(2009) 08 MAD CK 0005

In the Madras High Court

Case No : Writ Petition (MD) . No. 4761 of 2008 and M.P. (MD) . No. 1 of 2008

S. Srinivasa Raghavan APPELLANT

Vs

The Sub Registrar RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Registration Act, 1908 — Section 32, 80, 80(A)
Stamp Act, 1899 — Section 47(A), 47(A)(1), 47(A)(2), 47(A)(3)
Tamil Nadu Registration Rules, 1983 — Rule 2

Citation : (2009) 08 MAD CK 0005

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : N. Krishnaveni, for the Appellant; Pala Ramasamy, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—The petitioner has filed the above writ petition to quash the order passed by the respondents dated 20.05.2008. The

impugned order dated 20.05.2008 is a notice issued to the petitioner stating that in respect of a sale deed registered by the petitioner as document

No. 4068/2007 a deficit stamp duty of Rs. 12,928/- and registration charges of Rs. 1,620/-, in total Rs. 14,548/- is calculated as a loss to the

Government and the same is based on an audit report submitted by the Audit Department. Therefore, the petitioner has been called upon to remit

the said sum within a period of 10 days, failing which the respondent threatened that they would take action in terms of Section 47(A)(3) of the

Indian Stamp Act and Section 80(A) of the Registration Act.

2. The learned Counsel appearing for the writ petitioner would contend that the petitioner purchased the property by sale deed dated 12.11.2007

registered under document No. 4068/2007 on the file of the respondent. The total extent of the plot is 1584 sq.ft and he has constructed a house

consists of Ground floor and First floor with a built up area of 900 sq.ft in the Ground floor and 825 Sq.ft in the First floor and that the petitioner

has valued the plot at Rs. 2,18,592/- at the rate of Rs. 138 per sq.ft and the value of the building at Rs. 12,31,408/-. After the document was

presented for registration, the respondent made a personal inspection of the property to verify the details furnished in the annexure appended to the

sale deed. After inspection and having been satisfied with the value as well as stamp duty and the registration charges paid, the respondent

registered the instrument and also released the document. The petitioner has thereafter deposited the same with the Indian Bank, Anna Nagar

Branch, Madurai on 28.11.2007 and created a equitable mortgage in favour of the bank by a registered instrument bearing document No.

4561/2007 before the respondent.

3. The impugned notice has been received on 20.05.2008 six months after the document was registered and released. The learned Counsel

appearing for the petitioner would submit that the respondent has no jurisdiction to issue the impugned demand by exercising power u/s 47(A)(2)

of the Indian Stamp Act. The respondent is only a referring officer and cannot act as a adjudicating authority. That apart, the learned Counsel

appearing for the petitioner would submit that the audit objection cannot be the basis for the impugned demand. The learned Counsel would further

submit that in the impugned order a reference has been made to Section 80(A) of the Registration Act and even assuming such power has been

invoked, it cannot be done without affording opportunity to the petitioner of being heard.

4. The learned Special Government Pleader appearing for the respondent, on the other hand, would contend that in terms of Section 80(A) of the

Registration Act, there is sufficient power vested with the authorities to recover deficit stamp duty. He relied on the averment made in the counter

affidavit and would submit that u/s 47(A)(3) of the Stamp Act, the Collector may deal with the documents not already referred to him previously

and subsequently brought to his notice within 5 years from the date of registration and that only a notice was issued on 20.05.2008 with a view to give the petitioner an opportunity to explain his side. Representations, if any made by him in response to the notice will be duly considered in

consultation with the audit party and the course of required action will be decided. But, the petitioner failed to avail of the opportunity and rushed

to this Honourable High Court instead. He further submitted that as per Rule 2 of the Tamil Nadu Registration Rules 1983 (issued under the

provisions of Section 80(A) of the Act) on collection of deficit stamp duty, if any by the Collector u/s 47(A)(3) of the Stamp Act, action will be

initiated by registering officer for recovery of deficit registration fees, if any payable as per the value fixed u/s 47(A)(3) of the Stamp Act after

giving the presentant of the document an opportunity of being heard.

5. The learned Special Government Pleader also relied upon the audit report, which had been filed by the Government in the typed set of papers

and contended that if the dues are not recovered the interest of revenue would suffer. On the above grounds, the learned Special Government

Pleader prayed for dismissal of the writ petition.

6. I have carefully considered the rival submissions made by the learned Counsel on both sides.

7. The short issue for consideration is whether the respondent is justified in issuing the impugned demand.

8. The power u/s 47(A) of the Act confers on Collector, suo motu power within five years from the date of registration of any instrument of

conveyance etc., not already referred to him u/s 47(A)(1), to call for and examine the instrument for the purpose of satisfying himself as to the

correctness of the market value of the property which is the subject matter of conveyance and the duty payable thereon and if after such

examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the

market value of such property and the duty as aforesaid in accordance with the procedure u/s 47(A)(2) of the Act and the difference if any in the

amount of duty shall be payable by the person liable to pay the duty. Therefore, such power only to exercise by the Collector u/s 47(A)(3) and

there is no power vested with the respondent who is the registering authority to issue the present demand.

9. A Division Bench of this Court in The Government of Tamil Nadu Vs. S.

Jayalakshmi and Others, had examined the scope and ambit of such a

power conferred on the Collector u/s 47(A)(3) of the Act. While dealing with the said scope of the said provision, the Honouable Division Bench

has held that when there is no material to arrive at a conclusion that the market value of the property conveyed to allottees under respective deeds

of sale not been truly set forth and no reason have been recorded by the authority as to how the allottee have fraudulently evaded the submission of

stamp duty, that notices demanding additional stamp duty are liable to be quashed. Therefore, such power can be exercised by the Collector in the

absence of any material to arrive at such conclusion.

10. In view of clear legal position as stated above, it has to be held that the impugned notice is without jurisdiction.

11. The next issue pointed out by the learned Counsel for the petitioner as regards power u/s 80(A) of the Registration Act. Section 80(A) states

that Not withstanding anything contained in Section 80, if after the registration of a document, it is found that the fee payable under this Act in

relation to that document has not been paid or has been insufficiently paid, such fee or the deficit, as the case may be, may, on a certificate of the

registering officer, be recovered from the person who presented such document for registration u/s 32, as arrears of land revenue. The proviso

states that no such certificate shall be granted unless inquiry is made and such person is given an opportunity of being heard and that no such

inquiry shall be commenced after the expiry of such period, after the date of the registration of the document, as may be prescribed.

12. Therefore, even assuming that the fee paid by the petitioner is insufficient or there is a deficit, the respondent has no jurisdiction to issue the

demand. Therefore for the above reasons, the writ petition has to be succeeded and accordingly the same is allowed. Consequently, the connected

miscellaneous petition is closed. No costs.