

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATE:24.04.2019

CORAM;

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYANWrit Petition (MD) Nos.18212 and 19482 of 2018andWMP (MD) Nos.749 and 756 of 2019

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W.P. (MD) No.18212 of 2018

Great Lakes Multi-State Cooperative
Housing Society Limited
represented by its
Chief Executive Officer
S.Sakthivel
Srivilliputhur
Virudhunagar District.

.. Petitioner

Versus

1. The Inspector General of Registration
No.100, Santhome High Road
Foreshore Estate
Chennai - 600 028.
 2. The District Registrar
No.57, Railway Feeder Road
Tenkasi in Tirunelveli District.
 3. The Joint I Sub-Registrar
No.57, Railway Feeder Road
Tenkasi in Tirunelveli District.
- .. Respondents

W.P.(MD) No.18212 of 2018 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned letter rejecting the application for grant of certified copy of the registered sale deed of the petitioner in Letter No.29338/N1/2017 dated 27.03.2018 from the first respondent and quash the same and direct the respondents to grant a certified copy of the registered sale deed of the petitioner dated 31.08.2012 in Document No.853 of 2013 on the file of the Joint No.1 Sub Registrar, Tenkasi in Tirunelveli District.

W.P. (MD) No.19482 of 2018

Great Lakes Multi-State Cooperative
Housing Society Limited
represented by its
Chief Executive Officer
S.Sakthivel
Srivilliputhur
Virudhunagar District.

.. Petitioner

Versus



1. The Inspector General of Registration
Registration Department
No.100, Santhome High Road
Chennai - 600 028.

2. The District Registrar
The District Registrar Office
No.57, Railway Feeder Road
Old RTO Complex
Near New Bus Stand
Tenkasi - 627 811.

3. The Joint I Sub-Registrar
No.57, Railway Feeder Road
Old RTO Complex
Near New Bus Stand
Tenkasi - 627 811.

4. The District Revenue Officer (Stamps)
Collectorate Campus
Singaravelar Maaligai
Rajaji Salai
Chennai - 600 001.

.. Respondents

W.P.(MD) No.19482 of 2018 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to return the Sale Deed registered as Document No.853/2013 on the file of the third respondent with necessary endorsement after considering the representation of the petitioner dated 17.02.2018 on merits and in accordance with law insofar as the petitioner's request for return of Document No.853/2013 expeditiously within a time frame as stipulated by this Hon'ble Court.

For Petitioner in both WPs. : Mrs.T.Kokilavane

For Respondents in both WPs.: Mr.M.Murugan

Government Advocate

WMP (MD) Nos.749 of 2019 in W.P.(MD) No.18212 of 2018 and WMP (MD) Nos.756 of 2019 in W.P.(MD) No.19482 of 2018 have been filed by one Pangajam and Pakkirisamy seeking to implead them as proposed respondents 4 and 5 in W.P.(MD) No.18212 of 2018 and proposed respondents 5 and 6 in W.P.(MD) No.19482 of 2018 respectively.

For Petitioner in both WMPs. :M/s.T.R.Jeyapalam

For 1st Respondent in both WMPs. :Mrs.T.Kokilavane

For Respondents 2 to 5

in both WMPs.

:Mr.M.Murugan

Government Advocate

**COMMON ORDER**

In Writ Petition W.P.(MD) No.18212 of 2018, the petitioner has prayed for Certiorarified Mandamus to quash the first respondent's order in Lr.No.29338/N1/2017 dated 27.03.2018 and further seeks for a direction to the respondents to grant a certified copy of the registered sale deed dated 31.08.2012 in document No.853 of 2013 on the file of Joint No.I Sub Registrar, Tenkasi in Tirunelveli District.

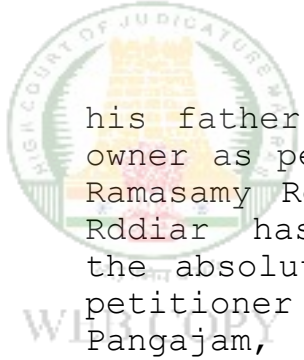
2. Writ Petition filed by the petitioner in W.P.No.19482 of 2018 is for Writ of Mandamus directing the respondents to return the sale deed registered as document No.853/2013 on the file of the third respondent - Joint No.I Sub Registrar, Tenkasi in Tirunelveli District within the time frame considering the representation of the petitioner dated 17.02.2018.

