IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 15.02.2016

Pronounced on : 22-02-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 35285 of 2015

Express Exclusive Developers Pvt Ltd
No.2, Express Estates
Club House Road, Mount Road
Chennai - 600 002
represented by its Authorised Signatory
Mr. Dinesh Kumar B. Jain .. Petitioner

Versus

1. The Inspector General of Registration
   Registration Department
   No.100, Santhome High Road
   Chennai - 600 028

2. The Sub-Registrar
   District Registrar (Cadre)
   No.182, Bharati Salai (Pycrofts Road)
   Royapettah, Chennai - 600 014

3. M/s. Axis Bank Limited
   Corporate Banking Centre
   No.193, Karumuthu Nilayam
   Anna Salai, Chennai - 600 002 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the second respondent to release the receipt dated 07.10.2015 executed by the third respondent (document No.P201500168) and the memorandum of deposit of title deeds executed by the petitioner in favour of The Union Bank of India, Industrial Finance Branch, Broadway, Chennai dated 19.10.2015 (document No.P201500176)

For Petitioner : M/s. Surana and Surana

For Respondent : Mr. M.Digvijaya Pandian
Additional Government Pleader for RR1 and 2

No representation for R3

ORDER

The petitioner has come forward with this writ petition praying for issuance of a Mandamus to direct the second respondent to release the receipt dated 07.10.2015 executed by the third respondent (document No.P201500168) and the memorandum of deposit of title deeds executed by the petitioner in favour of The Union Bank of India, Industrial Finance Branch, Broadway, Chennai dated 19.10.2015 (document No.P201500176).

2. The facts which led to the institution of the above writ petition and which are necessary for disposal of this writ petition are as follows:-

(i) The petitioner is the owner of the property bearing R.Survey No.315/9 (part), Block No.9, Triplicane Village, Mylapore-Triplicane Taluk having purchased the same by means of a registered sale deed dated 13.02.2014 registered as document No.210 of 2014. With a view to develop the said property, the petitioner submitted a proposal for construction of multi-storeyed building with Chennai Metropolitan Development Authority and complied with all the formalities. The petitioner was asked to execute a gift deed as a condition precedent for according approval for the proposal submitted by the petitioner. The petitioner therefore executed a gift deed dated 17.02.2015 in respect of land measuring 163.90 square meet in the above said property in favour of Chennai Metropolitan Development Authority. After registration of the gift deed, the second respondent sent a letter dated 09.09.2015 calling upon the petitioner to pay a total sum of Rs.19,75,732/- towards deficit stamp duty towards the gift deed dated 17.02.2015. Challenging the communication dated 09.09.2015 of the second respondent, the petitioner claims to have filed a writ petition before this Court and the same is pending.

(ii) Thereafter, the petitioner availed loan from the third respondent bank and as a condition precedent for availing the loan, the petitioner registered a Memorandum of Deposit of Title registered as document No.770/2014 dated 12.06.2014 in favour of the third respondent in the office of the second respondent. After the amount due and payable to the third respondent were settled by the petitioner, the third respondent executed a receipt dated 07.10.2015 in favour of the petitioner. The said receipt dated 07.10.2015 was presented for registration by the petitioner with the second respondent by paying the requisite fee. The petitioner also presented a Memorandum of Deposit of Title deeds executed in favour of The Union Bank of India, Industrial Finance Branch, Broadway dated 19.10.2015. The second respondent, instead of registering the receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title Deed dated 19.10.2015 kept them as pending documents by citing the non-payment of the stamp duty by the petitioner towards the gift deed dated 17.02.2015. According to the petitioner, unless the Receipt dated 07.10.2015 and the Memorandum of Deposit of Title Deed dated 19.10.2015 are released after due entries, it will remain as a subsisting encumbrance created over the property and therefore, he seeks for issuance of a Mandamus.

3. The learned counsel appearing for the petitioner would contend that the non-payment of alleged deficit stamp duty claimed by the second respondent, pertaining to the gift deed dated 17.02.2015 registered in favour of Chennai Metropolitan Development Authority by the petitioner, is the subject matter of writ proceedings before this Court and therefore, the second respondent is not justified in citing the same to refuse registration of the Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015. According to the learned counsel for the petitioner, the non-payment of alleged deficit stamp duty is not a bar for the second respondent to refuse registration of the Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015. The action of the second respondent in refusing to register the Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015 is contrary to Rules 55 and 162 (A) of the Registration Act. According to the learned counsel for the petitioner, only if the reasons enumerated in Rule 55 and 162 (A) of the Registration Rules are fulfilled, the second respondent can refuse registration of an instrument. In this case, none of the reasons enumerated in Rule 55 and 162 (A) of the Registration Rules are attracted and therefore, the action of the second respondent to refuse registration of the Receipt presented by the petitioner is without jurisdiction and therefore he prayed for allowing the writ petition.

