IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.NO.519 OF 2017
&
C.M.P.NO.7464 OF 2017

1.The Inspector General of Registration,
Santhome High Road, Mylapore,
Chennai-600 004.

2.The District Revenue Officer (Stamps),
O/o. The District Collector,
5th Floor, M.Singaravelar Maligai,
No.32, Rajaji Salai,
Chennai-600 001.

3.The Sub Registrar,
O/o The Sub Registrar,
Thiruvallur. ... Appellants/Respondents

Versus

R.Chithra ... Respondent/Petitioner

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, seeking to set aside the order made in W.P.No.23985 of 2016, dated 13.07.2016.

W.P.No.23985 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the 2nd and 3rd respondents to return the sale deed dated 16.05.2013 registered as Document No.6741 of 2013 on the file of the 3rd respondent in respect of the property comprised in Survey No.500/1, 500/2 and 505/2 situate at Thirupper Village, Thiruvallur Taluk and District to an extent of 1 acre and 46 cents of land based on the petitioners application dated 26.03.2016.

For Appellant : Mr.P.S.Sivashannmughasundaram
Special Government Pleader

For Respondents : Mr.C.Prabakaran

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G.RAMESH, J.)

This Writ Appeal is directed against the order of the learned single Judge made in W.P.No.23985 of 2016, dated 13.07.2016, directing the 3rd appellant/Sub Registrar to follow the guidelines and release the document bearing No.6741/2013 dated 16.5.2013.

2. It appears that the respondent, having purchased the property situated in S.Nos.500/1, 500/2 and 505/2 in Thiruppur village, Thiruvallur District, vide a registered sale deed, dated 16.5.2013, sought of release of the document. However, after following the due procedure, the appellants withheld the document and directed the respondent to pay the deficit stamp duty, which prompted the respondent to come forward with the writ petition.

3. The learned Judge, on consideration of the facts and circumstances and in view of the settled position that once a document is registered, the registering authority has no authority or jurisdiction to retain the same, and following the decision of this Court reported in 2002(3) CTC 544 (B.Rajappa and another versus The Special Deputy Collector, Madras and others), allowed the Writ Petition. Challenging the same, the authorities have come forward with the present writ appeal.

4. In fact, as regards the determination of the market value in respect of the property purchased by the respondent covered by the subject document bearing No.6741/13, the District Revenue Officer has initiated proceedings under Section 47-A of the Indian Stamp Act and a notice thereof was issued to the respondent in the month of June, 2016, calling upon him to submit his explanation along with material evidence. Thereafter, since there was no explanation received from the respondent, an ex parte order by proceedings, dated 04.03.2016, determining the deficit stamp duty at Rs.2,46,908/- was issued and directed the respondent to pay the same.

5. The learned Judge has not gone into the merit of the issues, but allowed the writ petition on technical ground that once a document is registered, the registering authority has no authority or jurisdiction to retain the same. Sub Section 1 of Section 47A of the Indian Stamps Act confers power on the Registering Authority not to register an instrument where the registering officer has reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set forth in the instrument. Sub-section (2) of Section 47A provided for an opportunity of making representation to the concerned party and an enquiry to be held for determining the market value of the property. Sub-section (3) conferred

power on the authority to take in suo motu revision any instrument executed within two years from the date of registration of the instrument for satisfying as to the correctness of the market value of the property and to recover the difference in case the authority had reason to believe that the market value was not correctly determined. Sub-section (4) provided for an appeal against such decision of the authority.

6. When the above procedure as contemplated under the Act insists the Registering Authority to see that the market value has been correctly determined so as to prevent the party who had intention to evade the stamp duty. In the present case, after registering the document, it has been noted by the authorities that the market value has not been properly determined and accordingly, after issuing notice under Section 47 A of the Act to the respondent and after affording an opportunity, which was not availed by the respondent, the authorities have rightly issued the proceedings directing the respondent to pay the deficit stamp duty at Rs.2,46,908/-. Therefore, the respondent cannot take advantage on technical ground, without complying the statutory obligation and evade the stamp duty, which would ultimately result loss of revenue to the State. In such view of the matter, we are unable to fortify the order of the learned Judge.

7. Accordingly, the order passed by the learned Judge is set aside. However, since the respondent had not participated 47A proceedings issued against him, which lead to passing the impugned order ex parte, directing the respondent to pay deficit stamp duty, we are of the view that an opportunity should be provided to the respondent to enable him to defend his claim. Accordingly, the appellants are directed to proceed afresh by issuing notice under Section 47-A of the Indian Stamp Act, 1899 vis-a-vis under the provisions of the Tamil Nadu Stamp (Prevention of Under Valuation of instruments) Rules, 1968 and pass appropriate orders in accordance with law. The authority also would take into consideration any change in guideline value which favours the party respondent.

With the above direction, this Writ Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Suk

To

1.The Inspector General of Registration,
Santhome High Road, Mylapore,
Chennai-600 004.

2.The District Revenue Officer (Stamps),
O/o. The District Collector,
5th Floor, M.Singaravelar Maligai,
No.32, Rajaji Salai,
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3.The Sub Registrar,
O/o The Sub Registrar,
Thiruvallur.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.47543
+1cc to the Government Pleader, S.R.No.26425

W.A.No.519 of 2017

SJ(CO)
CA(11/07/2017)