IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.31970 of 2022

K.Jayaraman . . . Petitioner

Vs.

The Sub Registrar
(District registrar cadre)
Thiyagaraya Nagar
Chennai-600 035 . . . Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ in the nature of a Writ of Certiorarified Mandamus call for the records of the Respondent in relates to refusal number RCNo.290/2021 dated 18.06.2021 and quash the same and direct the Respondent to keep the sale certificate dated 1.08.2020 in Book No.1 without insisting stamp duty in view of the Judgment reported in 2022 Live Law (SC) 969.

For Petitioner : M/s. J.Franklin

For Respondent : Mr.E.Vijay Anand,
Additional Government Pleader

ORDER

The present petition has been filed seeking the relief of quashment of the impugned order dated 18.06.2021 passed by the respondent and to direct the Respondent herein to keep the sale certificate dated 1.08.2020 without insisting stamp duty in view of the Judgment reported in 2022 Live Law (SC) 969.

2. The facts of the case is that the petitioner is a successful bidder in respect of the subject property in this Writ Petition, in the auction that was conducted by the Indian Bank IRB Chennai North Branch, Stressed Assets Management Branch, Chennai, based on which, the petitioner was issued with sale certificate dated 31.08.2020 in respect of the above said property and the said sale certificate before the respondent herein for the purpose of filing the copy of the same in Book I as per Section 89(4) of the Registration Act, 1908 and the same was rejected vide impugned order dated 18.06.2021 on the ground that the said sale certificate can be filed only after the payment of stamp duty and Registration charges. Challenging the said order, the petitioner has come up with the present petition.

3. The learned counsel for the petitioner submits that a Sale Certificate issued by an Officer authorised by a Bank under the provisions of the SARFAESI Act, would be akin to a sale by a Revenue Officer which would fall within Section 89(4) of the Registration Act. Therefore, the registration of such document is not mandatory in view of the provisions of Section 17(2)(xii) of the Registration Act. He further submits that the issue arises in this writ petition is covered by the decision of this Court in W.P.No.25237 of 2018 dated 12.09.2022.

4. The learned Additional Government Pleader appearing for the 1st respondent would submit that the sale certificate issued by a Collector or a Revenue officer does not attract Section 89(4) of the Registration Act.

5. This Court, heard the learned counsel on the either side and perused the materials available on record.

6. The decision held by the Hon'ble Apex Court in case of ***The Inspector General of Registration & Another Vs G.Madhurambal & Another*** reported in ***2022 LiveLaw (SC) 969*** stands squarely attracted to the present case of the petitioner and the relevant portion of the order is extracted here as under:-

> *"Learned counsel for the petitioner(s) has made a valiant endeavor to persuade us to interfere with the impugned judgment(s) but not successfully. It is logically so as this issue has been repeatedly settle and if one may say, a consistent view followed for the last 150 years.We may refer to the judgments by the Madras High Court in the Board of Revenue No.2 of 1875 (In Re:Case Referred) dated 19.10.1875 opining that a certificate of sale cannot be regarded as a conveyance subject to stamp duty, by the Allahabad High Court in* ***Adit Ram v. Masarat-un-Nissa*** *opining that a sale certificate is not an instrument of the kind mentioned in clause (b) of Section 17 of Act III of 1877 and is not compulsorily registrable and this Court's view in* ***Esjaypee Impex Pvt. Ltd v. Asst. General Manager and Authorised Officer, Canara Bank*** *opining that the mandate of law in terms of Section 17(2)(Xii) read with Section 89(4) of the Registration Act, 1908 only required the Authorised Officer of the Bank under the SARFAESI Act to hand over the duly validated Sale Certificate to the Auction Purchase with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the Registration Act and order of this*

Court in M.A.No.19262/2021 in SLP(C) No.29752/2019 dated 29.10.2021 opining that once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act, it has the same effect as registration and obviates the requirement of any further action.

7. In view of the ratio laid down by the Hon'ble Apex Court this Court is of the considered view that the said sale certificate should be entered in Book I as per Section 89(4) of the Registration Act and the impugned order dated 18.06.2021 passed by the respondent is set aside.

8. Accordingly this Writ Petition is allowed. No costs.

29.11.2022

NHS

Index : Yes / No
Internet : Yes / No

M.DHANDAPANI, J.

NHS

To

The Sub Registrar
(District registrar cadre)
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Chennai-600 035

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