N.Lingadurai Vs. 1. the Inspector General of Registration,

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SooperKanoon Citation : sooperkanoon.com/2000

Court : Chennai

Decided On : Nov-17-2014

Judge : M.Venugopal

Appellant : N.Lingadurai

Respondent : 1. the Inspector General of Registration,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

17. 11.2014 CORAM THE HONOURABLE MR.JUSTICE M.VENUGOPAL W.P.(MD)No.18492 of 2014 N.Lingadurai ... Petitioner Vs.

1. The Inspector General of Registration, Santhome, Chennai.

2. The District Registrar, Tirunelveli District, Tirunelveli.

3. The Sub Registrar, Valliyoor, Tirunelveli District. ... Respondents PRAYER Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the third respondent to release the document No.P20101400042 dated 01.09.2014 registered in Sub-Registrar, Valliyoor, third respondent herein in respect of the petitioner's property in Ayan Punja Survey No.825/2, Kannanallur Village, Radhapuram Taluk, Tirunelveli District within a time stipulated by this Court. !For Petitioner : Mr.V.Sasikumar For Respondents : Mr.K.Guru Additional Govt. Pleader :

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader.

2. According to the petitioner, he purchased the property in Survey No.825/2 measuring 3 acres of Kannanallur Village, Radhapuram Taluk, Tirunelveli District from one Siluvai Ammal, W/o. Anthony Nadar and her sons viz., Jesu Robin, Anthony, Ananthan, Maria Raja and Kamaraj on 01.09.2014 for a valid sale consideration of Rs.3,88,800/-.

3. The stand taken on behalf of the petitioner is that he had remitted the necessary stamp duty for the sale consideration and in fact, he paid a sum of Rs.27,216/- and also paid the registration charges along with computer charges for a sum of Rs.4,100/- before the third respondent. He also paid a sum of Rs.40/- as sub-division fees on 01.09.2014 itself. The third respondent had also issued a receipt for the said payment on 01.09.2014. He was informed that the sale deed was registered as Document No.P201400042 and he was directed to approach the third respondent after 10 days for getting the original registered sale deed.

4. The petitioner sent a representation on 31.10.2014 addressed to the respondents 1 and 2 seeking to release the sale deed registered on 01.09.2014. Although, his representation was received, yet his grievances have not been addressed so far by the concerned respondents. As such, he has filed the present writ petition before this Court.

5. It is to be noted that whenever the document is registered, the Registering Authority should forthwith release the original document with an endorsement that reference under Section 47(A)(1) is pending in respect of the document as per decision in M.Krishnan vs. the District Collector reported in (1988 (3) CTC366.

6. At this stage, this Court aptly points out the decision of this Court in the Sub-Registrar, Chingleput and Others v. R.Rama reported in (2008 Writ L.R.260), whereby and whereunder, it is observed as follows:- "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."

7. Moreover, 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 whereunder in paragraphs 13 to 16 it is observed as follows:-

"3. 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."

8. Also, 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 whereunder, in paragraph 4, it is observed 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."

