IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32166 of 2014
and M.P.No.1 of 2014

Janmathul .. Petitioner

v.

The Joint Sub Registrar - II
O/o the Joint Sub Registrar
Thiruppur
Tiruppur District. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records pertaining to the order passed by the order passed by the respondent herein in Demand Notice in Na.Ka.No.502/2014/dated 05.11.2014, and quash the same and consequently, direct the respondent to release the document, bearing Document No.2926/2014, dated 18.06.2014, registered in the O/o the Joint Sub-Registrar-II, Thiruppur, in respect of the property belonging to the petitioner bearing Door No.4A, 4B, 4C, comprised in Survey No.81/1 of Tiruppur village in Town Survey No.3/1 block no.1, Town Survey Ward No.6, Nandavanan Thottam, within Tirupur Municipality limits, Tamil Nadu.

For Petitioner : Mr.A.Thiagarajan, Senior Counsel for Mr.S.Ramesh Kumar
For Respondents : Mr.R.Vijayakumar,AGP

ORDER

Heard Mr.A.Thiagarajan, learned Senior Counsel for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondent.

2. The petitioner has challenged the order passed by the respondent dated 05.11.2014, by which the respondent has called upon the petitioner to pay deficit stamp duty of Rs.8,33,800/-, together with registration fee thereon at Rs.1,19,115/- and compounding fee of Rs.7085/-, in all Rs.9,60,000/-. This amount has been directed to be remitted by the petitioner on the ground that the Sale Certificate which was presented for registration was accepted for registration and inspection was directed to be conducted, as there was a superstructure in the property.

3. According to the respondent, the superstructure has not been valued correctly and there is a deficit in the valuation. This is the reason for issuing impugned proceedings demanding deficit stamp duty, registration charges and compounding fee. If the petitioner

has not valued the building properly, the respondent is entitled to come to a conclusion as to whether the valuation was proper and if the valuation was not proper, if he has a genuine doubt with regard to the value of the superstructure, then, the authority has to follow the procedure contemplated under Section 47-A of the Indian Stamp Act. In fact, a circular to this effect has been issued by the Inspector General of Registration, to all the Sub Registrars in the State, vide Circular dated 14.09.2011. Therefore, the respondent cannot retain the document and keep the same pending and call upon or compel the petitioner to pay alleged default stamp duty, when the respondent is bound to exercise his statutory power under Section 47-A of the Act and forward the papers to the Competent Authority, for ascertaining the correct market value of the superstructure.

4. The decision referred to by the learned Additional Government Pleader in W.A.Nos.2407 and 2408 of 2010 dated 01.04.2011 is not applicable to the facts of the case on hand, since there is no dispute as regards the value of the immovable property and the value which is being disputed is only with regard to the superstructure. In any event, the Hon'ble Division Bench directed the Registering Authority to refer the matter under Section 47-A of the Indian Stamp Act for determination of the correct value of the property.

5. In the light of the aforesaid decision of this Court, wherein, it has been held that there is no justification in retaining the document on the ground that the matter requires to be referred under Section 47-A of the Indian Stamp Act, in order to safeguard the interest of revenue, the authority is entitled to make necessary endorsement in the document for releasing the same.

6. At this stage, it would be relevant to refer to the earlier order passed by this Court in W.P.Nos.2106 and 2107 of 2015 and the operative portion of the order reads as follows:

> "4. The learned senior counsel for the petitioner submitted that there is no jurisdiction for the third respondent to retain the documents after registration and there is no power under the Registration Act, 1908. 12 Further, it is submitted that if at all, the third respondent states that stamp duty remitted by the petitioner is incorrect or deficit, only procedure provided under the Indian Stamp Act is to resort to Section 33 (A) of the Act. Without doing so, the question of retaining the documents does not arise. In support of such contention, the learned counsel has placed reliance on the decision of T.PANNEER SELVAM V. THE INSPECTOR GENERAL OF REGISTRATION (2012 (2) CTC 59).
>
> 5. The learned Government Advocate submitted that the petitioner, a Limited Liability Partnership Firm incorporated under Section 12 (1) of the Limited Liability Partnership Act, 2008, has donated the land measuring 2857.61 square meter and 1202.34 square meter in favour

