(2002) 04 MAD CK 0183

In the Madras High Court

Case No : Writ Petition No. 14406 of 2000

G. Natarajan APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:
Stamp Act, 1899 — Section 47(A)

Citation : (2002) 04 MAD CK 0183

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : A.S. Narasimhan, for the Appellant; M. Mahalingam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—Petition praying to issue a writ of Certiorarified Mandamus to call for the records relating to Rc.No.1722/98 dated 17.3.99 on the file of the 3rd respondent to quash the same and to direct the respondents to return the registered document bearing No.357/98 dated 24.1.97 executed in favour of the petitioner by the executant Mr.Navaneethammal and also to direct the second and third respondents to pay a sum of Rs.25,000/- towards the mental agony and sufferings on account of the abuse of the statutory power vested in them.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that the petitioner presented a document dated 24.1.1997 before the second respondent for the purpose of purchasing 1/5th undivided interest in respect of land comprised in Village No.66, Nethapettai Village, Survey No.123/2 measuring 47 cents, 233/3 measuring 37 cents,263/77 measuring 44 cents, 232 measuring 44 cents, 51/3 measuring 22 cents, 167/3/36 measuring 35 cents, 183/2 measuring 40 cents; that after getting the necessary information from the second respondent, the petitioner ascertained the guidelines value in respect of the property from the office of the second respondent, according to whom the value was Rs.74,950/-; that the 1/5th undivided interest value comes to

Rs.14,990/-; that after the presentation of the document, the second respondent kept the document pending Document No.4/97 and called upon the petitioner to produce the field measurement book by a letter dated 17.11.1997; that after the presentation of the said documents, the second respondent instead of registering and returning the document to the petitioner, sent the document to the third respondent u/s 47(A) of the Indian Stamp Act 1899 after registering the same as document No.357 of 1998; that the third respondent sent a communication stating that the petitioner had to pay a sum of Rs.76,300/- towards stamp charges and since the petitioner had already paid a sum of Rs.87,200/- by way of stamp charges, he had to pay a sum of Rs.2,67,190/- towards the difference in stamp duty; that the above said communication was followed by another communication dated Nil signed on 12.5.98 by the third respondent in RC.No.1879/98 stating that there will be an enquiry on 22.5.98 at 11 a.m. in connection with the ascertainment of valuation and stamp duty; that the petitioner sent a notice through his counsel on 20.5.98 pointing out that the letter dated 19.2.98 is unconscionable; that the third respondent without considering the objections stated in the counsel''s reply dated 20.5.98 sent another communication dated 22.5.98 in which the total guidelines value of the property was mentioned as Rs.53,438/-, the 1/5th undivided share value as per the executant is Rs.14,990/-, the total stamp duty payable is Rs.6,417/-, the duty already paid by way of non-judicial stamp paper comes to Rs.1820/- and the balance stamp duty payable comes to Rs.4,597/-; that there is a complete variation between the value furnished by the notice dated 19.2.98 and 22.5.98; that the petitioner sent another notice dated 11.6.98 to the third respondent calling upon him to return the document and the second respondent has deliberately furnished false guidelines value to extract more stamp duty from the petitioner though the petitioner has purchased the 1/5th undivided interest in the property; that the third respondent sent a communication calling upon the petitioner to pay a sum of Rs.2,299/- towards 50% of the stamp duty payable and to get the document released; that this court has held in the decision reported in 1998 III C.T.C. 66 that once the document is registered and when the deficit stamp duty is paid, it is the duty of the authorities to recover the deficit amount by invoking the provisions of the Revenue Recovery Act.

3. On the part of the respondents, no counter would be filed, but the learned Government Advocate on the writ side would seek permission of the court to argue on instructions and the same having been granted, would appear on behalf of the respondents as a whole and therefore the following order is passed in consideration of the pleadings of the writ petition, having regard to the materials placed on record and upon hearing the learned counsel for both.

4. During arguments, the learned counsel appearing on behalf of the petitioner besides narrating the facts of the case as pleaded in the writ petition which are extracted above, would further cite a Judgment reported in 1998 III CTC 66 and would exhort that once the document is detained for adjudication, the authority should pass orders within three months of such detention of the documents, but

in the case in hand no such order has been passed. Laying emphasis that the property purchased under the document is only 1/5th share in the whole of the property for which the vendor was entitled to and the valuation of the whole of the property would be bluntly arrived as Rs.2,67,190/-.

5. On the part of the learned Government Advocate citing the order passed by the Special Deputy Collector(Stamps) in ROC.No.1879/98 dated 12.5.1998, would point out that the difference of stamp duty to be paid by the petitioner as per his letter is Rs.2,67,190/-, which has been required to be paid with immediate effects. Therefore, on such arguments, the learned Government Advocate would seek to dismiss the writ petition with costs.

6. In consideration of the facts pleaded and the materials placed on record, the case of the petitioner is glaringly seen that the subject matter of purchase falling under different survey numbers and in Patta No.344, Kanchipuram, the 1/5th share which had been purchased by the petitioner under the registered sale deed dated 24.1.1997 for a sum of Rs.14,990/- and the petitioner stating that according to the guidelines, the value of the property purchased, being 1/5th share of the entire extent shown therein as Rs.14,990/- and therefore the document had been written to that extent showing the same as market value which is also the guideline value on the date of registration, effecting the payment of stamp duty on that value.

