BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6310 of 2024
and
W.M.P.(MD)Nos.5912 and 5913 of 2024

B.Sri Ramulu ... Petitioner

Vs.

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
108, Santhome High Road,
Pattinapakkam,
Chennai – 600 028.

2.The District Registrar (Administration),
Office of the District Registrar,
Dindigul.

3.The Sub – Registrar.
Nilakkottai Sub – Registrar Office,
Nilakkottai, Dindigul District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the 2nd respondent in respect of the order No.4423/2020 dated 04.08.2023 and quash the same and consequently direct the respondent to refund the stamp duty paid in respect of the pending document No.P 46/2019 and P 47/2019 on the files of Sub Registrar, Nilakkottai.

For Petitioner : Mr.S.Suresh, Senior Counsel,
For M/sAiyar and Dolia

For Respondents : Mr.M.Senthil Ayyanar,
Government Advocate.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Government Advocate for the respondents.

2.The petitioner wants to purchase the petition mentioned property from M/s.Dhanalakshmi Paper Mills Private Limited. The sale deed was presented for registration before the third respondent. It was kept as pending document. Now the petitioner does not want to pursue the transaction. He wants the document back. Since the registering authority declined to honour his request, the petitioner filed W.P.(MD)Nos.7343 and 7344 of 2023. The said writ petitions were disposed of on 31.03.2023 in the following terms:-

> *"4. Let the second respondent take a considered decision with respect to the representation given by the petitioner herein, examine the bonafide and if required, issue notice to the proposed vendor in the sale deeds and thereafter, pass necessary orders. The entire exercise must be completed within a period of 12 weeks from the date of receipt of a copy*

of this order. If any part of the stamp duty had already been paid, necessary adjustment may be made and the balance amount may be returned back to the petitioner, if rules permit."

Pursuant to the direction given by this Court, the second respondent passed the impugned order dated 04.08.2023 rejecting the petitioner's request. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the petitioner submitted that the issue raised in this writ petition is no longer res integra and that therefore, the impugned order should be set aside and relief shall be granted as prayed.

4.The learned Government Advocate for the respondents submitted that the impugned order does not warrant interference.

5.I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned counsel for the petitioner, a learned Judge of this Court vide order dated 31.08.2020 made in W.P.No.24289 of 2017 (K.Palaniammal Vs. The District Registrar (Administration), Namakkal and another) had held as follows:-

3. Mr.Tranquebar Dorai Vasu, learned counsel appearing for the petitioner submitted that the issue involved in the present Writ Petition is covered by the decision of this Court reported in ***2018 (1) CTC 309 [Purushothaman Nath Rallan v. The Inspector General of registration cum the Chief Controlling Revenue Authority, Chennai and others],*** *wherein I had an occasion to deal with this issue and held as follows:-*

> *" ... 14. On a perusal of Rule 107 of the Registration Rules, it could be seen that when an impounded document is received back from the Collector have adjudication of stamp duty, the Registering Officer shall immediately give notice in writing to the presentant or to the person authorized by the presentant to take delivery of the document either to take steps to complete the registration of the document or to take delivery of the document. From Rule 107, it is clear that even after adjudication of the stamp duty, the Registering Officer should give notice in writing to the executant either to take steps to complete the registration of the document by paying the adjudicated stamp duty or to take delivery of the document. The words either to take steps to complete the registration of the document or to take delivery of the document would mean that the executant should pay the necessary stamp duty as adjudicated by the Authority and get the document registered or to take delivery of the document as it is, without getting it registered, in which case, the document shall not have any legal sanctity. The said Rule is also supported by the provisions of Clause-17 (2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act. As per the said Clause, a fixed fee of Rs.20/- has been levied for withdrawing a document from registration.*
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> *15. It is pertinent to note that in the case on hand, the document, which was presented for registration on 12.08.2015 has not yet been registered, which is evident from the fact that only a pending number in P.No.180/2015 has been assigned by the 3rd respondent. In the case of the document being registered, in such a case, the petitioner cannot seek for withdrawing the document from registration. When the document itself has not yet been registered, I am of the considered view that the provisions of Rule 107 of the*

Registration Rules and the provisions of Clause-17 (2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act are applicable.