of CMDA in the interest of public. It is submitted that the Registering Authority has impounded the document after registration and forwarded the same to the District Registrar (Administration), Chennai South, who is appointed as Collector under Section 40 of the Indian Stamp Act 1899. It is submitted that the District Registrar is yet to pass orders as contemplated under the provisions of the Act after giving an opportunity of hearing the petitioner. Even, if such an order is detrimental to the interest of the petitioner, the only remedy available to the petitioner is to file Revision Petition before the Chief Controlling Revenue Authority - cum - Inspector General of Registration, Chennai, as provided under Section 56 (1) of the Act.

6. In support of this contention, the learned Government Advocate has placed reliance on the decision in the case of JOINT SUB REGISTRAR V. PRASANTH CHANDRAN, (AIR 2005 MADRAS 354) and contended that when there is alternative remedy available, the writ petitions are not maintainable. The learned Government Advocate has also placed reliance upon the decision in TAMIL NADU STATE TRANSPORT CORPORATION (VILLUPURAM DIVISION II) LTD., V. C.DURAI (2005 WRIT LR 136) and un-reported judgment of the Division Bench of this Court in (KOUSHI MOHAN L. MAHTANI AND 6 OTHERS VS. STATE OF TAMIL NADU AND TWO OTHERS) (W.A.No.888 of 2014 dated 29.10.2014 in support of the said contention. Further, it is submitted that G.O.Ms.No.359 Commercial Taxes and Religious Endowments Department, dated 18.10.1993 is not applicable to the Gift Deeds relating to the present matters since the recitals of the Gift Deed does not suggest that the donor is a Developer. Therefore, it is submitted that the petitioner is not entitled for concessional levy of Stamp duty.

7. The learned Government Advocate further submitted that the claim made by the petitioner by placing reliance on the G.O.Ms.No.486 Commercial Taxes and Religious Endowments Department dated 05.11.1997 is also incorrect since it deals with settlement of land donated by Citizen and the petitioner being a Limited Liability Partnership Firm cannot be construed as a Citizen. By placing reliance on the decision of the Hon`ble Supreme Court in the case of STATE TRADING CORPORATION OF INDIA V. COMMERCIAL TAX OFFICER (AIR 1963 SC 1811), it is submitted that the Citizens can only be a natural persons and not any legal entity. Further it is submitted

that exemption of Government orders / notification have to be strictly construed and until the petitioner come within the four corners of the notification, they are not entitled to the benefit of the said notification. In this regard, the learned Government Advocate has placed reliance on the decision of this Court in THE GANDHI NAGAR CO-OPERATIVE HOUSING SOCIETY LTD., V. STATE OF TAMIL NADU AND ANOTHER (WP.NO.2496 OF 2009 DATED 16.8.2011) and the decision of the Hon`ble Supreme Court in the case of GRASIM INDUSTRIES LIMITED v. STATE OF MADHYA PRADESH (AIR 2000 SC 68 (69). With the above said submission, the learned Government Advocate prays for dismissal of the writ petitions.

8. The short issue which falls for consideration is as to whether the third respondent can refuse to release the documents after registering the same.

9. The documents in question are Gift Deeds. It is to be noted that the petitioner, which is a Limited Liability Partnership Firm registered under the provision of the said Act, filed an application for planning permission before the CMDA. The CMDA, by order dated 17.12.2014, directed the petitioner to remit Development Charges and other charges apart from imposing other conditions. As per condition No.8 (a) of the said order dated 17.12.2014, the Open Space Reservation Area and Link Road Portion roads are to be handed over through a registered gift deeds. Thus, it is clear that the petitioner has presented both the Gift Deeds, which are the subject matter of these writ petitions, pursuant to the order passed by the CMDA. Therefore, the Registering authority cannot state that the petitioner on its own volition has gifted the property.

