IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.Nos.19497 and 19498 of 2015

Hameed Johara Bivi
W/o.Mohammed Siddiquei
... Petitioner in W.P.No.19497 of 2015

Abdul Hasan
S/o.Hasan Gani
... Petitioner in W.P.No.19498 of 2015

Vs.

1.The District Collector,
Nagapattinam.

2.The Tahsildar,
Nagapattinam.

3.The Sub-Registrar,
Nagore, Nagapattinam District.

4.The Special Deputy Collector (Stamps)
District Collectorate Complex,
Thanjavur.
... Respondents in both W.P.s

Common Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents 3 and 4 to release the sale deed in the name of petitioner registered as document Nos.719 and 720 of 2004 on the file of the third respondent and handover the same to the petitioner within stipulated time.

For Petitioners (In both W.Ps) : Mr.S.Sounthar

For Respondents : M/s.A.Madhumathi for RR1 and R2 (In both W.Ps) Special Government Pleader

Mr.P.Purushothaman Government Advocate for RR3 R4

COMMON ORDER

These writ petitions are filed for issuing a Writ of Mandamus, to direct the respondents 3 and 4 to release the sale deeds in the name of petitioners registered as document Nos.719 and 720 of 2004 on the file of the third respondent and handover the same to the petitioners within stipulated time.

2.The petitioners have purchased different properties situated in T.S.No.1154, Block 15, Ward 5 Panangkollai Street, Nagapattinam District under the respective Sale deeds dated 09.09.2004. The said documents were registered by the third respondent as document Nos.719 and 720 of 2004. The third respondent entertained a doubt with regard to the market value of the property and referred the matter to the fourth respondent for determination of the correct market value. Thereafter, the fourth respondent conducted an enquiry and fixed the market value of the property and also fixed the deficit stamp duty. Pursuant to the direction of the fourth respondent, the petitioner has paid the entire amount along with interests.

3.The learned counsel for the petitioners submitted that the deficit stamp duty as determined by the fourth respondent was paid, but document registered before the third respondent was never returned to the petitioners despite the direction from first respondent.

4.The third respondent has filed a counter affidavit wherein it is stated that the sale deeds dated 09.09.2004 was registered as document Nos.719 and 720 of 2004. Since, the value of the property dealt with in the above sale deed was low, the third respondent referred the document in original to the fourth respondent under Section 47-A (1) of the Indian Stamp Act, 1899 for determining the market value of the property and the relevant paragraph is extracted hereunder:-

> ''This respondent respectfully submits that if the original instrument is lost in the fourth respondent's office, the proper remedy for the fourth respondent is to seek a certified copy of the sale deed in question from this respondent with certification that the said certified copy shall be treated as ORIGINAL instrument for all purpose as per Section 46 of the Indian Stamp Act, 1899 and then, the fourth respondent has to endorse the certification of collection of deficit stamp duty and to return the same to this respondent so as to enable this respondent to return the certified copy to the petitioner. This Hon'ble Court in Muthusamy, A.M.P.S vs RDQ Nagapatnam and Ors, AIR 1979 Mad 153 held that "in the case of an instrument

impounded by a judge for want sufficient stamp and sent to the collector under Section 38, Sub-Section (2) ans lost in transit, held that the Collector may equitably deal with the copy as if it were the original, making a note on the document of the circumstance''. The fourth respondent till date has not informed to this respondent about the fate of the original sale deed in question. Since the original sale deed in question has not been received from the fourth respondent, this respondent could not comply the relief sought for by the petitioner.''

5.Having regard to the facts and circumstance of this case, the original document namely the sale deeds have been lost in the fourth respondent's office. Appropriate proceedings can be initiated against respondents 3 and 4 making them accountable. In the interests of justice. This Court is inclined to disposed of the writ petition in the following lines:-

The third respondent is directed to hand over the certified copies of the sale deeds, which are registered as document Nos.719 and 720 of 2004 to the fourth respondent to get an endorsement from the fourth respondent regarding payment of stamp duty. The said certified copy shall be treated as the original instrument for all purpose as per Section 46 of the Indian Stamp Act, 1899. The fourth respondent shall endorse the collection of deficit stamp duty and return the same to the petitioner. The instrument that is handed over to the petitioners shall be treated as original for all purposes relating to registration of any instrument following the sale deed registered as document Nos.719 and 720 of 2004. This exercise shall be done by the respondents third and fourth within a period of twelve weeks from the date of receipt of a copy of this order.

With the above directions, the two writ petitions are disposed of. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1.The District Collector,
Nagapattinam.

2.The Tahsildar,
Nagapattinam.

3.The Sub-Registrar,
Nagore, Nagapattinam District.

4.The Special Deputy Collector (Stamps)
District Collectorate Complex,
Thanjavur.

+2cc to Mr.S.Sounthar, Advocate Sr.8113 and 8114
+1cc to the Government Pleader Sr.8502

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