S. Premakala Vs. State of Tamil Nadu Represented By Secretary To Government, Commercial Taxes and Registration Department, Secretariat and Others

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Court : Chennai

Decided On : Nov-28-2016

Judge : M.S. Ramesh

Appeal No. : W.P. No. 9831 of 2013 & M.P. No. 1 of 2013

Appellant : S. Premakala

Respondent : State of Tamil Nadu Represented By Secretary To Government, Commercial Taxes and Registration Department, Secretariat and Others

Advocate for Pet/Ap. : Mr. M. Sivavarthan

Judgement :

M.S. Ramesh, J.

1. Heard Mr.M.Sivavarthan, learned counsel for the petitioner and Mr. Mr.R. Govindasamy, learned Special Government Pleader for the respondents.

2. The brief facts of the case are as follows:

The petitioner was subjected to disciplinary proceedings for causing loss of revenue to the Government to the extent of Rs.4,97,106/- while she was working as Sub Registrar (in charge), Konnur, Chennai North Registration District and charges were framed against her under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeals) Rules vide proceedings of the second respondent dated 27.06.2011. The charges were to the effect that the petitioner had failed to verify that the Original Sale Certificate received from the Debt Recovery Tribunal was duly stamped or not before indexing and filing the same and thereby caused loss of revenue to the Government. As the petitioner was due to retire on superannuation on 30.06.2011, she was permitted to retire without prejudice to the disciplinary proceedings pending against her. Subsequently, an enquiry was conducted against the petitioner and the responsibility for the loss of revenue to the Government was fixed on her. After consideration of the petitioner's explanation, the second respondent initiated action on 08.03.2013 under Rule 9 of the Tamil Nadu Pension Rules, proposing to impose a punishment of a cut in DCRG to an extent of Rs.4,78,700/- and further cut in pension of Rs.2,000/- for two years for the proven charges. As against proposed punishment, the present writ petition has been filed.

3. Mr. M. Sivavarthan, learned counsel for the petitioner would submit that under the provisions of Section 17(2) of the Indian Registration Act, the sale certificate issued by a Court of law in Court Auction to a successful bidder is not a document required to be compulsorily registered under Section 89(2) of the Indian Registration Act, the sale certificate has to be communicated to the concerned Sub Registrar within whose jurisdiction the sold property is situated and it is the duty of the Sub Registrar to make an entry in Book No.1 and therefore, the petitioner cannot be said to have committed any irregularity. According to him, the sale certificate was received by the petitioner on 10th November, 2009 from the Debt Recovery Tribunal and on the same day, she had attested the said certificate as true copy and give it to the Assistant to file it and she was relieved from the concerned Sub Registrar's Office on 13.11.2009. Incidentally, 10.11.2009 happened to be Friday and the petitioner was relieved on the next working day, i.e.13.11.2009, being a Monday. Therefore, she did not have an occasion to deal with the sale certificate any further except to receive the same and hand it over to

the Assistant and therefore the petitioner could not be said to be at fault. Learned counsel for the petitioner would further submit that the purchaser C.Ponnivalavan had not opted for registration and therefore, the question of compulsorily registration would not arise and more over, the respondents have already initiated steps under Revenue Recovery Act for the deficient stamp duty by attaching the property of the purchaser and hence, the respondents stand that there is revenue loss to the Government, is baseless.

4. Mr.R.Govindasamy, the Special Government Pleader appearing for the respondents would submit that the petitioner as Registering Officer ought to have verified as to whether the original certificate was duly stamped before indexing and filing the sale certificate as per Section 89 of the Registration Act. On account of failure on the part of the petitioner, the loss has occurred to the Government and therefore, the petitioner is responsible for the said loss.

