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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED **30.08.2016**

CORAM

THE HONOURABLE **MR.JUSTICE M.VENUGOPAL**

W.P(MD)No.15401 of 2016

M/s.Sivam Mines
Represented by its Managing Partner
S.Ilangovan
No.6/209, Pudupatti,
Sirugudi Village,
Natham Taluk
Dindigul District. ... Petitioner

Vs.

1.The District Registrar (Administration),
Dindigul Registration District,
Dindigul.

2.The Sub Registrar,
Office of the Sub Registrar,
Natham,
Dindigul District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned Letter No.6813/Aa1/2015, dated 07.12.2015, issued by the 1st Respondent and the consequential order Na.Ka.No.21(A)/2015, dated 15.06.2016, issued by the 2nd Respondent and quash the same as illegal and consequently direct the Respondents to release the Document No.58/2015 pending on the file of the 2nd Respondent and to repay the sum of Rs.19,230/-, collected from the Petitioner for condoning the delay.

For Petitioner : Mr.C.Arul Vadivel Alias Sekar

For Respondents : Mr.K.Mahesh Raja
Government Advocate

ORDER

Heard both sides.

2.By consent, the main Writ Petition itself is taken up for final disposal.

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3. According to the Petitioner, the Principal Secretary to

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Government of Tamil Nadu, Industries (MMA.1) Department, vide G.O. (D)No.170, dated 03.11.2014, had transferred the Mining Lease from his individual name to the Petitioner / Firm. Pursuant to the aforesaid Government Order, the District Collector, Dindigul, had executed a 'Deed of Transfer of Mining Lease', in the name of the Petitioner's Firm, on 19.12.2014.

4. The stand of the Petitioner is that the District Collector, Dindigul, as per Memo in Na.Ka.No.51/2010/Mineral, dated 22.12.2014, had sent the 'Deed of Transfer of Mining Lease', dated 19.12.2014, to the Second Respondent / Sub Registrar, Office of the Sub Registrar, Natham, Dindigul District, and the said Deed was presented before him, on 06.04.2015, for registration purpose.

5. It comes to be known that the Second Respondent / Sub Registrar, Office of the Sub Registrar, Natham, Dindigul District, as per the Letter, dated 06.04.2015, had directed the Petitioner to produce the original Lease Deed, executed by the District Collector, in his favour and returned the 'Deed of Transfer of Mining Lease'.

6. It transpires that the Petitioner re-presented the 'Deed of Transfer of Mining Lease', along with the original Lease Deed, on 23.10.2015, before the Second Respondent and paid the registration fees, computer fees, transfer fees and stamp duty etc., on the same day. In fact, the Second Respondent had directed the Petitioner to submit a letter, to condone the delay of re-presentation. Also, the Petitioner gave a letter, on 23.10.2015 and the Deed was registered, as Document No.58/2015.

7. Apart from that, the Second Respondent / Sub Registrar, Office of the Sub Registrar, Natham, Dindigul District, through letter, dated 26.11.2015, requested the First Respondent / District Registrar (Administration), Dindigul, to pass orders to condone the delay of re-presentation of the Deed, which was registered, as Document No.58/2015, on 23.10.2015. In fact, the First Respondent, through the impugned letter, dated 07.12.2015, had addressed a communication to the Second Respondent, declined to condone the delay, on the basis that the maximum period of eight months to condone the delay had already expired and returned the original documents. Further, the Petitioner, after receiving the said impugned letter of the First Respondent, the Second Respondent had sent a consequential impugned order, dated 15.06.2015, to him communicating the reasons assigned by the First Respondent.

8. The Principal contention advanced on behalf of the Petitioner is that, as per Section 23 of the Registration Act, 1908, the Documents must be presented for Registration before the Authority, within four months, from the date of execution of the document. In this regard, the Learned Counsel for the Petitioner projects an argument that the 'Deed of Transfer of Mining Lease' was presented before the Second Respondent well within the time and the

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Deed was executed, on 19.12.2014 and the same was presented for registration, on 06.04.2015, before the expiry of four months.

9. Advancing his argument, the Learned Counsel for the Petitioner submits that, in terms of Section 25 of the Registration Act, the delay in re-presentation of the document for registration can be condoned by the authority concerned, on payment of fine, if the delay does not exceed four months.

