

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.02.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3536 of 2017
and WMP.No.3550 of 2017

1. Mrs. K. Almas Begum
2. K. Tippu Sultan

...Petitioners

-vs-

The Sub-Registrar,
Madhavaram,
Chennai.

... Respondent

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records in connection with the impugned Letter No.145/2014-17 dated 25.01.2017 passed by the respondent and quash the same and direct the respondent to pass a detailed and reasoned order after affording the petitioner an opportunity of being heard and in accordance with Section 80A(1) of the Registration Act, 1908.

For Petitioners : Mr.Santhosh Ukkur
for M/s. Tatva Legal

For Respondent : Mr. P. Purushothaman
Government Advocate

ORDER

Heard Mr.Santhosh Ukkur, for M/s. Tatva Legal, learned counsel for petitioners and Mr.P. Purushothaman, learned Government Advocate for respondent.

2. With the consent of learned counsel on either side, this writ petition itself is taken up for final disposal.

3. The petitioners have filed this writ petition challenging the proceedings of the respondent dated 25.01.2017, by which, the respondent has demanded registration fee of Rs.2,23,000/- (Rupees Two lakh and twenty three thousand only).

4. On a perusal of the impugned order, it is seen that no reasons have been assigned by the respondent for issuing such a

demand and since the petitioners have failed to appear before the respondent to put forth their contention, it is presumed that they have admitted the aforesaid deficit registration fee payable by them.

5. In the considered view of this Court, the approach of the respondent and the stand taken in the impugned order is not sustainable for more than one reason. Firstly, the respondent has not complied with the directions issued by this Court in its order dated 15.09.2015 in W.P.No.28912 of 2015. By the said order, the Writ Court has set aside the earlier order dated 12.05.2015 on the ground that no reasons have been given and directed the respondent to issue notice to the petitioners and after giving them an opportunity of personal hearing, thereafter, the respondent was directed to pass a reasoned order after considering the reply given by the petitioners.

6. It is no doubt true that respondent issued notice to the petitioners on 25.01.2017. However, the respondent states that the petitioners did not appear whereas, the petitioners would state that even earlier they had given a detailed reply on 10.07.2014 and there is no reference to the said reply. The learned counsel for the petitioners would submit that in the reply, the petitioners had referred to the decision of the Hon'ble Supreme Court to support their stand that when the firm owns a property and it is a capital of the firm, it can very well continue to run, and it need not be dissolved, when it has got other capital for its business. By relying upon the decision of the Hon'ble Supreme Court in the case of V.Subramaniam Vs. Rajesh Raghuandra Rao (Civil Appeal No.7438 of 2000 dated 20.03.2009) it is contended that the partners of a firm are co-owners of the property of them, unlike shareholders in a company, who are not co-owners of the property of the firm. Further, it is contended that partnership firm, whether registered or unregistered, is not a distinct legal entity and hence, the property of the firm really belongs to the partners of the firm. The petitioners would reiterate that no opportunity of personal hearing was granted. However, the respondent has stated in the impugned order that the petitioners did not response to the notice dated 11.09.2015.

7. Even assuming that the petitioners did not response, there is a duty enjoined upon the respondent to assign reasons in support of his demand. This is more so, because of the direction in W.P.No.28912 of 2015 dated 15.09.2015. Thus, for the above reasons, this Court holds that the impugned order is liable to be set aside.

8. In the result, this writ petition stands allowed and the impugned order is set aside and it will be open to the respondent to issue fresh notice and proceed in accordance with law after affording an opportunity of personal hearing to the petitioners. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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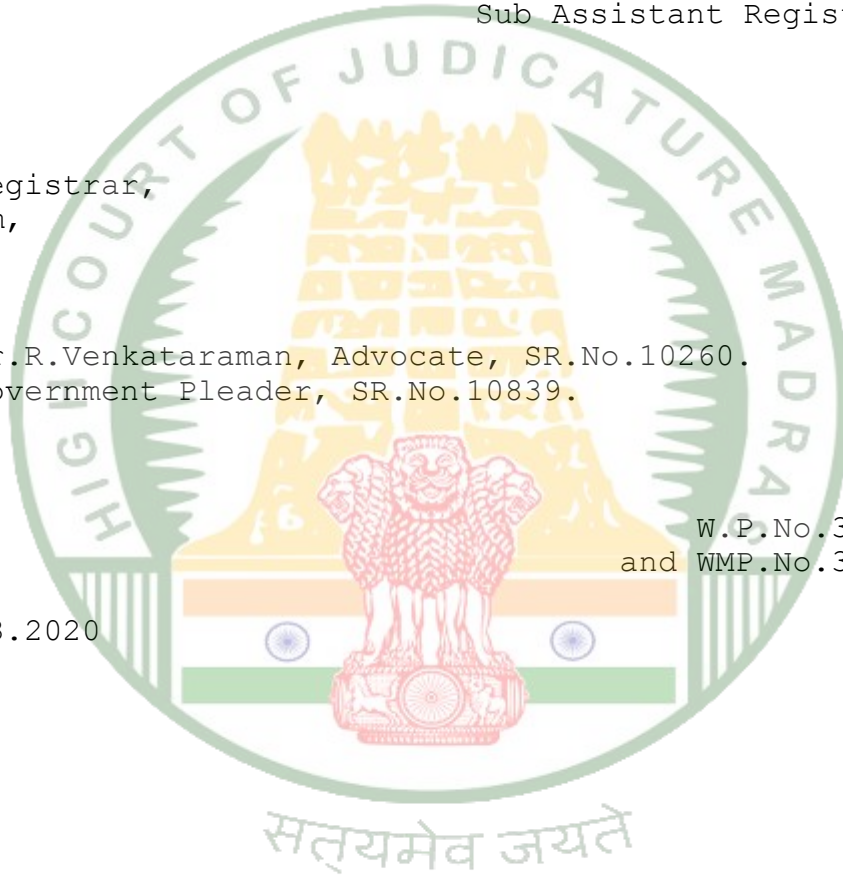
To

The Sub-Registrar,
Madhavaram,
Chennai.

+1cc to Mr.R.Venkataraman, Advocate, SR.No.10260.
+1cc to Government Pleader, SR.No.10839.

W.P.No.3536 of 2017
and WMP.No.3550 of 2017

CP (CO)
CSR: 17.03.2020



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