IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.03.2021
CORAM:
THE HONOURABLE MR. JUSTICE S.S.SUNDAR
W.P.Nos.18701 & 18702 of 2018

Sakthi Foundations Pvt. Ltd.,
Represented by its Director,
A.R.Divakar,
No.18/26, 2nd Street,
Loganathan Nagar,
Choolaimedu, Chennai - 600 094. ...Petitioner in both W.Ps

Vs.

1.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2.The District Registrar,
Chennai Central,
Barathi Salai, Royapettah,
Chennai - 600 014.

3.The Sub Registrar,
Purasawalkam,
Perambur Barracks Road,
Chennai - 600 007. ...Respondents in both W.Ps

PRAYER in WP 18701 of 2018: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus to direct the respondents to refund the excess amount of Rs.8,30,000/- collected during registration of Document No.5509 of 2017, on the file of the 3rd respondent, to the petitioner along with an interest of 18% per annum calculated from 09.10.2017 till the date of realization within the time frame fixed by this Court.

PRAYER in WP 18702 of 2018: Writ of mandamus to direct the respondents to refund the excess amount of Rs.1,36,10,000/- collected during registration of Document No.5510 of 2017, on the file of the 3rd respondent, to the petitioner along with an interest of 18% per annum calculated from 09.10.2017 till the date of realization within the time frame fixed by this Court

For Petitioner in both W.Ps : Mr.T.Mohan
for M/s.K.Surendar

For Respondents in both W.Ps: Mr.B.Kannan
Government Advocate

COMMON ORDER

These writ petitions have been filed for the issuance of writ of mandamus to direct the respondents to refund the excess amount of Rs.8,30,000/- and Rs.1,36,10,000/-collected during registration of Document Nos.5509 & 5510 of 2017, on the file of the 3rd respondent, to the petitioner along with the interest at the rate of 18% per annum calculated from 09.10.2017 till the date of realization within a time frame to be fixed by this Court.

2.Brief facts that are necessary for the disposal of the Writ Petitions are as follows:

The petitioner purchased a property with an extent of about 19279 sq.ft. along with buildings constructed thereon situated at New Nos.13 to 18, Subramaniya Mudali Street, Purasawalkam, Chennai - 600007, comprised in R.S.Nos.413/1, 416 (part), 417, 419, 421 (part), 421/1 of Purasawalkam Village, through E-auction conducted by consortium of banks represented by the Authorized Officer of State Bank of India pursuant to the proceedings initiated under the SARFEASI Act, 2002. It is the case of the petitioner that he paid the total consideration of Rs.27,22,00,000/- for the property.

3.After the sale was concluded in favour of the petitioner on 23rd June 2017, the sale certificate dated 16.08.2017 was issued to the petitioner by the Authorized Officer of the State Bank of India on behalf of the consortium of banks. The petitioner presented the sale certificate for registration before the third respondent on 09.10.2017. However, the third respondent collected a sum of Rs.1,90,54,000/- towards stamp duty being 5% of the sale consideration and surcharge being 2% sale consideration. The petitioner was also constrained to pay an additional sum of Rs.1,08,88,000/- towards registration fee calculated at 4% of the sale consideration. It is stated by the petitioner that the entire amount was paid under compulsion and that the said payment was tendered by way of Demand Drafts and the receipts for the amount was also issued by the third respondent on 09.10.2017. Subsequently, the sale certificate was assigned as Document Nos.5509 & 5510 of 2017 by the third respondent and the sale certificate was released to the petitioner.

4.Thereafter, the petitioner submitted a representation dated 15.03.2018 to refund a sum of Rs.1,44,40,000/-, which was collected in excess of the amount payable by the petitioner along with interest. The excess amount according to the petitioner, in the representation is the sum of 2% of surcharge and further some towards additional registration charges.

5.It is the case of the petitioner that the Government by exercising power under the Registration Act prescribed the Table of fees. The registration fee for a sale certificate should be 1% of the sale consideration. The Government by virtue of an amendment in 2017 prescribed registration charges at 4% for certain documents but not the sale certificate.

6.Vide G.O.Ms.No.49, Commercial Taxes and Registration (J2) Department dated 08.06.2017, the Government revised the registration fee payable under Registration Act in respect of certain instruments of conveyance, exchange, gift and settlement among non-family members. As per the notification published by the Government, a proviso was added to Article 1 of the table of fees prescribed by the Government. The proviso reads as follows:

> "Provided further that notwithstanding anything contained in this Table, in case of deeds of conveyance, exchange, gift and settlement among non-family members, the Registration Fee shall be levied at the rate of Rupees four per Rupees hundred or part thereof on the value or amount on which stamp duty under the Indian Stamp Act, 1899 (Central Act II of 1899) is payable".

