(2014) 11 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No.17923 of 2014

J. John Jesurajan APPELLANT

Vs

The District Registrar, District Registration Office, Pudukottai, Pudukottai District RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Citation : (2015) 1 CWC 523

Hon'ble Judges : Mr. M. Venugopal, J.

Bench : Single Bench

Advocate : Mr. M. Subash Babu, Advocate, for the Petitioner; Mr. K. Guru, Additional Government Pleader, for the Respondents

Final Decision : Allowed

Judgement

Mr. M. Venugopal, J.—Heard Mr.M.Subash Babu, the Learned Counsel appearing for the Petitioner and Mr.K.Guru, the Learned Additional Government Pleader appearing for the Respondents.

2. According to the Petitioner, the Sale Deed was executed by A.Gnana Arulraj and A.Arockiyaraj in his favor on 29.05.2014 and it was presented before the second respondent on the same day for registration. In fact, the second respondent/Joint Sub Registrar-II, Sub Registrar''s Office, Pudukottai, Pudukottai District had collected necessary registration charges and other fees and also issued receipt for the same but till date, the said document is not registered. However, the second respondent had kept the said document as pending one in P.No.57 of 2014 in respect of the property in Survey No.196/2/B, Pudukottai South Panchayat, Pudukottai, a part of Survey No.196/2.

3. The main reason advanced on behalf of the petitioner is that the second respondent has not taken any proceedings or action in the manner known to law. It is well settled that any Sub Registrar of the Registration Department cannot retain any document presented before him for registration and after making

endorsement, if any, he should register and release the document. However, in the instant case on hand, the second respondent is keeping the Sale Deed in question in P.No.57 of 2014 without any rhyme or reason.

4. The learned counsel for the petitioner brings it to the notice of this Court even though the Sale Deed in question was presented on 29.05.2014 for registration, even after lapse of five months period, the second respondent has not moved his little finger to release the document in question. As such, the petitioner made a representation before the second respondent in person on 27.10.2014. There is no response for his representation dated 27.10.2014 till date, resultantly the petitioner has filed the preset Writ Petition before this Court.

5. At this juncture, this Court more pertinently points out that in terms of Section 61 of the Registration Act, 1908 once the registration of document is completed, thereafter, the document/Sale Deed shall be returned to the concerned individual who presented the same for registration. In the instant case on hand, according to the petitioner, the registering authority/second respondent had not followed the requisite procedures enshrined under the rules and regulations and the law in force and needlessly and unnecessarily the second respondent is keeping the document of the petitioner, without returning the same, despite the fact that the registration of the document is not yet completed.

6. The learned counsel for the petitioner invites the attention of this Court to the decision made in K. Jothisenthilkannan v. The Collector, Puducherry Revenue Department and another reported in 2010 (2) CWC 753 whereby and where under in paragraphs 11 to 14 it is observed and laid down as follows:

"11. It is also relevant that Section 34 of the Registration Act provides that enquiry before registration by the Registering Officer is subject to the provisions contained in that part and no documents shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the Registering Officer. Moreover, Section 35(1) of the Act provides that if all the persons executing the document appear personally before the Registering Officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, the Registering Officer shall register the document as directed in Section 58 to 61 and return the same, as provided for in Section 61(2).

12. In the decision relied upon by the learned Counsel for the Petitioner in Pandurangan''s case, the issue under challenge was a direction by the District Collector to the District Registrar of Pondicherry to instruct the Sub Registrar to withhold the registration of any sale transaction in respect of a particular land in a revenue village and the said direction was set aside, as it was well settled that statutory rules cannot override express provisions of the statute and executive instructions cannot override either of the two. Hence, the said decision is not applicable to this case.

13. However, in the other decision cited by the learned Counsel for the Petitioner in Tata Coffee Limited, it was held that the retention of document after registration on ground of pendency of Civil proceedings in respect of the property was not proper and that the Registrar had no concern about validity or otherwise of the document, which was realm of Civil Court. Holding so, the authority was directed to release the document forthwith, without any endorsement.

14. In view of the decision of this Court in Tata Coffee Limited, the Second Respondent herein is directed to return the Petitioner''s original Settlement Deed, dated 30.03.2010, which is retained by the Second Respondent as pending document in Ref. No.P/93/2010 forthwith. However, this order shall not stand in the way of the Respondents initiating the Acquisition proceedings over the property in question, in which even the Petitioner shall have a right of defence. Also, as it is the case of the Respondents that there is a land grabbing with regard to the property in question, the Respondents are at liberty to proceed against the persons concerned, if they are so advised, in accordance with law."

