

Reserved on : 30.06.2017

Delivered on : 04.07.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.1546 of 2017

Purushotham Nath Rallan

... Petitioner

Vs.

1.The Inspector General of Registration
cum the Chief Controlling Revenue Authority,
Office of the Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam, Chennai - 600 028.

2.The District Registrar (Administration),
Office of the District Registrar,
South Chennai, Jeenis Road, Saidapet,
Chennai - 600 015.

3.The Sub Registrar,
Office of the Sub Registrar,
NGS Enclave, Manickam Salai,
Kundrathur, Chennai - 600 069.

... 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 Instrument of Settlement dated 12.08.2015 being the pending registration Document in No.P 180/2015 on the file of the 3rd respondent, as requested in the petition of the petitioner dated 07.11.2016 to the respondents.

For Petitioner : Mr.A.Jenasenan

For Respondents : Mr.V.Ayyadurai,
Additional Advocate General (II)
assisted by Mr.A.N.Thambidurai,
Special Government Pleader

O R D E R

By consent of both parties, the Writ Petition is taken up for final hearing.

2.The petitioner has filed the above Writ Petition to issue a writ of mandamus directing the respondents herein to return the petitioner's Instrument of Settlement dated 12.08.2015 being the pending registration Document in No.P 180/2015 on the file of the 3rd respondent, as requested in the petition of the petitioner dated 07.11.2016 to the respondents.

3.According to the petitioner, he is engaged in the business of Trading of Raw Hides and Skins, dyes and chemicals, exporting of finished leather through his sole Proprietary Concern, functioning in the name and style of International Trading Company. The petitioner purchased two pieces of agricultural lands measuring an extent of 87.5 cents in Survey No.61/9 in Noombal Village, Saidapet Taluk, then Chengalpet MGR District, now, Trivallur District, through two registered Sale Deeds dated 16.10.1992 (42 cents in S.No.61/9) and 28.10.1992 (45 cents in S.No.61/9) respectively in the office of the 3rd respondent. The said lands were purchased in the name of the sole Proprietary Concern viz., M/s.International Trading Company.

4.Since the petitioner is aged more than 85 years and also suffering from deteriorating health condition, he thought it fit to provide out of the personal wealth to his son viz., Sunil Rallan during his lifetime itself as he had been considerate and taking care of his wife and their advanced age and also assisting the petitioner in conducting his Proprietary Concern business. In these circumstances, the petitioner executed a Settlement Deed dated 12.08.2015 in favour of his son Sunil Rallan settling the two items of agricultural lands situated in Noombal Village, Ambattur Taluk, Tiruvallur District, purchased through two Sale Deeds dated 16.10.1992 and 28.10.1992.

5.The petitioner presented the executed Settlement Deed dated 12.08.2015 for registration on 12.08.2015 with the 3rd respondent. The petitioner paid the stamp duty of Rs.25,000/- payable under Article 58 (a) (i) of the Schedule - I to the Stamp

Act read with the Explanation to the said Article and the Reduction and Remission Notification in G.O.Ms.No.125 C..T. & R (J1) dated 30.09.2013 as applicable to the State of Tamil Nadu. However, the 3rd respondent took a view that as the property has been purchased in the name of the Proprietary Concern, it should be treated as a property of the Proprietary Concern and consequently, the said Settlement Deed dated 12.08.2015 executed by the petitioner as the sole Proprietor cannot be treated as one in favour of member or members of a family as provided under Article 58 (a)(i) read with Explanation thereto and should be dealt with under Article 58 (a)(ii) of the Schedule - I of the Stamp Act as the settlement in favour of other than a family members attracting stamp duty at the rate of Rs.8/- for every Rs.100/- or part thereof of the market value of the property.