10. Further more, the learned counsel for the petitioner pointed that the Donor in the Gift Deeds is the petitioner, who is the applicant before the CMDA and the petitioner is a Developer, and, therefore, they are entitled for the benefit of the Government order in GO.Ms.No.117. Further it is submitted that in respect of the Open Space Reservation Area, the petitioner is entitled to the benefit of the GO.MS.No.359 and the petitioner is not claiming any benefit under GO.Ms.No.486 dated 05.11.1997. Thus, it is clear that the Gift Deeds executed by the petitioner is pursuant to the direction issued by the CMDA. The recitals also show that the petitioner is a CMDA applicant and hence,

they are a Developer. The question that remains to be considered is whether the petitioner is entitled to the benefit of G.O.Ms.No.117 and GO.Ms.No.359 and whether the Stamp duty remitted by them is proper. However, the stage is yet to come to decide these issues since the District Registrar is yet to conduct enquiry into the matter. While on this issue, it is beneficial to refer to the decision of T.PANEER SELVAM Vs. THE INSPECTOR GENERAL OF REGISTRATION cited supra. In the said case, the petitioner therein sought for a direction to release a Deed of Dissolution of Partnership, which was kept as a pending document by the concerned registering authority. This Court, after taking into consideration the provisions of the Indian Stamp Act and the Registration Act pointed out that Section 33 (A) does not speak about the retention of a document after registration, in fact, the scheme of Section 33 (A) shows that the proceedings there under, can be initiated even after registration. Section 33-A(1) would show that it begins with a non -obstante clause and it uses the expression " after the registration". Further it was pointed out that since the proceedings have been initiated even after registration, but within a period of three years, there is no indication in Section 33 (A) about the power of the Sub Registrar to retain the documents. The aforesaid decision squarely applies to the case on hand.

11. In the written instruction given by the third respondent to the learned Government Advocate, a reference has been made to Section 40 of the Stamp Act. On a careful perusal of Section 40 of the Stamp Act, it is seen that the said provision deals with Collector's power to stamp instruments which are impounded. Prima facie, it appears that Section 40 would have no application to the present cases and if at all, there is any recovery of deficit stamp duty then necessarily, the power under Section 33 (A) has to be invoked. However, this Court does not propose to give any finding in this regard and left open to authority to proceed in accordance with law.

12. Be that as it may, there is no justification or jurisdiction for the third respondent to retain the documents after registration. The decisions relied on by the learned Government Advocate for the proposition that when there is alternative remedy provided under the Act, the petitioner should avail the same and not to file these writ petitions cannot be applied to the cases on hand at this

stage, since the proceedings are yet to commence and the documents have been registered and yet to be released. Under such circumstances, question of availing alternative remedy does not arise when the original authority has not passed any orders. The decisions relied on by the learned Government advocate in this regard does not render any support to the case of the respondents.

13. The applicability of G.O.Ms.No.359 and G.O.Ms.117 are to be considered by the authority after notice to the petitioner. Therefore, at this stage of the mater, this Court is not inclined to go into those aspects.

14. In the light of the above, this Court is of the view that the there is no jurisdiction for the third respondent to retain the documents after registration.

15. In the result, the writ petitions are allowed and the third respondent is directed to release and return the registered Gift Deeds dated 07.01.2015 bearing Doc.Nos.105 of 2015 and 110 of 2015 within a period of two weeks from the date of receipt of a copy of this order, with an endorsement that release of the documents would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act read with Registration Act. No costs. Consequently, connected miscellaneous petitions are closed. "

7. The above referred direction is equally applicable to the instant case, since the only difference is that in that case, it was either a sale deed or a release deed, etc., whereas in the present case, it is a Sale Certificate executed by the authorised officer under SARFAESI Act. Accordingly, the respondent is directed to register and release the document with an endorsement that release of the document would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act.

8. It is made clear that the concerned authority under the Indian Stamp Act is entitled to issue notice in Form-I and proceed to adjudicate the matter regarding the Court stamp duty payable on the said Sale Certificate, affording an opportunity of hearing to the petitioner to raise his objections, within a period of three weeks from the date of receipt of a copy of this order. It is needless to state that the petitioner should co-operate in the enquiry so conducted.

Accordingly, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

The Joint Sub Registrar - II
O/o the Joint Sub Registrar
Thiruppur, Tiruppur District.

+ 1 cc to M/s. S. Rameshkumar, Advocate SR.17787

+ 1 cc Government Pleader Sr.17918

UG(CO)
EU 27.04.2015