IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.1488 of 2017.
and C.M.P.No.19625 of 2017

1. The Special Deputy Collector (Stamps),
The District Registrar,
Salem District,
Salem District Collector's Complex,
Salem.

2. The Sub Registrar,
Valapadi, Salem District. ... Appellants

Vs.

K.Rajeswari ... Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.06.2017, passed in W.P.No.11920 of 2017.

Prayer in WP.No.11920 of 2017:Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents herein to return the petitioner Sale Deed No.201700419/17 dated 24.2.2017 by affixing seal under Section 47A Stamp Act enquiry pending to enable the petitioner to use the same for her day-to day use.

For Appellants : Mr.K.Dhananjeyan, Special Government Pleader

For Respondent : Mr.T.P.Kathiravan

J U D G E M E N T

[Judgement of the Court was delivered by RAJIV SHAKDHER, J.]

1. This is an appeal preferred against the judgement of the learned Single Judge dated 02.06.2017.

2. The respondent, who is the original writ petitioner, has filed a petition under Article 226 of the Constitution, whereby, a writ of Mandamus was sought, seeking a direction qua the appellants herein, (original respondents), to return the sale deed dated 24.02.2017, with a seal affixed under Section 47-A of the Indian Stamp Act, 1899 (in short, "the Stamp Act").

2.1. The learned Single Judge disposed of the writ petition with the following operative directions, which are contained in paragraph 5:

> "...... 5. Following the said order, the present writ petition stands disposed of with the following directions:-
>
> "1. The first respondent having proceeded with enquiry under Section 47-A of the Stamp Act by notifying notice under Form I, the authorities are entitled to proceed further by conducting enquiry as per the Act and Rules to pass provisional order and thereafter pass final order as per Rules 6 and 7. However, in the meantime, the registering authority shall release the document to the petitioner with the endorsement in the form of affixing seal indicating that the reference under Section 47-A with respect to undervaluation and assessment of stamp duty payable is pending.
>
> 2. In addition to the above said affixture of seal, the concerned registering authority shall make corresponding entries in the Register maintained under the Registration Act, 1908, especially with reference to Sections 54 and 55, as to the pendency of Section 47-A proceedings, to be disclosed in the encumbrance certificates relating to the said properties.
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> 3. On completion of the entire adjudication in respect of undervaluation by the competent authorities including the appeal and revision, if any, based on the ultimate decision, the authorities are entitled to recover the deficit stamp duty in accordance with the provisions of the Stamp Act.
>
> 4. Till such finality is reached and deficit stamp duty is paid in full as enshrined under Section 47A(4) of the Act, there will be a charge on the property which is the subject matter of such document in respect of the amount of deficit stamp duty.

5. On payment of the deficit stamp duty by the party, the registering authority, on production of the original deed of transfer shall make appropriate entry regarding the factum of payment of full stamp duty and discharging property from the charge as per Section 47-A(4) of the Act and also make consequential entries in the encumbrance and indexes maintained under Sections 54 and 55 of the Indian Registration Act, 1908.

6. The second respondent shall release the document within a period of four weeks from the date of receipt of a copy of this order."

3. The aforementioned directions contained in the impugned judgement, even, according to the learned counsel for respondent, are contrary to the judgement of the Division Bench of this Court rendered in : The Special Deputy Collector (Stamps) V. M.Alfred, 2017 (6) CTC 449. The Division Bench included one of us, i.e., N.Sathish Kumar, J.

3.1. Pertinently, the Division Bench in M.Alfred's case has made the following crucial observations in paragraphs 24 to 29 and 32 of the judgement. For the sake of convenience, the same are extracted hereinbelow :

"..... 24.Whether it is a question of impounding, deficit stamp duty or undervaluation, the result appears to be the same. What is determined by the Collector has to be paid. This determination is the duty payable on the instrument. These three are to be considered from the perspective of the revenue. Therefore, one has to come to an irresistible conclusion that in the absence of any provision relating to release of document during the pendency and after adjudication, a Collector is not bound to do so.

25.Though, payment of duty is one thing and release of the document is the other thing, both are intertwined with each other. The enactment merely provides for registration, notwithstanding the issue pertaining to undervaluation. The said factor cannot be extended for the release of the document in the absence of any provision. To that extent, there is no conflict between the two enactments. With the above said understanding of the provisions of the two enactments, let us go into the contentions raised.