3. The case of the petitioner in both the Writ Petitions is that the petitioner is a registered society having purchased an extent of 50 cents in S.No.16/18 at Alandur Village in Kanchipuram District registered for a valuable consideration under the registered sale deed dated 17.05.2013 as document No.853 of 2013 with the third respondent, who have raised certain queries of undervaluation and referred the same to the DRO (Stamps), Chennai, who passed an order dated 10.04.2017 which was again challenged by way of an appeal before the Inspector General of Registration, Chennai and the same is pending. Meanwhile the respondent when approached seems to have declined to return the original sale deed registered as early as 31.08.2012 and the matter is pending under Section 47-A of Indian Stamp Act as the property has been undervalued.

4. It is further seen that the petitioner society seems to have preferred an application seeking certified copy of the sale deed with the third respondent, who had refused to issue certified copy by passing an impugned order, which is under challenge before this Court in WP(MD) No.18212 of 2018. It is further seen that the third respondent even refused to accept the said application for issuing certified copy.

5. Pending Writ Petition W.P.No.18212 of 2018, the petitioner has filed W.P.(MD) No.19842 of 2018.

6. WMP (MD) No.749 of 2013 and WMP (MD) No.756 of 2018 came to be filed by one Pangajam and P.Pakkirisamy seeking to implead them in the said Writ Petitions as respondents 4 to 5 on the ground that the property in S.No.16/18, Alandur Village, Kanchipuram Taluk, Kanchipuram District, which is measuring to an extent of 50 cents originally belonged to Mrs.Pangajam's father-in-law Deva Reddiar, S/o.Venkatachalam Reddiar, who died on 10.05.1962, leaving behind his only son Ramasamy Reddiar, the impleading petitioner's husband. It was further claimed that Ramasamy Reddiar's mother predeceased



his father on 24.04.1961 and Ramasamy Reddiar became the absolute owner as per the Hindu Succession Act, 1956. The said Pangajam and Ramasamy Rddiar did not have any children and whileso, Ramasamy Rddiar has also passed away on 01.11.1970, his wife Pangajam became the absolute owner of the above said land. The second impleading petitioner Pakkirisamy is none other than the brother of the said Pangajam, in favour of whom the said Pangajam had executed the settlement deed dated 14.10.2008 and which was registered as document No.2942 of 2008 followed by another settlement deed dated 30.12.2009 registered as document No.3198 of 2009.

7. It is further alleged that the Writ Petitioner seems to have approached the second impleading petitioner and the first impleading petitioner and further claims that took the writ petitioner and her brother to Tenkasi and obtained her thump impression in some papers. Her brother also signed beneath her thump impression as they were under the impression that they were only executing a power of attorney in favour of one Sakthivel. Thus, the impleading petitioners claim innocence of the sale made to the writ petitioner. Under these circumstances, the impleading petitioner seeks dismissal of the writ petition. At the same time, the writ petitioner by the representation dated 17.02.2018 addressed to the respondents herein seeking a direction to the third respondent to release the registered sale deed dated 12.05.2012 in document No.853 of 2013.

8. The writ petitioner has filed a counter affidavit for the impleading petition filed by the proposed respondents Pangajam and Pakkirisamy, in which the writ petitioner while admitting the genealogy by which the impleading petitioner became absolute owner of the property as clause-I heir as to but refutes to accept the other allegations and that the impleading petitioners were in possession and enjoyment of the said property as incorrect as the writ petitioner society is in possession and enjoyment of the same and they have obtained patta in their favour and enjoyment of the property and they have also paid property tax to the said property. The writ petitioner would vehemently deny the allegations set out by the impleading petitioner, the manner in which the sale deed taken place in favour of the writ petitioner society.

