IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

CORAM

THE HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.15775 of 2017
and
W.M.P.No.17062 of 2017

E.Balasubramanian ... Petitioner

-Vs-

1. The Inspector General of Registration,
   100, Santhome High Road,
   Chennai 600 004.

2. State Bank of India,
   Stressed assets management Branch,
   No.1112, Raja Plaza, Avinashi Road,
   Coimbatore 641 037.

3. The Sub Registrar,
   Joint-2, Thirunelveli. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the 1st and 3rd respondents herein to register and release the Pending Document No.13/2017.

For Petitioner : Mr.S.Prabhakar, Senior Counsel
for Mr.M.A.Gouthaman

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader
for RR 1 and 3



O R D E R

The petitioner has filed the above writ petition to issue a writ of mandamus directing respondents 1 and 3 to register and release the Pending Document No.P13/2017.

2.It is the case of the petitioner that the second respondent had issued an e-auction sale notice dated 17.02.2017 under the SARFAESI Act bringing the properties mentioned therein for sale. The petitioner was the successful bidder in the e-auction, which took place on 09.03.2017. The petitioner had also paid the sale consideration of Rs.7,06,00,000/- for Item Nos.1 and 2 in Property No.1 mentioned in the schedule. After making the payment of the entire sale consideration, the second respondent handed over the possession of the property to the petitioner. Thereafter, the petitioner and the second respondent presented the sale certificate dated 29.05.2017 for registration before the third respondent and the third respondent had accepted the registration and kept it as Pending Document No.P13/2017. The petitioner had also paid a sum of Rs.35,30,000/- towards stamp duty and Rs.28,24,280/- towards registration charges.

3.According to the petitioner, the stamp duty payable is only 5% as per Article 18 read with Article 23 of the Indian Stamps Act, 1899, and the stamp charges levied is only on the sale price mentioned in the sale certificate and the surcharge of 2% cannot be charged. The stamp duty was paid based on the amount mentioned in the sale certificate and not on the guideline or market value of the property. At the time of registration of the sale certificate, the third respondent advised the petitioner to pay 7% as stamp duty and 1% towards registration fee. However, the petitioner relying upon Article 18 and 23 of the Indian Stamps Act, 1899, submitted before the third respondent that he has paid 5% as stamp duty in view of the provisions and in spite of the same, the third respondent has not released the document so far.

4.Mr.S.Prabhakar, learned Senior Counsel appearing for the petitioner, while reiterating the stand taken in the affidavit filed in support of the petition, also relied upon the following orders passed by this Court:

1.Unreported order dated 06.01.2011 passed in W.P.No.29226 of 2010 (between K.K.Thirumurugan vs. The Inspector General of Registration);
2.Unreported order dated 29.02.2016 passed in W.P.No.28343 of 2016 (between P.Pandian vs. The Inspector General of Registration & Anr.); and
3.Unreported order dated 30.06.2016 passed in W.P.No.17257 of 2016 (between Manickaraj vs. The Sub Registrar, Tiruvallur & Anr.).

In all these judgments, this Court had consistently held that the petitioner is liable to pay stamp duty of 5% and that it is not open to the Sub Registrar to claim stamp duty of 7% on the guideline or market value and that it cannot make a reference under Section 47A of the Indian Stamps Act, 1899.

5.Mr.A.N.Thambidurai, learned Special Government Pleader, taking notice for respondents 1 and 3, submitted that the relief sought for in the writ petition is covered by the decisions relied upon by the learned Senior Counsel appearing for the petitioner. Further, the learned Special Government Pleader submitted that in view of the said decisions, the third respondent may be directed to register the sale certificate and return the same to the petitioner.

6.In view of the submissions made by the learned counsel on either side and following the ratio laid down by this Court in the decisions relied upon by the learned Senior Counsel for the petitioner, I direct the third respondent to register the sale certificate dated 29.05.2017 and return the same to the petitioner within two (2) weeks from the date of receipt of a copy of this order.

7.With this direction, the writ petition is disposed of. No costs. Consequently, W.M.P.No.17062 of 2017 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Inspector General of Registration,
   100, Santhome High Road,
   Chennai 600 004.

2. State Bank of India,
   Stressed assets management Branch,
   No.1112, Raja Plaza, Avinashi Road,
   Coimbatore 641 037.

3. The Sub Registrar,
   Joint-2, Thirunelveli.

+1cc to Mr.M.A.Gouthaman, Advocate, S.R.No.44567
+1cc to the Government Pleader, S.R.No.44546

W.P.No.15775 of 2017

SJ(CO)
CA(03/07/2017)