7. Also the learned counsel for the petitioner brings it to the notice of this Court a decision made in Kannammal v. The Sub Registrar, O/o. the Sub Registrar, Kanchirappalayam, Chinnasalem Taluk, Villupuram District and others reported in 2013 (1) CWC 704 whereby and where under in paragraphs 3 to 5 it is observed and laid down as under:

"3. The learned Counsel appearing for the Petitioner would submit that the Act of the First Respondent in not registering the Sale Deed on the ground raised is in violation of the powers conferred under Sections 35 & 74 of the Registration Act, 1908. The Registering Authority cannot convert himself into a Civil Court and seek to decide disputed questions of title. He also referred to the recent judgment of this Court reported in Appourva J. Patel v. The Inspector General of Registration, Santhome High Road, Santhome, Chennai - 600 028 and others, 2012 (4) CTC 689, wherein this Court has clearly held that it is not the job of the registering officer under the Registration Act to find out if the title has passed on. If the Registering Authority is vested with such power a Sub-Registrar would turn himself into a Civil Court and decide disputed questions of title. Therefore, when that is the legal position well settled by this Court, the conduct of the Registration Authority in not registering is totally illegal and Arbitrary and therefore prays for appropriate direction to be given to the Registrar, the First Respondent herein. He also adds that the Respondent 2 and 3 are only the vendors of the Petitioner who had executed a Sale Deed in favour of the petitioner which was presented for registration.

4. The learned Special Government Pleader appearing for the First Respondent would admit this position. Therefore, I am inclined to direct the First Respondent herein to register and release the Sale Deed dated 08.01.2013 executed by the Second and Third Respondents in respect of the subject property, viz., S.F.No.47/1, Kadukka Marathukkadu, Vazhappadi Village, Kalvarayanmalai, Kallakurichi immediately if it is otherwise in order. The Respondent 2 and 3,

being formal parties, no notice was directed to be issued to them."

8. At this stage, this Court points out the decision in the Sub- Registrar, Chingleput and Others v. R.Rama reported in (2008 Writ L.R.260), 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 recognised 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."

9. Also in the decision in B. Rajappa and Another v. The Special Deputy Collector (Stamps) reported in 2002 (3) CTC 544, 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 5 2, 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."

10. Continuing further, this Court more relevantly points out 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 v. 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.

1.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. "

11. Apart from the above, this Court also cites the decision in Tata Cofee Limited v. The State of Tamil Nadu and others reported in (2008 (3) LW 286) wherein, 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."

12. Also that in the decision in A.J.Mappillai Mohadeen v. The Sub- Registrar, Registration Department, Sub-Registrar Office, Arakandanallur and another reported in (2008(5) CTC 239) wherein, it is held that "Section 47-A of the

Indian Stamp Act, 1899 can be pressed into service only when 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."

13. On a careful consideration of the rival contentions and in view of the fact that the Petitioner had made a representation dated 27.10.2014 addressed to the second respondent wherein he had sought for accepting his representation and to resister the Sale Deed in reference P.No.57 of 2014 and to release the same and also this Court taking note of the overall assessment of the entire facts and circumstances of the case in an encircling fashion which float on the surface, at this stage, in the interest of justice, directs the second respondent to consider the Sale Deed in P.No.57 of 2014 for registration within a period of two weeks from the date of receipt of a copy of this order.

14. At this stage, this Court points out that it is open to the Registering Authority to affix a seal, while releasing the sale 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. The Registrar is to make corresponding entries under Sections 54, 55 of The Registration Act, 1908, in the Register of indexes as to the pendency of proceedings under Section 47-A of the Indian Stamps Act, 1899, in case he comes to such a conclusion. 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 are to recover deficit stamp duty according to law. Till such proceeding reaches finality and deficit stamp duty, if any, is paid, there will be a charge for the deficit stamp duty, which is the subject matter of transfer or conveyance. 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 resultant entries in the registers/indexes maintained under Sections 54, 55, etc., of The Registration Act.

15. With the aforesaid directions, the second respondent is directed to register the Sale Deed in question and release the pending document in P.No.57 of 2014, dated 29.05.2014 presented for registration on 29.05.2014. Accordingly, this Writ Petition stands allowed. No costs.

