(2014) 11 MAD CK 0391

In the Madras High Court

Case No : W. P(MD) No. 18095 of 2014

A.V. Marimuthu APPELLANT

Vs

The Sub Registrar, Registration Department RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Registration Act, 1908 — Section 22A, 52, 54, 55, 59
Stamp Act, 1899 — Section 45(A), 47(A), 47(A)(i), 47A, 47A(1)

Citation : (2014) 11 MAD CK 0391

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.

1. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The petitioner has filed the present writ of Mandamus praying for passing of an order by this Court in directing the respondent to forthwith release and deliver the original registered sale deed document No. P.1 to 2006 dated 04.01.2006 to its beneficiary.

3. According to the petitioner, he conveyed a vacant site measuring an extent of 41 cents of land out of total extent of 1 acre 81 cents comprised in R.S.No. 31/2A, situate in Irumbadi Village, Vadipatti Taluk, Madurai District to one M.Saravanakumar by means of sale deed and presented the same before the respondent for registration on 04.10.2006.

4. It is the stand of the petitioner that the respondent after being satisfied with the execution of the documents in all respects had duly registered the said document and assigned document No. P1/2006. It is to be noted that the registration of the document was completed on 04.01.2006 itself.

5. The grievance of the petitioner before this Court is that the respondent till

date has not delivered the sale deed even after completion of registration and even though appropriate stamp duty was paid, yet the document is not delivered to the beneficiary concerned. More over, as on date, no proceedings have been initiated by the respondent under Section 47(A) of the Indian Stamp Act, 1899.

6. The contention advanced on behalf of the petitioner is that the retention of original document after completion of registration is not contemplated either under the Registration Act 1908 or under the Indian Stamp Act, 1899 and the Rules made thereunder. In this connection, the learned counsel for the petitioner seeks in aid of the decision of this Court in M.L. Mathews, Ms. Geetha Mathews and M.I. Jacob, All rep. by Power of Attorney P. Dhanapal Vs. The Inspector General of Registration, The Joint Sub Registrar No-2 and The Revenue Divisional Officer, , whereby and where under, it is observed as follows:-

It is for the Registering Authorities to show that the registration would be contrary to public policy and would be in violation of the provisions of law applicable to the case and in the absence of such violation, the Authorities cannot refuse to refuse to register the documents which are submitted.

7. Also, the petitioner invites the attention of this court to the decision of this Court in R. Sreedher Vs. The Registering Officer (District Registrar), Office of the Sub Registrar, Virugambakkam, Chennai - 83 and The Inspector General of Registration, Santhome, Chennai-1 , whereby and where under it is observed and laid down as follows:-

In view of the declaration of Section 22-A of Registration Act (Tamil Nadu Amendment) as ultra vires, there is no power on the part of the registering authorities either to retain the document or deferring the documents from registration, especially when the case does not apply to any of the instances mentioned in Rule 162 of Indian Registration Rules.

8. That apart, the learned counsel for the petitioner relies on the Division Bench Judgment of this Court in The district Collector , Erode v. Ponnusamy reported in 2001 (2) MLJ 458, whereby and where under it is held as follows:-

If the document presented sets forth the market value and all other facts necessary, truly, the document has to be registered. Sub-rules (3) and (4) of Rule 3 enable the registering authority, to find out whether the market value has been correctly furnished in the instrument or not. If the registering authority, on the basis of this enquiry, has reason to believe that the market value of the property has not been truly set forth in the instrument, he may refer the matter to the Collector for determination of the market value of such property. But, even here, before referring the matter, he shall do so only after registering the said instrument.

It could be seen that if the document is registered without any doubt as to the under-valuation of the document, or any reasonable belief as to the true value set forth in the instrument, and once it is registered, there is no further scope for holding the enquiry after registration regarding the value of the property for the purpose of reference. Therefore, necessarily before registering the document, the Registering Officer is entitled either to accept the valuation or refuse to accept the valuation. If he accepts the valuation, he has to register the document; if he does not accept the valuation also, he shall register the document and then refer the same to the Collector. Therefore, once the document is registered, it pre-supposes that the register is satisfied about the valuation or it could be that he was not satisfied about the valuation, but followed it by a reference after registration. In the reply to the legal notice, the third appellant, after one year and eleven months, has stated that he is awaiting the report of the valuation for the purpose of reference. Thus, there is a clear violation of Section 47-A of the Act.

There is no decision on the part of the Registering Authority that he had reason to believe that there was an attempt on the part of the parties to under-value the subject matter of the transfer with a view to evade payment of proper stamp duty. The only reasons apparently found from his memo that it is contrary to the guidelines cannot be the ground for referring the matter to the District Collector under Section 47-A(1) of the Act, especially after having registered the document without any demur and on his satisfying about the market value.