7. On the contrary, different stand has been taken on the part of the respondents especially the third respondent herein who is the Special Deputy Collector(Stamps) (who has been wrongly mentioned in the cause title as Independent Deputy Tahsildar (Stamps)). This respondent in his order in Ta.Pa.1722/98 dated 19.2.98 would give a calculation said to be based on the guideline value, as though a sum of Rs.87,200/- had already been paid as the stamp duty and yet another sum of Rs.76,300/- is to be paid still more by the petitioner and had ultimately arrived at the difference in the stamp duty to be paid at Rs.2,67,190/-; that on what basis this calculation has been arrived at, the respondents are not able to explain. Further more, as per another communication in Roc.No.1879/98 dated 12.5.98 sent to the petitioner this amount of Rs.2,67,190/- being the deficit stamp duty on the Document No.357/98, the same has to be remitted immediately and requiring him to appear for an enquiry before the Special Tahsildar (Stamps) at 11 a.m. on 22.5.1998 and thereafter again in communication No.1722/98 dated 27.10.1998, the Deputy Collector (Stamps) would send a communication of effecting a payment of stamp duty on the document No.357/98 for a sum of Rs.4,597/- and since the same has not been paid, has been asked to appear for enquiry at 11 a.m. On 4.11.98. Again by another communication dated 17.3.1999 the same authority showing a sum of Rs.2,67,190/- to be the value of the property for which the stamp duty payable is Rs.6,417/- and would requiring the petitioner to pay a sum of Rs.4,597/- being the deficit stamp duty, since a sum of Rs.1,820/- had already been paid and further require the petitioner to pay 50% of the same

which is the order impugned herein. The concession of 50% is said to be given as per Government order requiring the parties to make use of this from 1.3.99 to 30.6.99.

8. It is not only the Special Deputy Collector as per his order dated 19.2.98 has arrived at the total sum of Rs.2,67,190/-, which could be only the value of the entire extent of the properties described therein, but it is glaringly mentioned in this communication that it is the difference of stamp duty, not only in Column 7, but also just below the said column, and also by other communication dated 12.5.98 while seeking the petitioner to appear before the authority, viz. the Special Deputy Collector(Stamps). Again the same amount of Rs.2,67,190 has been shown as the deficit stamp duty and ultimately showing the same amount in the impugned order as the value of the properties covered by the documents and probably taking 1/5th share of the same, had not only arrived at the total sum of stamp duty at Rs.6,417/- and deducting the already paid sum of Rs.1,820/-, the petitioner had been asked to pay the rest of the amount of Rs.4,597/- giving a concession of 50% as per the Government order, if it is to be paid between 1.3.99 and 30.6.1999.

9. In these confused scenario, the petitioner has come forward to file the above writ petition seeking to quash the order dated 17.3.99, which is announcing concession of 50% valuation arrived at based on the guidelines value. It not only reveals the utter carelessness of the Deputy Collector(Stamps), but also in his non-application of mind in causing such confusion not only in the beginning requiring the party to pay the stamp duty to the entire extent of the property shown therein, without calculating the same only to 1/5th of the share which was the subject matter of purchase further more, giving the value of the total extent i.e. Rs.2,67,190/- to be the difference stamp duty that is due from the petitioner had also revealed total non-application of mind and callousness and therefore left with no option, the petitioner had to rush up to the court seeking redressal.

10. However, in the impugned order made in No.1722/98 dated 17.3.1999, the Special Collector(Stamps) has made it known to the petitioner that if he could pay the half of the stamp duty of the remaining amount of Rs.4,597/- i.e. Rs.2,299/-, he could get his document released as a concession granted by the Government that could be utilised only in between 1.3.99 and 30.6.99, but the petitioner without having a mind to make use of the said concession also has seeking to quash the very communication,passed by the third respondent Special Deputy Collector (Stamps) Chennai.

11. The petitioner cannot at all be compelled under any circumstance, to comply with any of the orders passed by the third respondent, the Special Deputy Collector(Stamps) Chennai, since he is not definite about his own order passed as it had been brought-forth in the earlier paragraphs and the other order passed by the other authority was causing utter confusion as it had been explained in the preceding paragraphs and therefore a direction issue to the third respondent would appropriately help the petitioner for the release the document atleast at

this belated stage and hence the following order:

12. In result,

(i)The above writ petition succeeds and the same is allowed with a cost of Rs.5,000/- which shall be borne from his personal funds by the incumbent in office, at the time when the erroneous orders came to be passed in Proceeding No.Ta.Pa.No.122/98 dated 19.2.98 and the communication that followed in Roc.No.1879./98 dated 12.5.98 calling for the petitioner to appear for the enquiry both of which are not only erroneous, but also utterly irresponsible besides being misleading.

(ii)The third respondent, the Special Deputy Collector(Stamps),Chennai is directed to take up the subject and deal with the same out of turn, in passing orders determining the execution of the document and amount of arrears of stamp duty as on the date of document of the instrument that was on 24.1.1997 and pass orders within 15 days from the date of receipt of a copy of this order.

(iii)The concession of 50% given pursuant to the order of the third respondent which is impugned herein, which the parties were entitled to make use of in between 1.3.99 and 30.6.99 shall be extended in favour of the petitioner, as though the matter is decided in between that period,since on account of the confusion caused by the third respondent, the Special Deputy Collector(Stamps), the petitioner was bereft of making use of the opportunity offered by the Government.