc.No.2806 of 2022 on the file of the third respondent, that in the meantime, two sale deeds were executed on 07.10.2021 and 14.2.2022 by paying the entire stamp duty and the

registration fee, that after cancellation of the sale agreement dated 16.12.2020, four more sale deeds were executed by paying the necessary stamp duty and the registration fee, that there is absolutely no revenue loss for the Registration Department and that there was no need to once again proceed against the petitioner for recovering the deficit stamp duty and the deficit registration fee.

9. It is brought to the notice of this Court that the petitioner company is in financial doldrums.

10. According to the learned counsel for the petitioner, considering the present financial position of the petitioner company, the respondents should not proceed against the petitioner.

11. Per contra, the learned Additional Government Pleader appearing for the respondents, apart from reiterating the stand that was taken in the counter affidavit, has submitted that the procedure was properly followed by the second respondent by affording sufficient opportunity to the petitioner, that therefore, there is no ground to interfere with the order passed by the second respondent and that the

petitioner, having filed an appeal before the first respondent, should not be allowed to parallelly challenge the order passed by the second respondent by filing this writ petition.

12. The learned Additional Government Pleader has further contended that the subsequent cancellation of the sale agreement dated 16.12.2020 will not enable the petitioner to escape from the liability. In order to substantiate this contention, he relied upon the judgment of the Apex Court in the case of ***Tirupati Developers Vs. State of Uttarakhand & Others [reported in 2013 (9) SCC 332]***. Accordingly, he sought for dismissal of this writ petition.

13. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order.

14. It is not in dispute that the petitioner has an efficacious alternative remedy under Sub-Section (3) of Section 33A of the Indian Stamp Act to file an appeal against the order passed by the District Registrar. In fact, the petitioner has, indeed, filed such an appeal

before the first respondent on 30.4.2024 and the appeal is at the stage of inquiry. Thereafter, this writ petition has been filed before this Court. Under such circumstances, this Court must only see only as to whether there is any gross procedural irregularity on the part of the second respondent by not following the procedure mandated under Section 33A of the Indian Stamp Act and as to whether the proceedings are vitiated for violation of the principles of natural justice. If these two requirements are satisfied, filing of the appeal before the first respondent will not stand in the way of this Court exercising its jurisdiction under Article 226 of The Constitution of India.

15. On the other hand, if these requirements do not stand satisfied, the above writ petition has to be closed and the petitioner has to be relegated before the first respondent to prosecute the appeal. The natural corollary is that this Court will not go into the various clauses in the sale agreement dated 16.12.2020 nor deal with the claim made for the recovery of deficit stamp duty on merits.

16. One of the grounds that was raised by the learned counsel for the petitioner is that the language used in the notice issued gives

an impression that the document is sought to be impounded whereas the document has already been released after collecting the necessary stamp duty and the registration fee and that therefore, the entire proceedings are vitiated.

17. It is now too well settled that the form of the document is not very relevant and what is relevant is the content. It is quite clear from the materials placed before this Court that there was no intention to impound the document and what was intended was only to recover the deficit stamp duty under Section 33A of the Indian Stamp Act.

18. Section 33A of the Indian Stamp Act does not speak about the retention of a document after registration. In fact, the scheme of Section 33A of the Indian Stamp Act provides that the proceedings thereunder can be initiated even after registration. Thus, the proceedings should be initiated within a period of three years from the date of registration of the document as enumerated in the Second Proviso.

19. In the case in hand, the sale agreement dated 16.12.2020 was registered on 18.12.2020 and the proceedings have been initiated within a period of three years.

20. The proper procedure to be followed under Section 33A of the Indian Stamp Act is that where it is found that proper stamp duty payable under the Act in respect of an instrument has not been paid or has been insufficiently paid, the same can be recovered on a certificate from the District Registrar. In the case in hand, the source, from which, it came to light that there is a deficit stamp duty, is the departmental audit. Before the certificate is issued by the District Registrar, an opportunity must be given to the concerned person as per the First Proviso. This would mean that a show cause notice should be issued by the District Registrar to the person, who is liable to pay the deficit stamp duty and such show cause notice must provide necessary particulars and it must be basically like a speaking order so as to enable the concerned person to put forth his defence with necessary materials at the time of inquiry.

