(2011) 01 MAD CK 0303

In the Madras High Court

Case No : Writ Petition No''s. 28637, 28625 and 28626 of 2010

Gojan Educational Trust — APPELLANT

Vs

The Registering Officer cum Collector under Indian Stamp Act and The Sub Registrar — RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:
Stamp Act, 1899 — Section 47A(1)

Citation : (2011) 01 MAD CK 0303

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S. Venkatesh, for the Appellant; S. Sivashanmugam Government Advocate for R1 and R2, for the Respondent

Judgement

T. Raja, J.—The Petitioner has filed

(i)W.P. No. 28637/2010 seeking issuance of a writ of Mandamus to direct the 2nd Respondent to return the registered document No. 201001370 dated 29.11.2010 in respect of the property land measuring about 2.10 acres (1.70.0 Hectares) comprised in Survey No. 236/7in Nallur Village (No. 114), Ponneri Taluk and situate within the SRO, Red hills and Registration District of Tiruvellore to the Petitioner;

(ii)W.P. No. 28625/2010 seeking issuance of a wriof Mandamusus to direct the 2nd Respondent to return the registered document no. P201001372 dated 29.11.2010 in respect of the property land measuring about 2.10 acres (1.70.0 Hectares) comprised in Survey No. 236/7 in NallurVillage (No. 114), Ponneri Taluk and situate within the SRO,Redhills and Registration District of Tiruvellore to the Petitioner.

(iii)W.P. No. 28626/2010 seeking issuance of a writ of Mandamus to direct the 2nd Respondent to return to return the registered document No. P201001371 dated 30.11.2010 in respect of the property land measuring about 3.04 acres

(1.23.0 Hectares) comprised in Survey No. 236/1(comprised in Pata No. 24) in Nallur Village (No. 114), Ponneri Talukand situatee within the SRO, Red hills and Registration District of Tiruvellore to the Petitioner.

2. (i) The case of the Petitioner in W.P. No. 28637/2010 is that the Petitioner after purchasing the immovable property measuring about 2.10 acres (1.70.0)hectares comprised in Survey No. 236/7 in Nallur Village(No. 114), Ponneri Taluk for a valid sale consideration from the vendor Mr. B. Ezhumalai, S/o T. Bakthavatchalam, residingat No. 3/208, Kannanoor Amman Koil street, Nallur Village,Ponneri Taluk represented by his General Power of AttorneyMr.R. Gopalan by a sale deed dated 29.11.2010, executed the said sale deed before the second Respondent. After registering the said sale deed in document No. 201001370, receipt was issued by them vide receipt No. 201032801 dated30.11.2010 to the Petitioner. The only grievance of the Petitioner is after registration and issuance of the receipt, the Document No. 201001370 was not returned to the Petitioner. Since there was no reason assigned for not returning the said registered sale deed, the Petitioner has approached the second Respondent to return the same after creating a charge on it and the same was also refused. Therefore, W.P. No. 28637/2010 is filed.

(ii) The case of the Petitioner in W.P. No. 28625/2010 is that the Petitioner after purchasing the immovable property measuring about 2.10 acres (1.70.0)hectares comprised in Survey No. 236/7 in Nallur Village(No. 114), Ponneri Taluk for a valid sale consideration from the vendor Mr. B. Santhanam, residing at No. 3/208, Kannanoor Amman Koil street, Nallur Village, Ponneri Talukrepresented by his General Power of Attorney Mr. R. Gopalanby a sale deed dated 29.11.2010, executed the said sale deed before the second Respondent. After registering the said sale deed in document No. 201001372, a receipt was issued by them vide receipt No. 201032803 dated 30.11.2010to the Petitioner. The only grievance of the Petitioner is after registration and issuance of the receipt, the Document No. 201001372 was not returned to the Petitioner. Since there was no reason assigned for not returning the said registered sale deed, the Petitioner has approached the second Respondent to return the same after creating a charge on it and the same was also refused. Therefore,W.P. No. 28625/2010 is filed.

(iii) Similarly, the case of the Petitioner in W.P. No. 28626/2010 is that the Petitioner after purchasing the immovable property measuring about 3.04 acres (1.23.0)hectares comprised in Survey No. 236/1(comprised in PattaNo. 24) in Nallur Village (No. 114), Ponneri Taluk for a valid sale consideration from the vendor Mrs.''s. Porkodi, w/o Mr .B. Santhanam, residing at No. 3/208, Kannanoor Amman Koilstreet, Nallur Village, Ponneri Taluk represented by his General Power of Attorney Mr. R. Gopalan by a sale deed dated29.11.2010, the said sale deed was executed before the second Respondent. After registering the said sale deed in document No. 201001371, a receipt was issued by them vide receipt No. 201032802 dated 30.11.2010 to the Petitioner. The only grievance of the

Petitioner is after registration and issuance of the receipt, the Document No. 201001371 wasn''t returned to the Petitioner. Since there was no reason assigned for not returning the said registered sale deed, the Petitioner has approached the second Respondent to return the same after creating a charge on it and the same was also refused. Therefore, W.P. No. 28626/2010 is filed.

3. When the matters were taken up, the learned Government Advocate appearing for the Respondents submitted that the second Respondent has already referred these matters u/s 47A on 10.1.2011. However, it was stated that the said documents having been registered by the second Respondent, will be returned to the Petitioner with the usual four conditions as held by this Court in W.P. Nos. 3567 and 3570 of 2009 dated 17.11.2009.

4. As rightly contended by the learned Counsel for the Petitioner, this Court in a judgment reported in 2001 (2) MLJ 458 has held that retaining a document for indefinite period is illegal and further in another unreported order in W.A.M.P. Nos. 4665 and 4666 of 2002 in W.A. No. 2751 and 2752 of 2002 has held as follows:

We prima facie think that the exercise of power u/s 47-A(1) of the Indian Stamp Act cannot be curtailed. The competent authority can inquire invoking that section, if he so wishes and if there is a requisition to that effect. Even if final order is passed invoking that power it shall not be given effect to until further orders of this Court. It is made clear that the document in question be registered and returned to the Respondent/writ petition on the Respondent/writ Petitioner filing a written undertaking that the differential stamp duty if imposed upon the final adjudication in the matter by this Court, shall be payable and that the property under the document shall not be alienated, transferred or encumbered in any other manner by the respective owners, pending disposal of the writ appeal.

Therefore, this Court gives a direction to the Respondent to release the documents by obtaining an undertaking from the Petitioner to pay all the stamp duty if any imposed upon the Petitioner and other usual conditions not to alienate the property till the final decision, if any, is to be taken. Hence, the Respondent is directed to release the documents within a period of three weeks from the date of receipt of a copy of this order.

5. With this observation, these writ petitions are disposed of. No costs.

