



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.24403 of 2021

Rajesh

...Petitioner

-Vs-

The Sub Registrar,
Avalpoondurai,
Erode District.

...Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Refusal Check Slip in refusal number RFL/Avalpoondurai/135/2021 dated 26.10.2021 and to quash the same as illegal and incompetent and consequently direct the respondent to register the amended decree dated 21.06.2019 passed in O.S.No.169 of 2019 on the file of the Principal District Judge, Erode.

For Petitioner : Mr.C.Ramaraj for
Mr.M.Guruprasad

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

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Refusal Check Slip in refusal number RFL/Avalpoondurai/135/2021 dated 26.10.2021 and to quash the same as illegal and incompetent and consequently direct the respondent to register the amended decree dated 21.06.2019 passed in O.S.No.169 of 2019 on the file of the Principal District Judge, Erode.

2.Heard, Mr.M.Guruprasad, learned counsel appearing for the petitioner and Mr.A.Selvendran, learned Special Government Pleader appearing for the respondent.

3. The case of the petitioner is that pending Civil Suit between the family members of the petitioner, they entered into



a compromise. In view of the compromise, the properties were settled in respect of their respective shares and the said settlement memo had been recorded in O.S.No.169 of 2019 on the file of the Principal District Court, Erode. As per settlement, 'B' Schedule of the properties were allotted to the petitioner. The petitioner filed a petition for amendment of schedule of property and the same was allowed on 18.12.2019. Thereafter, the petitioner presented the same before the respondent, on receipt of the same, it was pending as document No.137 of 2019. Further, the respondent directed the petitioner to pay penalty of Rs.27,500/- for the delay in presenting the document for registration, as per Section 25 of the Registration Act, 1908.

4. Accordingly, the petitioner paid the penalty and the decree was registered as document No.231 of 2020 by the respondent. Thereafter, the petitioner came to know that the portion of the property in the 'B' Schedule property in survey numbers have been recorded in old survey number. Therefore, the petitioner was unable to make sub division in the subject property. As per the amendment petition in I.A.No.68 of 2021 in O.S.No.169 of 2019 to amend the old survey numbers to new survey numbers and the same was allowed on 25.03.2021 and obtained certified copy of the same on 07.10.2021. Again, the petitioner presented the said decree before the respondent for registration on 26.10.2021. However, it was returned for the reason that it was presented for registration after lapse of 240 days from the date of execution.

5. The very same issue had already been settled by this Court in W.P.No.3012 of 2020, wherein it was held as follows :

"5. The learned counsel for the petitioner submitted that the petitioner wants the decree to be registered mainly on the ground that his title has been declared to the property and he wants it to be reflected in the encumbrance certificate. The learned counsel submitted that, even though Section 23 of the Registration Act provides for a limitation, the same is only directory in nature and it is not mandatory. To substantiate his submission, the learned counsel relied upon the judgment of this Court in K.Krishnan vs. Inspector General of Registration and Another reported in (2019) 6 MLJ 523. The learned counsel also relied upon the judgment of this Court in Lakshmi vs. The Sub Registrar, Valapady, Salem District reported in 2017 1 LW 721.

6. The learned Special Government Pleader appearing on behalf of the respondent submitted that the respondent had refused the registration only after noticing the relief of mandatory injunction.



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The learned counsel submitted that in view of the specific stand taken up by the learned counsel for the petitioner, the petitioner can be directed to present the decree again for registration and the same will be taken on file by the respondent and the same will be registered in accordance with law.

7. In the considered view of this Court, the petitioner wants the decree to be registered since his title has been declared by a competent civil Court with regard to the suit property. As rightly contended by the learned counsel for the petitioner, the limitation provided under Section 23 of the Registration Act is only directory in nature and it cannot be put against the petitioner who wants to register the Court decree. The judgment cited by the learned counsel for the petitioner will squarely apply to the facts of the present case.

8. In view of the above, the petitioner is directed to represent the decree before the respondent and the respondent on receipt of the document shall take it on file and register the same in accordance with law."

6. That apart, the petitioner had already paid a sum of Rs.27,500/- towards the delay for registration of the decree. The delay was not the fault of the petitioner and only due to the above said reasons. Therefore, the limitation prescribed under Section 23 of the Registration Act is not applicable for the Civil Court decree and levying of penalty by the respondent is illegal and the same is non-est of law.

7. In view of the above, the impugned Refusal Check Slip in refusal number RFL/Avalpoondurai/135/2021 dated 26.10.2021, is liable to be set aside. The petitioner is directed to represent the decree before the respondent and on receipt of the same, the respondent is directed to register and release the same forthwith.

8. In the result, the writ petition stands allowed. No costs.

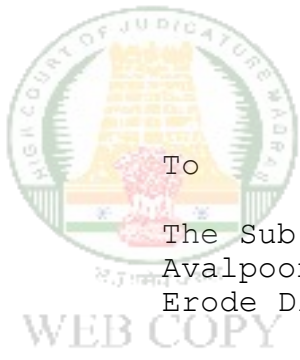
Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Lpp



To

The Sub Registrar,
Avalpoondurai,
Erode District.

+1cc to M/s.M.Guruprasad, Advocate, S.R.No.59157

+1cc to the Government Pleader, S.R.No.59764

W.P.No.24403 of 2021

RR(CO)
RGA(22/12/2021)