IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

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THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.23291 of 2017 and
W.M.P.No.24389 of 2017

M/s.R.S.Paper Board
a Registered Partnership Firm,
rep by its Managing Partner S.Seeni Pandian
S/o.Sakkannadevar
having its Registered Office
at No.435/2, Town Planning Nagar,
Narasothipatty, Salem – 636 004. ... Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 028.

2.The Sub Registrar,
Velagoundanpatti, Salem. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the entire records of the 2nd respondent in his proceedings in Na.Ka.No.113/2017 dated 27.07.2017, quash the same and consequently, direct the 2nd respondent to return the registered document bearing No.592 of 2017 dated 08.06.2017, registered on 09.06.2017 along with refund of excess stamp duty of 2% already paid by the petitioner in Registered document No.592 of 2017 on the file of the 2nd respondent being Sale Certificate issued by the Indian Overseas Bank, Tiruchengodu Branch dated 05.05.2017.

For Petitioner : Mr.A.K.Kumarasamy, Senior Counsel for M/s.P.Sivakumar

For Respondents : Mr.S.N.Parthasarathi, Government Advocate

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the entire records of the 2nd respondent in his proceedings dated 27.07.2017 and to quash the same and consequently, direct the 2nd respondent to return the registered document bearing No.592 of 2017 dated 08.06.2017, registered on 09.06.2017 along with refund of excess stamp duty of 2% already paid by the petitioner pertaining to the Sale Certificate issued by the Indian Overseas Bank, Tiruchengodu Branch dated 05.05.2017.

2.It is the case of the petitioner that the Indian Overseas Bank, Tiruchengodu Branch had issued an E-auction notice under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act for selling the movable and immovable properties which were mortgaged to them by the borrowers. The petitioner Firm had participated in the auction and they were declared as the highest bidder, wherein it bid for a sum of Rs.1,10,85,400/- for immovable properties and for a sum of Rs.1,06,05,600/-

for the movable properties. On receipt of the entire Sale Consideration, the Indian Overseas Bank had issued a Sale Certificate dated 05.05.2017 under Rule 9(6) of the SARFAESI Act in favour of the petitioner Firm. Since the Sale Certificate pertaining to the immovable properties required registration, the Sale Certificate was presented for registration before the 2nd respondent and the 2nd respondent advised the petitioner to pay 7% stamp duty and 1% towards registration fee. The Sale Certificate was registered on 09.06.2017 as Document No.592 of 2017. When the petitioner approached the 2nd respondent for return of the registered document, it was informed by the 2nd respondent that it has to pay 7% stamp duty on guideline value/market value and not for the bid amount mentioned in the Sale Certificate and was directed to pay 2% over and above chargeable 5% stamp duty. That apart, the 2nd respondent by letter dated 27.07.2017 directed the petitioner to furnish the report regarding the value of the machineries. According to the petitioner, they are liable to pay stamp duty on the amount mentioned in the Sale Certificate and not on guideline value or market value.

3.Mr.A.K.Kumarasamy, learned senior counsel appearing for the petitioner submitted that the Sale Certificate issued under SARFAESI proceedings will have the stamp duty payable under Article 18 read with Article 23 of Stamp Act on the sale price fixed in the Sale Certificate as per the decision of this Court. In support of his contention, the learned senior counsel relied upon an un-reported judgment of this Court ***dated 30.06.2016 made in W.P.No.17257 of 2016 [Manickraj Vs. The Sub Registrar, Tiruvallur, Tiruvallur District and another]*** wherein this Court held that the petitioner is liable to pay the stamp duty of 5% and that it is not open to the Sub Registrar to claim stamp duty of 7% on the guideline value or market value and he cannot make a reference under Section 47-A of the Indian Stamps Act, 1899. The learned senior counsel also relied upon an un-reported judgment of this Court ***dated 08.08.2017 made in W.P.No.14315 of 2017 [M/s. Sulochana Cotton Spinning Mills (P) Ltd., Rep. by its Managing Director, S.Krishnakumar, S/o. M.Shanmugham, No.424, 426, Kamaraj Road, Tiruppur. Vs. The Inspector General of Registration, No.100, Santhome High Road, Chennai - 600 028 and others]*** wherein the same ratio was followed.

4.Mr.S.N.Parthasarathi, learned Government Advocate appearing for the respondents submitted that the issue involved in this Writ Petition is covered by the decisions relied upon by the learned senior counsel for the petitioner.

5.Since the issue involved in the present Writ Petition is covered by the decisions of this Court stated supra, the impugned order passed by the 2nd respondent dated 27.07.2017 is liable to be set aside and the 2nd respondent should be directed to refund the excess stamp duty of 2% paid by the petitioner. Accordingly, the impugned order dated 27.07.2017 passed by the 2nd respondent is set aside. The 2nd respondent is directed to refund the excess stamp duty of 2% paid by the petitioner. The 2nd respondent is also directed to return the registered Sale Certificate to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

6.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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12.09.2017

To

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 028.

2.The Sub Registrar,
Velagoundanpatti, Salem.

M.DURAISWAMY, J.

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