BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P(MD)No.11163 of 2016

Ashwin Exim India Pvt., Ltd.,
Rep. By its Managing Director
A.Vishwanathan ... Petitioner

Vs.

1.The Inspector General of Registration and the
Chief Controlling Revenue Authority,
120, Santhom High Road,
Chennai-20.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

3.The District Revenue Officer(Stamps)
Office of the District Revenue Officer(Stamps)
Chennai District Collectorate Office,
5th Floor, Mr.Singaravelar Building,
32, Rajaji Salai,
Chennai-01.

4.The Sub-Registrar,
Office of Thoothukudi Melur,
Thoothukudi,
Thoothukudi District.

5.The Authorized Officer,
Indian Overseas Bank,
Regional Office,
No.21, Victoria Road,
Thoothukudi- 628 001,
Thoothukudi District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus directing the Fourth Respondent to deliver the original registered document No.1709 of 2016, dated 10.06.2016 to the Petitioner without insisting upon payment of additional stamp duty.

For Petitioner : Mr.B.Vinothkumar

For R-1 to R-4 : Mr.K.Mahesh Raja,
Government Advocate

For R-5 :Mr.N.Dilipkumar

O R D E R

Heard the Learned Counsel for the Petitioner, the Learned Government Advocate for Respondents-1 to 4 and the Learned Standing Counsel for the Fifth Respondent.

2. According to the Petitioner/Company, in the public auction, it took part in respect of Item No.5 and after making payment of Earnest Money Deposit of 10% of tendered sum, tender bid at a sum of Rs.43,30,000/-, in fact, the Petitioner/Company was declared to be the successful bidder. Being the successful and highest bidder, the Petitioner/Company paid the balance sale consideration after deducting 1% 'Tax Deduction at Sources'. On receipt of full sale consideration, the Fifth Respondent confirmed the auction in favour of the Petitioner and issued a Sale Certificate in the name of the Petitioner/Company under Rule 9(6) of SARFAESI Act, 2002. The possession of property was also handed over to the Petitioner/Company/Auction Purchaser.

3. It comes to be known that, on 01.06.2016, the Petitioner/Company presented the Sale Certificate before the Fourth Respondent/Sub-Registrar, Office of Thoothukudi Melur, Thoothukudi, Thoothukudi District, for registering the same by paying necessary registration charges and stamp duty to the tune of Rs.3,03.100/- and in fact, stamp duty was paid at the rate of 7% on Sale Certificate to the tune of Rs.43,30,000/-. In fact, the document was duly registered and a separate Document No.1709 of 2016 was given. After registration and the conveyance, the entire registration process was completed by the Fourth Respondent.

4. The grievance of the Petitioner is that the Fourth Respondent even after registration of the document, had not released or returned the registered Document bearing No.1709 of 2016. It appears that the Sub-Registrar, namely, the Fourth Respondent, had raised a doubt about the valuation and he expressed his intention that the valuation as projected in the Sale Certificate, was not commensurate with the guideline value fixed by the concerned Authority. Hence, the Petitioner has filed the present Writ Petition before this Court.

5. Per contra, it is the contention of the Learned Government Advocate for R-1 to R-4 that the Holder of the Sale Certificate, has to pay the stamp duty, in terms of the guideline value

prevailing as on the date of presentation of the Sale Certificate. Moreover, it is represented that the Fourth Respondent, is empowered to refer the Sale Certificate under Section 47A(1) of the Indian Stamp Act, 1899 if it is undervalued as per the guideline value relying on the common judgment in W.A.No.2407 and 2408 of 2010 of this Court between V.Sivakumar and others vs. Inspector General of Registration, Chennai.

6. At this stage, the Learned Government Advocate for R-1 to R-4 projects an argument that the Sale Certificate in question pertaining to the Petitioner/Company, is chargeable to stamp duty on the guideline value of the property prevailing as on the date of presentation of the Sale Certificate for registration and therefore, the Petitioner/Company has to pay the additional stamp duty as per the guideline value. In fact, the Fourth Respondent had acted well within his powers under the Indian Stamp Act and there is no violation. Also that, a notice was issued by the Fourth Respondent to the Petitioner to pay the deficit stamp duty on 13.06.2016 itself. But, the Petitioner has filed the present Writ Petition by approaching this Court with un-cleaned hands and suppressing all the facts in issue.

7. In response, the Learned Counsel for the Fifth Respondent/Bank submits that the Petitioner quoted the highest price and the sale was confirmed in its favour and it was directed to pay balance amount within another fifteen days by means of letter, dated 12.05.2016 of the Bank. Indeed, out of eight properties brought for auction, the property mentioned in Serial No.5, located in Survey No.1261/1, admeasuring 141 cents at Meelavittan Village-cum-Panchayat in Tuticorin Union, was purchased by the Petitioner for Rs.43.30 lakhs as against the upset price of Rs.42.30 lakhs fixed by the Bank. As a matter of fact, it is brought to the notice of this Court that the Petitioner/Company had paid the entire amount as directed by the Fifth Respondent/Bank and sought issuance of Sale Certificate and release of document through letter, dated 18.05.2016. In fact, a Sale Certificate, dated 01.06.2016 was issued by the Fifth Respondent/Bank.

