IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.16651 of 2023

Vanetra Infra,
A Partnership Firm
Represented by its Managing Partner
R. Muthuvel, Having its registered office
at 5 / 164, R. Kattachampatty, Rsipuram,
Namakkal District – 637 407. ... Petitioner

Vs.

1. The Government of Tamil Nadu,
Representd by its Secretary,
Department of Revenue And Disaster Management,
Secretariat, Chennai.

2. The Inspector General of Registration,
Santhome High Road, Chennai.

3. The Sub-Registrar,
Thiruvaikundam,
Thoothukudi District. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the 1st respondent to refund the excess stamp duty and registration fees of Rs. 4,79,394/- paid by the petitioner under protect, for registration of the sale certificate vide Document No. 318 of 2023 on the file of the 3rd respondent within a specific time frame as fixed by this Honble Court by considering the petitioners representation dated 24.03.2023

For Petitioner	: Mr.R.Kannan
For Respondents (for R1 to R3)	: Mr.R.Ramanlaal Additional Advocate General, assisted by Mr.T.Arun Kumar Additional Government Pleader

<u>O R D E R</u>

The Writ on hand had been instituted to direct the 1st respondent to refund the excess stamp duty and registration fees of Rs. 4,79,394/- paid by the petitioner under protect, for registration of the sale certificate vide Document No. 318 of 2023 on the file of the 3rd respondent within a specific time frame as fixed by this Honble Court by considering the petitioners representation dated 24.03.2023

2. In the cases where the sale certificate has been presented under Section 17 of the Registration Act and the process of registration has been completed by recovering the stamp duty, then the presentent of the sale certificate is not entitled to seek refund of the registration charges already deposited since the process of registration has already been concluded.

3. Detailed adjudication of facts may not be required since the issue raised in this writ petition is whether the sale certificate issued by the authorised officer under the SARFAESI Act is to be entered in the Book No.1 by the Registering Authority under the Registration Act.

4. The secured creditor holding first charge over the property initiated auction to recover the dues. The properties were sold through public auction. The highest bidder who purchased the property was issued with a Sale Certificate by the Authorised Officer. Under Section 89(4) of the Registration Act, the Authorised Officer issued a communication to the Registering Authority concerned to make entries in Book No.1 by following the procedures as contemplated under Section 89(4) of the Registration Act. Since, the said exercise was not done by the Registering Authority, the petitioner is constrained to move the present Writ Petition.

5. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the issue in this regard is no more res intregra and repeatedly affirmed by the Hon'ble Supreme Court of India. In this context, the learned Senior Counsel appearing on behalf of the Writ petitioner drew the attention of this Court with reference to the judgment of the Apex Court in the case of ***Esjaypee Impex Private Limited Vs. Assistant General Manager and Authorised Officer, Canara Bank,*** reported in ***2021 (11) SCC 537***, wherein the Hon'ble Supreme Court held as follows:

> *“16.We are of the view 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 -purchaser wit a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act.”*

6. The findings in paragraph 16 of Esjaypee Impex Private Limited case, the Hon'ble Supreme Court issued clarifications in the case ***Reality Associates Vs. The Assistant General Manager and Authorized Officer***

in SLP(C) No.29752/2019 dated 29.10.2021. The clarification reads as under:

> *"The direction has already been passed on 05.01.2021 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. We may note that the effect of filing of the copies under the said Section 89 has the same effect as registration and obviates the requirement of any further action. The compliance of our direction already made on 05.01.2021 will not be impeded by any High Court judgment. Our order to be duly complied by the registering authority.*
>
> *The applications stand disposed of."*

7. Subsequently, the Apex Court in ***SLP(C) No.16949/2022*** in the case of ***Inspector General of Registration versus G. Madhurampal*** passed an order on 11.11.2022 as under:

> *"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 the 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."

8. The learned Additional Advocate General, appearing on behalf of the State made a submission that the Government suffered revenue loss on account of such registration of Sale Certificates made without recovering the stamp duty. The auction purchasers, mostly private individuals, are not entitled to file the benefit under Section 89(4) of the Act since the transfer of property was made in favour of individual persons in the case of an auction sale under the SARFASI Act. However, the amendments made in this regard are already under challenge before this Court and an Interim stay was granted.

