

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2010

CORAM:

THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.6552 of 2009 &  
M.P.No.1 of 2009

S.S.Viswanathan

... Petitioner

Versus

1. District Revenue Officer (Stamps)  
Fifth Floor, Singaravelar Maligai,  
Collector Office Complex,  
32, Rajaji Salai,  
Chennai - 600 001.

2. The Sub-Registrar, Joint-1,  
South Chennai,  
Ground Floor, Jeenis Road,  
Saidapet, Chennai - 600 015.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, calling for the records of the first respondent dated 09.03.2009 in Na.Ka.C.Pa.No.A-1/6/08 and quash the same.

For Petitioner : Mr.Raja Raman

For Respondents: Mrs.Lita Srinivasan  
Government Advocate

O R D E R

The petitioner and his wife are the absolute owners of Flat No.B1,Door No.21/B1, Malaviya Avenue, Thiruvanmiyur, Chennai and they purchased the same by virtue of a sale deed, dated 18.11.2002, and registered as Doc.No.5421 of 2002 with the second respondent.

2. According to petitioner, he paid stamp duty required as per the Rules. The sale consideration was Rs.15,00,000/-. At the time of registration, the petitioner was not able to get stamps for the value of Rs.1,95,000/-. Therefore, the sale deed was engrossed in the stamps of the value of Rs.10,000/- and a sum of Rs.1,85,000/- was remitted with the second respondent and due endorsement was also made in the Instrument under Sections 41 and 42 of the Indian Stamp Act, 1899 (in short "the Act").

3. While so, the second respondent issued a notice dated 03.04.2008, calling the petitioner to remit a sum of Rs.37,570/- towards deficit in stamp duty and corresponding registration charges of Rs.2890/- totaling in all a sum of Rs.40,460/- and get the sale deed endorsed to that effect. Subsequent thereto, the first respondent passed an order, dated 09.03.2009, directing the petitioner to pay the deficit in stamp duty of Rs.37,570/-.

4. The petitioner has filed the present writ petition to quash the aforesaid order passed by the first respondent, dated 09.03.2009 on the ground that it is without jurisdiction and is violation of Section 47-A(3) of the Act.

5. Notice of motion was ordered on 20.04.2009 and interim stay was also granted.

6. Heard Mr.Raja Raman, learned counsel for the petitioner and Mrs.Lita Srinivasan, learned Government Advocate for the respondents.

7. The first respondent has filed a counter affidavit. The counter affidavit states that pursuant to the finding in the annual audit, it was found that stamp duty at the rate of Rs.1563/- per sq.ft should have been paid by the petitioner for registration, but, on the other hand, he paid the stamp duty at the rate of Rs.1097/- per sq.ft and there was an under valuation. The difference of stamp duty amounting to Rs.37,570/- has to be collected. Based on the audit report, the second respondent referred the document to the first respondent and issued the order dated 09.03.2009 to the petitioner. Before issuing the aforesaid order, a notice under Form - I dated 12.08.2008 was issued to the petitioner.

8. The aforesaid narration makes it very clear that the action was initiated only after five years of the registration of the document. Section 47-A(3) of the Indian Stamp Act, makes it very clear that the suo motu action should be within five years from the date of registration, but in the case of the petitioner, he registered a sale deed on 18.11.2002 and the five years period expires on 17.11.2007. Admittedly, no action was taken on or before 17.11.2007, even as per the counter affidavit. Therefore, the impugned order passed by the first respondent is without jurisdiction. Hence, the impugned order is liable to be quashed and accordingly the same is quashed.

9. The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Asst. Registrar

//true copy//

Sub Asst.Registrar

r n s

To

1. The District Revenue Officer (Stamps)  
Fifth Floor, Singaravelar Maligai,  
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Chennai - 600 001.

2. The Sub-Registrar, Joint-1,  
South Chennai,  
Ground Floor, Jeenis Road,  
Saidapet, Chennai - 600 015.

1 cc to Mr.M.Rajaraman, Advocate, Sr.No.46832

1 cc to Government Pleader, Sr.No.47012

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SGL {CO}  
TP/8.7.2010.

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