IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.32915 of 2016 & WMP.No.28458 of 2016

Futura Polyesters Limited, Mumbai
by Power Agent M. Nirmal Raj .. Petitioner

Vs.

1.District Registrar (Administration),
(In the cadre of Assistant Inspector
General of Registration),
North Chennai, Chennai.

2.The Sub-Registrar, Tiruvotriyur. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the second respondent to release the document of sale dated 11.12.2014 and registered as Doc.No.1292 of 2016 on the file of the Sub-Registrar, Thiruvotriyur and executed by the petitioner herein to and in favour of Mr. Vinoth and after making necessary endorsement regarding the pendency of the proceedings under the provisions of the Indian Stamp Act, 1899 and the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and within such time as may be prescribed by this Court.

For Petitioner : Mr.N.Damodaran
For Respondents : Mr.A.N.Thambidurai, SGP

O R D E R

Heard Mr.N.Damodaran, learned counsel appearing for the petitioner and Mr.A.N.Thambidurai, learned Special Government Pleader accepting notice on behalf of the respondents. With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that they are the owners of the property bearing S.Nos.21/1, 22, 23/1, 24, 25, 26/2, 27/1, 27/3, 37/1, 38/2 etc., Chinna Sekkadu Village, now Madhavaram Taluk, Tiruvallur District and were running an industry in the name and style of “The Indian Organic Chemicals Ltd., Mumbai” and now it is called as “Futura Polyesters

Limited, Mumbai", and pursuant to the orders passed by the Registrar of Companies, fresh Certificate of Incorporation was issued by the said authority.

3. It is further stated by the petitioner that originally, the company had borrowed loans from various financial institutions and recovery action has been initiated by the concerned financial institutions as well as by the Government for non-payment of statutory dues and therefore, the company has decided to part with the above said properties for industrial purposes by establishing an Industrial Park called "Futura Business Park" and necessary approvals/sanctions have also been obtained.

4. It is also stated by the petitioner that a document of sale dated 11.12.2014, executed by the petitioner company in favour Mr.A.K.Mani pertaining to S.Nos.41/2, 42 and 48/1 of Chinna Sekkadu Village, Madhavaram Taluk, Tiruvallur District, admeasuring an extent of 61,500 sq.mtrs, was presented for registration before the second respondent writing the true market value of the property. However, the second respondent called for a report regarding the fixation of market value and it is the stand of the petitioner that for the purpose of ascertaining the market value, there is no provision in the Stamp Act to retain the documents submitted for registration and in this regard, the petitioner filed W.P.No.13180/2016 before this Court and an order of interim stay was granted till 03.06.2016, vide order dated 26.04.2016 and the second respondent was also directed to release the document dated 11.12.2014 bearing No.1291/2016/BK1, after making necessary endorsement regarding the pendency of the proceedings under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, within a period of two weeks.

5. The petitioner would further state that they executed sale deeds in favour of Mr.M.Vinoth in respect of Plot No.1 bearing S.Nos.41/1 and 48/1 of Chinna Sekkadu Village, Madhavaram Taluk, Tiruvallur District admeasuring an extent of 61,500 sq.mtrs and submitted before the second respondent for registration and though the second respondent has registered the sale deeds as Doc.No.1292 of 2016, he refused to release the document citing the reason of pendency of the proceedings under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and therefore, the petitioner came forward with this writ petition.

6. Mr.N.Damodaran, learned counsel appearing for the petitioner has drawn the attention of this Court to the materials placed as well as Section 47-A of the Indian Stamp Act, 1899 and would submit that once the document is registered, the second respondent has no power to retain the same and prays for appropriate orders.

7. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit filed in similar matters and would submit that if a property dealt with in an instrument is referred for determination of market value, the Registering Officer is not bound to return the instrument and accordingly, the document is retained.

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

9. In B.Rajappa and another v. The Special Deputy Collector (Stamps), Chennai and two others [reported in 2002 (3) CTC 544], the scope of Section 47-A of the Indian Stamp Act, 1899 came up for consideration and it is relevant to extract paragraph 15 of the said judgment, which reads as follows :

> "15. While appreciating the anxiety expressed on behalf of the State by the learned Advocate General, this Court directs that:-
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> i) It is open to the Registering Authority to affix a seal, while releasing the original deed or conveyance or any other document indicating that a reference is pending under Section 47-A with respect to undervaluation and assessment of Stamp Duty payable, as and when the proceedings reach finality, the same shall be intimated to the person who is liable to pay stamp duty demanding payment of deficit Stamp Duty payable on the instructions.
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> ii) The Registrar to make corresponding entries under Sections 54, 55 of The Registration Act, 1909 in the Register of indexes as to pendency of proceedings under Section 47-A.
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> iii) On completion of adjudication as to the under-valuation by the competent authority as well as appeal or revision, if any, thereof, and depending upon the ultimate decision, the said authorities to recover deficit stamp duty according to law.
>
> iv) Till such proceeding reaches finality and deficit is paid, there will be a charge for the deficit stamp duty, which is the subject matter of transfer or conveyance.

v) On payment of deficit stamp duty, if any payable, the Registrar may once again, on production of the original deed of transfer, make appropriate entry and recording the additional stamp duty paid and release of charge and also make consequential entries in the registers/indexes maintained under Sections 54, 55 etc., of The Registration Act."

10. In the light of the above cited judgment, this writ petition is disposed of and the second respondent is directed to return the sale deed in Doc.No.1292/2016, to the petitioner after making necessary endorsement and the respondents shall complete the said exercise within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

To
1.The District Registrar (Administration),
(In the cadre of Assistant
Inspector General of Registration),
North Chennai, Chennai.

2.The Sub-Registrar, Tiruvotriyur.

+1cc to Mr.N. Damodaran, Advocate, S.R.No.53739
+1cc to the Government Pleader, S.R.No.54233

K(CO)
EU(07/12/2016)