BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.01.2017

Coram

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition (MD)No.23973 of 2016

K.Meeran Mohideen ... 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 second respondent in Document No.1468/2007, dated 05.03.2007 to the petitioner within the time fixed by this Court.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.T.S.Mohamed Mohideen
Additional Government Pleader

O R D E R

The petitioner seeks for a direction to the respondents to release the sale deed registered as Document No.1468 of 2007, dated 05.03.2007.

2. The case of the petitioner is as follows:

He purchased the land covered under the sale deed dated 05.03.2007 from one M.Arunachalavadivu through her power agent A.Abdul Latif for valid consideration and the same was registered in Document No.1468/07 before the second respondent. He paid stamp duty to the tune of Rs.1,61,000/-. The second respondent, after registering the document, referred the same to the first respondent under Section 47(A)(1) of the Indian Stamp Act, 1899, by determining the market value, as if the petitioner has undervalued the property. Though the petitioner sought for return of the said document, the same was not considered. Therefore, the present writ petition is filed before this Court with the relief stated supra.

3. The learned Additional Government Pleader appearing for the respondents submitted that a final order under Section 47(A) has already been passed as early as on 03.05.2013 and therefore, the petitioner has to pay the deficit stamp duty and take the document.

4. The learned counsel appearing for the petitioner submitted that the final order passed under Section 47(A) was not at all communicated to the petitioner and therefore, the petitioner was not in a position to challenge the same before the appellate Authority. He further submitted that even though the final order is passed under Section 47(A), the respondents are not entitled to retain the document as there is no statutory provision empowering them to do so. The learned counsel further submitted that since the copy of the final order is served to the petitioner, during the course of the hearing of this petition, the petitioner may be given liberty to challenge the same before the appellate authority and in the mean time, the respondents may be directed to return the document, so as to enable the petitioner to present the appeal effectively before the appellate authority, annexing the original document as required under Rule 9(3)(b) of Prevention of Undervaluation of Instruments Rule.

5. Heard both sides.

6. The petitioner seeks for release of the document registered before the second respondent over which proceedings under Section 47(A) of the Indian Stamp Act, 1899, has been initiated and final order has been passed on 03.05.2013 itself. It is the case of the petitioner that no such final order was communicated to him so far. However, it is not in dispute that the copy of the said order was given to the petitioner, during the course of the hearing of this writ petition. Though it was contended by the learned Additional Government Pleader appearing for the respondents that such final order was already communicated to the petitioner, he is not in a position to satisfy this Court that such communication was in accordance with the procedure contemplated under Rule 15, which requires that such communication should be by way of registered post with acknowledgement due. Therefore, this Court is of the view that the final order passed under Section 47(A) was not communicated to the petitioner in a manner known to law. However, as the copy of the same is furnished to the petitioner, during the course of the hearing of the writ petition, the petitioner is at liberty to challenge the same before the appellate authority as contemplated under Section 47(A)(5) of the said Act.

7. The next question that would arise for consideration in

this writ petition is as to whether the respondents are justified in retaining the document on the reason that final order under Section 47(A) has already been passed. Even though such stand is taken by the respondents, the learned Additional Government Pleader appearing for the respondents is not in a position to substantiate such stand by pointing out any statutory provision under the Indian Stamp Act, or the rules made thereunder, empowering the registering authorities to retain the document either during the pendency of the proceedings under Section 47(A) or after passing the final order thereon. On the other hand, perusal of Section 48 of the Indian Stamp Act would show that all duties, penalties and other sums required to be paid under the said Act may be recovered by the Collector by distress and sale of the property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears as land revenue.

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.

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.

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.

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.

Sd/-
Assistant Registrar (CS-I)

/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 Mr.H.ARUMUGAM, ADVOCATE IN SR No. 4955
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 5006

AKV
TE/PM-PN : 17/02/2017 : 4P/5C

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