IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4934 of 2023

B.Krishnaveni ...Petitioner

-Vs-

1.The Inspector General of Registration,
100, Santhome High Road,
Santhome, Chennai – 600 004.

2.The Sub-Registrar,
Tiruppur Joint I Sub Registrar's Office,
Thottathupalayam,
Tiruppur.

3.The Sub-Registrar,
Tiruppur Joint II Sub Registrar's Office,
Taluk Office Campus,
Kumaran Road, Tiruppur – 641 602. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to refund the excess sum of Rs.3,20,084/- realized illegally as stamp duty and registration charges together with interest.

For Petitioner : Mr.K.Sharath Chandran

For Respondents : Mr.D.Ravichander
Special Government Pleader

ORDER

A Writ of Mandamus has been instituted to direct the respondents to refund the excess sum of Rs.3,20,084/- realized illegally as stamp duty and registration charges together with interest.

2.The petitioner states that she is the absolute owner of the land situated in S.F.No.271/3, New Ward No.36, Perichampalayam, North Tiruppur Village admeasuring an extent of 2600 sq.ft. She purchased the same in an e-auction vide sale certificate No.3631 of 2022 from the Authorized Officer of the Indian Bank, MSME Branch, Tiruppur for a sum of Rs.54,50,000/-, which sale certificate was issued in favour of the petitioner on 07.07.2022. The petitioner presented the sale certificate for registration before the third respondent and paid a sum of Rs.3,76,000/- towards stamp duty and Rs.2,18,000/- towards registration fees, which is also 7% and 4% of the sale consideration respectively.

3.The learned counsel for the petitioner mainly contended that under Section 89(4) of the Registration Act [hereinafter referred to as 'the Act'], the sale certificate is to be entered into Book No.1 and no stamp duty is payable for registering the sale certificate under Section 89(4) of the Act. Thus, the excess stamp duty collected by the registering authority is directed to be refunded to the petitioner along with interest.

4.The learned Special Government Pleader raised an objection by stating that the petitioner has presented the document for registration under Section 17 of the Act. The nature of the document produced by the petitioner would reveal that the Indian Overseas Bank sold the property in favour of the petitioner. The nature of convenience presented by the petitioner shows that it is in the nature of a sale deed and therefore cannot be construed as a sale certificate within the meaning of Section 89(4) of the Act. More so, the procedure as contemplated under Section 89(4) of that Act has not been followed in the present case and the Revenue Officer has not forwarded a copy of the sale certificate as contemplated under Section 89(4) of the Act. Thus, the presentation made by the petitioner for registration under Section 17 of the Act was dealt with in accordance with the provisions of the Act and there is no infirmity as such. The stamp duty as prescribed has been charged and the petitioner has already paid the stamp duty and the document was released. That being the position, the petitioner is not entitled for any relief. The observations made by the Hon'ble Full Bench and Division Bench of this Court regarding the nature of documents has been reiterated in the counter affidavit filed by the first respondent, which reads as follows:

> "7.It is submitted that the Full Bench of this Hon'ble Court in Dr.Thiyagarajan v. The Inspector General of Registration, Chennai (2020) (5) LW 69 (FB) has held as follows:
>
> *"22.The Sale Certificate issued by the Authorised Officer of the bank cannot be agnated with the Sale Certificate issued by a Civil or Revenue Court. The nomenclature given to the document issued by the Authorized Officer would be irrelevant for exemption from payment of stamp duty and the same will not be covered under Article 18-C Schedule 1 of the Stamp Act. Therefore, the Sale Certificate issued by one who is neither Civil or Revenue Officer would not fall under*

Section 17(2)(xii) of the Registration Act and the Sale Certificate issued by the Authorized Officer is liable for stamp duty on the market value as per Article 18-C read with Article 23 of Schedule 1 of the Stamp Act.

23.If proper stamp duty is not paid for the said Sale Certificate and registered as required under law, then it is only a still born child and does not confer any right to the petitioner whatsoever. When the Sale Certificate is not properly stamped and registered, it is a void document and no right would vest upon the petitioner based on the same. As per Section 47-A of the Stamp Act, if the Registering Authority has reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set-forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of the said property and the proper duty payable thereon."

8.It is submitted that the Division Bench of this Hon'ble Court in Inspector General of Registration and 2 others vs. D.B.Prakashchand Jain and another W.A.Nos.570 & 571 of 2014 dated 16.09.2021 has held as follows:

"In view of a decision of the Hon'ble Full Bench

of this Court in Dr.R.Thiagarajan's case [cited supra] holding that if the sale certificate is not properly stamped, then it is a void document and no right would vest upon the person concerned based on the same, the common impugned order passed by the learned single judge holding that the sale certificate dated 26.10.2004 does not require registration is set aside. Consequently, the appellants/Registration Department are permitted to withdraw the entire Fixed Deposit amount deposited on 23.02.2018 in Axis Bank and ICICI Bank favouring Registrar General of this Court, along with accrued interest therein, forthwith and within a period of two weeks thereafter, Sale certificate dated 26.10.2004 of the writ petitioners shall be stamped and returned to them"

5.This Court also distinguished the procedure to be followed in respect of the sale certificate under Sections 17 and 89(4) of the Act. Once the documents are presented under Section 17 of the Act for registration, then the procedure as contemplated is to be scrupulously followed by the registering authority and the person presenting the document is liable to pay stamp duty. Only if the procedure contemplated under Section 89(4) of the

Act has been followed by the Revenue Officer, then alone the entries are to be made in the register as stipulated. This Court, in its order passed in Company Application No.1928 of 2009, dated 23.12.2009, has held as follows:-

> *"60. In view of the above, this application is disposed of, with a direction to the Official Liquidator to issue a certificate of sale or execute a Sale Deed, as per the choice of the auction purchaser. But while doing so, the Official Liquidator shall indicate that the auction purchaser is obliged to pay stamp duty for the sale value, calculated at the rate prescribed in Article 18 read with Article 23 of Schedule I to the Stamp Act, in the case of a certificate of sale or at the rate prescribed in Article 23 in the case of a Sale Deed. The Official Liquidator shall also put the auction purchaser on notice that if they do not pay stamp duty and do not choose to have the document registered, it may become inadmissible in evidence, in view of section 35 of the Stamp Act and Section 49 of the Registration Act Henceforth, the Official Liquidator shall also indicate in the Tender Notifications and Forms that necessary stamp duty is payable as per the provisions of Article 18 read with Article 23 of Schedule I to the Stamp Act."*

S.M.SUBRAMANIAM, J.

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6.This being the factum, the petitioner herein is not entitled for refund of the stamp duty. Accordingly, the Writ Petition stands dismissed. No costs.

10.07.2023

Index:Yes
Speaking order
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To

1.The Inspector General of Registration,
100, Santhome High Road,
Santhome, Chennai – 600 004.

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