(2015) 03 MAD CK 0441

In the Madras High Court

Case No : Writ Petition No. 3395 of 2015 and M.P. No. 1 of 2015

A.A. Thameem Ansari and Others — APPELLANT

Vs

The Sub-Registrar South-Joint I — RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Limited Liability Partnership Act, 2008 — Section 12(1)
Stamp Act, 1899 — Section 40, 56 (1)

Citation : (2015) 03 MAD CK 0441

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

Bench : Single Bench

Advocate : V. Karthikeyan, for the Appellant; V. Jayaprakash Narayanan, Spl. G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—By consent, the main writ petition itself is taken up for final hearing.

2. The case of the petitioners is that they have purchased a flat bearing No. 2C, Block B on the second floor having a built up area of 1440 sq.ft., along with 822 sq.ft. of undivided share of the land comprised in Old Survey No. 171/1 Part and T.S. Nos. 220/2, 221, 222, 223, 224, 225 and 226 at Vaigai Street, Besant Nagar, Thiruvanmiyur Village measuring an extent of 14000 sq.ft., which was developed by M/s. Kgeyes Residency Private Limited, with 18 number of flats. Since, as per the amended Indian Stamp Act, 1899, it has become mandatory for registration of any agreement relating to construction, subject to the payment of 1% of the Stamp duty on the cost of the proposed construction or any consideration specified in the agreement, the petitioners also executed and registered the sale deed conveying 822 sq.ft. of undivided share of land and the construction agreement of the flat under document Nos. 10215 of 2014 and 10214 of 2014 dated 22-09-2014 respectively, by paying the stamp duty and the registration charges in full quit. However, the respondent has not returned the

documents, for the reasons best known to them. The representation of the petitioners dated 12-12-2014 requesting the return of documents was not taken into consideration by the respondent. Having no other alternative, the petitioner is before this Court by way of the present writ petition to direct the respondent to return the documents bearing Nos. 10214 and 10215 of 2014 dated 22-09-2014 registered with the Office of the respondent.

3. Heard Mr. V. Karthikeyan, learned counsel for the petitioners and Mr. V. Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondent and perused the materials placed on record including the written instructions of the Sub-Registrar, Selaiyur.

4. It is submitted by the learned counsel for the petitioner that though the prayer sought for by the petitioner was for return of the document Nos. 10214 and 10215 of 2014 dated 22-09-2014, one of the documents viz., document No. 10215 of 2014 has already been returned by the respondent after completion of the registration process. Therefore, the relief sought for in this petition is restricted only to document No. 10214 of 2014 dated 22-09-2014.

5. The issue involved in this writ petition has already been dealt with by this Court in the order dated 12-02-2015 in W.P. No. 2106 and 2107 of 2015. In the said writ petition also the facts were identical and the respondent has refused to return the document and have claimed 1% additional stamp duty on the construction agreement.

6. The learned Special Government Pleader appearing in this writ petition has also raised identical objections as that of the earlier writ petition stating that the respondent is fully justified in invoking Section 33A of the Stamp Act. It is further submitted by the learned Special Government Pleader that Clause 5(i) of the Schedule I of the Indian Stamp Act makes it mandatory for registration of any agreement relating to construction, subject to payment of 1% of the Stamp Duty on the cost of the proposed construction or any consideration specified in the Agreement. Therefore, it is submitted that the petitioners were directed to pay 1% of the land cost in respect of document No. 10214 of 2014, which is a construction agreement with possession of the land and hence, the respondent is justified in demanding 1% stamp duty. At this stage, it would be relevant to refer to the earlier order passed by this Court in W.P. Nos. 2106 and 2107 of 2015 and the operative portion of the order reads as follows:

"4. The learned senior counsel for the petitioner submitted that there is no jurisdiction for the third respondent to retain the documents after registration and there is no power under the Registration Act, 1908. 12 Further, it is submitted that if at all, the third respondent states that stamp duty remitted by the petitioner is incorrect or deficit, only procedure provided under the Indian Stamp Act is to resort to Section 33 (A) of the Act. Without doing so, the question of retaining the documents does not arise. In support of such contention, the learned counsel has placed reliance on the decision of T. Paneer

Selvam Vs. The Inspector General of Registration, Santhome, Chennai, The District Registrar and The Sub Registrar, (2012) 2 CTC 59 .

