



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2016

Coram:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P. (MD) No.5956 of 2016

and

W.M.P. (MD) .Nos.5295 of 2016

1.R.Chidambara Raja Ratinam

2.Shanthi

3.Ram Shankar

4.Minor. Ram Gopal

(Minor is represented by his mother

and next guardian the second petitioner) ... Petitioners

Vs.

1. The District Registrar,
The District Registrar Office,
Tirunelveli District,
Tirunelveli.

2. The Special Deputy Collector (Stamps),
Tirunelveli District,
Tirunelveli.

3. The Sub Registrar,
No.1, Joint Sub Registrar Office,
Tirunelveli District,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings No.726/அமர/2016 dated 02.03.2016 of the third respondent and quash the same and further forbearing the respondents from taking any proceedings to recover any additional stamp duty and registration fee.

For Petitioner : Mr.M.Vallinayagan
Senior Counsel
for M/s.D.Nallathambi

For Respondents : Mr.N.S.Karthikeyan
Additional Government Pleader



O R D E R

The writ petition has been filed challenging the order dated 02.03.2016 passed by the third respondent and further forbearing the respondents from taking any proceedings to recover any additional stamp duty and registration fee.

2.The grievance of the petitioner is that the document was registered as early as in the year 2000 under Document No.456/2000 but the same has not been released. According to the petitioner, the petitioner and his brother repeatedly approached the authority concerned but nothing has happened. Subsequently, on 05.01.2015, 30.03.2015 a notice was issued to the mother of the first petitioner stating that the guideline value was fixed heavily and demand was made to pay the deficit stamp duty of Rs.7,91,022/- and further he was directed to approach under the Samathan scheme. Therefore, they have approached the authority concerned and placed their objections. But even thereafter the document was not released and according to him the third respondent has no authority to retain the document after registration. Hence, the petitioners sent a representation on 25.06.2013 to release the document and as the same has not been considered, he has filed a Writ Petition in W.P.(MD)No.11853 of 2013 to release the document and this Hon'ble Court passed an order to consider and pass appropriate orders on merits and in accordance with law. Thereafter, the petitioners have sent a copy of the order along with a representation. On considering the said order and the representation made by the first petitioner, the impugned order dated 02.03.2016 has been passed. Aggrieved against the said order dated 02.03.2016, the present Writ Petition has been filed.

3.The only ground which has been raised by the petitioner is that as per the decisions of this Hon'ble Court in O.N.S.Hyder Ali v. The Sub Registrar, District Registrar Cadre reported in 2003-2-L.W.160, Tata Coffee Limited v. The State of Tamil Nadu and others reported in 2008-3-L.W.286, K.N.Thangavel v. The Registrar, Registration Department, Erode Taluk and District and others reported in 2011-4-L.W.910 and T.Paneer Selvam v. The Inspector General of Registration reported in 2012 (2) CTC 59, there is a limitation and the authority cannot detain the document for nonpayment of stamp duty. Even otherwise if the non-payment of stamp duty is there, it has to be recovered within a particular period of time and beyond the period of five years as contemplated by the Division Bench order, even the proceedings under Section 47 cannot be kept pending and it has to be completed within a period of five years. Therefore, even taking into consideration that even in the year 2005 a notice under Samathan Scheme has been issued, the order should have been passed at least in the year 2010. Therefore, beyond that period, neither they can demand any amount nor they can seize the document or keep the document in



custody.

4.The learned Additional Government Pleader appearing for the respondents brought to the notice of this Court that even as early as in 2006 an order under Section 47 has been passed and the petitioners have not filed any appeal and therefore, the present order has been duly passed, that too, in response to the direction of this Court. Further the respondents have sent the documents for clarification and for fixing the value and the documents are not in their custody. Under those circumstances, the impugned order passed by the third respondent is correct.

5.Heard both sides.

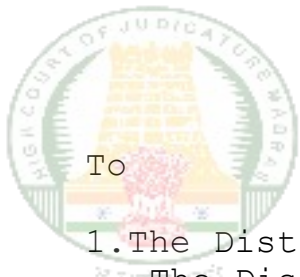
6.On a careful perusal of the above judgments, it is very clear that under Section 47 application has to be completed completely within a period of five years. Assuming for a moment, in this case, the order has been passed way back in the year 2006, thereafter for the past ten years the authority has not taken any steps to recover the amount. Therefore, when that order is analysed, it could be seen that that order has been passed as against the dead person viz., the mother of the first petitioner who died on 28.09.1997. Further, the order has been addressed to a different place. In fact, in the sale deed itself it is very clearly stated that the petitioners reside in the particular address and now they have shifted and they are in the present address which is specifically mentioned in the sale deed, conveniently without even taking note of the said correct address, the order has been despatched to the erstwhile address as mentioned in the very sale deed. Therefore, the order has never been communicated to the petitioners as rightly pointed by them. If that is the case and as per the decision of this Court in O.N.S.Hyder Ali v. The Sub Registrar, District Registrar Cadre reported in 2003-2-L.W.160, Tata Coffee Limited v. The State of Tamil Nadu and others reported in 2008-3-L.W.286, K.N.Thangavel v. The Registrar, Registration Department, Erode Taluk and District and others reported in 2011-4-L.W.910 and T.Paneer Selvam v. The Inspector General of Registration reported in 2012 (2) CTC 59, the authority cannot demand any amount from the petitioners.

7.In the result, the impugned order is set aside and the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/



To

1.The District Registrar,
The District Registrar Office,
Tirunelveli District,
Tirunelveli.

2.The Special Deputy Collector (Stamps),
Tirunelveli District,
Tirunelveli.

3.The Sub Registrar,
No.1, Joint Sub Registrar Office,
Tirunelveli District,
Tirunelveli.

+1cc to M/s.D.Nallathambi, Advocate, Sr.No.25689

srm

JM/AAL-MPA/SAR-III/10.06.2016/4P-5C

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