IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NOS.780 & 781 OF 2017 AND C.M.P.NOS.10817 TO 10819 OF 2017

1.The Inspector General of Registration,
Inspector General Office,
No.120, Santhome High Road,
Chennai 600 026.

2.The Special Deputy Collector (Stamps),
III Floor, Collectorate (District Collector's Office),
Salem 636 001.

3.The SpecialTahsildar (Stamps),
Taluk Office,
Trichy Main Road,
Namakkal.

4.The Sub Registrar,
Joint II Sub Registrar Office,
Taluk Office Campus,
Mohanur Road, Namakkal. ... Appellants in both W.As

-vs-

N.Periyannan ... Respondent in both W.As

Prayer in both appeals: Writ Appeals filed under Clause 15 of the Letters Patent against the order of the Hon'ble Mr.Justice R.Subbiah dated 11.03.2016 made in W.P. Nos.6549 and 6550 of 2016 on the file of this Court.

Prayer in W.P. Nos.6549 of 2016:-

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 of the 2nd respondent pertaining to Form 1 dated 31.07.2014 in Ci. Pa. No. 2831/2014 NKL SDC and quash the same and consequently direct the respondents to release the sale deed dated 05.04.2013 bearing document No. 1792/2013 pending before the 4th respondent in respect the lands situate at S.F. Nos. 524/4 and 524/5

Lathuvadi Village Namakkal Taluk by considering the petitioners representation dated 28.12.2015 and the judgment of this Honourable Court in Tata Coffee Limited versus the State of Tamilnadu reported in 2008-3-CTC-614

Prayer in W.P. Nos.6550 of 2016:-

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 of the 2nd respondent pertaining to Form 1 dated 31.07.2014 in Ci. Pa. No. 2832/2014 NKL SDC and quash the same and consequently direct the respondents to release the sale deed dated 05.04.2013 bearing document No. 1793/2013 pending before the 4th respondent in respect the lands situate at S.F. Nos. 520/1A 520/1B 520/3B 520/1D 521/1 and 521/2 Lathuvadi Village Namakkal Taluk by considering the petitioners representation dated 28.12.2015 and the judgment of this Honourable Court in Tata Coffee Limited versus the State of Tamilnadu reported in 2008-3-CTC-614

For Appellants in both appeals : Mr.T.Arunkumar,
Government Advocate

For Respondent in both appeals : Mr.Ragul Adithya

COMMON JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The Inspector General of Registration and three others have brought these appeals questioning the correctness of the order dated 11.03.2016 passed by the learned Single Judge in W.P. Nos.6549 and 6550 of 2016 directing the Registering Authority to affix a seal while releasing the original deed or conveyance or any other documents indicating that a reference is pending under Section 47-A with respect to undervaluation and assessment of stamp duty payable and as and when the proceedings reached finality, the same should be intimated to the person, who is liable to pay stamp duty, demanding payment of deficit stamp duty payable on the instrument.

2.Mr.T.Arunkumar, learned Government Advocate appearing for the appellants, assailing the impugned order, argued that the sole issue raised in these appeals is whether the fourth appellant, the Sub Registrar, Joint II Sub Registrar Office, after registering the sale deed, while referring the same under Section 47-A(1) of the Stamp Act to the Special Deputy Collector (Stamps), the second respondent herein for determining the deficit stamp duty, shall return the instrument or not? Placing on record a judgment of this Court in the case of the Special Deputy Collector (Stamps) and another vs. M.Alfred and others in a batch of writ appeals in W.A. (MD) Nos.1176 to 1179 of 2017 etc. dated 09.10.2017, learned Government Advocate appearing for the appellants submitted that the said issue is no longer res integra in as much as the said judgment has categorically held that the registering authority, while entertaining the document or instrument or conveyance, doubting under valuation of the instrument, shall refer the same to the Special Deputy Collector (Stamps) under Section 47-A of the Stamp Act for further adjudication. Therefore, the question of releasing or returning the instrument to the owner of the instrument has been ruled out.

3.Learned Government Advocate appearing for the appellants further submitted that after registering the sale deeds under Section 47-A(1) of the Stamp Act, the Sub Registrar, the fourth appellant herein has referred the instrument to the second appellant, who has passed final order, after giving reasonable opportunity to the respondent. Thereafter, the respondent took up the matter by way of Appeal to the first appellant, the Inspector General of Registration and the same is pending for consideration. Since the legal issue is very clear holding that after making endorsement and getting the certification ready, the registration of the document shall be deemed to be completed and thereafter, the document shall then be returned to the person, who presented the same for registration, in the present case, when the fourth appellant has made an endorsement by quantifying the stamp duty payable by the respondent, as per sub clauses 3 and 4 of Rule 47(7) of the Indian Stamp Act, the registering authority and the Collector are mandated to perform their respective roles and the payment of duty determined being mandatory, the same has to be followed by the certification of the Collector by way of an endorsement on the instrument. Unless these two requirements are satisfied, there is absolutely no question of releasing the instrument in the absence of any right accrued through the provisions.