There is absolutely no reason whatsoever for the third appellant to retain the document for two years without returning the same to the parties. It is only their filing of writ petition and receipt of the notice therein impelled the Registering Officer to make a reference under Section 47-A(1). The reason set forth for the inordinate delay is that the parties have agreed to pay the deficit stamp and that they were awaiting for that payment is too na?ve a proposition to be given any credence. Firstly, in the light of the averment made by the writ petitioners that they had been repeatedly meeting the officers nearly 20 times during this period, followed by a legal notice, there is no reason as to why they should have agreed to pay the deficit stamp fee and not coming forward to pay it later on and filing the writ petitions. Secondly, that is not the reason stated in the reply notice by the third appellant. Thirdly, there is no scope of provision for paying the deficit stamp duty at the instance of the Registering Officer after having registered the document. Therefore, the attempt of the third appellant to find out some reasons to justify the inordinate delay is nothing but an after-thought.

9. At this stage, this Court, to prevent an aberration of justice and to promote substantial cause of justice, cites the following decisions:-

(i) In The Sub Registrar, Registration Department and Others Vs. R. Rama and The Tamil Nadu Small Industries Development Corporation Ltd., whereby and where under, it is observed as under:-

"If a authority registering such document has a reason to believe that market value of the property has not been truly set forth, he may after registering such document refer the same to the Collector ? Such registering authority is not vested with the power to demand payment of additional duty nor he has got any power to postpone the registration of the document ? His only authority / power is to make an endorsement on such registered document regarding valuation, refer the matter to the Collector for determination of proper stamp duty payable thereon and return the document to the person entitled to receive such document.

In the present case the registering authority has not followed the aforesaid procedure, which has been judicially recognized in a long series of decisions, and unnecessarily kept the document with himself without return the same to the writ petitioner.

Direction issued to the Registering Authority to return the document to the first respondent and if the authority has any reason to believe that the market value has not been properly reflected, it would be open for him to take action in accordance with law as contemplated under Section 47-A."

(ii) . In B. Rajappa and Another Vs. The Special Deputy Collector (Stamps) The Office of the Collectorate (V Floor), Mr. Singaravelar Maligai Rajaji Salai, Madras-1 and Others whereby and where under in paragraphs 13 to 16 it is observed as under:-

"13. In the light of the said provisions, the learned Advocate General had to necessarily admit that the respondents have no authority or jurisdiction to retain the documents once it has been registered. Even assuming that there is scope for reference in respect of alleged under- valuation, the registering authority has no authority to retain the documents and this is also clear from the provisions of Sections 52, 59 and 60 of The Indian Registration Act.

14. In the circumstances, while following the above pronouncements, these two writ petitions are allowed. Accordingly, there will be a direction to the Registering Authority, namely, the 2nd respondent in W.P. No. 22998 of 2001 and the sole respondent in W.P. No. 8637 of 2002, to return the original sale deed as registered with necessary endorsements within ten days from the date of communication of this order or a production of a copy of the same by the respective petitioner.

15. While appreciating the anxiety expressed on behalf of the State by the learned Advocate General, this Court directs that :-

"i) It is open to the Registering Authority to affix a seal, while releasing the original deed or conveyance or any other document indicating that a reference is pending under Section 47-A with respect to under- valuation and assessment of Stamp Duty payable, as and when the proceedings reach finality, the same shall be intimated to the person who is liable to pay stamp duty demanding payment of deficit Stamp Duty payable on the instrument.

ii) The Registrar to make corresponding entries under Sections 54, 55 of The Registration Act, 1908, in the Register of indexes as to pendency of proceedings under Section 47-A.

iii) On completion of adjudication as to the under-valuation by the competent authority as well as appeal or revision, if any, thereof, and depending upon the ultimate decision, the said authorities to recover deficit stamp duty according to law.

iv) Till such proceeding reaches finality and deficit is paid, there will be a charge for the deficit stamp duty, which is the subject matter of transfer or conveyance.

v) On payment of deficit stamp duty, if any payable, the Registrar may once again, on production of the original deed of transfer, make appropriate entry and recording the additional stamp duty paid and release of charge and also make consequential entries in the registers/ indexes maintained under Sections 54, 55, etc., of The Registration Act."

16. Before parting with the case, with heavy heart, this Court has to point out that neither the State Government nor the Chief Controlling Authority had intimated about the law laid down by the Division Bench of this Court and the Registrars have been flouting the dicta laid down by this Court with impunity. Such violations are per se contemptuous. This Court pointed out this to the learned Advocate General, who in turn relied upon certain circulars issued, but they are not towards compliance with pronouncements and in conformity with the judgment of the Division Bench. However, this Court takes a lenient view in this respect, in view of the fair stand taken and explanation offered by the learned Advocate General."