26. The learned Special Government Pleader appearing for the appellants in the Writ Appeals and the respondents in the Writ Petitions would submit that neither the registering authority nor the Collector is duty bound to return the instrument. As on today, about Rs.12,000 Crores are to be collected by way of duty. The provisions of the Indian Stamp Act will have to be interpreted strictly. Even on a combined reading of the provisions under the Indian Stamp Act and the Registration Act, the documents both during and after adjudication are not liable to be given back. The learned Special Government Pleader had fairly produced number of judgments both in his favour and against him.

27. The learned counsel appearing for the respondents in Writ Appeals and the petitioners in the Writ Petitions would submit that in the absence of provision to withhold the documents they are to be returned. The registering authority cannot withhold the document. The same applies to the Collector as well. Section 47-A (4) of the Indian Stamp Act provides for a charge. Therefore, there is no need for withholding the document. Reference is with respect to the dispute and not the instrument. Thus, the writ petitions will have to be allowed and the writ appeals will have to be dismissed.

28. As discussed above, there is no question of return of the instrument by the registering authority, if a reference is made along with the instrument. In the absence of any provisions enabling the return of the instruments, the same cannot be given back. The provision for creating charge cannot be construed for an automatic release of the document. Even if we apply the principle of purposive and reasonable interpretation, the instrument cannot be released until and unless the duty determined is set aside or found to be wrong. In the light of discussions made above, we are of the view that the contentions raised by the learned counsel for the writ petitioners cannot be accepted.

29. Number of judgments have been relied

on at the bar. We have also discussed the decision rendered by the learned Single Judge, as he then was, in Krishnan, M. v. The District Collector, Erode District [1998 (III) CTC 366]. The fact involved therein is different. However, we find the discussions made in paragraph 71 with respect to retention of document after completing registration of the document, cannot be accepted as a correct position of law. There is no question of retention by the registering authority. He merely has to send it along with other records to the Collector for adjudication.

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32. We have already discussed that the time limit mentioned in Rule 7 subclause (1) is not mandatory being procedural. Hence, the same cannot give any right to claim a document nor to contend that the proceedings would lapse. However, the Collector cannot take his own sweet time. Thus, seeking to expedite the proceedings is one thing and asking for a release of document is another. Inasmuch as directions have been sought for as a matter of right in releasing the instrument, we are of the view that the writ petitions filed for the aforesaid prayer notwithstanding the pending proceedings under Section 47-A of Indian Stamp Act are liable to be rejected. ....."

3.2. We are further informed that pursuant to the aforementioned judgement of the Division Bench, the appellants have taken out a Government Order being : G.O.Ms.No.174, Commercial Taxes and Registration (J1) Department, dated 28.11.2017.

3.3. By virtue of this G.O., the Government has fixed a time limit of fifteen (15) days, for reference of the instrument to the Collector by the Registering Authority under Section 47-A(1) of the Stamp Act, after registration of the same by him. The Collector, in turn, is required to issue a notice under Form I within fifteen (15) days, after receipt of proposal from the Registering Authority.

3.4. The G.O. is also indicative of the fact that the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, have been amended. We are told by Mr.K.Dhananjeyan, learned Special Government Pleader, who appears for the appellants herein that a gazette notification has also been taken out in that behalf.

4. Accordingly, we are of the view that the appeal would have to be allowed. It is directed accordingly. Consequently, the impugned judgement is set aside.

5. The appellants will act in accordance with the directions contained in the judgement of the Division Bench rendered in : The Special Deputy Collector (Stamps) V. M.Alfred, 2017 (6) CTC 449 and G.O.Ms.No.174, dated 28.11.2017, as also, the amended 1968 Rules.

6. The time limit, as prescribed under G.O.Ms.No.174, dated 28.11.2017, and the amended 1968 Rules, will be scrupulously adhered to by the appellants in determining the deficit stamp duty.

7. Needless to say, in case, respondent is aggrieved by the determination made by the Collector, with regard to the deficit stamp duty, she would be entitled to take recourse to an appropriate remedy, albeit, in accordance with law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Special Deputy Collector (Stamps),
   The District Registrar,
   Salem District,
   Salem District Collector's Complex,
   Salem.

2. The Sub Registrar,
   Valapadi, Salem District.

+1cc to Government Pleader Sr.No.91124

PPA(CO)
sm:30.1.2018