4. Per contra, the learned Additional Government Pleader, appearing for the respondents would contend that the registration fee of Rs.19,75,732/- is due and payable by the petitioners towards the Gift Deed dated 17.02.2015 executed in favour of Chennai Metropolitan Development Authority. When such a huge amount of registration fee is due and payable by the petitioner in connection with a document presented by them for registration, the registration of further documents with regard to any other property presented by the petitioners cannot be entertained. Therefore, the learned Additional Government Pleader would contend that the second respondent is justified in refusing to register the Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015 presented by the petitioner for registration by citing the non-payment of registration fee due and payable by them. The learned Additional Government Pleader therefore prays this Court for dismissal of the writ petition.

5. I heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents. I had gone through the

materials placed on record.

6. The issue arise for consideration in this writ petition is whether the second respondent is justified in refusing to register the Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015 presented for registration by the petitioner by citing non-payment of alleged deficit stamp duty payable by the petitioner towards the gift deed dated 17.02.2015, whether they relates to the same property covered in the gift deed or some other document.

7. It is well settled that once the second respondent registered the Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015, he has no authority or jurisdiction to retain them without returning it to the petitioner. Even if there is any deficit in stamp duty payable by the petitioner towards the above said two documents, the second respondent can only return the instruments to the petitioner with an endorsement that proceedings relating to deficit stamp duty as contemplated under Section 47-A of the Indian Stamp Duty will be initiated against the petitioner separately thereby reserving their right to initiate such proceedings. In the present case, admittedly, the second respondent registered the Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015 presented by the petitioner for registration and collected the necessary fee. There is nothing on record to show that there is any deficit stamp duty payable by the petitioner relating to registration of Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015 to the second respondent. While so, there is no justification on the part of the second respondent to retain the Receipt dated 07.10.2015 as well as the Memorandum of Deposit of Title deed dated 19.10.2015 after registration.

8. The only reason assigned by the second respondent for not releasing the document in favour of the petitioner is that the petitioner is liable to pay a sum of Rs.19,75,732/- towards alleged deficit stamp duty covered under the gift deed dated executed in favour of Chennai Metroplitan Development Authority on 17.02.2015. In my considerd view, the second respondent is not justified in refusing to either register or return a registered instrument to the petitioner. By citing the alleged non-payment of registration fee payable by the petitioner in connection with an instrument presented and registered by them earlier, the second respondent cannot refuse to register the documents that are presented either in connection with the same property or relating to some other property. The circumstances under which a registering authority can refuse to register documents is clearly enunciated in Rule 162 of The Registration Rules. In this context, useful reference can be made to the decision of this Court in (T. Paneerselvam vs. The Inspector General of Registration, Santhome, Chennai and others) reported

in (2012) 2 CTC 59 wherein this Court considered the scope and ambit of 33-A of the Indian Stamp Act and held in para Nos. 11 and 12 as follows:-

> "11. In any case, 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 thereunder, can be initiated even after registration. A look at Section 33-A (1) would show that it begins with a non-obstante clause and it uses the expression "after the registration". Since the proceedings can be initiated even after registration, but within a period of 3 years as per the second proviso, there is no indication in Section 33-A about the power of the Sub-Registrar to retain the document.
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> 12. Perhaps, the power to retain the document was considered unnecessary, in view of the fact that what is contemplated under Section 33-A (1) is a Certificate of Recovery to enable the recovery of the deficit stamp duty as an arrear of land revenue. Therefore, even if the document is released, it would make no difference and the respondents would still be able to recover the deficit stamp duty as an arrear of land revenue.

9. It is evident from the above decision of this Court that if the registering authority finds that there is deficit stamp duty payable by the executant on any instrument, it is not necessary to retain the instrument, rather, it is well open to the registering authority to initiate appropriate proceedings for recovery of the deficit stamp duty even after returning the instrument after registration. Either refusal to register the instrument or to retain the document after registration is uncalled for. As per Section 33-A (1) of the Indian Stamp Act, all that the second respondent require is a Certificate of Recovery to recover the arrears of deficit stamp duty from the executant as an arrear of land revenue. While so, it is unnecessary for the second respondent to retain the instrument after registration. Furthermore, in the present case, none of the grounds mentioned in Rule 162 of The Registration Rules are attracted and therefore, in my considered view, the petitioner is entitled to succeed.

10. In the result, the Writ Petition is allowed as prayed for. No costs. The second respondent is directed to release the receipt dated 07.10.2015 executed by the third respondent (document No.P201500168) and the memorandum of deposit of title deed executed by the petitioner in favour of The Union Bank of India, Industrial Finance Branch, Broadway, Chennai dated 19.10.2015 (document No.P201500176) to the

petitioner within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

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To

1. The Inspector General of Registration
   Registration Department
   No.100, Santhome High Road
   Chennai - 600 028

2. The Sub-Registrar
   District Registrar (Cadre)
   No.182, Bharati Salai (Pycrofts Road)
   Royapettah, Chennai - 600 014

+1 cc to M/s.Surana & Surana, Advocates, sr.10875
+1 cc to Mr.V.P.Krishnamoorthi, Advocate, sr.9777
+1 cc to The Government Pleader, sr.11364

WP No. 35285 of 2015

gr co
kra 03.03.2016