IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 7077 of 2016
and
W.M.P. No. 6286 of 2016

1. L. Jeyaprakash
2. L. Mohan

Both represented by their power agent
M/s. Adroit Urban Developers Pvt Ltd
registered office at Old No.45, New No.1
Bheemanna Garden Street, Alwarpet
Chennai - 600 018. .. Petitioners

-Versus-

1. The Sub-Registrar (Tiruporur)
Office of the Sub-Registrar
Tiruporur

2. The District Revenue Officer (Stamps)
Office of the District Collector, Chennai
5th Floor, Singaravelar Maaligai
32, Rajaji Salai, Chennai - 600 001 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent pertaining to the check slip dated 29.12.2015 and quash the same and consequently direct the first respondent to register and release the Deed of Memorandum of Deposit of Title Deeds dated 29.12.2015 executed by the petitioners as Mortgagors in respect of 70% out of 2.90 Acres of lands in Survey No.80/8-A in Thazhambur Village, Thiruporur Taluk (formerly Chengalpet Taluk and District) Kancheepuram District.

For Petitioner : Mr. S. Rajasekar

For Respondents : Mr. V. Jayaprakash Narayanan
Special Government Pleader

ORDER

The petitioners have come forward with this writ petition questioning the correctness of the order dated 29.12.2015 passed by the first respondent wherein and by which the first respondent refused to entertain a Memorandum of Deposit of

Title deed dated 29.12.2015 submitted by the petitioners for registration on the ground that the petitioners are liable to pay deficit stamp duty and registration charges to the tune of Rs.1,37,11,580/- towards registration of an earlier sale deed dated 22.05.2013.

2. It is stated by the petitioners that they have entered into a Joint Venture Agreement with M/s. Adroit Urban Developers Private Limited in respect of the land measuring 3.2 acres in Survey No.80/8 part, Thazhambur Village, Tiruporur Taluk, Kancheepuram District for development of the vacant land. As a condition precedent for getting layout approval, a gift deed was also executed by the petitioners on 28.03.2013 in favour of Thazhambur Panchayat for open space reservation measuring 1213.3 square meter (13059.96 square feet). Thereafter, the petitioners also conveyed another land measuring 1.619 acres owned by them to the very same company, which is situate adjacent to the land in Survey No.80/8 part, by executing a sale deed dated 22.05.2013 registered as document No. 6755 of 2013 on the file of first respondent. Prior to execution of this sale deed, the petitioners also executed another gift deed dated 28.03.2013 in respect of land measuring 732.45 square meters (7884.09 square feet) in favour of Thazhambur Panchayat towards open space reservation. According to the petitioners, both the sale deeds have been executed by them by adopting the prevailing market value of the property by paying the exact stamp duty payable. However, two years after registration of the sale deed, on the basis of an alleged audit objection alleging that the petitioners have not paid the correct stamp duty on the two sale deeds, the second respondent issued a notice in Form I dated 30.06.2015 under Section 4 (1) of the Tamil Nadu Stamps (Prevention of Under Valuation and Instrument) Rules 1968 and it culminated in the proceedings under Section 47-A (3) of the Indian Stamp Act. In this proceedings, a sum of Rs.1,19,97,620/- being deficit stamp duty and Rs.17,13,960/- towards registration fee, totalling Rs.1,37,11,580/- was claimed by the second respondent. During the pendency of the proceedings relating to alleged deficit stamp duty initiated by the second respondent, the petitioners have entered into a memorandum of deposit of title deed dated 29.12.2015 in favour of M/s. Reliance Home Finance Limited for a mortgage loan of Rs.13 crores. When the Memorandum of Deposit of title deed dated 29.12.2015 was presented for registration, the first respondent passed the impugned order dated 29.12.2015 and refused to entertain it by citing the deficit stamp duty payable by the petitioners in connection with the proceedings initiated against them under Section 47-A (3) of Indian Stamp Duty Act. Challenging the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioners would vehemently contend that the order, which is impugned in this writ petition, is legally not sustainable. According to

