IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.19925 of 2015

S.K.Hariharan ... Petitioner

Vs.

1. The District Revenue Officer
(Stamps) District Collectorate Office
Singaravelar Maaligai 5th Floor No.32
Rajaji Salai Chennai-1.

2. The Sub-Registrar
Ambattur Sub-Registrar Office Ambattur
Chennai-53. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to consider the representation dated 22.06.2015 and to return the sale deed dated 25.01.2007 registered as Document No.835 of 2007 in petitioner favour under the retention of the 2nd Respondent.

For Petitioner : Mr.S.V.S.Ilamvazhuthi

For Respondents : Mr.V.Subbiah
Special Government Pleader

O R D E R

By consent the writ petition is taken up for final disposal.

2.The petitioner would state that the agricultural land admeasuring to an extent of 0.90 cents comprised in S.No.561/7 situated at Ambattur, Chennai was purchased by the petitioner through registered sale deed registered as document no.835 of 2007 at the office of the Sub-Registrar, Ambattur. The grievance expressed by the petitioner is that, after registration of the document the third respondent did not return the sale deed and when the petitioner repeatedly approached him, he was issued the notice in Form no.I by the District Revenue Officer (Stamps) stating that the petitioner has to pay deficit stamp duty of Rs.16,38,864/-. Petitioner aggrieved by the act of the District Revenue Officer (Stamps), has also submitted a representation dated 22.06.2015 to the first respondent and since he has not been favoured with any kind of response, came forward to file this writ petition.

3.Heard the submissions of Mr.S.V.S.Ilamvazhuthi, learned counsel appearing for the petitioner and Mr.V.Subbiah, learned Special Government Pleader who accepts notice on behalf of the respondents.

4.This Court in the judgment reported in (2008) 5 MLJ 1218 (Tata Coffee Limited, Bangalore and another versus State of Tamil Nadu, by the Secretary to Government Commercial Taxes & Registration, Government of Tamil Nadu, Chennai and Others) has considered the issue relating to the conduct of the registering authority in not returning the document on the ground of suspicion of deficit stamp duty and proceedings under Section 47-A are pending and in paragraph no.25 has initiated the following principles:

> "25.In view of the above said discussion, the following principles are culminated:
>
> "(1)In the event of the registering authority failing to refer any document on the basis that the properties have been undervalued within a reasonable time as per the observation of the Full Bench in paragraph 34 of G.Karmegam and Others v. Joint Sub-Registrar, Madurai (supra), or not in any event of non-completion of the entire proceedings culminating to the passing of final order by the Collector within a period of five years from the date of presentation of document for registration, the same should be deemed to be lapsed and the registering authority or the Collector thereafter has no jurisdiction to either initiate any proceedings afresh or to proceed further and the documents are to be returned forthwith without any endorsement.
>
> In W.P.No.37347 of 2007, the document was presented for registration on 12.4.2002 and the same was registered as document No.1625 of 2002 according to the petitioner, no Form I notice has been received and the petitioner has not received any information regarding provisional order and

inasmuch as no enquiry has been conducted for more than five years, the proceedings under Section 47 - A get lapsed. Accordingly, W.P.No.33556 to 33582 and 37347 of 2007, which falls under this category stand allowed.

(2) In cases where Form I notice are served to the petitioners as seen in W.P.Nos.34548 to 34550 of 2007, 35159 of 2007, 33957 of 2007, 37384 of 2007, 35384 of 2007; the authorities are entitled to proceed further by conducting enquiry as per the 77 Act and Rules to pass provisional order and thereafter pass final order as per Rules 6 and 7. However, in the meantime, the registering authority shall release the documents to the petitioners concerned with the endorsement in the form of affixing seal indicating that the reference under Section 47-A with respect to undervaluation and assessment of stamp duty payable is pending.

(3) In respect of cases where 47-A proceedings are pending as it is stated in W.P.Nos.25721 of 2007, 35722 of 2007, 37385 to 37387 of 2007, 27901 of 2007, 33848 and 33849 of 2007 and 36359 of 2007, the concerned registering authorities are directed to release the documents to the petitioners with an endorsement in the form of affixing seal indicating that reference under Section 47-A with respect to undervaluation and assessment of stamp duty payable is pending.

(4) Relating to other cases, wherein final orders are stated to have been passed by the Collector under Section 47 - A(2) of the Act, as it is stated in W.P.Nos.26871 of 2007 and 26658 of 2007, the petitioners are entitled to file further appeal to the appellate authority as per Section 47 - A (5) of the Act from the date of service of such orders as per Rule 15 within the time prescribed under the Rules and in the meantime the registering authority shall release the documents with an endorsement in the form of affixing seal indicating that reference under Section 47 - A with respect to undervaluation and assessment of stamp duty payable is pending.

(5) In addition to the above said affixture of seal relating to cases mentioned in Clauses 2, 3 and 4, the concerned registering authority shall make corresponding entries in the Register maintained under the Registration Act, 1908, especially with reference to Sections 54 and 55, as to the pendency of Section 47-A proceedings, to be disclosed in the encumbrance certificates relating to the said properties.

(6) On completion of the entire adjudication in respect of undervaluation by the competent authorities including the appeal and revision if any, based on the ultimate decision, the authorities are entitled to recover the deficit stamp duty in accordance with the provisions of the Stamp Act.

(7) Till such finality is reached and deficit stamp duty is paid in full as enshrined under Section 47-A (4) of the Act, there will be a charge on the properties which are the subject matter of such documents in respect of the amount of deficit stamp duty.

(8) On payment of the deficit stamp duty by the party, the registering authority, on production of the original deed of transfer shall make appropriate entry regarding the factum of payment of full stamp duty and discharging property from the charge as per Section 47-A(4) of the Act and also make consequential entries in the encumbrance and indexes maintained under Sections 54 and 55 of the Indian Registration Act, 1908."

The writ petitions stand allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed."

5.In the light of the facts and circumstances, this Court directs the respondents 1 and 2 to consider and dispose of the petitioner's representation dated 22.06.2015 in accordance with law and after taking note of the above said judgment and pass orders within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

6.The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The District Revenue Officer
(Stamps) District Collectorate Office
Singaravelar Maaligai 5th Floor No.32
Rajaji Salai Chennai-1.

2. The Sub-Registrar
Ambattur Sub-Registrar Office Ambattur
Chennai-53.

+1cc to Mr.S.V.S.Ilamvazhuthi, Advocate, S.R.No.34018
+1cc to the Government Pleader, S.R.No.34352

W.P.No.19925 of 2015

CA(CO)
CA(22/07/2015)