

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.2.2008

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.7388 of 1999

Mrs.Surekha

.. Petitioner

vs.

1. The Commissioner and Secretary
to the Government, Department of
Revenue, Fort St. George
Madras - 9
2. The Inspector General of Registration
Santhome High Road, Mylapore
Madras - 600 004
3. The District Registrar
Registrar of Assurances
South Madras, Saidapet
Chennai-35

.. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the communication in No.I No.20/B1/97, dated 18.8.1997, on file of the third respondent and quash such proceedings dated 18.8.1997 as it is vitiated by an error apparent on face of the record and further directing the third respondent to return the sale deeds pending documents no.P 535/96, dated 29.3.1996 that is a sale deed for consideration of Rs.2,80,250/- executed by Ramaswamy Mudaliar, Agent of Uday Malik relating to the sale of immovable property in Venpushnam, Mahabalipuram Village, Chengai MGR District, in R.S.No.245/1C2B, paimash No.1434 after collecting only the deficit stamp duty and after completing the necessary procedures for registration of sale.

For petitioner : Mr.C.Ramakrishna
Senior Advocate for
Mr.K.Viswanath

For respondents : Mr.V.Manoharan
Government Advocate

O R D E R

Heard Mr.C.Ramakrishna, the learned counsel for Mr.K.Viswanath, appearing for the petitioner and Mr.V.Manoharan, the learned Government Advocate, appearing for the respondents.

2. The petitioner has preferred the present writ petition praying for a writ of Certiorarified Mandamus, invoking Article 226 of the Constitution of India, seeking to quash the notice, dated 18.8.1997, issued by the third respondent in Ref.No.I No.20/B1/97, calling upon the petitioner to pay a penalty of 10 times the deficit stamp duty, under Section 40(1)(b) of The Indian Stamp Act, 1899, as amended by The Tamil Nadu Amendment Act 24 of 1975, (hereinafter referred to as 'the Act') and to direct the third respondent to register the sale deed presented, on 29.3.1996 and to return the same after the completion of the necessary formalities.

3. One of the main contentions raised on behalf of the petitioner is that the third respondent had imposed the penalty of 10 times the deficit stamp duty, by a letter, dated 18.8.1997, without giving the petitioner an opportunity to pay the deficit stamp duty and without adhering to the principles of natural justice. It has also been submitted that the notice, dated 18.8.1997, issued by the third respondent was received by the petitioner, on 28.8.1997. By the said notice issued by the third respondent, the petitioner was directed to pay the deficit stamp duty, along with the penalty, within a period of one week from the date of receipt of the notice. Subsequently, the efforts taken by the petitioner to pay the deficit stamp duty for the return of the document have been unsuccessful. According to the impugned notice of the third respondent, dated 18.8.1997, the petitioner was to pay the deficit stamp duty of Rs.33,589/-, together with a penalty of Rs.3,85,890/-, being 10 times the deficit stamp duty, amounting to a total sum of Rs.3,69,479/-.

4. It is stated by the learned counsel appearing for the petitioner that when an instrument is produced before the authority concerned, he could impound the same if it appears to the said authority that such instrument is not duly stamped, invoking the powers vested in him, under Section 33-A of the Act. If it is found, after registration, that the proper stamp duty has not been paid for registering the said instrument, the duty or the deficit to be paid could be recovered as arrears of land revenue, based on the necessary certificate issued by the concerned authority.

5. It has been further stated that Section 40 of the Act would not be applicable to the present case. Clause 2 of Section 47-A of the Act specifies that the market value of the property and the duty payable thereon ought to be determined only after the parties concerned are given a reasonable opportunity of being heard and after holding an

enquiry in such manner as may be prescribed by the rules made under the Act. After such determination, the persons concerned would be given an opportunity to pay the difference in the amount of duty liable to be paid, prescribing a specific period for the payment of the amount. Any person aggrieved by such an order may appeal to such authority as may be prescribed for the hearing of such appeal. By issuing the impugned proceedings, under Section 40(1)(b) of the Act, the third respondent has circumvented the procedures established by law. Thus, the petitioner has been adversely affected due to the irreparable monetary loss and mental agony caused to him. The third respondent has fixed the penalty amount without hearing the petitioner and without giving proper reasons for fixing the amount liable to be paid by the petitioner. When there are no guidelines prescribed for the third respondent to follow, while exercising the discretionary powers vested in him, to decide the penalty payable under Section 40(1)(b) of the Act, such a provision cannot be valid as it is arbitrary and ultra vires the constitution of India, being contrary to the principles enshrined in Article 14 of the Indian Constitution. Without following the principles of natural justice, the third respondent had concluded that the petitioner had under valued the instrument and had paid the deficit stamp duty with the malafide intention of gaining unlawfully.

6. It is further stated that the petitioner has no alternative remedy as it is clear that the provisions of Section 56 of the Act would not be applicable to the case of the petitioner. The Collector or the designated authority ought to have applied the provisions of Section 47-A of the Act by conducting an enquiry, giving the petitioner a reasonable opportunity of being heard and by prescribing a specific period for the deficit stamp duty to be paid by the petitioner, if any. Since no such enquiry was conducted before the impugned order had been passed by the third respondent, it is without jurisdiction and therefore, it is illegal and invalid in the eye of law.

7. Mr.C.Ramakrishna, the learned counsel appearing for the petitioner had placed the following decisions before this Court in support of his contentions.

