IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.11920 of 2017

K.Rajeswari ... Petitioner

Vs.

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

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

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's sale deed No.201700419/17 dated 24.02.2017 by affixing seal under Section 47-A of the Stamp Act enquiry pending to enable the petitioner to use the same for her day-to-day use.

For Petitioner : Mr.T.P.Kathirravan
For Respondents: Mr.A.N.Thambidurai,
Special Government Pleader

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of mandamus directing the respondents to return her sale deed dated 24.02.2017, by affixing seal under Section 47-A of the Stamp Act (hereinafter referred to as “the Act”), to enable her to use the same for her day-to-day use.

2.The learned counsel appearing for the petitioner submitted that the petitioner had purchased agricultural land measuring 0.40 cents in Survey No.41/4-A, Valapadi Revenue Village, by a sale deed dated 24.02.2017 and paid the stamp duty for the total sale consideration. However, the second respondent had sent the sale deed to the first respondent to collect additional stamp duty under Section 47-A of the Act. Therefore, the petitioner sent a representation dated 07.04.2017 to the respondents to release the sale deed by affixing the seal under Section 47-A of the Act. The learned counsel appearing for the petitioner further submitted that as per the law laid down by this Court in the Judgment reported in 2002 (3) CTC 544 (Rajappa vs. The Special Deputy Collector (Stamps) and in the unreported Judgment dated 30.04.2008 in W.P.No.37152 of 2007 [A.K.Rajeswari vs. The Special Deputy Collector (Stamps)], the petitioner is entitled to get the sale deed registered, pending enquiry under Section 47-A of the Act.

3. Mr.A.N.Thambidurai, learned Special Government Pleader, appearing for the respondents submitted that in view of the Judgments relied upon by the learned counsel appearing for the petitioner, the respondents may be directed to register the sale deed and release the document, pending enquiry under Section 47-A of the Act.

4. In the unreported Judgment dated 30.04.2008 in W.P.No.37152 of 2007 [A.K.Rajeswari vs. The Special Deputy Collector (Stamps)], this Court had disposed of the writ petition with the following directions:-

> "........
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> 2. Further the communication of the second respondent dated 26.10.2007 addressed to the counsel for the petitioner shows that the proceedings under Section 47A(1) has been initiated and it is in the stage of issuance of notice under Form I of the Indian Stamp Act. As decided in the batch of cases in W.P.No.25721 of 2007 etc., dated 21.04.2008, the following directions is issued.
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> 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 documents to the petitioner concerned 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.

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 properties which are the subject matter of such documents 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....... ”

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.

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 propery 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. ”

No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

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 Mr.T.P.Kalthiravan, Advocate, S.R.No.39672
+1cc to the Government Pleader, S.R.No.40046

W.P.No.11920 of 2017

RS(13/06/2017)