9. The second respondent/District Registrar had filed a counter in W.P.(MD).No.19482 of 2018 by stating that the deed of sale dated 31.08.2012 executed by one P.Selvaraj conveying 75.6 sq.m of land in S.No.450/1 T.S.No.62/2 and 63 of Puliyur Village, Tenkasi Taluk and by one Pangajam and Pakkirisamy conveying 50 cents of land in S.No.16/18 of Alandur Village, Alandur Taluk to and in favour of the writ petitioner which was registered as document No.853 of 2013. Since the market value of the property was not truly set forth in the document, the second respondent has referred the same to the fourth respondent under Section 47-A(1) of the Indian Stamp Act for determination of market value and collection of difference in stamp duty if any of such determination.



10. The second respondent further stated that the writ petitioner has valued the property measuring 50 cents of land in Alandur Village at Rs.50 lakhs only and the market value and guideline value for the said property is Rs.10,89,00,000/- (Rupees ten crores and eighty nine lakhs only) causing a probable loss of Rs.83,12,000/- to the exchequer. Since the document is pending under Section 47-A before the fourth respondent the petitioner is not entitled for the certified copy of the document No.853 of 2013. The second respondent further submits that as long as deficit stamp duty under Section 47-A(1) is rectified and paid, the original document as sought for by the writ petitioner in WP (MD) No.19482 of 2013 cannot be released until the proceedings are concluded and prays that the writ petition be dismissed.

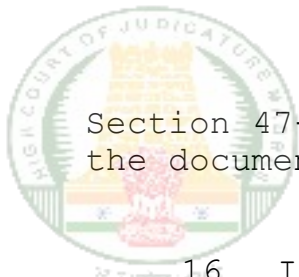
11. Heard the counsels. With the consent of all the parties. the main Writ Petitions were taken up for final disposal.

12. On perusal of the documents filed in support of the Writ Petitions, it is not in dispute that the sale deed dated 31.08.2012 registered as document No.853 of 2013 is pending adjudication before the Inspector General of Registration. The learned counsel Mrs.Kokilavane appearing for the writ petitioner would vehemently argue that the original document is highly necessary to the owner of the property as the society cannot possess and enjoy the property besides protecting the property from the encroachers, who have no title over the same and as such, once a document is registered, the same becomes a public document and as such, any person including the petitioner society is entitled to get the release of the sale deed.

13. The petitioner counsel would further argue that the second respondent is empowered to make necessary endorsement in the sale deed with the proceedings under Section 47-A are pending before the first respondent and as such, the second respondent has got no power to retain the document, after registering the same.

14. In this background, the petitioner counsel relied on an unreported judgment of Madurai Bench of Madras High Court dated 18.04.2018 made in ***W.P. (MD) No.8242 of 2018 (S.M.Raman ..vs.. The District Registrar)*** on a similar circumstances, where the Sub Registrar was directed to return the documents to the petitioner therein within a period of two weeks from the date of receipt of copy of the order with necessary endorsement that the proceedings under Section 47-A of Indian Stamp Act have been contemplated and initiated.

15. Per contra, the learned counsel for the respondent relied upon the judgment reported in ***2017 (6) CTC 449 (Special Deputy Collector (Stamps), Palayamkottai, Tirunelveli District and another v. Alfred and others)*** wherein, in a batch of cases, Hon'ble Division Bench of this Court has held that such power of returning the document without complying the necessary mandatory conditions under



Section 47-A, the Registrar has got no duty cast upon them to return the document.

16. I heard the arguments and perused the documents filed and guided by the case reported in **2017 (6) CTC 449 cited supra** wherein in para-25 and 28, it is held as follows:-

"25. Though, payment of duty is one thing and release of the document is the other thing, both are intertwined with each other. The enactment merely provides for registration, notwithstanding the issue pertaining to undervaluation. The said factor cannot be extended for the release of the document in the absence of any provision. To that extent, there is no conflict between the two enactments. With the above said understanding of the provisions of the two enactments, let us go into the contentions raised.

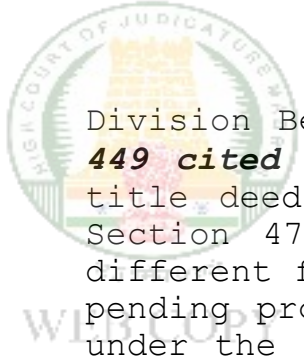
26.

27.

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."