7.1. The learned senior counsel had placed reliance on the decision of the Supreme Court in A.N.PARASURAMAN Vs. STATE OF T.N. ((1989) 4 SCC 683) to show that the determination of legislative policy and formulation of rule of conduct are essential legislative functions which cannot be delegated. The delegated authority can only be left with the task of implementing the object of a statute after the legislature lays down adequate guidelines for the exercise of the powers enshrined therein. Relying on the said decision, the learned counsel had submitted that the impugned order cannot be held to be valid as the third respondent had no delegated power to pass the impugned proceedings and there are no guidelines prescribed for the exercise of such power.

7.2. The decision of the Supreme Court in KRISHNA MOHAN (P) LTD., Vs. MCD (2003 L.W. SCC Vol.7), had been relied on to state that delegation of unguided and uncanalised legislative powers is invalid.

7.3. It was pointed out that the Supreme Court in SANJANA M.WIG Vs. HINDUSTAN PETROLEUM CORPN. LTD., ((2005) 8 SCC 242) had held that access to justice by way of public law remedy would not be denied when a lis involves public law character or involves a question arising out of public law functioning on the part of the respondent and when the forum chosen by the parties would not be in a position to grant appropriate relief.

7.4. The decision of the Supreme Court in STATE OF H.P. Vs. GUJARAT AMBUJA CEMENT LTD., ((2005) 6 SCC 499) had also been relied on to state that the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction of discretion of this Court to grant the relief, under Article 226 of the Constitution of India.

Thus, the learned counsel appearing for the petitioner had submitted that it would be a futile exercise for the petitioner to seek his remedy against the impugned order of the third respondent by invoking the alternative remedy alleged to be available under the law.

8. Per contra, Mr.V.Manoharan, the learned Government Advocate appearing for the respondents, had submitted that the impugned proceedings is only a show cause notice asking the petitioner to submit an explanation, if any, within the period specified therein. Even otherwise the petitioner could have availed the alternative remedy under Section 56 of the Indian Stamp Act, 1899, while challenging the impugned proceedings of the third respondent.

9. The learned Government Advocate appearing for the respondents had relied on the decision of the Division Bench of this Court in JOINT SUB-REGISTRAR-I Vs. PRASANTH CHANDRAN (2005 (4) CTC 417), in support of his contentions. In the said case, the Division Bench of this Court had held that by a Government Order in G.O.Ms.No.736, Revenue, dated 15.3.1971, it was notified that all registrars and sub-registrars appointed under The Indian Registration Act have also been notified to exercise the powers for the purpose of the various Sections of the Indian Stamp Act, 1899, as mentioned in the said order. It has also been held that it was open to the aggrieved person to challenge the proceedings issued under Section 40(1) (b) of The Indian Stamp Act, 1899, by approaching the Chief Controlling Revenue Authority, under Section 56 of the Act, by placing reliance on an order passed by this Court in TAMIL NADU STATE TRANSPORT CORPORATION (VILLUPURAM DIVISION II)

LTD. Vs. C.DURAI AND ANOTHER (2005 WLR 136) wherein it was held that even if there was a violation of natural justice, the writ petition could still be dismissed if there was an alternative remedy. The Division Bench had also relied on the decision of the Supreme Court in U.P. STATE BRIDGE CORPORATION LTD. Vs. U.P. RAJYA SETU NIGAM KARMCHARI SANGH, (1998 (4) SCC 268) wherein the Supreme Court had held that if there was a specific remedy available under a statute, the writ petition should not be entertained.

10. The learned Government Advocate appearing for the respondents had also pointed out that in many writ petitions, which had arisen under similar facts and circumstances, this Court had directed the authorities concerned to register the document in question and to return the same on payment of the amount, as per the original demand. It was also held that the authorities concerned would have the liberty to challenge the order passed by the registering authority before the appropriate forum in an appropriate manner.

11. It was pointed out that in the present case, the Registrar concerned had been directed to register and return the document by way of an interim order passed by this Court following the decision of the First Bench of this Court, dated 16.12.1997, made in W.A.Nos.1114 to 1124 of 1997. Pursuant to the said order, the document presented by the petitioner had been registered and returned to the petitioner.

12. The learned counsel appearing for the petitioner, while reiterating his contentions, had attempted to distinguish the present case from the cases cited by the learned Government Advocate appearing for the respondents. The learned counsel appearing for the petitioner had submitted that there is no lis existing for the petitioner to agitate and there is no provision for an alternative remedy as contemplated by the decisions of this Court or as stated by the learned Government Advocate appearing for the respondents. Once it is found that the third respondent has no authority or jurisdiction to issue the impugned proceedings, and that too without following the principles of natural justice, the impugned proceedings ought to be declared to be illegal and void and not binding on the petitioner.

13. Considering the submissions made by the learned counsels appearing for the parties concerned, this Court is of the considered view that the issues involved in the present case have been decided by the various order of this Court. The order passed by the First Bench of this Court in W.A.Nos.1114 to 1124 of 1997 and the order passed by the Division Bench of this Court in JOINT SUB-REGISTRAR-I Vs. PRASANTH CHANDRAN (2005 (4) CTC 417) would be applicable to the present case as well. Even though the concept of alternative remedy has been considered

to be a rule of self-imposed limitation and it may essentially be a rule of policy, convenience and discretion and never a rule of law, once a Division Bench of this Court had held in similar circumstances, that the aggrieved person ought to avail the alternative remedy provided by the statute, it is not open to this Court to take a different view. In such circumstances, it is held that the writ petitioner has not shown sufficient cause or reason to interfere with the impugned proceedings. Hence, the writ petition stands dismissed. No costs.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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to the Government, Department of
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2. The Inspector General of Registration
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South Madras, Saidapet
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+1 cc to Mr.K.Viswanath, Advocate, SR.No.10928.

Ksk (Co)
krd / 13.03.08

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