4.In support of his submission, placing reliance on the above judgment, learned Government Advocate appearing for the appellants submitted that 47-A(4) of the Indian Stamp Act speaks about the charge and such a charge is on the property mentioned in the instrument and that charge is not on the instrument, but on the property. Therefore, when the law has been settled, the question of releasing the instrument does not arise unless the deficit stamp duty indicated by the registering authority has been paid by the respondent. In view of the above, the impugned order passed by the learned Single Judge directing the appellants to release or return the instrument pending adjudication before the first respondent is un-justified.

Therefore, the same be set aside by allowing these appeals.

5.Opposing the above prayer, learned counsel appearing for the respondent submitted that when the respondent, having purchased the lands covered under S.F. Nos.524/4 and 524/5 Nos.520/1A, 520/1B, 520/3B, 520/1D, 521/1 and 521/2 respectively situated at Lathuvadi Village, Namakkal Taluk and District to the extent of 2.96 and 6.73 acres under Sale Deed dated 05.04.2013 bearing Document Nos.1792/2013 and 1793/2013 respectively for the total sale consideration of Rs.40,00,000/- and Rs.1,60,00,000/- by paying stamp duty of Rs.2,80,000/- and Rs.11,20,000/- respectively for running poultry shed, approached the fourth appellant for registration of the above sale deeds, the fourth appellant, after registering the same, doubting the deficit stamp affixed on the instrument, referred the same under Section 47-A(1) of the Stamp Act. No doubt, the fourth appellant is having authority under Section 32-A of the Act to refer the instrument to the Collector of such District in which either the whole or any part of the property is situated for determining of the true market value of such property and the proper duty payable on the instrument, if he has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject matter of such instrument. Referring to suo motu power under Section 47-A(3) of the Indian Stamp Act, learned counsel for the respondent submitted that the Collector vested with suo motu power, within a period of four years from the date of registration of any instrument on which duty is chargeble on the market value of the property, not already referred to him under sub-section (1), can also call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject of such instrument and the duty payable thereon and if after such examination he has reason to believe that the market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon, but, the same cannot be deprived of the benefit of getting the document for five long years which has been mandated by the impugned judgment that the appellant registering authority shall, after registration of the instrument return or release the document to the owner of the conveyance. Therefore, no fault can be found to interfere with the impugned order. In support of his submission, the learned counsel for the respondent placed reliance on two judgments of this Court in the case of the District Registrar and others vs. R.Chidambara Raja Ratinam and others in W.A. (MD) No.1099 of 2016 and the Inspector General of Registration and others vs. Aswin Exim India Pvt. Limited in W.A. No.1346 of 2016 for a proposition that the registering authority, after registering the document, shall return the instrument to the owner of the instrument of conveyance, even if he referred the instrument/ sale deed/gift to the Collector for determination of the market value of such property. Therefore, the learned Single Judge has rightly held that the registering authority cannot refuse to return or release the document while referring the matter for appeal before the appropriate forum.

6.But we are not able to find any justification on the submission made by the learned counsel appearing for the respondent. The reason being that Section 47-A speaks clearly that if the registering authority, while registering any instrument of conveyance, namely, exchange, gift, release of benami right or settlement) has reason to believe that the market value of the property of which is the subject matter of conveyance, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon and on receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance and the duty as aforesaid and the difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty. The issue involved in the present case has already been considered by the Gujarat High Court in the case of Champaklal vs. State of Gujarat and others reported in AIR 1988 Gujarat 29 (1). While referring to Sections 60 and 61 of the Registration Act, the Gujarat High Court has held that Sections 60 and 61 cannot be so interpreted as to impose an absolute obligation on the registering officer to return the document immediately after registration even though it becomes necessary for him either to retain the same or to deal with it in a similar manner if some other law requires that to be done. It is pertinent to extract the above judgment as under:

> 'Sections 60 and 61 cannot be so interpreted as to impose an absolute obligation on the registering officer to return the document immediately after registration even though it becomes necessary for him either to retain the same or to deal with it in a similar manner if some other law requires that to be done.'