(iii) In the Order dated 02.06.2014 in W.P.No. 11013 of 2014 between J.Jayakrishnan v. The State of Tamil Nadu, whereby and where under, in paragraph 4, this Court has observed and laid down as follows:-

"4. It is settled proposition of law that once a document is registered, the registering authority has no power to withhold the same. This was the view taken by this Court in (B. Rajappa and another Vs The Special Deputy Collector (Stamps) The Office of the Collectorate (Vth Floor), Mr. Singaravelar Maligai, Rajaji Salai, Madras-1 and 2 others) reported in 2002 (3) CTC 544, Therefore, following the decision of this Court mentioned supra, the following direction is issued in this writ petition:-

(i) The Registering Authority/fourth respondent is directed to release the sale deed dated 15.02.2013 to the petitioner forthwith. While releasing the sale deed dated 15.02.2013 to the petitioner, the respondent shall make necessary endorsement on the original document to the effect that the proceedings under Section 47-A of the Indian Stamp Act are pending.

(ii) The Registering Authority/fourth respondent shall make necessary entries in the register maintained regarding the pendency of 47-A proceedings in respect of the document, which is the subject matter of registration, so as to reflect the same in the encumbrance certificate for the benefit of the purchasers.

(iii) Pending final decision, in respect of the valuation under Section 47-A (i), as per Section 47-A(4), there shall be a charge over the properties in favour of the Government in respect of the unpaid value of the stamp duty.

(iv) After the entire proceedings under Section 47-A are completed, the registering authority shall make necessary endorsement removing the earlier endorsement clearly stating that the entire amount of stamp duty under the document has been paid in full and return the same.

(v) After making such endorsement, the Registering Authority/fourth respondent shall also make necessary entry as to the completion of 47-A proceedings in the register maintained by them so as to reflect the same in the encumbrance certificate.

(vi) It is open to the fourth respondent to finalise the proceedings initiated under Section 47-A of the Indian Stamp Act as expeditiously as possible in accordance with law. "

(iv) In Tata Coffee Limited and K. Manohar Vs. State of Tamil Nadu and Others, , whereby and where under it is held that ''Authority contemplated to conduct enquiry under Section 47-A for finding out the market price is not fettered with such Guidelines Register, since the enquiry contemplate of the Collector, is independent. Also in the aforesaid decision it is observed and held as follows:-

If the registering authority still has reason to believe that the market value has not been truly set forth in the instrument, he has right to refer the instrument to the Collector under Section 47-A(1) of the Act, for determination of market value for the purpose of ascertaining the proper duty under the document ? It is incumbent on the part of the registering authority to give his reasons to arrive at such conclusion.

This procedure of conducting enquiry by the Collector as per the above said Rules is made applicable in respect of the powers of the Collector to conduct suo motu enquiry under Section 47A(3) of the Act.''

(v) Added further, in A.J. Mapillai Mohadeen Vs. Sub-Registrar, Registration Department and Others, , wherein it is held that ''Section 47-A of the Indian Stamp Act, 1899 can be pressed into service only when the Registering Officer has reason to believe that market value of property, which is subject matter of conveyance, has not been truly set forth and it is so done with the intent to fraudulently evade payment of proper stamp duty etc.''

10. On a careful consideration of the contentions advanced on behalf of the petitioner and also this Court taking note of the representation dated 05.11.2014 addressed to the respondent and further this Court bear in mind the entire attendant facts and circumstances of the present case in an integral fashion, at this stage, opines that once a document is registered, the Registering Authority has no power to withhold the same. As such, this Court, to promote substantial cause of justice, directs the Respondent/Sub Registrar, Office of the Sub

Registrar, Sholavandhan Sub Registrar Office, Vadipatti Taluk, Madurai District, to release the Sale Deed, dated 04.01.2006 in P.No. 1 of 2006 to the beneficiary concerned forthwith.

(i) At the time of releasing the Sale Deed, dated 04.01.2006, in favour of the beneficiary, the respondent is directed to make necessary endorsement on the original document in question to the effect that that the proceedings under Section 47(A) of the Indian Stamp Act, 1899 are contemplated or pending, as the case may be.

(ii) It is open to the second Respondent/registering authority, to make necessary entries in the Register maintained in regard to the pendency of Section 47-A proceedings in respect of Sale Deed in question, which is subject matter of Registration, with a view to reflect the same in the Encumbrance Certificate, for the benefit of the Purchasers.

(iii) Pending final decision, in respect of any valuation under Section 47(A)(i), as per Section 45(A) of the Indian Stamp Act, 1899, there shall be a charge over of the properties in favour of the Government in respect of the unpaid value of the Stamp Duty, if any.

(iv) Also that, after completion of whole proceedings under Section 47(A) of the Indian Stamp Act, the Registering Authority / Respondent is to make necessary endorsement erasing / removing the earlier endorsement / clearly mentioning that the full / entire sum of Stamp Duty under the Document was paid in full and return the same.

(v) Moreover, after making such endorsement, the Respondent / Registering Authority shall also make entries in regard to the completion of Section 47(A) proceedings in the Register maintained by them with a view to reflect the same in the Encumbrance Certificate.

(vi) In any event, the Respondent is at liberty to finalise / complete the proceedings initiated under Section 47(A) of the Indian Stamp Act, as quickly as possible, of course, in the manner known to law and in accordance with law.

11. With the aforesaid directions, the Writ Petition stands disposed of. No costs.