6.The petitioner contended before the 3rd respondent that the Proprietary Concern is not a legal entity and it is only business name and the said sole Proprietary Concern is nothing more than himself as an individual and the settlement is within the definition of Section 2 (24) of the Stamp Act. The petitioner also contended that the Settlement Deed has to be one to be dealt with under Article 58 (a)(i) of the Schedule - I to the Stamp Act read with the Explanation thereto and the Remission notification thereof and in that view, the Settlement Deed cannot be termed as a one in favour of other than family members and is not to be dealt with under Article 58 (a)(ii) of the Schedule to the Stamp Act.

7.Not satisfied with the clarification provided by the petitioner and after observing that the petitioner did not accept to make the payment of the short duty payable on the instrument based on application of Article 58 (a)(ii) of the Stamp Act, impounded the Deed of Settlement, after assigning a pending number in P.No.180/2015 to the said instrument, vide his letter dated 08.10.2015. The 2nd respondent, vide his show cause notice, dated Nil.10.2015 (signed on 19.11.2015), informed the petitioner that the Settlement Deed has to be dealt with under Article 58 (a)(ii) of the Schedule to the Stamp Act as the settlement is in favour of non-family members and valued the property at Rs.14,45,34,000/- and fixed the stamp duty payable at 8%, which comes to Rs.1,15,62,720/-, after adjusting the stamp duty already paid (i.e.) Rs.25,000/-. The 2nd respondent fixed the stamp duty payable of Rs.1,15,37,720/-. By the show cause notice, the petitioner was called upon to show cause as to why the loss of stamp duty should not be collected along with the penalty of Rs.2,280/-. The petitioner submitted his interim reply dated 17.12.2015 and a detailed reply dated 11.01.2016 to the show cause notice issued by the 2nd respondent. However, the 2nd respondent, by his order dated 23.06.2016, rejected the

submission of the petitioner and also stated that on payment of a sum of Rs.1,15,37,720/-, along with the penalty of Rs.5,280/- before the 3rd respondent, the document can be collected by the petitioner. As against the order dated 23.06.2016, the petitioner preferred an Appeal before the 1st respondent on 19.07.2016.

8.The learned counsel appearing for the petitioner submitted that the petitioner has filed a petition to the 1st respondent for withdrawing the Appeal pending before the 1st respondent.

9.When the issue relating to the registration of the Settlement Deed was pending, due to the deteriorating health condition, the petitioner was concerned about the delay and became anxious as a father to do something to provide for his son before any untoward happen to him, hence, he prepared and organized for sale of the property covered by the Settlement Deed to a 3rd party with an intent to pass on the Sale Proceeds to his son at the earliest. However, the 3rd party purchaser was hesitant to proceed with the purchase transaction on account of the executed Settlement Deed lying with the respondents pending registration. In these circumstances, left with no other alternative, the petitioner presented a petition on 07.11.2016 to the 3rd respondent and requested the 3rd respondent to provide a challan to pay the fee as provided in Clause 17(2)(b)(i) under the Table of Fee prepared and approved by the Government under Section 78 of the Registration Act being a fixed fee of Rs.20/- to be accompanied with the petition for withdrawing. The 3rd respondent refused to receive the petition on the plea that such withdrawal would cause loss of revenue to the Government and if the duty demanded is not paid, it would be recovered as arrears of revenue. In these circumstances, the petitioner posted the petition dated 07.11.2016, along with a Demand Draft for Rs.20/- for withdrawing his instrument of Settlement by Registered Post with Acknowledgment Due on 25.11.2016, with a copy marked to the respondents 1 & 2. Though the respondents had received the petition sent by the petitioner, they have not sent any reply so far.

10.Mr.A.Jenasenan, learned counsel appearing for the petitioner submitted that in view of Rule 107 of the Registration Rules, the petitioner can take delivery of the document without paying the stamp duty, even after the Collector's adjudication of the stamp duty. Rule 107 of the Registration Rules reads as follows:

"107.When an impounded document is received back from the Collector after adjudication of stamp duty, the registering officer shall immediately give notice in writing to the presentant or to the person

authorized by the presentant to take delivery of the document either to take steps to complete the registration of the document or to take delivery of the document."