9. That apart, in Tata Cofee Limited vs. The State of Tamil Nadu and others reported in (2008 (3) LW286 whereby and whereunder, 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 contemplated 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.' 10. Also, in A.J.Mappillai Mohadeen v. The Sub-Registrar, Registration Department, Sub-Registrar Office, Arakandanallur and another reported in (2008(5) CTC239 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.' 11. In addition to the above, it is useful to refer to the Division Bench judgment of this Court dated 15.04.2014 in W.A.No.1966 to 1968 of 2013 between the Inspector General of Registration, Chennai-28 and 2 Others v. Sunpark Construction Private Ltd, whereby and whereunder in paragraphs 4 to 7 it is observed and held as follows:- "4.This Court in similar matters passed orders directing release of the documents pending Section 47A enquiry with certain conditions. One such order has also been produced before this Court. The Learned Special Government Pleader appearing for the Respondent s has no objection for a similar order being passed in these three writ petitions also. 5.Accordingly, following the earlier orders, these three writ petitions are also disposed of with the same conditions: (i)the Respondent s are directed to return the documents registered as Document Nos.1386, 1385 and 1387 of 2013 respectively to the petitioner with an endorsement on the instrument to the effect that the proceedings under Section 47-A of the Act are pending, and the second Respondent shall return the documents to the petitioner within a period of three weeks from the date of receipt of a copy of this order; (ii)the Respondent s shall make necessary entries in the Registers maintained by them to show that the property governed under the said documents are subject to the proceedings under Section 47-A of the Act, so as to be exposed in the encumbrance certificate for the notice of the purchasers; (iii)after the proceedings under Section 47-A of the Act are completed, including the appeals which are contemplated under the Rules, within the prescribed time under law, if the petitioner pays the deficit stamp duty and presents the original documents before the second Respondent / registering authority, the Respondent s shall make an endorsement making it clear that the proceedings under Section 47-A of the Act are completed and in that event, the Respondent s shall also make necessary entries in the Registers, so as to expose the same in the encumbrance certificate; and (iv)till the completion of the entire proceedings, as per Section 47- A(5) of the Act, there shall be a charge against the property, subject matter of the documents, relating to the deficit stamp duty payable by the petitioner. (v)If the document is not retained for an enquiry under Section 47A enquiry, it shall not be returned/released. 4.At the stage of hearing of the Writ Appeals, it is represented on behalf of the Appellants that this Court by an order dated 23.10.2013, has passed the following interim order: Heard the submissions of the Learned Special Government Pleader and the Learned counsel appearing for the Respondent . The documents, which are the subject matter of these writ appeals are ordered to be returned to the respective Respondent s subject to the condition that charge is to be created and the return of the documents is also subject to the result of these writ appeals. 5.On going through the impugned common order of the Learned single Judge in W.P.Nos.11177 to 11179 of 2013 dated 22.4.2013, we are of the categorical view that the said common order came to be passed because of the reason that the Learned Special Government Pleader appearing for the Respondent s therein had no objection for similar order (based on one such order produced in Court) being passed in three Writ Petitions.

6. In view of the fact that the Respondent has received the documents in question and also there being no infirmity or illegality in the common order dated 22.4.2013, passed by the Learned single Judge in W.P.Nos.11177 to 11179 of 2013, this Court comes to an inevitable and resultant conclusion that nothing survives for adjudication in the present Writ Appeals and as such no further orders are necessary to be passed."

12. In the light of detailed qualitative and quantitative discussions and in view of the fact that the petitioner had addressed a representation dated 31.10.2014 to the respondents 1 and 2 and also this Court taking note of the over all assessment of the facts and circumstances of the present case, in an integral fashion, at this stage, is of the considered view that once a document is registered, the Registering Authority has no power to withhold the same. As such, this Court, in

the interest of justice, directs the third respondent/Sub Registrar, Valliyoor, Tirunelveli District to release the sale deed in No.P20101400042 dated 01.09.2014 to the petitioner forthwith. (i) At the time of releasing the sale deed dated 01.09.2014 to the petitioner, the third respondent is directed to make necessary endorsement on the original document in question to the effect 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 registering authority / third 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 encumbrance certificate, for the benefit of 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 entire proceedings under Section 47(A) of the Indian Stamp Act, the Registering Authority / the third respondent is to make necessary endorsement annulling/ superceding the earlier endorsement by 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 third 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 third respondent is at liberty to complete / finalise 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. With the aforesaid directions, the Writ Petition stands disposed of. No costs. 13.11.2014 Index:Yes/No Internet:Yes/No akv To 1. The Inspector General of Registration, Santhome, Chennai.

2. The District Registrar, Tirunelveli District, Tirunelveli.

3. The Sub Registrar, Valliyoor, Tirunelveli District. M.VENUGOPAL,J.

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