BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.20172 of 2017

S.Pattukani .. Petitioner

Vs.

The Sub Registrar,
Pudukkottai,
Tuticorin District. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondent to delete the charge created in respect of the petitioner's property in S.No. 511/1D, in Patta No.3489, to an extent of 3.09 cents, situated at Plot No. 40, PMS Nagar, Kumarakiri @ Pudukkottai Village, Tuticorin District from the list of Encumbrance within the time frame to be stipulated by this Court.

For Petitioner	:	Mr.G.Mohankumar
For Respondent	:	Mr.P.Subbaraj Special Government Pleader

ORDER

The petitioner has filed this writ petition seeking for a mandamus to direct the respondent to delete the charge created in respect of her property in S.No.511/1D, in Patta No.3489, to an extent of 3.09 cents, situated at Plot No.40, PMS Nagar, Kumarakiri @ Pudukkottai Village, Tuticorin District from the list of Encumbrance.

2. The learned counsel for the petitioner would submit that the petitioner had purchased a property through a registered sale deed dated 17.12.2013 in Document No.4936/2013 on the file of the respondent herein. After registration, the said document was also released to the petitioner. However, by proceedings dated 01.03.2016, the respondent had called upon the petitioner to make good the deficit stamp duty failing which proceedings would be initiated under Sections 33-A and 47-A(3) of the Indian Stamp Act, 1899 read with Section 80-A of the Registration Act, 1908 for recovery of the dues. The said notice was suitably replied by the petitioner and no further proceedings were initiated by the respondent or any other authority under the Stamp Act. However, the

petitioner was surprised to find that an encumbrance has been created based upon a claim and therefore, she has approached this Court with the instant writ petition.

3. The learned counsel for the petitioner would submit that no proceedings had been initiated against the petitioner either under Section 33-A or Section 47-A(3) of the Indian Stamp Act. He would further submit that to initiate proceedings either under Section 33-A or under Section 47-A(3) of the Indian Stamp Act, the time period prescribed therein have expired and therefore, no such proceedings can also be initiated. Hence, he would seek this Court to grant the relief as prayed for by directing the respondent to delete the charge created in respect of the petitioner's property.

4. On the other hand, the learned Special Government Pleader would contend that the District Registrar (Audit) by his communication dated 08.06.2015 had indicated that the property was undervalued for which he had raised an audit slip for calculation of the deficit stamp duty

along with the deficit registration charges. He would further submit that the petitioner is liable to be proceeded under Section 47-A(3) of the Indian Stamp Act and only if the amount is paid, the encumbrance could be deleted. The respondent cannot delete the encumbrance unilaterally without the petitioner making the said payment. He would further submit that there has been a loss to the revenue due to the undervaluation of the property. Therefore, he would submit that no interference is required to be made.

5. I have considered the rival submissions made by the learned counsel on either side.

6. A notice had been issued by the respondent calling upon the petitioner to pay the difference in stamp duty failing which encumbrance would be created over the property. The said notice indicates initiation of proceedings under Sections 33-A and 47-A(3) of the Indian Stamp Act read with Section 80-A of the Registration Act. The same had also been replied to by the petitioner through a legal notice, which has also been

acknowledged by the respondent. It is to be noted that the audit slip issued by the District Registrar (Audit) was placed before this Court and a perusal of the same would indicate that the District Registrar (Audit) had found that the property had been undervalued in the document. When that be so, it could only be the second respondent, who ought to have initiated proceedings under Section 47-A(3) of the Indian Stamp Act only. Section 33-A of the Indian Stamp Act cannot be applied to such cases.

7. Section 47-A(3) of the Indian Stamp Act mandates that the Collector may, *suo motu* or otherwise, within five years from the date of registration of any instrument of conveyance, if not already referred to him under sub-Section (1), may call for and examine an instrument for the purpose of satisfying himself as to the correctness of the market value of the property.

8. Admittedly, in the present case, the document was registered in the year 2013 and the notice had been issued by the respondent in the

year 2016. However, they had not initiated any proceedings under Section 47-A(3) of the Indian Stamp Act, even as of today. Hence, there can be no authority for the respondent even to refer the matter to the Special Deputy Collector (Stamps) for fixing the market value under Section 47-A(3) of the Indian Stamp Act. Even under the said provision, the District Collector can only initiate such proceedings within five years from the date of registration of the document. In such view of the matter, I see no impediment in ordering the writ petition as prayed for.

9. In fine, this Writ Petition is allowed and the respondent is directed to delete the entry of encumbrance made pursuant to the notice dated 01.03.2016 within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

03.01.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

To

The Sub Registrar,
Pudukkottai,
Tuticorin District.

K.KUMARESH BABU, J.

abr

W.P.(MD) No.20172 of 2017

Dated: 03.01.2025