11.The learned counsel also relied upon Clause-17 (2) (b) (i) of the Table of Fees prepared under Section 78 of the Registration Act, 1908 and submitted that there is a provision under the Act for withdrawing the document presented for registration on payment of a fixed fee of Rs.20/-.

12.Mr.V.Ayyadurai, learned Additional Advocate General appearing for the respondents submitted that once the document is presented for registration, the respondents have no power to return the document, without collecting the necessary stamp duty payable by the petitioner.

13.In support of his contention, the learned Additional Advocate General relied upon the following judgments:

(i)2005 (4) CTC 417 [Joint Sub Registrar-I Vs. Prasanth Chandran] wherein a Division Bench of this Court held as follows:

"...

4. The document was stated to have been presented immediately after its execution before the appellant. Thereafter by a notice dated 19-3-2004, the appellant held that the said document has been lying in its office as 'Pending Document' bearing No.142/2003, inasmuch as the recitals contained in the said document would fall within provision of Section 5 of the Indian Stamp Act and therefore, it was impounded for payment of deficit stamp duty and registration fee as well as penalty. In the said notice, after referring to Clause (1) and (2) of the document, the appellant also reached a conclusion that it required collection of deficit stamp duty of Rs.2,66,530/-, deficit registration fee of Rs.66,700/- apart from penalty of Rs.5000/-, in all a sum of Rs.3,38,230/-. While directing the respondent to show cause why the deficit stamp duty and registration fee along with penalty should not be collected, it was also held that the respondent could prefer an appeal within the time stipulated, namely, 15 days of the receipt of the said letter dated 19-3-2004. The respondent submitted his reply dated 5-4-2004, contending that it was purely a partition deed, that in a partition deed, all the co-sharers need not be allotted properties, that the properties partitioned under the document can be allotted to one or some sharers to the exclusion of others and therefore, the said document cannot be

construed as a composite deed of partition as well as release. Thereafter, the appellant is stated to have passed an order dated 7-5-2004, holding that the explanation submitted by the respondent was not convincing and therefore, a sum of Rs.2,66,530/- by way of deficit stamp duty along with a sum of Rs.5000/- by way of penalty was being levied. The said order also stated that if the respondent is aggrieved against the said order, he can file his appeal.

...

6. Assailing the said order, the learned Government Pleader would contend that having regard to the nature of allotment, made in favour of the respondent in respect of the 'A' Schedule property under Clause (1) of the deed in question, the document was treated as Partition-cum-Release deed, therefore, the appellant had to impound the document for want of deficit stamp duty as well as deficit registration fee, and since the explanation of the respondent was not acceptable, the final order came to be passed on 7-5-2004. According to the learned Government Pleader, the impounding of the document and the order demanding deficit stamp duty and registration fee would fall under Section 33(2), 40 and the other connected provisions of the Stamp Act and therefore, the remedy of the respondent is to file an appeal before the Chief Controlling Revenue Authority (Inspector General of Registration) by invoking Section 56 of the Indian Stamp Act.

7. On the other hand, Mr.M.S.Krishnan, learned counsel appearing for the respondent would contend that if at all the appellant wanted to impound the document as Joint Registrar, the appellant should have forwarded the instrument to the Collector after the impounding as per Section 38(2) of the Indian Stamp Act, who alone could have exercised his powers under Section 40 of the Act to pass appropriate orders as to whether or not any further deficit stamp duty was payable. According to the learned counsel only thereafter, if any doubt arise as to the amount of duty chargeable on the instrument, the Collector could make a reference to the Chief Controlling Revenue Authority as per Section 56(2) of the Stamp Act. The learned counsel would therefore contend that going by the nature of the orders passed by the appellant, there was no scope for the respondent to invoke the remedy provided under Section 56(2) of the Act.

