IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 05.02.2021
CORAM
THE HONOURABLE MR. JUSTICE S.S.SUNDAR
W.P.No.27199 of 2017
and
W.M.P.No.29069 of 2017

Triniity Colour India (P) Limited,
Represented by its Director,
Mr.A.Yogeshkumar,
S/o.C.Ayyakkan,
No.27, Annamalai Nagar,
Off: Mettur Road,
Erode-638 011. ... Petitioner

Vs.

1. The Inspector General of Registrations,
Mylapore,
Chennai.

2. The Sub-Registrar,
Annur,
Coimbatore District. ... Respondents

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to refund the 2% additional stamp duty collected from the petitioner Company for registering the Sale Certificate presented by the petitioner Company as Doc.No.7230/2016 dated 17.11.2016.

For Petitioner : Mr.E.J.Ayyappan

For Respondents : Mr.P.P.Purushothaman
Government Advocate

ORDER

The writ petition has been filed for directing the respondents 1 and 2 to refund the 2% additional stamp duty collected from the petitioner Company for registering the Sale Certificate presented by the petitioner Company as Doc.No.7230/2016 dated 17.11.2016.

2.The brief facts are necessary for disposal of the writ petition are as follows:-

Petitioner is a company registered under the Companies Act. The petitioner participated in the public auction conducted by the Authorised Officer of the State Bank of India. The property which was brought to public auction by the State Bank of India was purchased by the petitioner company.

The authorized officer follwing auction issued a sale certificate dated 11.11.2016 in favour of the petitioner company under the SARFAESI Act. Later the sales certificate was presented for registeration. The second respondent instructed and directed the petitioner to pay a stamp duty of 7% (5% stamp Duty + 2% Surcharge) on the value of the sales certificate as per instructions. It is stated by the petitioner that he paid 2% Surcharge under protest for completing the registration process. Hence the petitioner approached the second respondent for refund of excess 2% charged as Surcharge on the value of the sale certificate. Since, there was no response, the petitioner has filed the above writ petition.

3.The learnced counsel for the petitioner relied upon the judgment of the learned single Judge of this Court in W.P.No.28343 of 2015 in the case of P.Pandian Vs.The Inspector General of Registeration and another

4.The respondent submitted that the petitioner is liable to pay the stamp duty as required under Article 18 (c) r/w 23 of Indian Stamp Act. He referred to the judgement of Full Bench of this Court in the case of Dr.R.Thiagarajan Vs.The Inspector General of Registeration, Chennai and others reported in 2019 (4) CTC 839 in the counter affidavit. From the portion of judgment entered in the counter affidavit, it is seen that the case does not relate to the levy of surcharge under District Municipalities Act.

5.The question arise for consideration in this writ petition is whether the petitioner is liable to pay 2% of Surcharge apart from 5% of Stamp duty before registering the sale certificate issued by the authorized officier. First of all it is to be noted that 2% surcharge collected from the petitioner is not under the provisons of Stamp Act. It is specifically stated that 2% Surcharge was collected from the petitioner as contemplated under Section 116 (A) of Tamil Nadu District Municipality Act 1920.

6.This Court, in the case of P.Pandian Vs.The Inspector General of Registeration and another in W.P.No.28343 of 2015 held that transactions which would attract surcharge under Section 116 (A) of Tamil Nadu District Municipality Act 1920, does not include the sale certificate issued by the bank. The sale certificate is not a Sale of immovable property or Exchange or Gift of immovable property or mortgage with possession of immovable property or lease in perpetuity of immovable property as dealt with under Section 116A Tamil Nadu District Municipalities Act, 1920. It is also held that a Sale Certificate is a document issued by the duly authorized statutory authority evidencing the factum of a statutory sale.

7.This Court is of the view that the judgment of Full Bench is not applicable in this case. The petitioner there in paid stamp duty as per the market value. It was contented by the petitioner that the petitioner who is the purchaser of the property in proceedings under SARFAESI Act, should get the sale certificate by paying stamp duty only for the sale consideration stated out in the sale certificate and that there is no scope for reference under section 47 (A) of the Indian Stamp Act which is not applicable in respect of sale by way of public auction under SARFAESI Act. The Hon'ble Full Bench did not agree with this proposition and held that the Section 47A of Stamp Act can be invoked.

8.In the present case, the issue is not relating to under valuation. It is not a case of petitioner or the respondent that the value mentioned in the sale certificate is grosly inadequate.

9.The Judgment of the learned single Judge of this Court is applicable to this case and the full bench judgement has no relevance. The Respondents are liable to refund the 2% additional surcharge collected from the petitioner Company for registering the Sale Certificate presented by the petitioner Company as Doc.No.7230/2016 dated 17.11.2016.

Accordingly, the writ petition is allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tta

Copy to

1. The Inspector General of Registrations,
   Mylapore, Chennai.

2. The Sub-Registrar,
   Annur,
   Coimbatore District.

+1cc to Mr.E.J.Ayyappan, Advocate, S.R.No.6470.
+1cc to the Government Pleader, S.R.No.6660

W.P.No.27199 of 2017

PL(CO)
CSR 01.04.2021