

A.Jayakumar Vs. 1.The Special Deputy Collector (Stamps),

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SooperKanoon Citation : sooperkanoon.com/1168306

Court : Chennai

Decided On : Oct-27-2014

Judge : M.Venugopal

Appellant : A.Jayakumar

Respondent : 1.The Special Deputy Collector (Stamps),

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

27. 10.2014 CORAM THE HONOURABLE MR.JUSTICE M.VENUGOPAL Writ Petition No.17239 of 2014 A.Jayakumar ... Petitioner Vs. 1.The Special Deputy Collector (Stamps), Virudhunagar District, Virudhunagar. 2.The Sub Registrar, Office of the Sub Registrar, Aruppukkottai. ... Respondents Prayer Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the 2nd Respondent herein to release the Petitioner's sale deed registered vide document No.201405268, dated 16.10.2014 within a stipulated period, as fixed by this Court. !For Petitioner : Mr.M.Thirunavukkarasu For Respondents :Mr.K.Guru Addl.Govt.Pleader :

ORDER

Heard Mr.M.Thirunavukkarasu, 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, he purchased a property comprised in S.No.26/3 and S.No.25/1, admeasuring 1207.72 Sq.Meter (13,000 Sq.feet) of vacant site, situated at Periyapuliyampatti (East), Aruppukkottai, from one Murugan, who is the power agent of Radhakrishnan, for a valid consideration. It is the stand of the Petitioner that as per guideline value of that area, he had remitted a sum of Rs.1,82,000/-, as Stamp Duty, at Rs.200/- per Square Feet, whereas, the 2nd Respondent had insisted him to pay a Stamp Duty at Rs.400/- per Square Feet, taking note of the market value pertains to the nearby area, called Meenambikai Nagar, which is predominant and very faraway from his property.

3. It is the stand of the Petitioner that during the year 2004, when a lay out was formed over the above said property, the guideline value for the said property was Rs.25/- per Square Feet and thereafter, the said property was divided into house sites. Even during the year 2010, one of such house site in the said lay out was sold at Rs.25/- per Square Feet. Subsequently, upto 2012, the Stamp Duty for the property purchased by him was registered at Rs.45/- per Square Feet, as per guideline value.

4. The Learned Counsel projects an argument that in view of the instruction given by the Registration Department, vide No.12181/G4/87, dated 25.01.1988, the value of one particular survey number should not be taken for another survey number for fixing stamp value. Besides in view of another instruction of Registration Department No.43781/L1/1990, dated 20.11.1990, though many streets comprised in one survey number, the higher value of one particular street cannot be applied for another particular street.

5. That apart, it is brought to the notice of this Court by the Learned Counsel appearing for the Petitioner that the Registration Department issued another Instruction in Ref.No.19136/L1/1998, dated 22.04.1998, in and by which, a sale deed registered with higher value cannot be taken into subsequent document. The guideline value alone should be taken into account and as such, it is not open to the Respondents to take the guideline value and market value, which relates to the Meenambikai Nagar for his sale deed, which are no way connected with that area.

6. Apart from the above, the Learned Counsel for the Petitioner proceeds to take a stand that when a document is presented for Registration, if the Authority registering such a document has a reason to believe that market value of the property has not been truly set forth, he may after registering such a document refer the same to the Collector for determination of the market value of such property and the proper duty payable thereof.

7. In fact, the plea of the Petitioner is that the Registering Authority has not vested with the power to demand payment of additional duty nor he has got any power to postpone the registration of the document. Further, 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.

8. Moreover, 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 person, who presented the same for registration. In the instant case on hand, it is the submission of the Learned Counsel for the Petitioner that the Registering Authority / the 2nd Respondent is not followed the aforesaid procedures and the 2nd Respondent is unnecessarily kept the document of the Petitioner, without returning the same, despite registration of such document is over.

9. In effect, the contention of the Learned Counsel for the Petitioner is that the 2nd Respondent in Law has no authority to retain the documents of the Petitioner, after its registration, for want of additional Stamp Duty. In this regard, the Learned Counsel relies Article 300(A) of Constitution of India. According to which, a Citizen has a Right to own a property and retain the same and moreover, such a Right cannot be deprived of, except by Authority of Law.

10. It is the stand of the Petitioner that he sent a detailed representation to the Respondents by RPAD, on 18.10.2014, with a request to release his Sale Deed. But, the 2nd Respondent has refused to release the Sale Deed, for the reasons best known to him. The Learned Counsel to lend support to the contention that the Registering Authority is to return the documents to the Petitioner and the said

Authority has any reasons to believe that the market value of the property in question has not been properly reflected in a document, it would be open for him to take action in accordance with Law, as contemplated under Section 47-A of Indian Stamp Act, 1899, relies a decision of this Court 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 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.".

11. The Learned Counsel also seeks in aid of the decision of this Court in B.Rajappa and Another v. The Special Deputy Collector (Stamps) reported in (2002 (3) CTC544, at Special Page, 550 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."

12. That apart, the Learned Counsel invites the attention of this Court to 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) CTC544 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. "

13. On a careful consideration of respective contentions and in view of the fact that the Petitioner had sent a detailed representation to the Respondents on 18.10.2014, with a request to release his Sale Deed and also this Court, taking

note of over all assessment of entire conspectus of the facts and circumstances of the case in a cumulative 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 prevent an aberration of justice and to promote substantial cause of justice, directs the 2nd Respondent / the Sub Registrar, Office of the Sub Registrar, Aruppukkottai Town, Virudhunagar District, to release the Sale Deed, dated 16.10.2014, to the Petitioner forthwith. (i) At the time of releasing the Sale Deed, dated 16.10.2014, to the Petitioner, the 2nd Respondent is directed to make necessary endorsement on the original documents in question to the effect that the proceedings under Section 47(A) of the Indian Stamps Act, 1899 are contemplated or pending, as the case may be. (ii) It is open to the second Respondent 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 Stamps 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 Stamps Act, the Registering Authority / the 2nd 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 2nd 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 second Respondent is at liberty to finalise / complete the proceedings initiated under Section 47(A) of the Indian Stamps Act, as quickly as possible, of course, in the manner known to law and in accordance with law.

14. With the aforesaid directions, the Writ Petition stands disposed of. No costs.
27.10.2014 Index : Yes / No Internet : Yes / No MPK To 1.The Special Deputy Collector (Stamps), Virudhunagar District, Virudhunagar. 2.The Sub Registrar, Office of the Sub Registrar, Aruppukkottai. M.VENUGOPAL, J.

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