the learned counsel for the petitioners, two years after registration of the sale deeds presented by the petitioners, the second respondent has demanded additional stamp duty payable on the instruments, based on an audit objections. When the petitioners are agitating the issue raised by the second respondent relating to alleged deficit of stamp duty, the first respondent refused to register the Memorandum of title deeds dated 29.12.2015 purportedly on the ground that the petitioners are liable to pay deficit stamp duty for which proceedings under Section 47-A(3) have been initiated by the second respondent. According to the counsel for the petitioners, the pendency of proceedings under Section 47-A(3) of the Indian Stamp Duty relating to alleged deficit of stamp duty is not a bar for registration of the Memorandum of Deposit of title deeds dated 29.12.2015. As per the Registration Act, registration of a document can be refused only in the circumstances enumerated in Rule 55 and 162 (A) of the Registration Rules. Therefore, according to the learned counsel for the petitioners, the first respondent has no jurisdiction to refuse registration of the Memorandum of title deed dated 29.12.2015 presented by the petitioners for registration and he prayed for allowing the writ petition.

4. Per contra, the Special Government Pleader, appearing for the respondents would contend that the registration fee of Rs.1,37,580/- is due and payable by the petitioners. When the registration fee is due and payable by the petitioners in connection with a document presented by them for registration, the registration of further documents with regard to any other property or same property presented by the petitioners cannot be entertained. Therefore, the learned Special Government Pleader would contend that the first respondent is justified in refusing to register the document presented by the petitioners for registration by citing the non-payment of registration fee due and payable by them. The learned Special Government Pleader therefore prays this Court for dismissal of both the writ petitions.

5. I heard the learned counsel appearing for the petitioners as well as the learned Special Government Pleader appearing for the respondents. I had gone through the materials placed on record.

6. The only ground on which the memorandum of title deed dated 29.12.2015 presented by the petitioners was not entertained by the first respondent is that the petitioners are liable to pay deficit stamp duty in connection with sale deeds executed by them. The very same issue came up for consideration before me in WP No. 38363 and 38887 of 2015 came up for consideration wherein, by order dated 10.02.2016, I held that the registering authority has no right or power to refuse to entertain a document for registration by citing non-payment of alleged deficit stamp duty payable by the executant in another instrument. The relevant passage of the order

dated 10.02.2016 in WP Nos. 38363 and 38887 of 2015 is extracted hereunder:-

> 9. In this case, the petitioners have presented an agreement of sale as well as power of attorney deed, both dated 23.05.2012 for registration before the third respondent in WP No. 38363 of 2015, who is the sole respondent in WP No. 38887 of 2015. The said respondent has entertained the instruments and registered it. However, 15 months after registration, on the basis of an alleged audit objection, the said respondent has passed an order dated 12.09.2013 demanding payment of additional registration fee purportedly on the reasoning that the petitioners have handed over possession of the property in question to the promoter, without which the promoter could not promote the lands in question. This is objected to by the petitioners by relying on the covenants in the agreement of sale dated 23.05.2012 and contend that there is a clear and specific clause in the agreement that the petitioners have not parted with possession or title of the lands in question to the promoter/agent, while so, the respondent is not justified in demanding additional registration fee or deficit stamp duty, as the case may be, as if possession of the property has been handed over to the promoter/agent.
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> 10. According to the registering authority, there is an interpolation in the agreement of sale and certain words have been written manually to the effect that "at present possession of the property has not been handed over to the purchaser" which only gives an impression that the possession of the property has been handed over by the petitioners to the promoter/power agent. Therefore, the learned Special Government Pleader for respondents contend that the demand for payment of additional registration fee on the entire sale consideration is justified and interference of this Court is not warranted.
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> 11. The contentions advanced on behalf of the respondents cannot be accepted. If the registering authority entertained any doubt as to whether really possession has been handed over or retained by the petitioners as per the covenants contained in the agreement of sale, he ought to have conducted appropriate inquiry after giving an opportunity of hearing to the executants to clarify such aspect as contemplated under Section

80-A (1) of The Registration Act. In the absence of any such inquiry, the demand for payment of additional or deficit stamp duty made by the registereing authority is clearly without jurisdiction.

