BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A.(MD) No.1503 of 2022
and C.M.P(MD) No.12543 of 2022

The Sub Registrar,
Mahrnonbuchavadi Registrar Office,
Thanjavur District. ... Appellant

-vs-

1.T.Praveena

2.The Authorised Officer,
Equitas Small Finance Bank Ltd.,
2nd Floor, No.5, Williams Road,
Cantonment,
Tiruchirapalli District. ... Respondents

PRAYER: Writ Appeal filed under Section I5 of Letters Patent against the order dated 04.04.2022 made in W.P.(MD)No.5474 of 2022.

For Appellant	:	Mr.R.Baskaran, Additional Advocate General Assisted by Mr.S.Shanmugavel, Addl. Government Pleader
For Respondents	:	Mr.M.Vivek for R1

JUDGMENT

(Judgment of the Court was delivered by ***D.KRISHNAKUMAR, J.***)

Challenging the order passed by this Court, dated 04.04.2022, made in W.P.(MD)No.5474 of 2022, the appellant has come forward with this writ appeal.

2. The first respondent / writ petitioner has purchased the property through the auction sale conducted by the second respondent herein and the sale certificate was also issued by the second respondent on 27.12.2021. The petitioner as well as the 2nd respondent bank forwarded the sale certificate to the appellant / first respondent for registration in Book-I under Section 89 of the Registration Act, 1908, but the appellant insisting upon the petitioner to pay the stamp duty and registration fees and passed the original refusal check slip vide his proceedings in RFL/Mahrnonbuchavadi/14/2022, dated 20.01.2022. Challenging the same, first respondent / writ petitioner has filed a writ petition. After hearing the parties, the Writ Court, relying upon the order passed by this Court in W.P.No.20769 of 2021, dated 17.11.2022, quashed the impugned order and directed appellant to file the sale certificate submitted by the second respondent in respect of the property purchased by the petitioner in Book-I, as per the provisions of Section 89 of the Act, within a period of two [2] weeks from the date of receipt of a copy of that order. As against the said order, the appellant / first respondent has filed this Writ Appeal.

3. The learned Additional Advocate General appearing for the appellant submitted that the learned single Judge has failed to take note of the circular, dated 18.07.2011 in 25052/E2/2011 of the Inspector General of registration following the direction issued in the judgment passed in W.A.Nos.2407 and 2408 of 2010 dated 01.04.2011, which clearly distinguish the fact that the sale certificate issued by the Bank official would not be equal to that of the certificate issued by the Civil Court and the same to be considered only as a document of sale and leviable with stamp duty and on that ground, the order of the learned single Judge is liable to be interfered with.

4. The learned counsel appearing for first respondent / writ petitioner submitted that the learned single Judge relying upon the order passed in the writ petition W.P.No.20769 of 2021, dated 17.11.2021, has rightly allowed the writ petition. In the said writ petition, the learned Judge has relied upon a judgment of the Hon'ble Division Bench of this Court reported in 2018(3) TNCJ 541 MB N.Naresh Kumar Vs. The Inspector General of Registration, Chennai-28 and another, wherein it is held as follows:

> *"15.Therefore, the refusal by the Sub Registrar to file sale certificate issued by the Recovery Officer by making necessary entries in the Book in accordance with sub-section (4) of Section 89 of the Registration Act is not justified. The copy of the sale certificate thus filed in Book No.1 which contains all the relevant details and all that is the Sub Registrar is required to do is to file a copy of the certificate in Book No.1 and nothing more.*
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> *16.In B.Arvind Kumar Vs.Government of India and others reported in JT 2007 (8) SC 602, it is held that a property sold in public auction pursuant to an order of the Court and once the sale is confirmed it becomes absolute and the title vests with the auction purchaser. The subsequent sale certificate issued to the purchaser is the evidence of such title which does not require registration under Section 17(2) (xii) of the Registration Act. In the case on hand also the property was purchased in public auction on 16.05.2008 and the sale certificate was issued on 31.08.2008. Therefore, the appellant/purchaser automatically becomes title holder of the property by virtue of the sale certificate. The payment of stamp duty on the sale certificate is not warranted as it is only a sale certificate issued which has to be filed or scanned in Book No.1 as per Section 89(4) of the*

Registration Act.

17.The payment of stamp duty perhaps may arise only when the appellant wants to deal with the property by selling it. As long as the sale certificate remains as it is, it is not compulsorily registrable. If the appellant uses the document for any other purpose, then the requirement of stamp duty etc., would arise. Hence, the plea of the appellant is well within the statutory powers. Section 89(4) contemplates only filing of the sale certificates and therefore, the question of delay or laches on the part of the appellant does not arise. The dismissal of the writ petition on the ground of delay and payment of stamp duty therefor does not arise and therefore, cannot be sustained. Accordingly, the order passed in the writ petition is set aside and the appeal is allowed. No costs."

5. The learned counsel appearing for the first respondent / writ petitioner has relied upon a judgment of the Hon'ble Supreme Court in ***The Inspector General of Registration and another Vs. G.Madhurambal and another*** reported in ***2022 LiveLaw (SC) 969***, wherein, the Hon'ble Supreme Court has held as follows:

"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 settled 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. It is time that the authorities stop filing unnecessary special leave petitions only with the objective of attaining some kind of a final dismissal from this Court every time. Costs this time has been spared but will not be spared the next time. The needful be*

> *done in terms of the impugned judgment(s) within 15 days from today. The special leave petitions are dismissed. Pending applications stand disposed of."*

6. In view of the above, we are of the view that the judgment of the Hon'ble Supreme Court in ***The Inspector General of Registration and another Vs. G.Madhurambal and another*** reported in ***2022 LiveLaw (SC) 969*** is squarely applicable to the facts of the present case and therefore, the impugned order passed in W.P.(MD)No.5474 of 2022 does not warrant interference.

7. In the result, this Writ Appeal is dismissed confirming the order dated 04.04.2022, passed in W.P.(MD)No.5474 of 2022. The appellant/official respondent is directed to comply with the order dated 04.04.2022 passed in W.P.(MD)No.5474 of 2022, as confirmed in this Writ Appeal, within a period of two [2] weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] **[R.V., J.]**

20.12.2022

Index : Yes / No

Internet : Yes / No
vsm

D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

vsm

To

The Authorised Officer,
Equitas Small Finance Bank Ltd.,
2nd Floor, No.5, Williams Road,
Cantonment,
Tiruchirapalli District.

W.A.(MD) No.1503 of 2022

20.12.2022