BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2017

CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.(MD)No.3192 of 2017

J.Lessley Invicta ... Petitioner

Vs.

1.The Special Deputy Collector (Stamps),
Kokkirakulam, Tirunelveli.

2.The Sub-Registrar,
Sub-Registrar Office,
Melapalayam, Tirunelveli. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to release the sale deed registered before the 2nd respondent in Document No.4870/2014 dated 14.08.14 to the petitioner within a stipulated time to be fixed by this Court.

For Petitioner :Mr.H.Arumugam
For Respondents :Mr.C.Selvaraj
Special Government Pleader

O R D E R

Mr.C.Selvaraj, learned Special Government Pleader takes notice for the respondents. By consent of both parties, the main writ petition itself is taken up for final hearing, since the issue involved in this case is squarely covered by a decision of this Court in W.P.(MD)No.23973 of 2016, dated 30.01.2017, in favour of the petitioner.

2.The petitioner presented a sale deed, dated 14.08.2014, for registration, before the second respondent. The same was registered as document No.4870/2014. After registering the document, the first respondent referred the same to the first respondent under Section 47(A)(1) of Indian Stamp Act, 1899 for determining the market value by contending that the value mentioned in the sale deed is below the guideline value. Consequently, the sale deed so registered was not returned to the petitioner.

3.The first respondent thereafter passed the order on 10.11.2016 under Section 47(A)(1) of the Act, calling upon the petitioner to pay the deficit stamp duty. Challenging the said order, the petitioner preferred an appeal before the Inspector General of Registration, Chennai, on 09.01.2017 and the same is still pending. Now, the present writ petition is filed seeking for return of the document.

4.The issue as to whether the respondents are entitled to retain the document after its registration, on the reason that the proceedings under Section 47(A)(1) of the Act, either is pending or decided, has already been considered by this Court and answered against the respondents in W.P.(MD)No.23973 of 2016, dated 30.01.2017. In the said decision, this Court, has observed at Paragraph Nos. 8 to 11, as follows:-

> "8.The question as to whether the respondents are entitled to retain the document during the pendency of Section 47(A) proceedings has already been considered by this Court and found that they are not entitled to do so. To that effect, several decisions have been made by the writ Court as well as the Division Bench dealing in writ appeal arising out of such orders passed by the writ Court.
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> 9. The same analogy has to be applied even in respect of the cases where the final order is passed as well, in the absence of any statutory enabling provision for the registering authorities to retain such document. Moreover, perusal of Rule 9(3)(b) of the Prevention of Undervaluation of Instruments Rule would reveal that the appeals under Section 47 (A)(5) shall have to be accompanied by the original or a certified copy of the instrument.
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> 10. As rightly pointed out by the learned counsel for the petitioner that unless the document is furnished to the petitioner, the question of enclosing the same along with the appeal does not arise and therefore, the effective presentation of the appeal as required under Rule 9 cannot be complied with. Therefore, I find that the respondents are not entitled to retain the document and on the other hand, they can return the same to the petitioner by making an endorsement about the final order passed under Section 47(A) and the liability of the petitioner to pay the deficit stamp duty.
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> 11. Accordingly, the writ petition is allowed and the respondents are directed to return the document registered as Document No.1468/07 dated 05.03.2007 to the petitioner within a period of four weeks from the date of receipt of a copy of this order. On receipt of the said document, it is open to the petitioner either to pay the deficit stamp

duty as required under the final order passed on 03.05.2013 or to challenge the said order before the appellate authority within a period of four weeks from the date of receipt of the document. If any such appeal is filed, the appellate authority shall consider the same on its own merits and in accordance with law without reference to the delay in view of the facts discussed supra. No costs. Consequently, the connected Miscellaneous Petition is closed."

5.The learned Special Government Pleader fairly conceded that the above decision squarely applies to the present case as well.

6.Accordingly, this writ petition is allowed and the second respondent is directed to return the document No.4870/2014, dated 14.08.2014 to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. Needless to say that the present order passed will not stand in the way of the Inspector General of Registration in deciding the appeal filed by the petitioner on its own merits and in accordance with law. No costs.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To
1.The Special Deputy Collector (Stamps),
Kokkirakulam, Tirunelveli.

2.The Sub-Registrar,
Sub-Registrar Office,
Melapalayam, Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate, SR No. 10714
+1 CC to M/s.THE SPECIAL GOVERNMENT PLEADER, SR No. 10493

RJ2
PSM/RSK-SKN/SAR3/07.03.2017/3P/5C

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