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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 22866 of 2014
and
W.M.P. Nos. 1 and 2 of 2014

E.Kavitha

...Petitioner

-vs-

1. The District Registrar,
(ARG Rank Registration Department),
Office of the District Registrar,
Sivan Cinema Theater near,
Weavers Colony,
Tirupur District.

2. The Sub Registrar,
Office of the Sub Registrar,
Avinashi, Tirupur District.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order dated 30.12.2013 passed by the second respondent and the consequential order made in Na.Ka.No.2531/B1/2014 dated 28.05.2014 by the first respondent and quash the same and further direct the second respondent to register the unregistered document No.P.133/2012 dated 07.08.2012 returned to the petitioner pertains to the agricultural land comprised in Survey No.12/1B, Sembianallur Village, Avinashi Taluk, Tirupur District forthwith.

For Petitioner : Mr.G.Ethirajulu
For Respondents : Mr.Richardson Wilson
Counsel for Government

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to the order dated 30.12.2013 passed by the second respondent and the consequential order made in Na.Ka.No.2531/B1/2014 dated 28.05.2014 by the



first respondent and quash the same and further direct the second respondent to register the unregistered document No.P.133/2012 dated 07.08.2012 returned to the petitioner pertains to the agricultural land comprised in Survey No.12/1B, Sembianallur Village, Avinashi Taluk, Tirupur District forthwith.

2. The petitioner presented a document for registration which was refused by the respondent / registering authority, i.e., second respondent, on the ground that, the necessary patta copy had not been annexed or produced. Only on that ground, the document was not entertained by the registering authority, i.e., second respondent and accordingly, he has passed the rejection order on 30.12.2013. As against the said order, the petitioner preferred an appeal on 08.05.2014 to the first respondent, who also, after having considered the request of the petitioner, rejected the appeal through the impugned order dated 28.05.2014 not on merits, but only on the ground of limitation, as against which, the present Writ Petition has been filed.

3. Though such a prayer had been sought for by the petitioner, when the Writ Petition was taken up for hearing, it was the submission by Mr.G.Ethirajulu, learned counsel appearing for the petitioner that, during the pendency of the Writ Petition, subsequently, since the petitioner has got the patta which was the requirement of the second respondent, he had presented another instrument for the very same transaction and accordingly, the same got registered in the second respondent office, thereby, the purpose to get registration is over and the transaction completed.

4. However, the learned counsel appearing for the petitioner not stopping with that, has further made a request before this Court to give a liberty to prefer an application to the concerned authority, i.e., Collector (Stamps) as contemplated under the Indian Stamp Act, 1899 to refund the stamp duty that has been paid for the original instrument, which was refused or not entertained in the registration, which itself triggered to file this Writ Petition.

5. In this context, the grievance appears to be on the part of the petitioner is that, since there has been a statutory limitation prescribed under the provisions of the Indian Stamp Act, in filing or pursuing the application for getting refund of the stamp duty for the unused or unregistered documents, such limitation since has admittedly been over, beyond the limitation period now, if the petitioner goes before the Collector (Stamps) with the application to refund the stamp duty, the same shall not be entertained by the Collector (Stamps) and in this regard only the learned counsel appearing for the petitioner seeks indulgence of this Court to give a liberty.



6. However, Mr. Richardson Wilson, learned counsel for the Government appearing for the respondents by relying upon Sections 49 and 50 of the Indian Stamp Act, would submit that, insofar as the case of the petitioner is concerned, what are all the circumstances, under which, a person can seek for refund of the stamp duty since has been enumerated under Section 49 of the Indian Stamp Act, it can fit in under sub-section (6) of 49, provided the petitioner must establish her case that the stamp used in the first instrument has become useless in consequence of the transaction intended to be thereby effected or being effected by some other instrument between the same parties and bearing a stamp of not less value.

7. He would also submit that, if at all, the petitioner is able to establish her rights to make an application for getting the stamp duty as contemplated under sub-section (6) of 49 of the Indian Stamp Act, such application shall be filed in the manner prescribed under Section 50 of the said Act. He would also submit that, by relying upon the provisions of Section 50, such application shall be filed within a time frame of six months, and if no such application is filed, certainly, since it is a statutory limitation, which cannot be extended or kept open by the authority who is otherwise empowered to entertain such application, i.e., Collector (Stamps) and therefore, only with the said apprehension, the petitioner seeks liberty. The learned counsel for the Government also submits that, if at all this Court is inclined to give such liberty, that shall not be construed by the respondents or the Collector (Stamps) to entertain the proposed application to be submitted by the petitioner under Section 50 of the Indian Stamp Act, as if that, it has been made within the time and in this regard, whatever be the decision to be made by the Collector (Stamps), on receipt of such application from the petitioner, that decision shall be in accordance with the provisions of the Indian Stamp Act, especially in the context of Sections 49 and 50 of the Act and in this regard, the power conferred with the Collector (Stamps) under the said provisions of the Indian Stamp Act, shall not be denuded by the orders of this Court in the name of the liberty which is sought for now by the learned counsel appearing for the petitioner.

8. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. Insofar as the prayer sought for in this Writ Petition is concerned as has been submitted by the learned counsel appearing for the petitioner that, in view of the subsequent registration having been completed during the pendency of the Writ Petition



on the same transaction of the same property between the parties, the question of giving any further direction, even if the impugned order is found to be a unjustifiable one does not arise, as the petitioner need not once again register the document for the same property or same transaction between the parties. Therefore, virtually, the prayer sought for in this Writ Petition in the considered opinion of this Court has become infructuous.

10. However, insofar as the present plea made by the learned counsel appearing for the petitioner to seek liberty to approach the Collector (Stamps) for the purpose of refund of the stamp duty is concerned, it is open to the petitioner to make such application in the manner known to law especially in the context of Sections 49 and 50 of the Indian Stamp Act as referred to above.

11. If such an application is made by the petitioner, the Collector (Stamps) shall look into and decide the same as to the entertainability or otherwise of the said application in the teeth of the statutory limitation prescribed under Section 50 of the Act and once the Collector (Stamps) comes to the conclusion that it can be entertained beyond the limitation period for any plausible reason to be substantiated by the petitioner, in this regard, it is open to the Collector (Stamps) to entertain the same and pass orders thereon on merits in accordance with law.

12. With the above liberty and observations, this Writ Petition is dismissed for the reasons stated above. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vji
To

1. The District Registrar,
(ARG Rank Registration Department),
Office of the District Registrar,
Sivan Cinema Theater near,
Weavers Colony,
Tirupur District.



2. The Sub Registrar,
Office of the Sub Registrar,
Avinashi, Tirupur District.

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+1 CC to Mr.G.Ethirajulu, Advocate sr 31791.

+1 CC to The Government Pleader sr 32006.

W.P. No. 22866 of 2014

and

W.M.P. Nos. 1 and 2 of 2014

GMI (CO)

SP(09/07/2021)