BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.01.2017

Coram

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition (MD)No.24626 of 2016
and
W.M.P(MD)No.17750, 17751 and 17752 of 2016

Selvam ... Petitioner

-Vs-

The Special Deputy Collector,
Stamp Duty,
Tiruchirapalli. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the respondent in his proceedings in Tha.Pa.No.2872/2015 dated 04.11.2016 and quash the same and consequently, direct the respondent to return the document pertaining to Registration No.4330/2015 dated 13.11.2015 on the file of the respondent and within the time stipulated by this court.

For petitioner : Mr.B.Jameel Arasu

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

O R D E R

This writ petition is filed challenging the order passed by the respondent dated 04.11.2016 under Section 47(A)(1) of the Indian Stamp Act and consequently, to direct the respondent to return the Document No.4330/2015 dated 13.11.2015.

2. Heard both sides.

3. What is under challenge in this writ petition is an order passed under Section 47(A)(1) of the Indian Stamp Act, against which, admittedly a statutory appeal lies before the competent appellate authority as contemplated under Section 47(A)(5) of the said Act. Therefore, this writ petition cannot be entertained, challenging the order, which is an appealable one.

4. The learned counsel for the petitioner submitted that the petitioner would file an appeal before the appellate authority and however, the respondent cannot retain the document on the reason that an order under Section 47(A)(5) is passed against the petitioner.

5. Therefore, the only question that would arise for consideration in this writ petition is as to whether the respondent is 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 respondent, the learned Additional Government Pleader appearing for the respondent 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 only 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.

6. The question as to whether the registering authorities 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.

7. 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 provision enabling the registering authorities to retain such document. Moreover, a 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.

8. 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 respondent is not entitled to retain the document and on the other hand, he can return the same to the petitioner by making an endorsement therein about the final order passed under Section 47(A) and the liability of the petitioner to pay the deficit stamp duty.

9. Considering the above submissions made by the learned counsel for the petitioner, the writ petition is disposed of and the respondent is directed to return the document registered as Document No.4330/15 dated 13.11.2015 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 to file an appeal before the appellate authority, challenging the order passed by the respondent, dated 04.11.2016, within a period of four weeks thereafter. 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(RTI)

/True Copy/

Sub Assistant Registrar

akv

To

The Special Deputy Collector,
Stamp Duty,
Tiruchirapalli.

+1cc to Mr.D.Jameel Arasu, Advocate Sr.No. 4891

+1cc to Spl.Government Pleader Sr.No. 82986

JAM/21.02.17 /CM-MSA/ 3p-4c

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