

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.NO. 12236 of 2012

A.Ponraj

.. Petitioner

Vs

The Sub Registrar
Office of Sub Registrar
Bhavani,
Erode District

.. Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus directing the respondent to release the registered Doc.No.665/2012 to the petitioner retained by the respondent on his file.

For Petitioner: Mr. M.V.Venkateshan

For Respondent: Mr. S.Gunasekaran
Govt. Advocate

O R D E R

Heard Mr.M.V.Venkateshan, learned counsel for the petitioner and the Mr.S.Gunasekaran, learned Government Advocate appearing for the respondents and perused the materials available on record. With the consent of both parties, the writ petition is taken up for hearing at this stage.

3. The petitioner seeks for a issuance of Writ of Mandamus to direct the respondent to release the registered Doc.No.665/2012 to the petitioner retained by the respondent on his file.

4. Further, the petitioner would state that till date, no notice in form No.I has been issued to the petitioner. The question is as to when the matter is pending reference under Section 47A of the Act, whether the respondent could retain the document.

5. The issue involved in this writ petition is no longer res integra and has been decided by this court in several judgments and it would be worthwhile for this Court to refer the decision (Sub Registrar, Registration Department Vs. R. Rama) reported in (2008) 1 MLJ 825. An identical issue arose for consideration before this court in W.P.No.8585 of 2010 dated 26.04.2010, wherein, directions were issued to the Sub Registrar to return the sale deed subject to certain conditions and the same is extracted hereunder;

"(i) The Registering Authority while releasing the documents shall make necessary endorsement on the original documents to the effect that the proceedings under Section 47-A of the Act are pending.

(ii) The Registering Authority shall make necessary entries in the register maintained regarding the pendency of 47-A proceedings in respect of the documents subject matter of the 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, on production of the original documents by the petitioner, the Registering Authority shall make necessary endorsement removing the earlier endorsement clearly stating that the entire amount of stamp duty under the documents have been paid in full and return the same.

(v) After such endorsement, the Registering Authority shall make necessary entry of the completion of 47-A proceedings in the register maintained by them so as to reflect the same in the Encumbrance Certificate."

6. In the light of the above, there will be a direction to respondent to return the registered Doc.No.665/2012 within a period of two weeks from the date of receipt of a copy of the order subject to the following conditions.

(i) The Registering Authority while releasing the documents shall make necessary endorsement on the original documents to the effect that the proceedings under Section 47-A of the Act are pending /initiated.

(ii) The Registering Authority shall make necessary entries in the register maintained regarding the pendency of 47-A proceedings in respect of the documents subject matter of the 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, on production of the original documents by the petitioner, the Registering Authority shall make

necessary endorsement removing the earlier endorsement clearly stating that the entire amount of stamp duty under the documents have been paid in full and return the same.

(v) After such endorsement, the Registering Authority shall make necessary entry of the completion of 47-A proceedings in the register maintained by them so as to reflect the same in the Encumbrance Certificate."

7. Thereafter, it is open to the respondent to issue notice in Form No.I under provisions of Indian Stamps Act and the Rules framed thereunder and ascertain the correct market value of the property, after following due process of law. The petitioner shall cooperate in such enquiry as and when notice in Form No.I is issued.

8. The Writ Petition is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Sub Registrar
Office of Sub Registrar
Bhavani,
Erode District

+3 cc's to Venkataseshan, Advocate, SR.17513.

ad(co)
krd 7/4

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