WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.18099 of 2023
and
W.M.P(MD)No.15108 of 2023

1.M.Thiruppathi

2.M.Maheswaran ... Petitioners

Vs

1.The District Collector,
District Collectorate Campus,
Madurai.

2.The District Revenue Officer,
District Collectorate Campus,
Madurai

3.The District Registrar,
Madurai South,
Madurai.

4.The Sub-Registrar,
Arasaradi Sub Registrar Office,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in No.3288/A1/2023, dated 10./7.2023, on the file of the third respondent and to quash the same as illegal and consequently to direct the respondents to refund the stamp duty amount of Rs.1,00,000/- under Section 41 of

https://www.mhc.tn.gov.in/judis

WEB COPY

the Indian Stamp Act, 1899, which is paid for registration of partition deed, within the time stipulated by this Court.

For Petitioners : Ms.B.Bhuvaneswari

For RR 1 to 4 : Mr.D.Sadiq Raja
Addl.Govt.Pleader

ORDER

This Writ Petition has been filed challenging the impugned order in No.3288/A1/2023, dated 10./7.2023, on the file of the third respondent and to quash the same as illegal and consequently to direct the respondents to refund the stamp duty amount of Rs.1,00,000/- under Section 41 of the Indian Stamp Act, 1899, which is paid for registration of partition deed, within the time stipulated by this Court.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The Petitioner and his family members owned properties. The Petitioner and his family members entered into partition deeds on 11.2.2021 and the same was presented for registration. The Petitioner paid a sum of Rs.75,000/- as stamp duty through challan and Rs.25,000/- by way of stamp paper. However, it could not be

https://www.mhc.tn.gov.in/judis

WEB COPY

registered for various reasons and the document was refused to be registered by the fourth respondent. The appeal filed by the Petitioner before the third respondent was also rejected and as such, the Petitioner could not be able to register the partition deeds and it was kept pending. While being so, the Petitioner submitted a representation on 25.02.2022 to refund the stamp duty as well as registration charges under Section 41 of the Indian Stamp Act. However, the Petitioner was refunded with the registration fees to the tune of Rs.17,160/- and failed to refund the stamp duty to the tune of Rs.1 lakh on the ground that the claim of the Petitioner was made belatedly and it is against the provisions under Section 50 and 49(d)(5) of the Indian Stamp Act.

4.On a perusal of the order, dated 29.3.2022, on the file of the third respondent would reveal that the Petitioner made an application as early as on 25.02.2022 for refund of registration fees and stamp duty which is paid at the time of registration of partition deeds for registration. In the very same proceedings, after rejection of appeal filed by the Petitioner, the original document was returned only on 21.6.2021. The partition deeds were presented for registration on 11.2.2021 and on the very same day, the said document was kept as a pending document in P.21/2021.Therefore

WEB COPY

the Petitioner submitted his claim of refund of registration fees as well as stamp duty. It is relevant to extract the provision under Section 49(d)(5) of the Indian Stamp Act, which reads as follows:

> *''**49.Allowances for spoiled stamps**:- subject to such rules as may be made by the State Government as to the evidence to be required or the enquiry to be made, the Collector may, on application made within the period prescribed in Section 50, as if he is satisfied as to the facts, make allowances for impressed stamps spoiled in the cases hereinafter mentioned namely*
>
> *(d)the stamp used for an instrument executed by any party thereto which--*
>
> *(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non acceptance of any office thereby granted, totally ails of the intended purpose.''*

5.Therefore an application for refund under Section 49 shall be made within a period of two months in the cases mentioned in Clause No.49(d)(5) of the Indian Stamp Act. Therefore the Petitioner fulfilled the period of limitation by submitting an application as early as on 25.2.2022. After rejection of the appeal

https://www.mhc.tn.gov.in/judis

WEB COPY

filed by the Petitioner as against the refusal of registration of partition deeds, the original document was returned to the Petitioner on 21.6.2021. After return of the original document, the Petitioner immediately submitted an application seeking refund of Court fee which were paid at the time of presentation of partition deeds for registration. Therefore it cannot be said that delay caused in seeking refund of registration fees as well as stamp duty. In fact, the request made by the Petitioner seeking refund of registration fees was considered and the Petitioner was refunded to the tune of Rs.17,160/- as registration fees by proceedings dated 23.9.22.However, the request made by the Petitioner seeking refund of stamp duty was rejected on 10.7.2023.On a perusal of the order impugned in this Writ Petition reveal that the Petitioner made an application on 3.12.2022 seeking refund of stamp duty. Subsequently, by way of G.O.77, Commercial Taxes and Registration(J1)Department, dated 15.3.2014, the Government ordered to appoint the District Registrars as Collectors for the purposes of Sections 49,52,53 and 54 of the Indian Stamp Act, 1899(Central Act II of 1899). However, the Petitioner was made to run from pillar to post and finally approached the third respondent for refund of registration fees. Therefore the said delay occurred and not wantonly and for the reasons stated above.

https://www.mhc.tn.gov.in/judis

WEB COPY

6.In view of the above, the order impugned herein is liable to be quashed and accordingly the same stands quashed and the Writ Petition is allowed. The third respondent is directed to disburse the stamp duty which was paid by the Petitioner at the time of presentation of partition deeds for registration within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

08.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
vsn

To

1.The District Collector,
District Collectorate Campus,
Madurai.

2.The District Revenue Officer,
District Collerctorate Campus,
Madurai

3.The District Registrar,
Madurai South,
Madurai.

4.The Sub-Registrar,
Arasaradi Sub Registrar Office,
Madurai.

https://www.mhc.tn.gov.in/judis

WEB COPY

G.K.ILANTHIRAIYAN, J.

vsn

Order made in
W.P(MD)No.18099 of 2023
and
W.M.P(MD)No.15108 of 2023

08.01.2025