IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.A.No.1078 of 2011 and

M.P.No.1 of 2011

1. Inspector General of Registration,
   No.120, Santhome High Road, Chennai-28.

2. Sub Registrar, Chinna Salem,
   Cuddalore District.

3. Assistant Commissioner of Commercial Tax,
   Villupuram. ... Appellants

Vs.

M.Abubackar Siddiq ... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed by this Court in W.P.No.48617 of 2006 dated 09.04.2010.

For Appellants	: Mrs.Raman Laal, Addl.Adv.Genegal Assisted by Mrs.Geetha Thamarai selvan Spl.Govt.Pleader
For Respondent	: Mr.V.R.Rajasekaran

JUDGEMENT

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

This Intra Court Appeal has been filed by Registration Department as against the order passed by this Court in W.P.No.48617 of 2006 dated 21.06.2010, wherein, the Writ Court has directed the appellants to refund a sum of Rs.3,15,000/- with interest at the rate of 10% to the respondent herein.

2. The brief facts leading to the filing of the writ appeal is as follows.

According to the respondent/writ petitioner, he had purchased the land and building in S.No.335/1, Chinna Salam in the public auction conducted by the third appellant on 04.11.2004 and the sale certificate was also issued in his name and subsequently, it was published in Villupuram District Gazette No.2, dated 16.02.2005. The respondent had requested the second appellant herein to file the above sale certificate in Book No.1, as per Section 89 of the Registration Act, but, it was refused and he had compelled writ petitioner to pay a sum of Rs.3,15,000/- as stamp duty for filing the same. Therefore, the respondent/writ petitioner had paid the above amount and only after payment of stamp duty, the second appellant herein had filed the sale certificate in Book No.1.

2.1. As per the proviso to Section 89(4) of the Registration Act, 1908, the Registering Officer shall file the copy of the sale certificate in Book No.1 maintained in the office and such refusal of the second appellant to file the sale certificate is against the provision of the Act. Therefore, the respondent/ writ petitioner had made a representation on 07.07.2005 to the Inspector General of Registration, the first appellant, requesting to refund the stamp duty paid by him and the same was rejected on 01.08.2005 stating that the stamp duty collected is in order. Hence the respondent/ writ petitioner has filed the above writ petition, seeking to quash the above rejection order and consequently to direct the respondents to refund the sum of Rs.3,15,000/- paid by him as stamp duty. The writ court has allowed the writ petition, against which, this writ appeal has been filed by the Department.

3. The learned Additional Advocate General appearing for the appellants submitted that the respondent herein had voluntarily paid the amount of Rs.3,15,000/- as stamp duty for registration of sale certificate and consequent to the same, sale certificate was registered and the stamp duty paid by him was remitted to the exchequer and hence, the appellants are not liable to refund the stamp duty already paid. He further submitted that the respondent had produced the original sale certificate for filing and while he was demanded for payment of stamp duty, without making any objection, he had paid the stamp duty, afterwards, taking a U-turn, he made a representation to the authorities concerned to refund the stamp duty paid by him. Hence, his request was rightly rejected by the authorities concerned.

4. The learned counsel appearing for the respondent had strongly opposed the above said submission made by the learned Additional Advocate General and submitted that the respondent had not voluntarily paid the stamp duty. He further submitted that, while the respondent has forwarded the sale certificate to the second appellant for filing the document, under Section 89 of the Registration Act, it is the duty of the

Registering officer to file the sale certificate in Book No.1 and there is no necessity to register the document. He further submitted that, since the respondent was in urgent need of money, without any option, except to pay the stamp duty, he paid the amount for making entry of the sale certificate in Book-I. Therefore, the learned Single Judge, accepting the case of the respondent/ writ petitioner, has rightly allowed the writ petitioner.