7.It may be mentioned herein that in one of the judgments referred by the counsel for the respondent in the case of the District Registrar and others vs. R.Chidambara Raja Ratinam, it has been held that in 1998 (III) CTC 366 (M.Krishnan and 44 others vs. the District Collector, Erode District and two others), 2002 (3) CTC 544 (B.Rajappa and another vs. The Special

Deputy Collector (Stamps)] and 2003 (4) LW 193 [S.R.Sengotavelu, Servampatti vs. The District Collector, Namakkal and 4 others], it has been held that when an instrument is presented for registration, the Sub Registrar must prima facie come to a conclusion as to whether the property is properly valued or not. If the Sub Registrar prima facie satisfies that the property is undervalued, he must record the reasons and refer to the Collector under Section 47-A of the Indian Stamp Act. Even though no time limit is fixed, the Sub Registrar must refer the matter within a reasonable time. When a Sub Registrar registered the document, he has power to retain the same after registration. It is relevant to extract the above portion as under:

> '.....when an instrument is presented for registration, the Sub Registrar must prima facie come to a conclusion as to whether the property is properly valued or not. If the Sub Registrar prima facie satisfies that the property is undervalued, he must record the reasons and refer to the Collector under Section 47-A of the Indian Stamp Act. Even though no time limit is fixed, the Sub Registrar must refer the matter within a reasonable time. When a Sub Registrar registered the document, he has power to retain the same after registration. If the instrument is referred to the Collector under Section 47-A of the Indian Stamp Act, the Sub Registrar can make an endorsement in the instrument that proceedings under Section 47-A of the Indian Stamp Act is pending and release the document to the party. This will safeguard the interest of revenue.'

8.A perusal of the above observation shows that if the instrument is referred to the Collector under Section 47-A of the Indian Stamp Act, the Sub Registrar can make an endorsement in the instrument that proceedings under Section 47-A of the Indian Stamp Act is pending and release the document to the party and this will safeguard the interest of revenue. But the above judgment says that the registering authority can make an endorsement and release the document, which does not mean that he shall return or release the conveyance. This position has been further clarified by the Gujarat High Court in the earlier judgment, which we have already referred above.

9.A Division Bench of Madurai Bench of Madras High Court in a batch of Writ Appeal (MD) Nos.1176 to 1179 of 2017 etc. by order dated 09.10.2017 has held that there is no question of return of the instrument by the registering authority, if a reference is made along with the instrument. It is pertinent to extract relevant portion as under:

'26.The learned Special Government Pleader appearing for the appellants in the Writ Appeals and the respondents in the Writ Petitions would submit that neither the registering authority nor the Collector is duty bound to return the instrument. As on today, about Rs.12,000 crores are to be collected by way of duty. The provisions of the Indian Stamp Act will have to be interpreted strictly. Even on a combined reading of the provisions under the Indian Stamp Act and the Registration Act, the documents both during and after adjudication are not liable to be given back. The learned Special Government Pleader had fairly produced number of judgments both in his favour and against him.

27.The learned counsel appearing for the respondents in Writ Appeals and the petitioners in the Writ Petitions would submit that in the absence of provision to withhold the documents they are to be returned. The registering authority cannot withhold the document. The same applies to the Collector as well. Section 47-A(4) of the Indian Stamp Act provides for a charge. Therefore, there is no need for withholding the document. Reference is with respect to the dispute and not the instrument. Thus, the writ petitions will have to be allowed and the writ appeals will have to be dismissed.

28.As discussed above, there is no question of return of the instrument by the registering authority, if a reference is made along with the instrument. In the absence of any provisions enabling the return of the instruments, the same cannot be given back. The provision for creating charge cannot be construed for an automatic release of the document. Even if we apply the principle of purposive and reasonable interpretation, the instrument cannot be released until and unless the duty determined is set aside or found to be wrong. In the light of discussions made above, we are of the view that the contentions raised by the learned counsel for the writ petitioners cannot be accepted.'

10.In the light of the above judgments referred supra, we are unable to support the reasoning given by the learned Single Judge. Therefore, it is made clear that the registering authority, while referring the matter before the Special Deputy Collector (Stamps), second appellant herein under Section 47-A

(1) need not release or return the instrument to the owner of the instrument. In view of the above, the impugned order is set aside and the writ appeals stand allowed. Consequently connected M.Ps are closed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vga

To

1.The Inspector General of Registration,
Inspector General Office,
No.120, Santhome High Road,
Chennai 600 026.

2.The Special Deputy Collector (Stamps),
III Floor, Collectorate (District Collector's Office),
Salem 636 001.

3.The SpecialTahsildar (Stamps),
Taluk Office,
Trichy Main Road,
Namakkal.

4.The Sub Registrar,
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+1cc to M/S.P.T.Ramadevi, Advocate, SR.No.34666
+1cc to Government Pleader, SR.No.34962

W.A.Nos.780 & 781 of 2017 and C.M.P.Nos.10817 to 10819 of 2017

RGN(CO)
PM(07/09/2021)