8. We have heard the learned Government Pleader for the appellant as well as the learned counsel for the respondent.

Under Section 31 of the Indian Stamp Act, the Collector has been empowered to determine the duty (if any) with which in his judgment, the instrument that is brought before him is chargeable whether such instrument was executed or not and whether properly stamped or not. Under Section 33(1)(b), irrespective of what is provided under Section 31, the Collector before whom any instrument is brought for determining the duty with which the instrument is chargeable can impound the same if such instrument is not duly stamped. Under Section 40(1)(b) of the Act, the Collector, who after impounding an instrument under Section 33 is of the opinion that such instrument is chargeable with duty is not duly stamped, can require the payment of proper duty or the amount required to make up the same, together with a penalty of five rupees; or if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees. While Section 33, 38 and 40 fall under Chapter IV of the Act. Section 56 of the Act prescribes that the powers exercisable by a Collector under Chapter IV and V would be subject to the control of the Chief Controlling Revenue Authority. The Collector himself while acting under Section 40 of the Act, develops any doubt as to the amount of the duty with which any instrument is chargeable, can draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority. Thereafter, it is for the Chief Controlling Revenue Authority to consider the case and send a copy of its decision to the Collector to proceed further. That apart, under Section 57 of the Act, the Chief Controlling Revenue Authority himself can refer any matter referred to it under Section 56(2) or otherwise which comes to its notice for further reference to the High Court under Sub-section (2) of Section 57 which is to be decided by not less than three Judges of the High Court.

...

10. We find force in the submissions of the learned Government Pleader. On a perusal of the Government Orders appended to Section 2(9) of the Act,

we find that certain Officers have been notified as Collectors for the purpose of exercising the powers conferred under Sections 31, 32, 38 and 40 of the Indian Stamp Act noted against them within the limits of their jurisdiction. In Serial No.4, apart from the Personal Assistant to the Inspector General of Registration, all District Registrars of the Registration Department have been notified as "Collectors" for the purpose of Sections 31, 32, 38 (2), 40, 41, 42, 48 and 56 and 70 of the Act. By a subsequent notification under G.O.Ms.No.736 Revenue dated 15-3-1971, all Registrars and Sub-Registrars appointed under the Indian Registration Act have also been notified in the same manner. The learned counsel for the respondent obviously seemed to have failed to take note of the above referred to notifications, in and by which, the respective District Registrars have been notified to act as Collectors under Section 2(9) of the Act for the purpose of Sections 31, 32, 38 and 40 of the Act.

11.A conspectus reading of Sections 31, 33(2) and 40(1)(b) along with the above referred to Notifications stated to have been passed under Section 2(9) of the Indian Stamp Act, and the Indian Registration Act, makes it clear that whomever has been notified as "Collector" could impound a document when it comes before him and when it appears to him that such instrument is not duly stamped. Thereafter by virtue of Section 40(1)(b), the Collector is empowered to call upon the concerned person to pay the proper duty apart from levying any penalty as prescribed under the said provision. After any such order is passed by the Collector, invocation of Section 56 automatically coming into play.

12. In the case on hand, the initial show cause notice dated 19-3-2004 disclose that the appellant in the cadre of a District Registrar issued the said show cause notice, apparently in exercise of his powers under Section 40(1)(b) of the Act. The subsequent order dated 7-5-2004 also came to be passed after the receipt of the reply filed by the respondent on 5-4-2004. As stated earlier, the respondent did not challenge the subsequent order dated 7-5-2004 confirming the proposal made in the show cause notice dated 19-3-2004. Though the appellant in its counter in paragraph 7 pointed out that after the receipt of the reply of the respondent dated 5-4-2004 and after giving due consideration to the said reply, the

earlier order was confirmed, the said averment was not refuted by way of any reply on behalf of the respondent. The Writ Petition itself came to be filed only on 20-5-2004. Yet there was no challenge to the final order dated 7-5-2004. In the order of confirmation, the appellant after determining the deficit stamp duty and the fine amount, pointed out that if the respondent is aggrieved, he can prefer an appeal within 30 days from the date of receipt of copy of the order. It is not the case of the respondent that any such appeal was preferred by him. Provision of appeal referred to by the appellant in the said order dated 7-5-2004 apparently refers to Section 56 of the Act.

