(2011) 01 MAD CK 0296

In the Madras High Court

Case No : Writ Petition No. 28667 of 2010 and M.P. No. 1 of 2010

Laxmi Kumar Narottam Goculdas and Late Mr. Ramchoddas Mathradas Goculdas rep. by Suhas Manohar Mehta Power of Attorney Holder — APPELLANT

Vs

The District Revenue Officer (Stamps), The Special Deputy Collector of Stamps, The Deputy Tahsildar (Stamps) and The Sub-Registrar — RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Prevention of Undervaluation of Instruments Rules — Rule 15
Registration Act, 1908 — Section 54, 55
Stamp Act, 1899 — Section 47A

Citation : (2011) 01 MAD CK 0296

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : T. Poornam, for the Appellant; S. Sivashanmugam, GA for R1 and R4, for the Respondent

Judgement

T. Raja, J.—The Petitioner has filed the present writ petition seeking a direction, directing the Respondents to release the Sale Deed dated 28.05.2005, registered as document No. 580 of 2005, on the file of the Sub-Registrar, Ootacamund, the fourth Respondent herein and to adjudicate and pass appropriate orders in the proceedings pending u/s 47(A) of the Indian Stamp Act, 1899 on considering the objection filed by the Petitioner and after giving reasonable opportunity to the Petitioner by giving notice.

2. The prayer made by the Petitioner cannot be considered in view of the final order passed by the Special Deputy Collector of Stamps, Ootacamund, second Respondent herein on 15.03.2006, calling upon the Petitioner to pay a sum of Rs. 8,21,952/-.

3. Infact, after the registration of the sale deed dated 28.05.2005, registered as document No. 580 of 2005, the Sub-Registrar, Ootacamund, the fourth

Respondent herein has forwarded the sale deed to the Special Deputy Collector of Stamps, Ootacamund, second Respondent herein for fixation of the market value of the property. Thereafter, the Deputy Tahsildar (Stamps), Ootacamund, third Respondent herein on 08.06.2005, issued a Form-I u/s 47(A) of the Indian Stamp Act, 1899 to the Petitioner, wherein the third Respondent has fixed the market value of the property as Rs. 1,10,74,400/-per acre and called upon the Petitioner to send their objections, if any, within a period of 21 days from the date of receipt of the Form-I.

4. Immediately, the Petitioner through his counsel sent a reply on 27.06.2005 to the third Respondent herein stating that the value of Rs. 1,10,74,400/-fixed by the third Respondent is highly exorbitant and arbitrary and also submitted that the market value that is mentioned in the Sale Deed as Rs. 8,00,000/-per acre is the correct value, since the property is situated at a remote place, which is away from the Ootacamund town, that there is no proper road access to the property and there are no water and drainage facilities for the said property. However, the Petitioner made a request to the third Respondent to personally inspect the property, to find the correct market value of the property.

5. Thereafter, the Petitioner received a notice from the third Respondent to appear on 11.07.2005 for enquiry. Accordingly, he was appeared before the third Respondent on 11.07.2005 and reiterated the above said facts and requested the third Respondent to personally inspect the property.

6. Further, the learned Counsel appearing for the Petitioner submits that subsequently no reply or action was taken by the third Respondent. As a result, though the property was registered in 2005 under a sale deed dated 28.05.2005, as document No. 580 of 2005, on the file of the Sub-Registrar, Ootacamund, till date the sale deed has not been released to the Petitioner and the Respondents have not passed the final order. This contention cannot be accepted in view of the order passed by the second Respondent.

7. The learned Government Advocate appearing for the Respondents would submit that after the enquiry was held on 11.07.2005, the matter was properly considered and the market value was also properly ascertained. Thereafter, the second Respondent herein passed the final order in Form-II dated 15.03.2006 and the same was also served on the Petitioner, calling upon him to pay a sum of Rs. 8,21,952/-. Therefore, since the second Respondent has already passed the order dated 15.03.2006 and fixed the market value, it is left open to the Petitioner to challenge the order, if he is so advised, in accordance with law.

8. Further, the learned Counsel appearing for the Petitioner repeatedly submitted that the Form-II dated 15.03.2006 calling upon the Petitioner to pay the deficit stamp fee is not in accordance with law under the provision of Rule 15 of the Prevention of Undervaluation of Instruments Rules and the Petitioner has also taken a view in the petition that he has not received any intimation from the Respondents with regard to the release of the sale deed by the fourth

Respondent or payment of stamp duty, if any, by the Petitioner.

9. Therefore, it is made clear that since a copy of the order dated 15.03.2006 has been given to the Petitioner, the question of limitation will not arise for challenging the said order by way of appeal before the first Respondent.

10. However, since the document was registered in the year 2005, the Respondent is directed to release the document by mentioning the usual conditions on the back side of the sale deed.

These said conditions are as follows:

(i) It is open to the Registering Authority to affix a seal, while releasing the original deed or conveyance or any other document indicating that a reference is pending u/s 47-A with respect to under-valuation and assessment of Stamp duty payable, as and when the proceedings reach finality, the same shall be intimated to the person who is liable to pay stamp duty demanding payment of deficit stamp duty payable on the instrument.

(ii) The Registrar to make corresponding entries under Sections 54, 55 of the Registration Act, 1908 in the Register of indexes as to the pendency of proceedings u/s 47-A.

(iii)On completion of adjudication as to the under-valuation by the competent authority as well as appeal or revision, if any, thereof, and depending upon the ultimate decision, the said authorities to recover deficit stamp duty according to law.

(iv)Till such proceeding reaches finality and deficit is paid, there will be a charge for the deficit stamp duty which is the subject matter of transfer or conveyance.

(v) On payment of deficit stamp duty, if any payable, the Registrar may once again, on production of the original deed of transfer, make appropriate entry and recording the additional stamp duty paid and release of charge and also make consequential entries in the registers/indexes maintained under Sections 54, 55 etc. of the Registration Act.

11. With the above observation, the writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