17. In the above judgment, it is categorically made clear that the document cannot be released until the proceedings under Section 47-A are concluded. This Court is of the affirmative view to the submissions made by the Government Pleader Murugan, who appeared on behalf of the respondents. When that being the position of law, I am unable to accept the argument put forth by the learned counsel for the writ petitioner. Hence, the prayer made in W.P.(MD).No.19482 of 2018 cannot be granted and deserves to be dismissed.

18. With regard to the argument of the learned counsel for the petitioner in W.P.(MD) No.18212 of 2018 that once a document is pending before the authorities under Section 47-A proceedings or for any other reasons before the registering authority, it becomes a public document, no doubt, the Hon'ble



Division Bench of this Court in the case reported in **2017 (6) CTC 449 cited supra** has negated the claim of returning the original title deed when the same is pending before the authorities under Section 47-A(1). However, the return of original title deed is different from obtaining or issuing a certified copy of the document pending proceedings under Section 47-A(1). There is no bar either under the Stamp Act nor under the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968, for issuance of certified copy of the document pending scrutiny under Section 47-A(1). As far as the claim made by the petitioner in W.P.(MD).No.18212 of 2018, I am unable to accept the contention raised by the learned Government Advocate for the respondents that since the original deed is pending adjudication before the first respondent under Section 47-A(1) for undervaluation and deficit stamp duty paid by the petitioner, the certified copy cannot be issued. This Court is of the view that the pendency under Section 47-A(1) of the title deed pending adjudication is totally different from issuing a certified copy of the document. The Statute does not differentiate the certified copy sought to be issued by the registering authorities that with those documents pending under Section 47-A(1). Nowhere in the Statute neither under the Stamp Act nor under the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968, provide any such embargo. When such is the position, this Court is of the view that the writ petitioner is entitled to receive a certified copy of the document registered before the second respondent.

19. The argument put forth by the learned counsel for the proposed impleading petitioners 5 and 6, namely, Pangajam and Pakkirisamy is not convincible to this Court as the factual matrix raised by the impleading petitioners cannot be gone into under Article 226 of the Constitution of India as the impleading petitioners have raised certain issue of fraud committed on them by the writ petitioner, the impleading petitioners necessarily need to approach the appropriate forum (civil court) for their redressal. Though the impleading petitioners claim that they are interested parties in the Writ Petitions, the prayer sought for in the Writ Petition has got no nexus to the allegations made by the impleading petitioners as against the writ petitioner, as such, the impleading petitions cannot be entertained. Hence, the WMP (MD) Nos.749 and 756 of 2019 for impleading them as respondents to the writ proceedings are to be dismissed.

20. To conclude,

(i) WP.(MD) No.19482 of 2018 is dismissed;

(ii) WP.(MD) No.18212 of 2018 is allowed. The impugned letter of the first respondent in Letter No.29338/N1/2017 dated 27.03.2018 rejecting the application of the petitioner for grant of certified copy of the registered sale deed is hereby quashed.

<https://hcservices.ecourts.gov.in/hcservices/>

(iii) The respondents in WP.(MD) No.18212 of 2018 are



directed to issue certified copy of the document No.853 of 2013 dated 31.08.2012 with necessary endorsement of the pendency with regard to original title deed under Section 47-A(1) of Indian Stamp Act on each and every page of the certified copy of the document within a period of four weeks from the date of receipt of a copy of this order.

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(iv) The impleading petitions in WMP (MD) Nos.749 of 2019 in W.P.(MD) No.18212 of 2018 and WMP (MD) Nos.756 of 2019 in W.P.(MD) No.19482 of 2018 filed by Pangajam and Pakkirisamy are dismissed.

(iv) No costs in all the Petitions.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Inspector General of Registration
Registration Department
No.100, Santhome High Road
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Rajaji Salai
Chennai - 600 001.
- +1cc to Mr.T.R.Jeyapalam,Advocate, SR.No.62409
+2cc to Mr.T.Kokilavane,Advocate, SR.No.62519

W.P.(MD) Nos.18212 and 19482 of 2018
and
WMP (MD) Nos.749 and 756 of 2019
24.04.2019

SP/03.05.2019/8P/8C