BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2017

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD)No.16024 of 2016
and W.M.P. (MD) No.11716 of 2016

Seyyad Welfare Society,
Door No.6,
23rd Cross Street,
Maharaja Nagar,
Tirunelveli - 11.
Rep. by its Secretary ..Petitioner

Vs

The Joint Sub Registrar No.1,
Tirunelveli - 627 002. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Check Slip No.1/2016 dated 26.07.2016 issued by the respondent and quash the same as illegal and consequently to direct the respondent to register and release the Document dated 19.07.2016 within the period that may be stipulated by this Hon'ble Court.

For Petitioner :Mr.M.E.Ilango

For Respondent :Mr.K.Mahesh Raja
Government Advocate

O R D E R

The Petitioner has approached this Court seeking quashment of the Check Slip No.1/2016 dated 26.07.2016 issued by the respondent and to direct the respondent to register and release the Document dated 19.07.2016, within a time frame.

2.The facts and circumstances necessitated the filing of the present Writ Petition are stated hereunder:

(a) The petitioner is a registered Trust and some time in 2016 had taken a decision to purchase the property from the legal heirs of one T.E.Seyad Rowther. The petitioner Trust presented the document of sale deed dated 19.07.2016, before the respondent. However, the respondent by impugned order dated 28.07.2016, refused to register the document on the ground that an amount is due to be paid in respect of parent document No.1548 of 2013 and as such the sale deed presented by the petitioner Trust could not be registered. The respondent has also cited the circular issued by the Inspector of Registration in Order No.251/C1/2012 dated 24.04.2012.

(b) According to the petitioner, document No.1548 of 2013 referred to in the impugned order was in respect of a release deed executed among the family members of the Trust. One of the brothers T.E.S.Kamaludeen passed away leaving behind his wife Saaral and his three children. Even after the death of the said T.E.S.Kamaludeen, all the properties were jointly held by the brothers and the widow of the deceased brother and their children. While so, the family members have decided to mutually relinquish their respect rights in the co-ownership properties in favour of others. Accordingly, T.E.S.Naina Mohammed and T.E.S.Fathu Rubbani executed a release deed dated 11.06.2012 in favour of their brother's widow and their children and the release deed was presented to the respondent for registration and a Stamp duty under Article 55-A of Schedule - I of the Indian Stamp Act (Tamil Nadu Amendment Act 31 of 2004) was paid along with necessary fees. However, the respondent has kept the document pending and was not inclined to register the same. When a representation was made to the respondent on 06.10.2012, it was informed that in respect of the release deed Stamp Duty under Article 55-C had to be paid since the widow of the deceased brother will not come under the definition of family. Countering the stand taken by the respondent, it was represented on behalf of the petitioner that the widow also come within the definition of family and therefore, the Registration Fee payable is only under Article 55-A of the Indian Stamp Act and not under Article 55-C. Since no action was being taken, they were constrained to approach this Court by filing W.P.(MD) Nos.16154, 16155 and 16246 of 2012, praying for a direction to the respondent to register and release the documents kept pending. This Court by a common order dated 13.03.2013, was pleased to allow all the three writ petitions and directed the respondent to register the Release Deeds under Article 55-A of the Stamp Act and release the same within a period of 4 weeks. However, despite the Court's direction, no action was taken for registration of the release deeds by the respondent. In the mean while, it appears that the respondent had filed Writ Appeals against the order passed by this Court in the above said Writ Petitions. Since there was no interim order passed in the Writ Appeals, Contempt Petitions were filed before this Court. However, when the matter was taken up for hearing, the Court was informed that the documents would be registered and released subject to the final result of the Writ Appeals. Recording the said submissions, by order dated 23.10.2013, this Court was pleased to dispose of the said Contempt Petitions. Thereafter, the respondent registered the documents with endorsement “Registered subject to the result of the cases”.

(c) Thereafter, another release deed was entered into on

27.01.2014, among the widow Saaral and her children in respect of the properties in the earlier release deed dated 11.06.2012 registered as document No.1548 of 2013 and presented the same for registration. However, once again the respondent refused to register the documents on the same ground. Therefore, the parties were once again constrained to approach this Court by filing W.P. (MD) Nos.2557 to 2559 of 2014 and this Court by common order dated 12.08.2014, allowed the same and the relevant portion is extracted below:

