

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-07-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.21223 of 2015

P.Chandrasekaran

.. Petitioner

vs

The Joint Sub Registrar - I
O/o. Sub-Registrar
Gobichettipalayam
Erode District

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondent to register the sale deed dated 4.3.2015, (Pending Doc. No.3/2015) executed by the petitioner in respect of the property measuring an extent of 18 cents (7848 sq. ft.) bearing new S.F.No.99/2 (Old S.F.No.679) of Kolapalur Village, Gobichettipalayam Taluk and to release the original document to the petitioner's purchasers.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.V.Subbiah
Special Government Pleader

ORDER

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

2.The petitioner would state that he became the absolute owner of 37 ½ cents in S.F.No.679 of Kolapalur Village, Gobichettipalayam Taluk, Erode District, and sold an extent of 10 cents to a third party including an extent of 1,744 square feet, by means of a registered sale deed bearing Document No.391/2012 dated 6.2.2012, and thereafter, took a decision to sell an extent of 18 cents in favour of one Palanisamy and his wife, and also executed a sale deed dated 4.3.2015, and it was also presented for registration on 4.3.2015.

3.The grievance expressed by the petitioner, is that the respondent is keeping the sale deed as Pending Document No.3/2015, without disclosing the reasons for not registering the same and

hence, he came forward to file this writ petition.

4.The learned Counsel appearing for the petitioner, has drawn the attention of this Court to para 6 of the affidavit and would submit that some of the extent of the properties situated in Survey No.679, were the subject matter of sale and hence, there cannot be any impediment on the part of the respondent to register the sale deed dated 4.3.2015, and would further submit that the ratio laid down by this Court in the judgment reported in (2008) 5 MLJ 1218 (TATA COFFEE LTD. V. STATE OF TAMIL NADU AND OTHERS), is squarely applicable to the facts of this case and prays for appropriate orders.

5.Per contra, Mr.V.Subbiah, learned Special Government Pleader, who accepted notice on behalf of the respondent, would submit that the Village Administrative Officer, Gobi Taluk, has issued a certificate dated 9.3.2015, stating that the lands in question, belong to Pachainayaki Ammal Temple at Kolapalur, and therefore, there is hesitation on the part of the respondent to register the sale deed.

6.In response to the said submission, the learned Counsel appearing for the petitioner, would submit that the property owned by the said temple, is one of the boundaries to the property owned by the petitioner, and since he is the owner of the property and he wants to convey the same in favour of the third party, appropriate direction may be given to the respondent to register the document.

7.This Court has carefully considered the rival submissions and also perused the materials placed before it.

8.It is relevant to extract para 25 of the above cited order [(2008) 5MLJ 1218] as under:-

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 the 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 WP.No.37347/2007, the document was presented for registration on 12.04.2002 and the same was registered as document No.1625 of 2002 and 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, WP.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 WP.Nos.234548 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 WP.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 WP.Nos.26871 of 2007 and 26658 of 2007, the petitioners are entitled to file further appeal to the appellate authority as per section 37-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 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."

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9.In the light of the facts and circumstances, this Court directs the respondent to take into consideration the ratio laid down in the above said judgment, and pass appropriate 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. The writ petition is disposed of accordingly. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nsv

To:

The Joint Sub Registrar - I
O/o. Sub-Registrar
Gobichettipalayam
Erode District

+1 cc to M/s.N.Manokaran Advocate sr.38316
+1 cc to the Government Pleader, High Court Madras
sr.38383

W.P.No.21223 of 2015

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