(2014) 07 MAD CK 0080

In the Madras High Court

Case No : Writ Petition (MD) No. 11694 of 2014 and M.P. (MD) No. 1 of 2014

K. Devadoss APPELLANT

Vs

The District Registrar RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : (2014) 07 MAD CK 0080

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

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—Mr. K. Guru, learned Additional Government Pleader takes notice for the respondents.

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

3. In this Writ Petition, a direction is sought for upon the second respondent to register the pending Document No. 54 of 2012 and release the same.

4. The petitioner presented the said document, which is a sale deed, in respect of an immovable property in Survey Nos. 10/5 and 10/6, Sevanthialingapuram Village, Musiri Taluk, Trichy District measuring about 1.25 acres, which has been taken on file by the second respondent as pending Document No. 54 of 2012.

5. The second respondent by proceedings, dated 07.07.2014 informed that the document is kept pending, since the second respondent proposes to assess the correct market value of the property and in this regard, a report has been called for.

6. It is the settled legal principle that merely because proceedings are pending under Section 47A(1) of the Indian Stamp Act, the documents cannot be withheld. If there is any under valuation, the authority to whom such reference is made can decide upon the proper valuation subject to appeal and deficit stamp duty payable can be realised.

7. In this regard, it would be worthwhile to refer the decision of the Division Bench of this Court in R.Sonai Vs. The District Collector and another in W.A (MD) No. 372 of 2005, dated 22.11.2005, wherein the Honourable Division Bench has held as follows:-

8. A perusal of the aforesaid provision makes it clear that the officer concerned cannot withhold registration merely because he suspects any under valuation. His jurisdiction is to refer the matter under Section 47A(1) for ascertaining the proper stamp duty payable. If there is any under valuation, the authority to whom such reference is made can decide upon the proper valuation subject to appeal and any deficit stamp duty payable can be realised. The right to get such deficit amount becomes a charge upon the property. It is thus clear that a self-contained code is statutorily prescribed. If the authority registering the document neither has jurisdiction to withhold registration nor to withhold any document, it is axiomatic to hold that such authority cannot impose any other condition such as not to alienate the property.

9. The scope and ambit of Section 47-A have been repeatedly analysed and reiterated in several decisions of this Court, including the decisions reported in 2001 (2) CTC 449 (The District Collector, Erode District, Erode and two others) and 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 . It is surprising that inspite of such clear and categorical decisions, the authorities are flouting the provisions and such decisions by refusing to register the documents or withholding such registered document instead of following the statutory provisions. We do not find in these two decisions any indication that the purchaser of a property under the sale deed would be restrained from alienating such property till the matter relating to under valuation is decided by the competent authority. As already indicated, the amount payable, as determined in a reference or in any appropriate proceeding, becomes a charge over the property effected in such instrument and the Government has right to recover such amount by enforcing such charge. In such view of the matter, in our opinion, the learned single Judge was not justified in imposing condition No.ii which has already been extracted.

10. The Writ Appeal is accordingly allowed and condition No.ii imposed by the learned single Judge shall be inoperative. There would be no order as to costs.

8. In the light of the above, there will be a direction to the second respondent to register and release the document, subject to the ascertainment of the correct market value of the property. Registration and release of the document will not prejudice the rights of the respondents in referring the document for ascertainment of correct market value of the property under Section 47A(1) of the Indian Stamp Act. It is also open to the respondents to make necessary endorsement that the document is subject to the proceedings under Section 47A(1) of the Indian Stamp Act.

9. In the light of the above, the second respondent shall register and release the document subject to the observation made above within a period of four weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.