> "6.In the light of the fact that the liability in respect of the previous transaction is yet to attain finality and already a direction issued by this Court in the Contempt Petitions recording an undertaking, the documents in question which are involved in these writ petitions, cannot be kept pending. However, the petitioner should be imposed certain conditions so that the interest of revenue is also protected.
>
> 7.Accordingly, the writ petitions are allowed subject to the condition that the documents in question shall bear an endorsement that the same is being released and registered subject to the further orders to be passed in the writ appeal filed by the respondents as against the orders passed in W.P.Nos.16154, 16155 and 16246 of 2012, dated 13.03.2013 which is said to be pending before this Court and in the event of any liability is fastened on the petitioner in respect of the earlier transaction, then the petitioner is bound to clear the said liability and with the said effect the petitioner shall furnish a letter of undertaking before the respondent and on complying with the above, the documents in question will be registered and released subject to the endorsement and furnishing of undertaking, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

(d) In pursuance of the above order passed by this Court, the said release deeds were registered with an endorsement as made in the earlier document No.1548 of 2013. Therefore, from the above, the petitioner case would be clear that there would be no impediment for registration of any document as covered under the earlier orders passed by this Court and also pending orders to be passed in the pending Writ Appeals.

(e) While matter stood thus, as stated supra, the petitioner Trust presented the sale deed by mentioning the correct market value with sufficient stamp duty for registration of the sale deed dated 19.07.2016. But unfortunately, the respondent once again refused to register the instrument and passed the impugned proceedings dated 26.07.2016, stating the same reason "amount due is pending in document No.1548 of 2013. Even assuming that there was some amount is due to the Government by way of improper stamp in respect of document No.1548 of 2013, the family members of the

T.E.Seyad Rowther have to pay only the differential stamp duty and the result of the Writ Appeals will not have any bearing for subsequent dealings in respect of the properties covered in the earlier document. The only question that has to be decided was whether Article 55-A or 55-C of the Stamp Act to be applied in the matter of release deed in regard to the widow of one of the deceased brother. With reference to Order No.251/C1/2012 dated 25.04.2012, of the Inspector General of Registration, the petitioner would contend that the same cannot be applied in the factual matrix of the present case, since no proceedings has been initiated or pending with regard to the document which is now being presented for registration. The circular issued by the Inspector General of Registration would only cover the documents which have been undervalued for the purpose of payment of stamp duty and the like. Therefore, the circular i.e., referred to in the impugned proceedings cannot have any bearing on the presentation of the document by the petitioner's Trust and registration of the same by the respondent. In these circumstances, the petitioner is before this Court seeking the prayer as stated supra.

3.Heard Mr.M.E.Ilango, the learned counsel appearing for the petitioner and Mr.K.Mahesh Raja, the learned Government Advocate appearing for the respondent.

4.According to the learned Government Advocate appearing for the respondent, the subject matter is pending adjudication in the Writ Appeals and therefore, the authority had rightly refused to register the document presented by the petitioner. However, the learned Government Advocate would not seriously dispute the averments raised in the Writ Petitions and the contentions put forth by the learned counsel for the petitioner.

5.The learned counsel appearing for the petitioner would reiterate his submissions on the basis of the detailed averments contained in the affidavit filed in support of the Writ Petition. He would contend that on earlier occasions when the instruments were presented for registration, the petitioner's family was compelled to approach this Court for a direction and only thereafter, the documents came to be registered and released. Inspite of the fact that on two earlier occasions such orders were obtained from this Court and the documents were registered and released, yet again, now on the same reasoning the present sale deed presented by the petitioner for registration has been refused by the respondent. This despite the fact that proper market value has been disclosed in the document and no other discrepancy has been pointed out by the respondent except for the same reason that were given in the earlier document No.1548 of 2013.

6.I have considered the submissions made by the learned counsel appearing for the parties and I am of the considered view that the impugned order passed by the respondent dated 26.07.2016, on the above said reasons cannot be sustained either on law or on facts. Merely because the Writ Appeals are pending adjudication before this Court, the same cannot be a reason for refusing to register the document, which is otherwise in order. In such circumstances, it is not open to the authority to refuse registration and drive the parties to approach this Court for directions when a document is presented for registration. The authority is very well aware that on earlier occasions the parties have approached this Court and obtained a direction for registration and release of the documents and therefore, the power vested with the authority must be exercised judiciously. The impugned order passed by the respondent on the facts and circumstances of the present case is nothing but a colourful exercise of power and the same cannot be allowed to stand.

7.In view of the above, this Writ Petition is allowed and the impugned order passed by the respondent in Check Slit No.1 of 2016 dated 26.07.2016 is set aside as unsustainable and the respondent is directed to register the document dated 19.07.2016, presented by the petitioner, if the same is otherwise in order, subject to the result of the writ Appeals within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is also closed. There is no order as to costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Joint Sub Registrar No.1,
Tirunelveli - 627 002.

+1cc to Mr.S.Elango,Advocate,SR.16592

W.P. (MD)No.16024 of 2016
and W.M.P. (MD) No.11716 of 2016
22.03.2017

SJ
KK-MR-SAR4-07.04.2017-5P-3C