IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2022

CORAM

THE HON'BLE MR. JUSTICE T. RAJA
AND
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 3411 of 2019
and
C.M.P. No. 21944 of 2019

1. The Sub Registrar,
   Periamet,
   Poonamallee High Road,
   Chennai – 600 003.

2. The District Revenue Officer (Stamps),
   5th Floor, M.Singaravelar Maaligai,
   Collector Office,
   No. 32, Rajaji Salai,
   Chennai – 600 001.

3. The Inspector General of Registration,
   No. 100, Santhome High Road,
   Pattinappakkam,
   Chennai – 600 028. … Appellants/Respondents

-vs-

Hameed Syed Razool ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order passed in W.P. No. 34930 of 2015 dated 30.10.2015 and allow the present Writ Appeal.

For Appellants : Mr. K.V.Sajeevkumar,
Special Government Pleader

For Respondent : No appearance

O R D E R

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

The appellants have filed this writ appeal having been aggrieved by the directions given by the learned Single Judge in paragraph 4 of the order dated 30.10.2015 in W.P. No. 34930 of 2015 directing the 2nd respondent therein to return the document registered as Document No. 1438 of 2015 dated 28.05.2015 subject to the condition that can be imposed including the condition by affixing the seal along with endorsement indicating that the document is released pending proceedings under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act' for short) for undervaluation.

2. The respondent herein having purchased the subject property from one Tmt. Fathima Bi, W/o. Late Thiru. S.Abdul Malik and six others for valuable consideration, registered the same on 28.05.2015 as Document No. 1438 of 2015 on the file of the 1st appellant by paying the stamp duty as per the guideline value of Rs. 4,500/- (Rupees Four Thousand and Five

Hundred only) per square feet fixed on 01.04.2012. After the registration of the said document, the 1st appellant refused to deliver the document to the respondent herein and in turn, he received a notice dated 22.06.2015 under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, from the 2nd appellant stating that a communication has been received from the 1st appellant under Sections 47-A(1) and 3 of the Act informing that the respondent herein has to pay a sum of Rs. 1,32,300/- (Rupees One Lakh Thirty Two Thousand and Three Hundred only) as additional stamp duty since guideline value has been fixed as Rs. 8,000/- (Rupees Eight Thousand only) per square feet instead of Rs. 4,500/- (Rupees Four Thousand and Five Hundred only) per square feet. Therefore, the grievance of the respondent herein before the learned Single Judge was that when the document was registered as Document No. 1438 of 2015 on 28.05.2015 on payment of the stamp duty as per the guideline value fixed on 01.04.2012 fixing Rs. 4,500/- (Rupees Four Thousand and Five Hundred only) per square feet, if the authority comes to the conclusion that the respondent herein has paid only the deficit stamp duty undervaluing the subject property and the document in question was referred under Sections 47-A(1) and 3 of the Act, he should have returned the same with an endorsement that the proceeding is pending under Section 47-A(1) of the Act.

3. The appellants are assailing the impugned order as it runs contra to the judgment of the Division Bench in the case of ***The Special Deputy Collector (Stamps), Palayamkottai vs. M.Alfred*** reported in (2017) 6 CTC 449 :: (2017) 5 LW 212 wherein a direction had been given that if a registered document is subsequently referred under Section 47-A(1) of the Act during the pendency of the proceedings, the said document cannot be released until the deficit stamp duty is paid and the relevant portion is given hereunder:

> *"21. The object of the Registration Act is to give certainty to the title, preventing fraud, give evidentiary value to the documents and make them public (See In Re,* ***Official Liquidator, High Court****, [2010 (2) CTC 113]). Therefore, the provisions of the Registration Act and the Stamp Act are acting on their respective fields to achieve their distinct objects. They are not in pari materia. While Indian Stamp Act is actually a fiscal enactment, the Registration Act gives sanctity to the transactions. Section 61 of the Registration Act deals with endorsement and certificates to be copied and documents returned. This provision speaks about the return of documents. This has got nothing to do with the provisions of the Stamp Act, especially cases dealing with undervaluation and reference made under Section 47-A of the Indian Stamp Act. Therefore, the so called return can only be with respect to the document, over which no determination was made with respect to*

the market value of the property mentioned therein.

22. Registration Rules have been framed in exercise of power granted under the enactment. Rule 27(2) deals with a document deficiently stamped. The registering authority shall inform the party about deficiency and if agreeable, the same can be collected and certified by him under Section 41 of the Indian Stamp Act, 1899. In other cases, the documents shall be impounded and action has to be taken under the Act. Therefore, this provision speaks about the mandatory impounding followed by action. Explanation to Rule 27 wants to make the position clear regarding the registration qua undervaluation of an instrument. It thus explains that an issue pursuant to undervaluation cannot be a ground for return of a document. Therefore, it would mean a document has to be registered by the registering authority.

23. The Tamil Nadu Registration Manual-Part-II-Departmental Orders - 726 states as follows:

> *"726. (I) A reference by the registering officer to the Collector shall contain all details regarding the instrument including those specified in clause (b) to (f) and (h) of rule 9(2) of the Tamil Nadu Stamp (Prevention Undervaluation of Instrument) Rules, 1968 and shall be accompanied by the original instrument."*

24. Thus, the above said provision in clear terms requires *production of the original instrument.*

25. Whether it is a question of impounding, deficit stamp duty or undervaluation, the result appears to be the same. What is determined by the Collector has to be paid. This determination is the duty payable on the instrument. These three are to be considered from the perspective of the revenue. Therefore, one has to come to an irresistible conclusion that in the absence of any provision relating to release of document during the pendency and after adjudication, a Collector is not bound to do so.

26. Though, payment of duty is one thing and release of the document is the other thing, both are intertwined with each other. The enactment merely provides for registration, notwithstanding the issue pertaining to undervaluation. The said factor cannot be extended for the release of the document in the absence of any provision. To that extent, there is no conflict between the two enactments. With the above said understanding of the provisions of the two enactments, let us go into the contentions raised.

27. 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.*

28. 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.

29. ***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."***

It is also pertinent to extract the relevant portion of the order passed by the learned Single Judge as hereunder:

> *"4. Thus, the second respondent is directed to pass appropriate final orders within a period of 8 weeks from the date of receipt of a copy of this order. The pendency of the proceedings under Section 47-A of the Act cannot be a ground to withhold the document as held by the catena of decisions of this Court. Thus, the second respondent is directed to return the document registered as Document No. 1438 of 2015 dated 28.05.2015 subject to the condition that can be imposed including the condition by affixing the seal along with endorsement indicating that the document is released pending proceedings under Section 47-A of the Act for under valuation and the amount is liable to be paid. The Respondent shall release the said document within a period of two weeks from the date of receipt of a copy of this order."*

4. Since the Division Bench has vividly held against the respondent herein that in the absence of any provisions enabling the return of documents, the same cannot be released unless and until the stamp duty determined is set aside and found to be wrong, the impugned order is set aside. The 2nd

appellant is hereby directed to send a notice calling upon the respondent herein for enquiry and complete such exercise within a period of four weeks from the date of receipt of a copy of this order.

5. This writ appeal is disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

(T.R., J.) **(P.D.A., J.)**
07.09.2022

vjt

Index: Yes/No

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