16. In the judgments relied upon by the learned Additional Advocate General, the provisions of Rule 107 of the Registration Rules and the provisions of Clause-17(2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act were not relied upon by the parties therein. Since the parties did not rely upon the provisions of Rule 107 of the Registration Rules and the provisions of Clause-17 (2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act, this Court had no occasion to deal with the said provisions in those two judgments. In the case on hand, since the learned counsel appearing for the petitioner is relying upon those two provisions, I am of the considered view that both the provisions are applicable to the case of the petitioner. If there is no provision under the Act for withdrawing a document from registration, there is no necessity for having Rule 107 of the Registration Rules and Clause-17(2)(b)(i) of the Table of Fees prepared under Section 78 of the Registration Act, enabling the executant to withdraw the document. From these two provisions, I am of the view that the petitioner can take delivery of the pending document in P.No.180/2015 dated 12.08.2015 without paying the demand made by the 3rd respondent and without getting the document registered. In such an event, the document viz., the Settlement Deed executed on 12.08.2015 shall not have any legal sanctity and the same should be treated as a cancelled document. The petitioner cannot rely upon the said document before anyone or any authority whomsoever.

17. In these circumstances, I direct the 3rd respondent to return the Settlement Deed dated 12.08.2015 pending for registration in P.No.180/2015 as requested in the petitioner's petition dated 07.11.2016 to the petitioner within one week from the date of receipt of a copy of this order, without demanding any additional stamp duty from the petitioner. However, I make it clear that the Settlement Deed dated 12.08.2015 presented for registration and pending in P.No. 180/2015, shall not have any legal sanctity and the said document should be treated as a cancelled document and it should not be produced before any individual or any authority for any reason whatsoever.”

The learned counsel also submitted that the said Judgment has been confirmed by the Division Bench of this Court by its Judgment dated 06.06.2019 in Writ Appeal No.1763 of 2019.

4. On a reading of the above, it is clear that the issue involved in the present Writ Petition is identical to the issue involved in the judgment relied upon by the learned counsel for the petitioner.

*5. Hence, following the ratio laid down in the judgment reported in **2018 (1) CTC 309 [cited supra]** which is also confirmed by the Division Bench of this Court in W.A.No.1763 of 2019, dated 06.06.2019, the impugned order dated 21.12.2016 is set aside. Consequently, I direct the 2nd respondent to return the partition deed dated 19.01.2016 bearing pending Document No.10 of 2016 as requested by the petitioner by their letter dated 25.07.2017, within a period of two weeks from the date of receipt of a copy of this order, without demanding any additional stamp duty from the petitioner. However, I make it clear that the Partition Deed dated 19.01.2016 presented for registration in pending Document No.10 of 2016. shall not have any legal sanctity and the said document should be treated as a cancelled document and it should not be produced before any individual or any authority for any reason whatsoever."*

6.The aforesaid decision squarely applies to the facts on hand. That apart, the reasons ascribed by the second respondent in the impugned order are also not quite relevant. The sin committed by the vendor cannot be allowed to fall on the petitioner. The petitioner being the proposed purchaser had obviously purchased the stamp papers. When he does not want to pursue the transaction, the document must be returned and the stamp duty must also be refunded.

7.Even though the petitioner had specifically referred to the earlier order passed by this Court, the second respondent has not chosen to apply the same. When the law has been categorically laid down by the highest Court of the State, the authorities are expected to follow the same. In this view of the matter, the impugned order is set aside and the writ petition is allowed. The third respondent is directed to return the document to the petitioner herein. On surrender of the defaced stamp papers by the petitioner, the stamp duty also shall be refunded as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To:-

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
108, Santhome High Road,
Pattinapakkam,
Chennai – 600 028.

2.The District Registrar (Administration),
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3.The Sub – Registrar.
Nilakkottai Sub – Registrar Office,
Nilakkottai, Dindigul District.

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