



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No. 9441 of 2017

P.S.Abdul Rahuman

... Petitioner

Vs.

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

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

... Respondents

PRAYER: 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 second respondent in Document No.2348 of 2016 registered on 28.04.2016 to the petitioner within the time fixed by this Court.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.K.P.Krishna Das
Government Advocate

O R D E R

The petitioner has purchased a property and executed sale deed and the same was registered before the Sub-Registrar on 28.04.2016 under document No.2348 of 2016, Thereafter, the petitioner is not even aware whether the document has been referred under Section 47 (A)(1) to the first respondent for determination of market value of the property. Even if the document is referred to under Section 42(A) of the Act, the respondent has not released the original document till date. Even though no order is passed, the original document has not been returned. In this connection, the petitioner made a representation dated 06.05.2017, requesting the respondents to release the document, in spite of the same, the respondent has not released the document till date.



2. The learned Additional Government Pleader takes notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3. The short point arises for consideration in this Writ Petition is that once the document has been registered and in view of the difference in valuation of the property, pending adjudication, whether the petitioner can seek for release of the document. In this connection, the petitioner would contend that charges in accordance with the declared value, if the authority is not convinced of the valuation as set out by him, it is always open to the respondents to refer the matter to fix the valuation under Section 47-A of the Act. But without doing so, the respondent cannot have a roving enquiry or adjudicate upon such matter by himself.

4. Now, the main grievance of the petitioner is that even pending adjudication under Section 47-A of the Act, the petitioner seeks for the document in question.

5. This Hon'ble Court on many occasions have stated that after registration is over, even if it is referred to Section 47(A) (1) of the Act, the authority can still release the document with an endorsement on the back of the document on condition that the property will not be alienated and there will be charge over the property in respect of the tax payable following the decision.

6. To support his contention, the learned counsel for the petitioner relied upon a decision of the Principal Bench of this Court made in W.P.No.11734 of 2010, dated 16.06.2011, wherein it has been held at Paragraph No.9 as follows:

"9. As far as this contention is concerned, following the earlier order of this Court made in W.P.(MD).No.2464 of 2008, it could be done so with the following conditions:

"(i) The first respondent shall release the sale deed registered as document No.1279/02 within a period of two weeks from the date of receipt of a copy of this order with an endorsement stating that the reference under Section 47(A) (1) is pending.

(ii) The first respondent shall also make necessary entries in the registers showing the pendency of the proceedings under Section 47(A) (1) so as to reflect the same in the encumbrance certificates in the interest of purchasers.

(iii) Pending the final order to be passed under Section 47(A) (1), there shall be a charge over the property in favour of the Government as per Section 47(A) (4) of the Act.



(iv) After completion of the entire proceedings under Section 47(A) including the appellate remedy available under the same, the petitioners shall pay the amount which is arrived at ultimately and after such payment on production of the original sale deed, the first respondent shall make necessary endorsements stating that the entire amount due as per Section 47A has been paid and there is no amount due under the Indian Stamps Act".

7. Following the above decision, there will be a direction to the first respondent that he shall issue notice calling upon the petitioner to appear before him and on such appearance and after following the due formalities, the document in question in Doc.No.2348/2016, dated 28.04.2016 shall be released with all the above similar conditions as mentioned in para.9 of the above stated order. These exercises shall be done within a period of two weeks from the date of receipt of a copy of this order.

8. With the above directions this Writ Petition stands allowed. No Costs.

Sd/-
Vacation Officer

/True Copy/

Sub Assistant Registrar

To

1. The Special Deputy Collector (Stamps),
Kokkirakum,
Tirunelveli District.
2. The Sub-Registrar,
Sub-Registrar Office,
Melapalayam,
Tirunelveli District.

+1cc to Mr.H.Arumugam, Advocate Sr.No.57588
+1cc to Spl.Government Pleader Sr.No.57877

pjl

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