8. To lend support to the contention that the Petitioner is not liable to pay the deficit stamp duty as sought for by the Fourth Respondent in his communication, dated 13.06.2016, the Learned Counsel for the Petitioner seeks in aid of the Division Bench Judgment of this Court in W.A.No.985 of 2015 between The Joint Sub-Registrar II, O/o.the Joint Sub-Registrar, Tiruppur, Tiruppur District, whereby and whereunder at Paragraph Nos.12 to 16, it is observed and held as under:

> 12. It is to be borne in mind that the Registration of a document shall be deemed to be conferred under Section 61(2) of the Indian Registration Act, 1908 only when it

is registered in terms of Section 58 to 61 and not otherwise. Further, in terms of the provisions of Sections 60 and 61 of the Indian Registration Act, the deed is registered at a latter date, but, by reason of Section 47 thereof the Right, Title and Interest in relation to the lands stands transferred from the date of execution of the deed of sale and not from the date of its registration as per decision Rahim Baker V. Sub-Registrar reported in AIR 2002 Kerala at Page 27 at Special Page 29.

13.It is to be relevantly pointed out that it is open to the State Legislature to lay down the basis for computing the Stamp Duty on the market value of the property as per decision Himalaya House Co., V. Chief Controlling Revenue Authority AIR 1972 SC at Page 899

14.Further, the basic valuation is only for the purpose of collecting the Stamp Duty and it cannot form the foundation to determine the market value as per decision U.P.Jal Nigam, Lucknow V. Kalrah Properties (P) Ltd., AIR 1996 SC at Page 1170

15.Also that, when the property is purchased through an Auction at the instance of a State Agency, then, it is not permissible to impeach the value set forth in the instrument of conveyance of title on an assumption it is not the true value as per decision Tungabhadra Holdings (P) Ltd., V. District Registrar and Collector, Medak District and Another AIR 2006 Andhrapradesh Page 383.

16.As far as the present case is concerned, the Learned Single Judge had disposed of the Writ Petition No.32166 of 2014 on 30.03.2015 by directing the Appellant/Respondent to register and release the document in question with an endorsement that release of the document would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act. Also, it was made clear that the concerned authority under the Indian Stamp Act was entitled to issue Notice in Form-I and proceed to adjudicate the matter regarding the Court Stamp Duty payable on the said Sale Certificate, affording opportunity of hearing to the Respondent/Petitioner to raise his objections etc., Indeed, the aforesaid directions and observations of the Learned Single Judge while disposing of the Writ Petition No.32166 of 2014 on 30.03.2015, in the considered opinion of this Court do not suffer from material irregularities and patent illegalities in the eye of Law. Consequently, the Writ Appeal fails.

9. The Learned Counsel for the Petitioner cites the decision of this Court between A.J.Mapillai Mahdeen, rep. By Power of Attorney Holder, K.Asokan vs. Sub-Registrar, Registration Department, Sub-Registrar Officer, Arakandanallur (2008) 7 MLJ 506, wherein it is observed and held as under:

> "Unless there is an under-valuation of the subject matter with fraudulent intension to evade proper payment of stamp duty, as per Section 47-A of the Indian Stamp Act the registering authority cannot refer the document to the Collector after registration for determination of the market value of such property and the proper duty to be payable therein. Therefore, when in this case the value was fixed by the public authority in the public auction, which is a material consideration for the assessment of the market value, the same cannot be doubted for reference under Section 47-A(1) of the Indian Stamp Act."

10. On a careful consideration of respective contentions and in view of the fact that the Petitioner is the highest/successful bidder in the auction held on 15.04.2016 and also this Court taking note of yet another primordial fact that the Petitioner had paid the full auction amount as directed by the Fifth Respondent and also the Sale Certificate, dated 01.06.2016 was issued in his favour by the Fifth Respondent/Bank and also this Court taking note of the entire gamut of the facts and circumstances of the present case, in an attendant fashion, to secure the ends of justice, directs the Fourth Respondent/Sub-Registrar, Office of Thoothukudi Melur, Thoothukudi, Thoothukudi District, to release the document No.1709 of 2016 in question by making an endorsement to the following effect that 'release of document would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act, 1899. Also, it is made crystal clear that the concerned Authority under the Indian Stamp Act, 1899, is empowered/entitled to issue notice in Form No-I and to proceed to adjudicate the matter regarding the stamp duty payable on the said Sale Certificate, by affording necessary opportunity of hearing to the Writ Petitioner and others concerned so as to enable him to raise objections etc.'

11. Before parting with the case, in the instant case, since the Fourth Respondent had issued notice to the Petitioner, dated 13.06.2016, to pay deficit stamp duty, the Petitioner is directed to send a detailed reply narrating the necessary facts in the subject matter in issue and to seek redressal of his grievance in the manner known to Law and in accordance with Law.

With the above said Direction(s)/Observation(s), this Writ Petition stands disposed of. No Costs.

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

1.The Inspector General of Registration and the
Chief Controlling Revenue Authority,
120, Santhom High Road,
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2.The District Collector,
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3.The District Revenue Officer(Stamps)
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4.The Sub-Registrar,
Office of Thoothukudi Melur,
Thoothukudi,
Thoothukudi District.

+1CC to M/S.B.Vinoth Kumar, Advocate, SR.No. 49619
+1CC to M/S.N.Dilip Kumar, Advocate, SR.No. 49085
+1CC to the Special Government Pleader, SR.No. 49139

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