9. The learned Additional Advocate General drew the attention of this Court with reference to the Writ Appeal Nos.1271, 1134 & 1270 of 2023 filed against the orders passed by the learned Single Judges. In yet another Writ Appeal No.2162/2022, the Hon'ble Division Bench granted an Interim Stay and the Writ Appeal is pending. However, those Writ Appeals

may not be a ground for keeping the present Writ Petition pending or to follow the judgement of the Hon'ble Division Bench of this Court. More so, the three judges Bench of the Hon'ble Supreme Court of India in the case of 2021 (11) SCC 537 reiterated the principles in the case of *Esjaypee Impex Pvt. Ltd.*, cited supra. Thus, this Court has to follow the said precedents for the purpose of considering the present writ petition.

10. Section 17 of the Registration Act speaks about documents of which registration is compulsory. Therefore, if any person is presenting a sale certificate for registration under Section 17 of the Registration Act, the Registering Authority is empowered to recover the Stamp Duty as applicable and register the Sale Certificate by following the procedures as contemplated. But, if the Sale Certificate issued under the SARFAESI Act by the Authorised Officer has been communicated to the Registering Authority under Section 89(4) of the Registration Act, then the Registering Authority shall file the copy of the sale certificate in his Book No.1 or get it scanned. In such circumstances, the Registering Authority shall not recover the Stamp Duty since, the process of Registration under Section 17 has not undergone.

11. The procedure to be followed under Section 17 and under Section 89(4) are distinct and different. Section 89(4) was intended in respect of the recovery of public dues and thus, the process contemplated under Section 17 of the Registration Act has been waived. Thus, the Authorised Officer is at liberty to communicate the sale certificate to the Registering Authority by specifically quoting the provision under Section 89(4) of the Registration Act and in the event of any such preceding any such communication from the Authorised Officer under the SARFAESI Act, the Registering Authority has to make entries in his Book No.1 or get it scanned as contemplated under Section 89(4) of the Registration Act. The entry of Sale Certificate in Book No.1 under Section 89(4) of the Registration Act has the same effect as registration and obviates requirement of no further action. In the case of G.Madhurampal cited supra, the Hon'ble Apex Court reiterated the above position.

12. The interpretation, as offered by the learned Additional Advocate General with reference to the purpose, object and the context of Section 89(4) of the Registration Act, deserves no further consideration in the present writ petition in view of the fact that the Hon'ble Supreme Court has reiterated the legal position in more than one occasion and thus, the said

position is to the followed. Thus, the following orders are passed:

(i) The Authorised Officer, under the SARFAESI Act, shall communicate the copy of the Sale Certificate to the Registering Authority under Section 89(4) of the Registration Act.

(ii) On receipt of any such communication along with the sale certificate from the Authorised Officer, the Registering Authority shall make entry in his Book No.1 or get it scanned.

(iii) In the event of any person, presenting the sale certificate for registration under Section 17 of the Registration Act, the Registering Authority shall receive and register the same by following the procedures as contemplated under the Registration Act by recovering the required Stamp Duty as contemplated.

(iv) The registering authority, on receipt of the Sale Certificate is empowered to ascertain whether there is any impediment for registration with reference to Section 22A or 22B of the Registration Act. If the Sale Certificate is hit by any of the provisions of the Registration Act, then the registering authority shall refuse to make entries in the relevant register.

(v)The said exercise is directed to be completed by the Registering Authority within a period of four (4) weeks from the date of receipt of copy of this order if the sale certificate has been already communicated by the Authorised Officer under Section 89(4) of the Registration Act.

(vi) The respondents are directed to follow the above directions based on the individual facts involved in the this Writ Petition.

13. Accordingly, with the above directions, the writ petition stands **disposed of.** No costs.

29.08.2023

Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)

To

1. The Government of Tamil Nadu,
Representd by its Secretary,
Department of Revenue And Disaster Management,
Secretariat, Chennai.

2. The Inspector General of Registration,
Santhome High Road, Chennai.

3. The Sub-Registrar,
Thiruvaikundam,
Thoothukudi District.

S.M.SUBRAMANIAM. J.,

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