IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.Nos.13996 & 22323 of 2019
and
WMP.No.21635 of 2019

WP.No.13996 of 2019

G.Raja ...Petitioner

Vs

The Joint Sub Registrar-I,
District Registrar's Office,
Chennai ...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to release the sale deed dated 23.11.2012 registered as document No.1104 of 2012 on the file of his Office forthwith.

For Petitioner : Mr.Abdul Majeed W.M.

For Respondent : Mr.A.Selvendran,
Special Government Pleader

WP.No.22323 of 2019

G.Raja ...Petitioner

Vs

1.The District Registrar,
Chennai

2. The Joint Sub Registrar-I,
District Registrar's Office,
Chennai ...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the letter in Ka.No.145/Aa.Pa.Pi/2019 dated 15.05.2019, on the file of the second respondent and consequently direct the respondents to release the sale deed dated 23.11.2012, registered as document No.1104 of 2012, in the Office of the second respondent, forthwith.

For Petitioner : Mr.Abdul Majeed W.M.

For Respondents : Mr.A.Selvendran,
Special Government Pleader

COMMON ORDER

The writ petition in WP.No.22323 of 2019 is filed to issue a Writ of Certiorarified Mandamus calling for the records relating to the letter in Ka.No.145/Aa.Pa.Pi/2019 dated 15.05.2019, on the file of the second respondent and quash the same and consequently direct the respondents to release the sale deed dated 23.11.2012, registered as document No.1104 of 2012, in the Office of the second respondent, forthwith.

2. The petitioner purchased the property situated at old door No.8, new door No.17 Sriram Nagar, South Street, Alwarpet, Chennai to an extent of 1236 sq.ft. together with undivided share of land admeasuring 618 sq.ft. for valid sale consideration by the sale deed dated 23.11.2012. The said sale deed was presented for registration with all registration fees and stamp duty on 23.11.2012. The same was registered as document No.1104 of 2012. However, the said sale deed was not released by the second respondent. Therefore, the petitioner made representation and also filed writ petition to consider his representation in WP.No.13996 of 2019. While pending the writ petition, the second respondent issued the impugned order dated 15.05.2019 stating that the sale deed in document No.1104 of 2012 dated 23.11.2012 has been impounded and pending for action to be taken under Section 33A of the Indian Stamp Act, 1899.

3. The learned counsel for the petitioner would submit that as per second proviso to the Section 33A of the Indian Stamp Act, 1899, the enquiry to be conducted within a period of three years from the date of registration of the instrument. Whereas in the case on hand, the sale deed was presented for registration on 23.11.2012 and the same has been registered vide document No.1104 of 2012. After period of nearly seven years, the impugned order has been passed stating that the sale deed dated 23.11.2012 has been impounded to take action under Section 33A of the Indian Stamp Act.

4. Heard, Mr.Abdul Majeed W.M., the learned counsel for the petitioner and Mr.A.Selvendran, Special Government Pleader appearing for the respondents.

5. On perusal of the counter filed in WP.No.13996 of 2019, revealed that the sale consideration for the sale has been stated as Rs.76,00,000/-. But contrary to that, the petitioner set forth the value of the property at Rs.40,84,000/- adopting

the guideline value. Article 23 of Schedule I to the Indian Stamp Act, 1899 mandates that in respect of conveyance of sale, the stamp duty shall be paid on the market value of the property and not on the guidelines value. Guidelines value is one which is provided to assist the registering officer to find out whether any undervaluation of property is made. Therefore, there is a deficit stamp duty of Rs.2,45,000/- and deficit registration fees of Rs.35,160/- due from the petitioner and the action is taken under Section 33A of the Indian Stamp Act, 1899 to recover the deficit stamp duty and registration fee under Section 80A of the Registration Act. Though the second respondent passed order to impound the sale deed dated 23.11.2012 to take action under Section 33A of the Indian Stamp Act, till today, the petitioner was not served with any notice to conduct enquiry even after expiry of three years. It is relevant to extract proviso to Section 33A of the Indian Stamp Act, 1899 hereunder:

> "33-A. Recovery of deficit stamp duty:
>
> (1) Notwithstanding anything contained in section 33 or in any other provisions of this Act, if, after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the cast may be, may, on a certificate form the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty as an arrear of land revenue:
>
> Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard.
>
> Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument.
>
> (2) The certificate of the Registrar of the district under sub-section (1) shall, subject only to appeal under sub-section (3), be final and shall not be called in Question in any court or before any authority.
>
> (3) Any person aggrieved by a certificate of the Registrar of the district under sub-section (1) may appeal to the Chief Controlling Revenue Authority. Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed"

Accordingly, after the registration of any instrument under the

Registration Act, if found that the proper stamp duty has not been paid or has been insufficiently paid, the certificate from the Registrar of the said District will be issued to recover the same from the person liable to pay stamp duty as an arrear of land revenue. Such certificate shall be issued after giving an opportunity of being heard. Such enquiry shall be commenced within a period of three years from the date of registration. After enquiry, if any certificate is issued by the Registrar of the District, can be appealable before the Chief Controlling Revenue Authority i.e. Inspector General of Registration.

6. Whereas in the case on hand, the sale deed was presented for registration on 23.11.2012 and the same had been registered as document No.1104 of 2012. Even then, the sale deed was not released and as such the petitioner made representation on 20.03.2019. Since no action was taken and the petitioner was constrained to file writ petition in WP.No.13996 of 2019. While pending the writ petition, the impugned order has been passed and the same is also under challenge in WP.No.22323 of 2019. Therefore, the sale deed dated 23.11.2012 registered vide document No.1104 of 2012 cannot be impounded for the reason that action under Section 33A of the Indian Stamp Act, 1899 cannot be taken after expiry of three years from the date of registration i.e. 23.11.2012.

7. In view of the above, the impugned order dated 15.05.2019 is set aside and the writ petition in WP.No.22323 of 2019 is allowed. Accordingly, the second respondent is directed to release the sale deed dated 23.11.2012 registered vide document No.1104 of 2012 forthwith.

8. In view of the above order passed in WP.No.22323 of 2019, the writ petition in WP.No.13996 of 2019 filed for direction directing the respondent therein to release the sale deed dated 23.11.2012 registered as document No.1104 of 2012 is closed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Registrar,
   Chennai

2. The Joint Sub Registrar-I,
   District Registrar's Office,
   Chennai

+2cc to Mr.W.M.Abdul Majeed, Advocate, S.R.No.59330, 59331

+1cc to the Government Pleader, S.R.No.60064

WP.Nos.13996 & 22323 of 2019

JPL(CO)
RGA(09/12/2021)