5. The learned Government Advocate submitted that the petitioner, a Limited Liability Partnership Firm incorporated under Section 12(1) of the Limited Liability Partnership Act, 2008, has donated the land measuring 2857.61 square meter and 1202.34 square meter in favour of CMDA in the interest of public. It is submitted that the Registering Authority has impounded the document after registration and forwarded the same to the District Registrar (Administration), Chennai South, who is appointed as Collector under Section 40 of the Indian Stamp Act 1899. It is submitted that the District Registrar is yet to pass orders as contemplated under the provisions of the Act after giving an opportunity of hearing the petitioner. Even, if such an order is detrimental to the interest of the petitioner, the only remedy available to the petitioner is to file Revision Petition before the Chief Controlling Revenue Authority - cum -Inspector General of Registration, Chennai, as provided under Section 56 (1) of the Act.

6. In support of this contention, the learned Government Advocate has placed reliance on the decision in the case of Jt. Sub Registrar-I Vs. Prasanth Chandran, AIR 2005 Mad 354 : (2005) 4 CTC 417 : (2005) 3 LW 414 : (2005) 3 MLJ 628 and contended that when there is alternative remedy available, the writ petitions are not maintainable. The learned Government Advocate has also placed reliance upon the decision in Tamilnadu State Transport Corporation (Villupuram Division II) Ltd. Vs. C. Durai and The Secretary, Regional Transport Authority, (2005) 1 MLJ 435 : (2005) WritLR 136 and un-reported judgment of the Division Bench of this Court in (Koushi Mohan L. Mahtani and 6 Others v. State of Tamil Nadu and Two Others) (W.A. No. 888 of 2014 dated 29.10.2014 in support of the said contention. Further, it is submitted that G.O. Ms. No. 359 Commercial Taxes and Religious Endowments Department, dated 18.10.1993 is not applicable to the Gift Deeds relating to the present matters since the recitals of the Gift Deed does not suggest that the donor is a Developer. Therefore, it is submitted that the petitioner is not entitled for concessional levy of Stamp duty.

7. The learned Government Advocate further submitted that the claim made by the petitioner by placing reliance on the G.O. Ms. No. 486 Commercial Taxes and Religious Endowments Department dated 05.11.1997 is also incorrect since it deals with settlement of land donated by Citizen and the petitioner being a Limited Liability Partnership Firm cannot be construed as a Citizen. By placing reliance on the decision of the Hon''ble Supreme Court in the case of The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others, AIR 1963 SC 1811 : (1963) 33 CompCas 1057 : (1964) 4 SCR 99 , it is submitted that the Citizens can only be a natural persons and not any legal entity. Further it is submitted that exemption of Government orders/notification have to be strictly construed and until the petitioner come within the four corners of the notification, they are not entitled to the benefit of the said notification. In this regard, the learned Government Advocate has placed

reliance on the decision of this Court in The Gandhi Nagar Co-operative Housing Society Ltd. v. State of Tamil Nadu and Another (W.P. No. 2496 of 2009 Dated 16.8.2011) and the decision of the Hon''ble Supreme Court in the case of The Grasim Industries Ltd. and Another Vs. State of Madhya Pradesh and Another, AIR 2000 SC 66 : (1999) 9 JT 118 : (1999) 7 SCALE 133 : (1999) 8 SCC 547 : (2000) 1 UJ 104 : (1999) AIRSCW 4189 : (1999) 9 Supreme 493 . With the above said submission, the learned Government Advocate prays for dismissal of the writ petitions.

8. The short issue which falls for consideration is as to whether the third respondent can refuse to release the documents after registering the same.

9. The documents in question are Gift Deeds. It is to be noted that the petitioner, which is a Limited Liability Partnership Firm registered under the provision of the said Act, filed an application for planning permission before the CMDA. The CMDA, by order dated 17.12.2014, directed the petitioner to remit Development Charges and other charges apart from imposing other conditions. As per condition No. 8 (a) of the said order dated 17.12.2014, the Open Space Reservation Area and Link Road Portion roads are to be handed over through a registered gift deeds. Thus, it is clear that the petitioner has presented both the Gift Deeds, which are the subject matter of these writ petitions, pursuant to the order passed by the CMDA. Therefore, the Registering authority cannot state that the petitioner on its own volition has gifted the property.