10. Yet another bone of contention projected on the side of the Petitioner is that admittedly, the document was registered by the Second Respondent, on 23.10.2015, as Document No.58/2015, after receiving the necessary fees and the fine amount of Rs.19,230/-, for condoning the delay and as such, it is emphatically pleaded on the side of the Petitioner that there is no delay, in terms of ingredients of Section 23 of the Registration Act and that the fine amount ought not to have been collected by the authorities concerned.

11. Per contra, it is the submission of the Learned Government Advocate for the Respondents that the Petitioner presented the 'Deed of Transfer of Mining Lease', dated 19.12.2014, based on G.O3(D). No.91/IND/MMA2/DEPT, dated 03.06.1997, and the said Deed was presented before the Second Respondent, for Registration on 06.04.2015. Further, it is contended on the side of the Respondents that there is no consideration for the transfer of right, the Second Respondent has not able to fix the stamp duty, in consonance with relevant Rules and the Petitioner had also failed to produce the original Deed of Lease. Therefore, the Second Respondent, in order to ascertain the consideration of the said transfer, had returned the document of the 'Transfer of Mining Lease' presented by the Petitioner for registration, as per the proceedings, dated 06.04.2015 in Na.Ka.No.21(A)/2015, requiring the Petitioner to produce the Original Deed of Lease.

12. Continuing further, the Learned Government Advocate for the Respondents takes a stand that on 23.10.2015, the Petitioner again approached the Second Respondent, for re-presentation of the returned document, by complying with the queries and paid all necessary fees. Moreover, in consonance with Section 23 of the Registration Act, there was a delay of exceeding eight months, for presentation of the document. As such, the Second Respondent has not registered the same and kept the document, as pending. Added further, the Second Respondent obtained the requisition letter from the Petitioner, for condonation of the delay for re-presentation and forwarded the same with requisition to the First Respondent, on 26.11.2015, to condone the delay, as per Standing Order 451.

13. Finally, it is the argument of the Learned Government Advocate for the Respondents that the civil Court is the competent forum for challenging the refusal order, dated 07.12.2015, passed by the First Respondent and the consequential order, dated

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15.06.2016, passed by the Second Respondent and as such, the present Writ Petition fled by the Petitioner, is devoid of merits.

14. In this connection, this Court, on perusal of the impugned order, dated 07.12.2015, passed by the First Respondent, addressed to the Second Respondent, finds that the First Respondent had in candid terms had mentioned that the period of eight months for condonation of delay, in respect of pending Document No.58/2015, came to an end, the two original documents were returned and advised accordingly.

15. Also this Court, on perusal of the impugned order, dated 15.06.2016, passed by the Second Respondent, is of the considered view that the Second Respondent had referred to the Letter of the First Respondent, dated 07.12.2015 in Ref.No.2 and stated that the period of eight months for condonation of delay, in respect of pending Document, had expired and therefore, the documents were returned and accordingly informed.

16. It is to be borne in mind that Section 23 of the Registration Act, 1908, reads as under:-

> "23. Time for presenting documents:- Subject to the provisions contained in section 24,25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:"
>
> Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final."

17. Further, Section 25 of the Registration Act, 1908, runs as under:-

> 25.Provision where delay in presentation is unavoidable (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.
>
> (2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith

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forward it to the Registrar to whom he is subordinate.

18. It is to be noted that whenever a document is presented for registration, the Sub-Registrar is required firstly to register the document and then only make a reference under Section 47-A of the Act, if he deems fit and proper, as per the decision of Hon'Ble Supreme Court in ***Residents Welfare Association, Noida, v. State of U.P.,*** reported in ***(2009 (3) R.C.R (Civil) 87*** at special page 93 (SC). Further, in computing the four months time provided for registration, the day on which the document was executed is excluded by force of the definition of the word, "from" in the General Clauses Act, as per the decision in ***Malik Parmanand v. Kala, 90 P.R.1890***.

19. As a matter of fact, the conduct of the parties to a document cannot, in any way, affect the period of limitation, within which it can be registered under the Act. Resultantly, an agreement to convey a certain property within a particular time, with a condition that it must become a conveyance on default being made, must be presented for registration within four months from the date of execution thereof. In case, there is delay in presentation of the document for registration, and the same does not exceeds four months, it is open to the Registrar to accept the document for registration on the payment of a fine "not exceeding' ten times the amount of the proper registration fee. Really speaking, ten times is the upper limit and within that limit a judicial discretion is vested upon the Registrar to determine, what if any fine should be imposed, as per the decision, Neeraj Kumar v. State of Maharashtra reported in (2006 (44) A.I.C.352)at special page 354 (Bom).