5. I have given careful consideration to the submissions made by respective counsel.

6. In a similar situation, this Court had an occasion to deal with the same set of facts in W.P.No.48617 of 2006 dated 09.04.2010 wherein the Registration Authorities had refused to file the sale certificate stating that it was contravention of Section 89(4) of the Registration Act while holding that the Court Auction Sale Certificate sent to Registration Department for filing in Book I would not attract stamp duty. The relevant portion of the order reads as follows:

"6. This Court had an occasion to consider a similar question in Shree Vijayalakshmi Chartable Trust v. The Sub Registrar reported in 2009(5) CTC 15, wherein it is held that the documents mentioned in 17(1)(b)(c) are to be registered by the Registrar as per procedure mentioned in Sections 50 to 67 of Part xI of the Registration Act. while hold so, this Court further found that the procedure for filing copy of the sale certificate can be seen under Section 89 of the Act and, therefore, both procedures were found different, namely, for registration, stamp duty has to be paid, whereas for filing any document, no stamp duty is required to be paid, because when the purchaser goes for registration of Sale Certificate issued by the Court Officer, Article 10 of the Indian Stamp Act would be attracted and stamp duty is to be paid as per Article 23 of the Registration Ac treating it as conveyance i.e., market value of the property. When the instrument is not submitted for registration and it is being sent to the Registrar only for the purpose of filing in Book No.1 under Section 89 of the Act, it does not attract any stamp duty."

7. The further contention of the petitioner is that the purchaser under sale certificate had not opted for registration has also been dealt with by this Court in the decision reported in the case of Shree Vijayalakshmi Charitable Trust v. The Sub-Registrar reported in 2009 (5) CTC 15, has held as follows:

"16. In view of the above judgments and exemption granted under Section 17(2), the copy of the document is only required to be filed in Book I under the special procedure under Section 89 of the Act. If Stamp Duty is required even for filing of the copy of instrument under SEction 89 of the Act, the exemption given under Section 17(2) of the Act would become meaningless. In that event, there is no necessity for the special procedure under Section 89 of the Act and it would amount to violation of the Act. The Hon'ble Supreme Court in similar circumstances in Shanti Devi, L. v. Recovery Officer, AIR 1991 SC 1880 after comparing "registration" under Section 17 with "filing" under Section 89 of the Act held that though the processes are different, the purchaser at a Court or revenue sale is under no disadvantage because of lack of registration and transfer of title is not vitiated by non registration of certificate and directed the Registrar to file the copy of the Sale Certificate in Book-I.

18. When such is the position, the Sale Certificate would have come under Section 17(2)(xii) of the Registration Act, 1908. As long as the Sections 17(2) and 89 are there in the Registration Act, the Court can only go by the statue and quash the order which are ultra vires of the Act. In view of the categorical pronouncement of the judgment of the Supreme Court and also the judgment of this Court and also in view of provisions given in the Registration for filing in Book-I would not attract stamp duty. The respondent has got no power and jurisdiction to issue the impugned order because of Sections 17(2)(xii) and 89(2) of the Registration Act and cannot demand stamp duty. Hence the impugned order is liable to be set aside.

8. In the case on hand, by letter dated 02.09.2009, the Debt Recovery Tribunal No II, while forwarding the copy of sale certificate to the Sub Registrar, had stated that if the purchaser opts for registration, then the stamp duty, as per the prevailing rates have to be collected from the auction purchaser under Article 18 of the Stamp Act, 1899. Admittedly, the purchaser in the present case, did not opt for registration and hence, the question of levy of stamp duty would not arise.

9. Learned Special Government Pleader relying upon the judgment of the Full Bench of this Court in the case of C. Mathesu v. The Secretary to Government, Revenue Department, Chennai-9 and Others reported in 2013 (3) CTC 309 would submit that the respondents are entitled to withhold the pension after the government servant is permitted to retire. The said proposition may not be applicable to the facts of the present case since, this is not a case where a punishment of dismissal or removal has been imposed and it is not in dispute about the Government's power to withhold the pension.

10. In view of the categorical pronouncements made in the aforesaid judgments and also in view of the provisions of the Registration Act, I am of the considered opinion that sale certificate pursuant to Court Auction send for registration filing in Book-I will not attract stamp duty. Consequently, the impugned order passed by the respondents stating that there is a failure on the part of the petitioner in not verifying as to whether the original certificate was duly stamped before indexing or filing as per Section 89 of the Registration Act cannot be sustained. The punishment proposed by the respondents in the impugned order dated 08.03.2013 is liable to be set aside and accordingly, the impugned order is quashed.

11. In the result, the writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

W.P. Allowed, M.Ps. Closed and No Costs.