12. In my considered opinion, the registering authority has powers to demand for or take steps to recover deficit registration fee, however, before preceding to either demand or recover such fee, it is incumbent on the part of the registering authority to conduct an inquiry in which opportunity has to be given to the person who presented the instrument for registration. In the present case, admittedly, the registering authority has not conducted any enquiry. The registering authority, on the basis of surmises, assumed and presumed that possession of the property would have been handed over to the promoter/power agent and therefore, the petitioners have to pay the registration fee on the entire sale consideration. Such a conclusion arrived at by the registering authority, without conducting any inquiry as contemplated under the first proviso to Section 80-A (1) of the Registration Act, is legally not sustainable. Therefore, in my considered opinion, the order which is impugned in WP No. 38363 of 2015 is contrary to the provisio to Section 80-A (1) of the Registration Act and on that ground it is liable to be set aside.

13. By citing the orders which are impugned in WP No. 38363 of 2015, the respondent in WP No. 38887 of 2015 refused to register certain documents presented by the petitioners. In my considerd view, the order, which is impugned in WP No. 38363 of 2015, is not a bar for the respondent in WP No. 38887 of 2015 to refuse registration of the documents presented by the petitioners. The circumstances under which registration authority can refuse registration of documents is clearly enunciated in Rule 55. Rule 55 reads as follows:-

> "55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider

objections raised on any of the grounds stated below:-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic".

14. A reading of the said Rule would show that it is not the duty of the registering officer to enquire into the validity of the document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document and he has to consider the objections raised on any one of the grounds stated in Rule 55. The said rule further would reveal that if there is any impersonation on the part of the executants to the document or there is any element of fraud, then only the Sub Registrar is entitled to enquire into the matter. But here, it is not the case of the respondent that there is impersonation on the part of the executants. On the other hand, the impugned order was passed on the ground that the petitioners are due and payable certain amount towards registration fee. In my considered opinion, on this reasoning, the respondent is not justified in refusing registration of the documents presented by the petitioners.

15. At any rate, by citing the alleged non-payment of registration fee payable by the petitioners in connection with an instrument presented and registered by them earlier, the respondent cannot refuse to register 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 the present case, none of the grounds mentioned in Rule 162 of The Registration Rules are attracted and therefore, in my considered

view, the order which is impugned in WP No. 38887 of 2015 is legally not sustainable and it is liable to be set aside."

7. In the light of the above order dated 10.02.2016 passed by me in WP No. 38363 and 38887 of 2015, I hold that the first respondent is not justified in refusing to register the Memorandum of deposit of title deed dated 29.12.2015 presented by the petitioners for registration. The alleged deficit stamp duty payable by the petitioners, which culminated in initiating the proceedings under Section 47-A(3) of the Indian Stamp Duty by the second respondent, is not a bar for registration of the Memorandum of Deposit of title deed dated 29.12.2015 by the first respondent. Accordingly, the impugned order dated 29.12.2015 of the first respondent is set aside. The writ petition is allowed. No costs. Consequently, connected WMP No. 6286 of 2016 is closed.

rsh Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Sub-Registrar (Tiruporur)
Office of the Sub-Registrar
Tiruporur.

2. The District Revenue Officer (Stamps)
Office of the District Collector, Chennai
5th Floor, Singaravelar Maaligai
32, Rajaji Salai, Chennai - 600 001.

+ 2 ccs to Mr.S.Rajasekar, Advocate Sr 18867

KR/4/4/16