5. Heard the learned counsel appearing for both the parties and we have perused the materials on record.

6. It is not disputed by both the parties that, the property in question was sold through public action by the third appellant herein, viz., Assistant Commissioner of Commercial Tax, Villupuram to the respondent/ writ petitioner and after confirmation of sale, sale certificate was issued in his favour and it was forwarded to the Registration Department/second appellant, vide proceedings dated 09.02.2005, and for filing the sale certificate, the second appellant had demanded payment of stamp duty under Article 18(c) of the Indian Stamp Act and the same was paid by the

respondent herein, without making any objection and after the payment of stamp duty, the sale certificate was filed in Book No.1. Subsequently, the respondent herein/ writ petitioner had demanded to refund the stamp duty paid by him by representation dated 07.07.2005 and he had already sold the property to the third party on 23.05.2005.

7. The facts remain that the registration of sale certificate is not a compulsory one and as per Section 89(4) of the Registration Act, no stamp duty is required for filing the sale certificate in Book No.1, whereas, for registering the sale certificate, stamp duty should to be paid, as per Article 18 of the Indian Stamp Act. Admittedly, the respondent/ writ petitioner had paid the stamp duty, as demanded by the second respondent. If the respondent/ writ petitioner would not have paid the stamp duty, certainly, this Court can grant relief to the respondent to refund the amount. But, when a demand was made by the second appellant to respondent to pay the stamp duty, without making any objection, he had paid the stamp duty and the documents was also registered in the office of the Sub Registrar, Chinna Salem in "File Volume 1131 page 129 L.No.92005" on 09.02.2005.

Subsequently, the respondent/ writ petitioner had also sold the property to the third party on 22.05.2005. Only afterwards, the respondent/ writ petitioner had made an objection for the stamp duty collected from him and demanded to refund the same.

8. The sale certificate may not require for compulsory registration under the Registration Act. However, for the purpose of conveying the property, stamping of document is required. In such circumstances, it is to be noted that, the respondent/ writ petitioner has not made any objection for registration of the sale certificate and he himself admitted that as he was in urgent need of money and inview of the same he wanted to sale the property, he had paid the stamp duty, as demanded by the second appellant. Therefore, now, he cannot say that only at the instance of the second appellant, he had paid the stamp duty.

9. As per Section 89(4) of the Registration Act, the Revenue Officer shall send the copy of the sale certificate to the registering authority and on such receipt of the certificate, the officer concerned shall file the copy of the

document in Book No.1 or get it scanned, without insisting upon for registering the sale certificate. The above provision reads as follows.

> **89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed.**
>
> 89(1) --
>
> 89(2) --
>
> 89(3) --
>
> 89(4) Every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by pubic auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate and **such officer shall file the copy in his Book No.1. or get it scanned.**

As per the proviso to Section 89(4) of the Registration Act, we can say that the act of the second respondent in demanding stamp duty for filing the sale certificate is incorrect. But, the learned Additional Advocate General submitted that though the respondent/writ petitioner has not voluntarily paid the stamp duty, he had paid the entire amount without making any objection for registering the sale certificate. To that extent, we support the contention of the appellants/Department, because, it is an admitted fact that after registering the sale certificate on 09.02.2005, the property was sold on 22.05.2005 to the third party by the respondent/writ petitioner. Therefore, there is no justification on the part of the respondent/ writ petitioner in demanding refund of the stamp duty, after he had sold the property. Further, there is no material before this Court on the side of the respondent/ writ petitioner, except the submission that, under protest, he had paid the amount towards stamp duty for filing the sale certificate in Book No.1. Therefore, in the light of the above discussion, we are of he view that the order passed by the Writ Court warrants interference by this Court.

10. Before parting, we direct the authorities concerned to give necessary instructions to all the officials of the Sub Registrar, to file the sale certificate in Book No.1, whenever a copy of the sale certificate is forwarded to them, without insisting upon for registration of the document and it is for the purchaser to make such a request for registration of the document to the authorities concerned.

11. With the above direction, this writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (P.B.B.J.)

07.08.2023

Internet: Yes/No
Index : Yes/No
mst

To

1. Inspector General of Registration,
   No.120, Santhome High Road, Chennai-28.

2. Sub Registrar, Chinna Salem,
   Cuddalore District.

3. Assistant Commissioner of Commercial Tax,
   Villupuram. ...

D.KRISHNAKUMAR, J.
and
P. B.BALAJI, J.

mst

W.A.No.1078 of 2011

07.08.2023