...

14. The respondent should have worked out its remedy only before the said authority as regards his grievances as against the initial show cause notice dated 19-3-2004 as well as the subsequent order of confirmation dated 7-5-2004. Since such an efficacious alternate remedy has been made available to the respondent, we are unable to sustain the order of the learned single Judge in having gone into the nature of the document and the expressions of his final opinion on it. It has been repeatedly held by various decisions that wherever there is alternate remedy available to an aggrieved person, the writ jurisdiction cannot be invoked. In the judgment reported in "2005 Writ LR 136 (Tamil Nadu State Transport Corporation (Villupuram Division II) Ltd. v. C.Durai)", this Court has held as under paras 4 and 5 :

"4. ...In our opinion, even if there is violation of natural justice or the order is without jurisdiction, the writ petition can still be dismissed if there is an alternative remedy.

"5. In U. P. State Bridge Corporation Ltd. v. U. P. Rajya Setu Nigam Karmachari Sangh, the Supreme Court held that if there is a specific remedy available under a statute a writ petition should not be entertained."

We, therefore, set aside the order of the learned single Judge."

(ii)AIR 1983 Mad 19 [Mohammed Nachiar Vs. The District Registrar] wherein this Court held as follows:

"....

2.Mr.T.V.Balakrishnan, learned counsel for the petitioner, would at the outset state that, when the executant of the document has the right to seek for withdrawal, there being no specific provision made either in the Act or in the Rules framed thereunder, the public authority is bound to return the document and it is not open to him to insist on payment of stamp duty and compel him to have the document registered. In essence, his contention is, no person, who is not desirous of having the document registered, can be compelled by the registering authority to complete the registration, and if at all stamp duty is to be paid, it will be payable only if the document is to be registered. When the petitioner had already expressed her desire not to have the document registered, the Sub-Registrar is duty bound to return the document. In support of this contention, he relied upon not only the provisions of the Registration Act, but also R. 29 of the Rules framed under the Act, which provides that if the registration fee is not paid in respect of an impugned document which has been received from the Collector, then the presentment would not be entitled to have the registration completed as provided under R.29 (4) of the Rules. Though these rules do not provide for the return of the document, as an analogy he referred to the Rules framed by the Uttar Pradesh Government. the present case is not concerned with payment of registration fees, but the duty payable under the Act and therefore, the need to rely upon any of the provisions of the Registration Act or the Rules framed thereunder, does not exist and it is too premature to deal with the situation which may develop under the provisions of the said Act.

3. When the present claim is confined only to the payment of stamp duty, and after the document is impounded, whether the petitioner can ask for the return of the document is the main point to be considered. The respondent has sworn to in the counter-affidavit that the Sub-Registrar has impounded the document. This claim was refuted by the petitioner, which resulted in the file being produced into Court and they show that the Sub-Registrar has (matter in vernacular omitted - Ed.) impounded the document, and the document has then been sent to the

respondent. Therefore, when neither the provisions of the Act nor the rules framed thereunder envisage return of the impounded document without payment of the stamp duty whether by relying upon Section 31 of the Act, the petitioner can seek for return of the document alone has to be looked into. As soon as the document was received, while forwarding it to the responden, the statement accompanying the document itself mentions in column 3 that it has been impounded on 23-2-1979.

...

6. The Government Pleader relied upon Section 62 of the Act to contend that an executant of a document with deficit duty can be prosecuted. It goes to show that as soon as a document is executed, the liability to pay proper stamp duty thereon has already occasioned.

