IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.12.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.A.No.1458 of 2016
and
C.M.P.No.18190 of 2016

Mrs.Stella Sunitha ... Appellant

Versus

1. The Sub Registrar,
   Pallavaram, Chennai 600 043.

2. The District Registrar,
   Chennai South, Saidapet,
   Chennai 600 015.

3. The Special District Revenue Officer (Stamp),
   5th Floor, Collectorate Building,
   Rajaji Salai, Chennai 600 001.

4. The Inspector General of Registration,
   Santhome High Road, Mylapore,
   Chennai 600 004.

Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 15.6.2016 passed in W.P.No.17194 of 2016 on the file of this court. Filed under article 226 of the constitution to of India issue a writ of mandamus or any order or direction in the nature of writ of mandamus Directing the respondents to return the document namely Rectification Deed dated 3.6.2015 registered as Document No.P162/ 2015 to the petitioner within the time stipulated by this Honourable Court

For appellant : Mr.G.Ilangovan
For Respondents : Mr.P.S.Sivashanmugasundaram, Special Government Pleader

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JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader appearing for the parties.

2. This appeal is filed by the petitioner challenging the order passed by the learned Single Judge on 15.6.2016, in W.P.No.17194 of 2016, which was filed seeking a direction to the respondents to return Rectification Deed dated 3.6.2015 registered as Document No.P162/2015 to the appellant/petitioner.

3. In paragraph 6 of the order, the learned Single Judge has observed as under:-

> "Though the petitioner prays fro the larger relief, this court in the light of the facts and circumstances, directs the first respondent to act on the endorsement of the second respondent in mjpK/vz;-5475-M1-2016 dated 7.4.2016 in accordance with law within a period of two weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner."

4. The second respondent is the District Registrar, who has decided the issue and demanded the deficit stamp duty as per section 47A and the provisions of sections 52, 59 and 60 of the Stamp Act. The deficit stamp duty is calculated at Rs.12,51,220/-, on the ground that there is change in boundaries as stated in the rectification deed.

5. Be that as it may, the sale transaction had originally taken place in the year 2007. The rectification deed is of the year 2015. The appellant/petitioner sought to change the boundaries. Of course, according to the appellant/petitioner, except such change in the boundaries, there is no change in value of the property. The learned counsel appearing for the appellant/petitioner, relying upon the decision in B.RAJAPPA AND ANOTHER v. THE SPECIAL DEPUTY COLLECTOR (STAMPS) (2002(3) CTC 544), sought to contend that withholding the document is totally unwarranted and also sought to contend that it is highly improper on the part of the respondent-authorities to withhold a document even if they find undervaluation and the only authority/power of the respondents is to make an endorsement on such registered document regarding valuation, refer the matter to the Collector for determination of proper stamp duty payable thereon and return the document to the person entitled to receive such document and accordingly, sought for release of the document pending disposal of the appeal.

6. Sections 47(A)(1) and 47-B of the Indian Stamp Act reads thus:-

"47-A Instruments of conveyance etc., undervalued how

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to be dealt with-- (1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, exchange, gift, release of benami right or settlement has reason to believe that the market value of the property of which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, has not been truly set forth in the instrument he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon."

"47-B Stamp duty chargeable for instrument of rectification-- Where an instrument purports to rectify any error in the description of property as set out in any previous instrument falling within the purview of section 47A, then, the amount of duty chargeable in such instrument of rectification shall be the amount chargeable on it under Schedule I less the amount of duty, if any, already paid in respect of such previous instrument."

7. In the case on hand, it is the case of the appellant/petitioner that the document is of the year 2007 and only rectification was sought to be made in the year 2015, but, it is withheld by the registering authority on the ground that deficit stamp duty has to be paid, etc. Now, the rectification deed is under reference on the ground that there is more than rupees twelve lakhs is due to the Government. In the meanwhile, by virtue of a direction issued in the writ petition filed by the appellant/petitioner preliminary enquiry was ordered under section 47A of the Act and the second respondent, who has held the enquiry, after notice to the appellant/petitioner, valued the deficit stamp duty as Rs.12,51,220/-. Being aggrieved by the said order, this appeal is filed by the appellant, apart from the appeal filed before the Registrar of Stamps.