7.From the amendment, it is evident that an additional registration fee can be levied at the rate of 4% only in respect of deeds of conveyance, exchange, gift and settlement if these documents are among non-family members, i.e. if executed by one in favour of another who are not members of family.

8.The issue regarding collection of 2% additional surcharge was decided by this Court earlier. A learned Single Judge of this Court in the case of P.Pandian vs. The Inspector General of Registration reported in 2016 AIR (Madras) 81 held that the sale certificate issued by the Recovery Officer under the SARFEASI Act do not amount to transfer of property and that the sale certificate issued by the bank does not attract surcharge at 2%. After referring to Section 116(A) of the Tamil Nadu District Municipalities Act, this Court pointed out that specific transactions mentioned in Section 116(A) do not include the sale certificate and therefore levy of 2% surcharge cannot be justified by referring to either Section 116 of the Tamil Nadu District Municipalities Act, 1920 or Tamil Nadu Duty on Transfer of Property (in Municipal Areas) Act 32 of 2009. Since Section 116(A) of Tamil Nadu District Municipalities Act, refers to a sale of immovable property, exchange of immovable property, gift of immovable property, mortgage with possession of immovable property and lease in perpetuity of immovable property, it was held that a sale certificate issued by the Authorized Statutory Authority evidencing the factum of a statutory sale is not an instrument and that therefore the surcharge cannot be collected. Regarding collection of Registration charges at 4% the amendment also speaks about deeds of conveyance, exchange, gift and settlement among non-family members. It is not in dispute that by virtue of the amendment, conveyance, exchange, gift and settlement among non-family members attract 4% registration fee. Registration charges can be collected at 4% only in the cases of deeds of conveyance, exchange, gift, and settlement among non-family members.

9.The reasoning of the learned Single Judge while interpreting Section 116(A) of the Tamil Nadu District Municipalities Act, also, hold good even for collecting registration charges by virtue of amendment by G.O.Ms.No.49, Commercial Taxes and Registration (J2) Department dated 08.06.2017.

10.It is to be noted that the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Pramod Kumar Gupta reported in (1991) 1 SCC 633 has held as follows:

> It is manifest that the tile passes under the auction sale by force of law and the transfer becomes final when an order under Rule 92 confirming it is made. By the certificate issued under Rule 94, the court is formally declaring the effect of the same and is not extinguishing or creating title. The object of issuance of such a certificate is to avoid any controversy with respect to the identity of the property sold, and of the purchaser thereof as also the date when the sale becomes absolute. The use of past tense in the rule stating that the sale "became" absolute, is consistent with this interpretation. The certificate, therefore, cannot be termed to be an instrument of sale so as to attract Section 147 of the Delhi Municipal Corporation Act.

11.The Hon'ble Supreme Court, considered similar issue in relation to Section 147 of Delhi Municipal Corporation Act, 1957 where under the Corporation was authorized to collect a surcharge in relation to sale of immovable property, exchange of immovable property, gift of immovable property, mortgage with possession of immovable property and lease in perpetuity of immovable property. The Hon'ble Supreme Court held that the sale certificate issued by the Authorized Officer is not a document of conveyance by itself and that title passes immediately under the auction sale by force of law and the transfer becomes final when an order under Rule 92 confirming it is made.

12.Having regard to the view expressed by this Court earlier interpreting Section 116(A) of the Tamil Nadu District Municipalities Act and the judgment of Hon'ble Supreme Court, this Court has no hesitation to hold that the sale certificate cannot be subjected to levy of an additional surcharge at 2% or at 4% of registration charges relying upon the newly introduced proviso as per the amendment in 2017. The liability to pay 5% towards stamp duty and 1% towards Registration charges is admitted. However the respondents have collected Registration charges at 4% of value and Additional Surcharge at 2%. Hence 5% of the value has been collected in excess.

13.As a result, these writ petitions are allowed. The respondents are directed to refund the excess amount of Rs.8,30,000/- and Rs.1,36,10,000/- collected during the registration of Document Nos.5509 & 5510 of 2017 on the file of the third respondent to the petitioner along with the interest at the rate of 6% per annum from 15.03.2018 till the date of realization. Though the petitioner claim interest at the rate of 18%, the respondents being statutory authorities presumed to have collected the amount on good faith. They may not earn 18% interest by keeping the money. Since the petitioner has paid the amounts without protest, interest can be claimed only from the date of representation. Hence the respondents are directed to pay interest at the rate of 6% from the date of representation on the excess amount paid by the petitioner till the refund of the amount in accordance with the directions of this Court within 12 weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam

To

1.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2.The District Registrar,
Chennai Central,
Barathi Salai, Royapettah,
Chennai - 600 014.

3.The Sub Registrar,
Purasawalkam,
Perambur Barracks Road,
Chennai - 600 007.

+1 cc to Government Pleader, SR.No.18636, 18637

W.P.Nos.18701 & 18702 of 2018

PMK(CO)
NS(04/05/2021)