

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.626 of 2018 and
C.M.P.No.6134 of 2018

1. The District Registrar (Administration)
(in the cadre of Assistant Inspector General of Registration)
North Chennai, Chennai.

2. The Sub Registrar,
Tiruvotriyur. Appellants

-vs-

Futura Polyesters Limited,
Mumbai and having its registered office
at Paragon Centre,
Pandurang Budhkar Marg,
Mumbai-400 013 and represented by its
Authorised Signatory. Respondent

Appeal filed under Clause 15 of the Letters Patent, against
the order passed by this Court in W.P.No.14493 of 2017 dated
05.10.2017.

PRAYER: Writ petition filed under Article 226 of the
Constitution of India praying for issuance of writ of Mandamus
to direct the second respondent to release the document of sale,
dated 01.03.2017 and registered as Doc.No.1038 of 2017 on the
file of the Sub Registrar, Thiruvotriyur and executed by the
petitioner herein to and in favour of M/s.Golden Star Promoters
Private Limited represented by its Director Mrs.Grace Jayanthi
Rani and after making necessary endorsement regarding the
pendency of the proceedings under the provisions of the Indian
Stamp Act, 1899 and the Tamil nadu Stamp (Prevention of
Undervaluation of Instruments) Rules, 1968 within time be fixed by
this court.

For Appellants :: Mr.T.M.Pappaiah,
Special Government Pleader

For Respondent :: Mr.N.Damodaran

JUDGMENT

(Made by HULUVADI G.RAMESH, J.)

The respondent herein sought for a Mandamus before this Court in W.P.No.14493 of 2017 to direct the second appellant herein to release the document of sale dated 01.03.2017 registered as Doc.No. 1038 of 2017 on his file and executed by the respondent herein, to and in favour of M/s.Golden Star Promoters Pvt Ltd.

2.The learned single Judge, by order dated 05.10.2017, disposed of the writ petition by directing the second appellant to return the subject matter sale deed to the respondent, after making necessary endorsement within a period of three weeks subject to certain conditions, by relying upon a decision of this Court in W.P.Nos.18521 and 18522 of 2016 dated 14.06.2016.

3.The appellants / Registering Authorities have come up with this appeal challenging the order passed by the learned Single Judge.

4. Heard Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader for the appellants and Mr.N.Damodaran, learned counsel for the respondent and perused the materials available on record.

5.The learned Special Government Pleader appearing for the appellants has submitted that the issue involved in this writ appeal is covered by a decision of the Madurai Bench of this Court in W.A.(MD) No.1176 of 2017 etc.batch dated 09.10.2017, wherein it has been held as under:

"15.The Collector has to act under Section 47-A(2) of the Indian Stamp Act on receipt of a reference under sub-section (1). Under sub-section (3), he can also take suo motu action. If one sees the language of sub-section (3), the Collector can call for and examine the the instrument. There is no provision, which enables or mandates the Collector to release an instrument pending adjudication and thereafter.

16.Section 47-A (4) of the Indian Stamp Act speaks about the charge. Such a charge is on the property mentioned in the instrument. The charge is not on the instrument, but on the property. Creating charge is one thing and release of document is another thing. However, the question for consideration is as to whether such a charge by itself give a right to get the document released, notwithstanding payment of duty determined. Keeping in mind the object of the enactment, necessarily we have to hold that no such right is available.

... ..
28.As discussed above, there is no question of return of the instrument by the registering authority, if a reference is made along with the instrument. In the absence of any provisions enabling the return of the instruments, the same cannot be given back. The provision for creating charge cannot be construed for an automatic release of the document. Even if we apply the principle of purposive and reasonable interpretation, the instrument cannot be released until and unless the duty determined is set aside or found to be wrong. In the light of discussions made above, we are of the view that the contentions raised by the learned counsel for the writ petitioners cannot be accepted."

6. In the light of the decision referred supra, the impugned order passed by the learned single Judge is set aside. However, the first appellant is directed to positively conclude the proceedings and determine the duty within eight weeks from the date of receipt of a copy of the order.

7.The writ appeal is disposed of accordingly. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

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To

1. The District Registrar (Administration)
(in the cadre of Assistant Inspector General of Registration)
North Chennai, Chennai.

2. The Sub Registrar,
Tiruvotriyur.

+1cc to Mr.N.Damodaran, Advocate, sr.no.58266
+1cc to Government Pleader, sr. no.57862

W.A.No.626 of 2018 and
C.M.P.No.6134 of 2018

RSV (CO)
RMP (28/09/2018)