8. Learned counsel appearing for the appellant sought to contend that it is the dictum of this court as well as the provisions of the Stamp Act that when once the document is registered, it would be proper only to release the document and if at all, proceedings can be initiated for recovery of duties and penalties under section 48 of the Stamp Act, but, withholding the document is unwarranted.

9. Learned Special Government Pleader would submit that as per the direction of the learned Single Judge, steps have been taken in furtherance of section 47A of the Act, and the order of the learned Single Judge, has been complied with and order has been passed on the rectification, having found that there is deficit stamp duty payable and calculated the same at

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Rs.12,51,220/- and although it is challenged by the appellant/petitioner before the Registrar of Stamps, till conclusion of the enquiry before the Registrar of Stamps regarding the payment of Rs.12,51,220/- the appellant/petitioner has to wait and if the document is released immediately, it would be a burden to the exchequer leading to unnecessary multiplicity of proceedings and sought to contend that once a finding is rendered by the Registrar of Stamps, who deals with the appeal by the appellant/petitioner with regard to deficit stamp duty, the document would be released.

10. As per the provisions of section 47A of the Stamp Act, the Collector is empowered to hold enquiry in case of deficit stamp duty etc, and it appears that in the case on hand, the District Registrar, having issued notice and having heard the matter determined the deficit stamp duty payable as Rs.12,51,220/-.

11. It appears that even when there is scope for reference, regarding undervaluation, the registering authority has no jurisdiction to withhold the document under sections 52, 59 and 60 of the Indian Registration Act. The view has been taken by this court to in earlier decisions to safeguard the interest of the Government by affixing a seal while releasing the original deed or conveyance or any other document indicating that a reference is pending under Section 47-A of the Stamp Act and stating that a charge is created on the property which is the subject matter of conveyance with regard to additional stamp duty that may be payable consequent upon adjudication of reference.

12. Although the law is clear with regard to releasing of document, now, at this stage, when already adjudication has taken place before the District Registrar and the same resulted in arriving at a deficit stamp duty of Rs.12,51,220/- to be paid by the appellant/petitioner and the legality of the said order is now under challenge before the Registrar of Stamps by the appellant/petitioner. In the fact situation, when there is an amount determined as deficit stamp duty, to question as to whether the appellant/petitioner is liable to pay that amount or whether there is any irregularity in the calculation made by the District Registrar is under review. Paramount importance is to safeguard the interest of the State there would not be any loss to the Exchequer. Section 48 of the Stamp Act also provides for the State to proceed to recover the amount which is in the form of stamp duty way of arrears of land review, but, the fact remains that it takes sufficiently unreasonable time and also inordinate delay in reaching the finality of the case due various holidays and intricacies in the course of recovering the amount and prolonged litigations questioning the very proceedings demanding the payment by way of arrears of land revenue, deficit stamp duty to be paid, either deliberately or

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otherwise.

13. In such circumstances, we are of the view that instead of simply releasing the document in a situation as is noted by the earlier Division Bench, a rider clause may have to be added to safeguard the interest of the Government instead of driving the State to initiate recovery proceedings as per section 47-A of the Stamp Act. In view of the same, the amount which is determined as deficit stamp duty would ultimately remain as a charge on the property that would be recoverable by way of arrears of land recovery as otherwise, it would take more than a decade to reach the finality in the recovery proceedings. If that method is adopted, the moment the finality is reached, the amount will be readily available to the Government.

14. In the circumstances, we are of the view that instead of releasing the document instantly, we direct that the document shall be released on execution of an indemnity bond by the appellant/petitioner to the tune of deficit stamp duty determined by the District Registrar so that the interest of the State also would be safeguarded. With that view, we direct the appellant/petitioner to execute an indemnity bond for the said amount pending disposal of the appeal before the Registrar of Stamps or any further proceedings and on reaching such finality with regard to payment is concerned, if the amount is liable to be paid to the State it could be realised or else, if the appellant/petitioner is not liable to make payment in view of the finding rendered, the indemnity bond could be cancelled. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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ssk.

To

1. The Sub Registrar,
   Pallavaram, Chennai 600 043.

2. The District Registrar,
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3. The Special District Revenue Officer
   (Stamp),
   5th Floor, Collectorate Building,
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4. The Inspector General of Registration,
   Santhome High Road, Mylapore,
   Chennai 600 004.

+1cc to Mr.G.I. Elangoven, Advocate, S.R.No.70803
+1cc to the Government Pleader, S.R.No.71249

kj(CO)
md(04/01/2017)

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