20. It is to be remembered that, when a document is accepted after four months on payment of penalty, the presumption is Section 25 of the Registration Act, 1908, is complied with, in the considered opinion of this Court. In fact, the finding of the Registrar, as to the existence of circumstances for condoning the delay is final and that a successor in office only a civil court has any power to question such exercise of discretion. Undoubtedly, Section 23 of the Act is quite imperative. Also that, the ingredients of Section 25 of the Registration Act, are quite similar to the ingredients of Section 5 of the Limitation Act. Under Section 77 of the Registration Act, a suit will lie only, if the Registrar refuses to order the document to be registered either under Section 72 or under Section 76 of the Registration Act. Section 72 provides for an Appeal to the Registrar Against an order of Sub-Registrar refusing to admit a document for the purpose of registration.

21. Be that as it may, on a mere running of the eye in respect of the impugned order, dated 07.12.2015, passed by the First Respondent and the impugned order, dated 15.06.2016, passed by the Second Respondent, this Court comes to an inescapable and

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irresistible conclusion that both the Respondents had only mentioned that the period / time of eight months, in regard to the condonation of delay of pending document had expired and therefore, the documents were returned. The said impugned order of the First Respondent, dated 07.12.2015 and the impugned order, dated 15.06.2016, passed by the Second Respondent are undoubtedly cryptic and shorn of necessary qualitative and quantitative reasons, in the considered opinion of this Court.

22. At this stage, one cannot ignore an important fact that an unreasoned order may be just valid and tenable from the point of view of the Authority, who passes the same. However, it may not be so in regard to the aggrieved / affected person, is concerned. It cannot be gainsaid that a reasoned order will have an appearance of justice, in the considered opinion of this Court.

23. That apart, in both the impugned order, dated 07.12.2015, passed by the First Respondent and the consequential order, dated 15.06.2016, passed by the Second Respondent, there is no reference to the ingredients of Section 23 of the Registration Act, 1908 or in fact, they had not adverted to the effect of ingredients of Section 25 of the Registration Act, 1908. To put it succinctly, there is no evaluation of the ingredients pros and cons of either Section 23 or Section 25 of the Registration Act, 1908. As such, this Court is of the considered view that both the orders, dated 07.12.2015, passed by the First Respondent and the consequential order, dated 15.06.2016, passed by the Second Respondent are non-speaking orders and they are bereft of necessary qualitative and quantitative reasons. As such, this Court interferes with both the impugned order, dated 07.12.2015, passed by the First Respondent and the consequential order, dated 15.06.2016, passed by the Second Respondent, are liable to be set aside.

24. In the result, the Writ Petition is allowed and the impugned order, dated 07.12.2015, passed by the First Respondent and the consequential order, dated 15.06.2016, passed by the Second Respondent are set aside by this Court, for the reasons assigned in the Writ Petition.

25. At this stage, it is brought to the notice of this Court on behalf of the Petitioner that the Document No.58/2015 (Transfer of Mining Lease, dated 19.12.2014) is still in the Office of the Second Respondent (the same not yet returned to the Petitioner). As such, this Court directs the Respondents, to take up the pending Document No.58/2015 (Transfer of Mining Lease, dated 19.12.2014), within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the Respondents are directed to proceed further in respect of the said 'Deed of Transfer of Mining Lease', dated 19.12.2014, Document No.58 of 2015, by taking into the logical conclusion viz., to hear the arguments on the side of the Petitioner (if need be) and the Respondents and to pass a reasoned speaking order, on merits and in accordance with Law, within a period of two

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weeks thereafter, (of-course after providing necessary opportunity to the Petitioner and others concerned, by following the principles of natural justice, if situation so warrants). The Petitioner is directed to lend his assistance and co-operation to the Respondents so as to enable them to do the needful in the subject matter in issue, within the time afore stated. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

MPK

To

1.The District Registrar (Administration),
Dindigul Registration District,
Dindigul.

2.The Sub Registrar,
Office of the Sub Registrar,
Natham,
Dindigul District.

+1 cc to Mr. C.ARUL VADIVEL @ SEKAR,Advocate, Sr.No: 48269

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