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W.P.(MD)NO.27688 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.27688 of 2022 and
W.M.P.(MD)Nos.21795 & 21796 of 2022

K.Arumugasamy

... Petitioner

Vs.

The Sub Registrar,
Sub Registrar's Office,
Vadipatti,
Madurai District.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice bearing document No.2780/2022 dated 24.11.2022 on the file of the respondent and set aside the same as illegal and consequently direct the respondent to release the sale certificate bearing document No.2780/2022 dated 12.07.2022 within the period stipulated by this Court.

For Petitioner : Mr.R.Shankar Ganesh

For Respondent : Mr.N.Sathees Kumar,
Additional Government Pleader.

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**ORDER**

Heard the learned counsel on either side.

2. The writ petitioner had purchased the property in question in a Court monitored auction sale on 21.02.2022. The petitioner had offered a bid of Rs.7,21,00,000/- and it was found to be highest. The sale certificate was also issued in favour of the writ petitioner. The respondent herein took the view that the sale transaction has been under valued and called upon the petitioner to pay deficit stamp duty of Rs.32,64,616/-. Challenging the same, the present writ petition has been filed.

3. The respondent has filed counter affidavit and the learned Additional Government Pleader took me through its contents. The core argument of the respondent is that where the sale value is below the market value, the authority is very much entitled to issue proceedings under 47-A of The Indian Stamp Act, 1899. The learned Additional Government Pleader called upon this Court to dismiss the writ petition.



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4. I carefully considered the rival contentions and went through the materials on record.

5. The issue raised in this writ petition is no longer *res integra*. The Hon'ble Apex Court in the decision reported in **2022 SCC OnLine SC 1554 (Registrar of Assurances and Another V. ASL Vyapar Private Ltd. and Another)** held as follows:-

“ 22. In the Company matter, emphasis was placed on the intention of the State Legislature, I.e., to accept ' market value ' as set forth in an instrument by which the immovable property was transferred or acquired by the Central or the State Government or any other authority under the Central or State Government, etc. without any reference of Section 2(16B) and 47A of the Act, as can be seen from Rule 3C(9) of the West Bengal Stamp Rules. It was contended that there was, thus, no question of intention



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of any defraud or not disclose the correct price in a court sale and as per the observations in V.N.Devadoss case the Registering Authority cannot be permitted to sit over appeal over the decision of the court, especially a Constitutional Court and doubt the consideration determined in a court authorised sale.

24. On the conspectus of the matter, we have not the slightest hesitation in upholding the view that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through court process / receiver as that is the most transparent manner of obtaining the correct market value of the property.

31. We find hardly any rational in adopting the submission on behalf of the appellant. The provisions are not dissimilar in the different enactments in its fundamentals; the “reason to believe ” of a Registering



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Officer has to be based on ground realities and not some whimsical determination; the Registering Authority cannot be permitted to doubt the liquidation proceedings as having some superior knowledge when it is a court monitored process where the court would take care of aspects such as cartelization; the Registering Authority can hardly be said to be the only authority with knowledge of the subject to the exclusion of the court; the independent determination by a Registering Officer would not apply to a court sale but to a private transaction; the Stamp Act being a fiscal statute, while being interpreted strictly and literally would not imply some kind of absolute power.”

6. In the case on hand, the auction sale was monitored by the National Company Law Tribunal Division Bench-I, Chennai. It is obviously a Court monitored auction sale. Therefore, respectfully applying the ratio set out in the



aforsaid decision, the impugned communication is quashed.

This writ petition stands allowed. The respondent herein is directed to release the document in question as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

23.12.2022

Index : Yes / No

Internet : Yes/ No

PMU

To:

The Sub Registrar,
Sub Registrar's Office,
Vadipatti,
Madurai District.



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G.R.SWAMINATHAN,J.

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