10. Further more, the learned counsel for the petitioner pointed that the Donor in the Gift Deeds is the petitioner, who is the applicant before the CMDA and the petitioner is a Developer, and, therefore, they are entitled for the benefit of the Government order in G.O. Ms. No. 117. Further it is submitted that in respect of the Open Space Reservation Area, the petitioner is entitled to the benefit of the G.O. Ms. No. 359 and the petitioner is not claiming any benefit under G.O. Ms. No. 486 dated 05.11.1997. Thus, it is clear that the Gift Deeds executed by the petitioner is pursuant to the direction issued by the CMDA. The recitals also show that the petitioner is a CMDA applicant and hence, they are a Developer. The question that remains to be considered is whether the petitioner is entitled to the benefit of G.O. Ms. No. 117 and G.O. Ms. No. 359 and whether the Stamp duty remitted by them is proper. However, the stage is yet to come to decide these issues since the District Registrar is yet to conduct enquiry into the matter. While on this issue, it is beneficial to refer to the decision of T. Paneer Selvam v. The Inspector General of Registration cited supra. In the said case, the petitioner therein sought for a direction to release a Deed of Dissolution of Partnership, which was kept as a pending document by the concerned registering authority. This Court, after taking into consideration the provisions of the Indian Stamp Act and the Registration Act pointed out that Section 33 (A) does not speak about the retention of a document after registration, in fact, the scheme of Section 33 (A) shows that the proceedings there under, can be initiated even after registration. Section 33-A(1) would show that it begins with a non-obstante

clause and it uses the expression " after the registration". Further it was pointed out that since the proceedings have been initiated even after registration, but within a period of three years, there is no indication in Section 33 (A) about the power of the Sub Registrar to retain the documents. The aforesaid decision squarely applies to the case on hand.

11. In the written instruction given by the third respondent to the learned Government Advocate, a reference has been made to Section 40 of the Stamp Act. On a careful perusal of Section 40 of the Stamp Act, it is seen that the said provision deals with Collector''s power to stamp instruments which are impounded. Prima facie, it appears that Section 40 would have no application to the present cases and if at all, there is any recovery of deficit stamp duty then necessarily, the power under Section 33 (A) has to be invoked. However, this Court does not propose to give any finding in this regard and left open to authority to proceed in accordance with law.

12. Be that as it may, there is no justification or jurisdiction for the third respondent to retain the documents after registration. The decisions relied on by the learned Government Advocate for the proposition that when there is alternative remedy provided under the Act, the petitioner should avail the same and not to file these writ petitions cannot be applied to the cases on hand at this stage, since the proceedings are yet to commence and the documents have been registered and yet to be released. Under such circumstances, question of availing alternative remedy does not arise when the original authority has not passed any orders. The decisions relied on by the learned Government advocate in this regard does not render any support to the case of the respondents.

13. The applicability of G.O. Ms. No. 359 and G.O. Ms.117 are to be considered by the authority after notice to the petitioner. Therefore, at this stage of the mater, this Court is not inclined to go into those aspects.

14. In the light of the above, this Court is of the view that the there is no jurisdiction for the third respondent to retain the documents after registration.

15. In the result, the writ petitions are allowed and the third respondent is directed to release and return the registered Gift Deeds dated 07.01.2015 bearing Doc. Nos. 105 of 2015 and 110 of 2015 within a period of two weeks from the date of receipt of a copy of this order, with an endorsement that release of the documents would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act read with Registration Act. No costs. Consequently, connected miscellaneous petitions are closed."

7. It has to be pointed out that the only difference in the earlier writ petition is that the document in question was a gift deed. This Court took note of the earlier orders passed wherein it was held that there is no justification to hold the documents after registration and following the order, there is no justification or the respondent has no jurisdiction to retain the documents after registration.

8. In the result, the writ petition is allowed. The respondent is directed to release and return the documents bearing No. 10214 of 2014 dated 22-09-2014, within a period of two weeks from the date of receipt of a copy of this order with an endorsement that release of the documents would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act read with Registration Act. However, there will be no order as to costs. The connected miscellaneous petition is closed.