21. Even though reference No.1 in the impugned order dated 29.2.2024 speaks about the show cause notice issued by the third respondent dated 24.7.2023, it has nothing to do with the present proceedings since it was issued under Section 80A of the Registration Act, which pertains to levy of deficit registration fee and which is a separate proceedings arising out of the same transaction. Since both the proceedings were initiated for the levy of deficit stamp duty and for the levy of deficit registration fee almost at the same point of time, the first notice issued under Section 80A of the Registration Act finds a place in the impugned order whereas the first notice dated 03.8.2023 that was issued by the second respondent to the petitioner talks about the fact that the stamp duty ought to have been paid under Article 48(e) whereas it was paid under Article 5(j) of the Indian Stamp Act and as a result, there is a deficit stamp duty of Rs.1,17,99,180/-. Along with this notice, the audit report was also annexed.

22. On receipt of the same, a detailed reply was given by the petitioner on 08.8.2023 to the third respondent. Thereafter, another notice dated 25.8.2023 was issued by the second respondent, for which also, a partial reply dated 08.9.2023 was given by the petitioner

to the second respondent. Once again, a full and final reply dated 24.11.2023 was submitted before the second respondent. Apart from the above replies that were submitted by the petitioner, the statements made on the side of the petitioner were also recorded by the second respondent. The second respondent has also received the report from the third respondent. The second respondent, thereafter, considered the stand taken by the petitioner and the audit report and passed the impugned order dated 29.2.2024.

23. As per the scheme of Section 33A of the Indian Stamp Act, after the inquiry, the District Registrar has to issue a detailed final order followed by a certificate as contemplated under Section 33A(1) of the Indian Stamp Act. By the time the certificate was issued by the second respondent for recovery of the stamp duty as an arrear of land revenue, the petitioner had filed the appeal before the first respondent and it is pending. This Court does not find any procedural irregularity on the part of the second respondent and this Court is of the view that the second respondent has given sufficient opportunity to the petitioner to put forth his defense. Once this requirement is satisfied,

the order passed by the second respondent cannot be held to be illegal on the ground of violation of the principles of natural justice.

24. While considering the fulfillment of requirements under Section 33A of the Indian Stamp Act, this Court finds that the requirements have been complied with by the second respondent and that the same cannot be interfered on some technical grounds to the effect that no certificate has been issued by the second respondent and in the meantime, an attempt was made to recover the deficit stamp duty. The issuance of a certificate is preceded with a show cause notice, inquiry and a detailed order and all these requirements have been satisfied.

25. In the light of the above findings, this Court is of the considered view that the petitioner will not be allowed to ride in two horses. The petitioner, having chosen to file an appeal before the first respondent against the impugned order passed by the second respondent, cannot be allowed to parallelly question the impugned order passed by the second respondent before this Court by filing this

writ petition. Hence, the petitioner has to necessarily work out his remedy only in the pending appeal before the first respondent.

26. The conclusive submissions that were made on the side of the petitioner to the effect that the sale agreement was already canceled vide document dated 03.2.2022, that already six sale deeds have been executed by paying necessary stamp duty and the registration fee, that there is no loss of revenue for the Registration Department and that the petitioner is in financial doldrums, are all arguments, which are unsustainable. This Court is dealing with the revenue of the State, based on the document, which was already registered and towards which, it is alleged that there is a payment of deficit stamp duty and deficit registration fee. Such claim cannot be defeated and it will be of no avail to raise a ground that the document has been subsequently canceled.

27. In the result, the writ petition is dismissed. The petitioner is permitted to raise all the grounds before the first respondent in the pending appeal filed under Sub-Section (3) of Section 33A of the Indian Stamp Act and the same will be considered on its own merits

and in accordance with law. The first respondent is directed to pass final orders after affording an opportunity to the petitioner within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected WMP is also dismissed.

13.2.2025

Index : Yes
Neutral Citation : Yes

To
1.The Inspector General of
Registration-cum-Chief
Controlling Revenue
Authority, 100, Santhome
High Road, Mylapore,
Chennai-4.

2.The District Registrar
(Administration), (Assistant
Inspector General Grade),
Vellore District, Vellore.

3.The Sub-Registrar,
Gudiyattam, Thangam Nagar,
Gudiyattam, Vellore District.

RS

N.ANAND VENKATESH,J

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