7. In the instant case, when the document has been admittedly executed and also presented for registration it will not be open to the petitioner to claim as if the document has been presented for adjudication or even otherwise she can demand return of the document which belongs to her, without paying stamp duty. Under the provisions of the Act, any person executing an instrument bearing deficit duty is liable to be prosecuted u/s. 62 of the Act and hence, after a document is impounded and the procedure u/s. 33 having been put into force, the liability to pay stamp duty cannot be avoided by an executant of an instrument under the provisions of the Act. It is in this view, this writ petition is liable to be dismissed."

14. On a perusal of Rule 107 of the Registration Rules, it could be seen that when an impounded document is received back from the Collector after adjudication of stamp duty, the Registering Officer shall immediately give notice in writing to the presentant or to the person authorized by the presentant to take delivery of the document either to take steps to complete the registration of the document or to take delivery of the document. From Rule 107, it is clear that even after adjudication of the stamp duty, the Registering Officer should give notice in writing to the executant either to take steps to complete the registration of the document by paying the adjudicated stamp duty or to take delivery of the document. The words "either to take steps to complete the registration of the

document or to take delivery of the document" would mean that the executant should pay the necessary stamp duty as adjudicated by the Authority and get the document registered or to take delivery of the document as it is, without getting it registered, in which case, the document shall not have any legal sanctity. The said Rule is also supported by the provisions of Clause-17 (2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act. As per the said Clause, a fixed fee of Rs.20/- has been levied for withdrawing a document from registration.

15.It is pertinent to note that in the case on hand, the document, which was presented for registration on 12.08.2015 has not yet been registered, which is evident from the fact that only a pending number in P.No.180/2015 has been assigned by the 3rd respondent. In the case of the document being registered, in such a case, the petitioner cannot seek for withdrawing the document from registration. When the document itself has not yet been registered, I am of the considered view that the provisions of Rule 107 of the Registration Rules and the provisions of Clause-17 (2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act are applicable.

16.In the judgments relied upon by the learned Additional Advocate General, the provisions of Rule 107 of the Registration Rules and the provisions of Clause-17 (2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act were not relied upon by the parties therein. Since the parties did not rely upon the provisions of Rule 107 of the Registration Rules and the provisions of Clause-17 (2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act, this Court had no occasion to deal with the said provisions in those two judgments. In the case on hand, since the learned counsel appearing for the petitioner is relying upon those two provisions, I am of the considered view that both the provisions are applicable to the case of the petitioner. If there is no provision under the Act for withdrawing a document from registration, there is no necessity for having Rule 107 of the Registration Rules and Clause-17 (2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act, enabling the executant to withdraw the document. From these two provisions, I am of the view that the petitioner can take delivery of the pending document in P.No.180/2015 dated 12.08.2015 without paying the demand made by the 3rd respondent and without getting the document registered. In such an event, the document viz., the Settlement Deed executed on 12.08.2015 shall not have any legal sanctity and the same should be treated as a cancelled document. The petitioner cannot rely upon the said document before anyone or any authority whomsoever.

17. In these circumstances, I direct the 3rd respondent to return the Settlement Deed dated 12.08.2015 pending for registration in P.No.180/2015 as requested in the petitioner's petition dated 07.11.2016 to the petitioner within one week from the date of receipt of a copy of this order, without demanding any additional stamp duty from the petitioner. However, I make it clear that the Settlement Deed dated 12.08.2015 presented for registration and pending in P.No.180/2015, shall not have any legal sanctity and the said document should be treated as a cancelled document and it should not be produced before any individual or any authority for any reason whatsoever.

18. With these observations, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

va

To

1. The Inspector General of Registration
cum the Chief Controlling Revenue Authority,
Office of the Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam, Chennai - 600 028.

2. The District Registrar (Administration),
Office of the District Registrar,
South Chennai, Jeenias Road, Saidapet,
Chennai - 600 015.

3. The Sub Registrar,
Office of the Sub Registrar,
NGS Enclave, Manickam Salai,
Kundrathur, Chennai - 600 069.

+1cc to M/s.A.Jenasenan, Advocate, SR.NO.46773

Order made in
W.P.No.1546 of 2017

AR (IV)
CU (11/07/2017)