IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.06.2024**

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Writ Appeal Nos.697 to 710 of 2013
and
M.P.Nos.1 and 2 of 2013

W.A. No.697 of 2013
and
M.P. No.1 of 2013

1. The Special Deputy Collector (Stamps),
Singaravelan Maligai, Chennai-600 001.

2. The Sub Registrar,
Sub Registrar Office,
Red Hills, Chennai – 600 052. ... Appellants

Vs.

Kanchana S/o. Krishnachand Chordia ... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 21.04.2008 made in W.P. No.33659 of 2007.

For Appellants : Mr. B. Vijay,
[in all W.A's] Additional Government Pleader

For Respondent [in all W.A's] : No appearance.

COMMON JUDGMENT

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.)**

A batch of intra-court writ appeals have been instituted challenging the common order dated 21.04.2008, issuing directions to release the documents registered under the provisions of the Registration Act, 1908.

2. It is not in dispute that the documents registered by the Registering Authority had been referred under Section 47-A of the Indian Stamp Act, to determine the market value and the stamp duty payable on such documents executed and registered under the Registration Act.

3. Since the registered documents were not released, during pendency of the proceedings initiated under Section 47-A of the Indian Stamp Act, the parties to the documents approached the High Court by instituting writ proceedings for releasing the documents. The Writ Court formed an opinion that mere reference and pendency of adjudication under Section 47-A

of the Indian Stamp Act is not a bar for release of documents by creating a charge on the documents. In this context, the writ court relied on the case of ***M.Ponnusamy and 42 others Vs. The District Collector, Erode & Others).*** Yet another case relied on by the writ court is that ***G.Karmegam and others Vs. The Joint Sub-Registrar, Madurai (2007 (5) CTC 737).*** Relying on the above judgments, the writ court allowed the batch of writ petitions and issued directions to release the documents by creating charge with consequential directions. Aggrieved by said directions, the State preferred the present writ appeals.

4. Mr.B.Vijay, learned Additional Government Pleader appearing on behalf of the appellants would submit that the issues raised in the writ petitions and the present writ appeals are no more *res integra.* The legal position was clarified by the Hon'ble Division Bench in the case of ***Special Deputy Collector (Stamps) and another Vs. M.Alfred and others*** reported in ***2017 (2) CWC 896.*** The principles laid down in ***M.Alfred's*** case has been reiterated in the case of ***The Special Deputy Collector (Stamps) and another Vs. K.Rajeswari*** in W.A.No.1488 of 2017 dated 18.12.2017.

5. In the case of ***M.Alfred's,*** the Hon'ble Division Bench considered

the earlier judgments relied on by the writ court in the order impugned in the present writ appeals. The provisions, role of the Registering Authority, scope of Section 47-A of the Indian Stamp Act and release of documents during the pendency of 47-A proceedings were elaborately considered. The Division Bench in paragraph nos.16, 24 and 28 held as follows:

> *"16. Section 47-A(4) of the Indian Stamp Act speaks about the charge. Such a charge is on the property mentioned in the instrument. The charge is not on the instrument, but on the property. Creating charge is one thing and release of document is another thing. However, the question for consideration is as to whether such a charge by itself give a right to get the document released, notwithstanding payment of duty determined. Keeping in mind the object of the enactment, necessarily we have to hold that no such right is available.*
>
> *17 to 23……………….*
>
> *24. 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 abound to do so.*

25 to 27…………..

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."

6. In paragraph No.28, the Hon'ble Division Bench in clear terms held that there is no question of return of instruments by the Registering Authority, if a reference is made along with the instrument. In the absence of any provisions enabling the return of instruments, the same cannot be given back. However, the Division Bench formed an opinion that a time limit is to be fixed for the purpose of completing the adjudication and passing of orders under Section 47-A of the Indian Stamp Act. Subsequently, necessary amendments were made in the Rules and Government issued G.O.Ms.No.174, Commercial Taxes and Registration Department dated 28.11.2017, fixing the time limit of 15 days for reference of the instrument to the Collector by the

Registering Authority under Section 47-A(1) of the Indian Stamp Act.

7. Again a dispute arises, whether the time limit of 15 days for making reference made under Rules are mandatory or directory. In this context, the Hon'ble Supreme Court of India held in the case of ***Inspector General of Registration, Tamil Nadu and others vs. K.Baskaran*** reported in ***(2020) 14 SCC 345*** as follows:

> "*32. We, therefore, hold the fixation of timeline of three months in Rule 7 to be purely directory. In the premises, the conclusion by the High Court holding the said provision to be mandatory is set aside, and no benefit on that ground can accrue to the respondents.*
>
> *33 to 46………..*
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> *47. There is nothing in the scheme of the Act which purports to restrict the exercise of suo motu power under Section 47-A, and confines it to cases where knowledge of any illegality or infirmity in the proceedings undertaken by the subordinate officers must be gathered from sources other than through a pending appeal. Unless the statute expressly or even by necessary implication restricts the exercise of power, there would be no occasion to read into the power, any other limitations. The High Court has not found the exercise of power*

to be invalid on any count, nor was any such submission advanced before the High Court. The High Court had simple gone on the existence of power rather than on the exercise of power. It is not as if the assessment made by the appellate authority was either opposed to principles of natural justice, or was so palpably incorrect, that it could never be sustained. In our view, the High Court completely erred in setting aside the exercise of power undertaken by the authority concerned. The exercise of power was definitely designed to obviate an obvious illegality and prejudice to the interest of the Revenue. The exercise was, thus, absolutely correct, and there was no occasion to set aside the orders passed in pursuance thereof. We, therefore, answer question 3 accordingly."

8. The Constitutional Courts have adopted the principles of purposive interpretations of the time limits fixed in various statutes. The purpose and objects sought to be achieved would be the prime consideration for forming an opinion whether the time limit fixed in the Act is directory or mandatory. In certain enactments, time limits are fixed, so as to ensure speedy disposal of the proceedings. In such cases, if the volume of documents, enquiry and investigations are unable to be completed within the time limit stipulated in the statute, then the Courts have to form an opinion that such time limits fixed under the Act are directory in nature. Merely on the ground

of non-completion of investigation or enquiry within the time limit would not be a ground to vitiate the entire proceedings. In such circumstances, if such serious proceedings are quashed merely on the ground of delay, it would result in mis-carriage of justice and injustice to the public cause. Therefore, the courts have adopted purposive interpretation to ensure that the objectives of the provisions of the Act are considered while forming an opinion that the time limit in the Act is directory or mandatory. However, in the present case, the Hon'ble Supreme Court has held that the time limit prescribed under the Rules are directory and not mandatory.

9. The Division Bench of this Court, in the case of ***M.Alfred,*** interpreted the provisions of the Indian Stamp Act and Registration Act and held that the return of instrument by the Registering Authority, if a reference is made cannot be claimed as a right. Only after disposal of the proceedings under Section 47-A, such right can be claimed in the manner contemplated under the Act and Rules. Regarding the time limit of 15 days also, the Hon'ble Supreme Court of India held that it is only directory and not mandatory.

10. Therefore, we are of the considered opinion that the common

order, which is under challenge cannot be sustained, in view of the legal position held by the Hon'ble Division Bench of this Court in ***M.Alfred's case*** and by the Hon'ble Supreme Court of India in the case of ***K.Baskaran***. Consequently, the common order dated 21.04.2008, is set aside and this batch of Writ Appeals stand **allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S.,J.] [C.K.,J.]
05.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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