IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19921 of 2023

1.Mr.Ramesh Kumar Gupta,
2.Ms.Sweety Gupta
3.Ms.Saroj Gupta ... Petitioner

Vs.

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

2.The Sub-Registrar,
Sub-Registration Office, Periamet,
1103, Poonamallee High Road,
Park Town, Poongavanapuram,
Chennai – 600 007. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the Respondents, more particularly 2nd respondent, to refund Rs.10,21,790/-, collected from the petitioners for registration of the 'Sale Certificate', registered as Doc No.343 of 2022 in Book-1 on the file of the SRO, Periamet.

For Petitioner : Mr.K.F.Manavalan

For Respondents : Mr.D.Ravichander,
Special Government Pleader

ORDER

The Writ of Mandamus has been instituted to direct the second respondent to refund a sum of Rs.10,21,790 collected from the petitioners for the registration of Sales Certificate registered as Document No.343 in Block No.1 on the file of the SRO, Periamet.

2. The petitioners purchased the subject property through public action conducted by DRT and a Sales Certificate has been issued by the authorized officer. The petitioner presented the Sale Deed certificate for registration under Section 17 of the Registration Act. The Sub-Registrar registered the document and released the same, after following the procedures and on payment of registration and other charges.

3. After completion of the registration and release of the document registered, the petitioners have chosen to raise an objection by stating that the Sale Certificate

need not be registered compulsorily and therefore, the Sub-Registrar ought to have registered under Section 89(4) of the Act without collecting the registration charges.

4. The learned counsel for the petitioners reiterated that the collection of registration charges are in violation of the provisions of the Act. Mere entry on record would be sufficient as far as the Sales Certificate is concerned and thus, the petitioner is entitled to get refund of the charges that had already been paid for registration. The petitioner has given representation seeking refund, which was not considered and thus the petitioners have filed the present writ petition.

5. The learned counsel for the petitioners mainly contended that under Section 89(4) of the Act, procedures are contemplated to make entry of Sales Certificate to be followed and in the present case, the Sub-Registrar has registered the document by collecting registration charges, which is improper.

6. It is contended that there is no transfer of any right made pursuant to the Sale Certificate granted in favour of the petitioners. Therefore, the registration became unnecessary and thus, the petitioners are entitled to seek refund.

7. The learned Special Government Pleader appearing for the respondents raised an objection by stating that under Section 17(1) of the registration Act, for documents presented by the writ petitioner, Sales Certificate is not compulsorily registrable. It is an option of the person to present the document for registration under Section 17 of the Act. Section 17(2) contemplates certain documents which is not compulsorily registrable also can be registered. Section 17(2)(xii) denotes that "*any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer*". Therefore, if the Sales Certificate has been issued by a civil or revenue officer, such Sales Certificate can be registered under Section 17 of the Act also.

8. The distinction between Section 17(1) and Section 17(2) are to be borne in mind. Conveyance of right becomes mandatory, if the document is registered under Section 17(1) of the Act. However, no such conveyance of right is required in respect of all the documents following under Section 17(2) of the Act.

9. Section 17(2)(v) stipulates that *“[any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest.”*

10. Therefore, the above provision unambiguously clarifies that the documents to be registered under Section 17(2) need not convey any right to the parties. Distinction between Section 17(1) and 17(2) can be identified through Section 17(1)(b), which stipulates “*other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.*”

11. Therefore, documents which all are to be compulsorily registered are to be registered under Section 17(1) of the Act. The documents which are not compulsorily registrable and optional is to be registered under Section 17(2) of the

Act. The documents falling under Section 17(1) and 17(2) are distinguishable and the provisions therein would indicate that the documents presented under Section 17(2) did not convey any right to the parties.

12. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in ***Esjaypee Impex Private Limited Vs. Assistant General Manager and Authorised Officer, Canara Bank*** reported in (2021) 11 SCC 537 and the relevant paragraph is observed 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 with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act."*

13. The above observations made by the Apex Court would not be applicable with reference to the facts of the present case. The Hon'ble Supreme Court has

considered the procedures to be followed under Section 89(4) of the Registration Act or authorized officer of the Bank under the SARFAESI Act.

14. If the procedure contemplated under Section 18(4) of the Act has been followed by the authorised officer, then such Sales Certificates are to be entered into the register in Book No.1, which would be sufficient and to be construed as compliance of Section 89(4) of the Act. However, if any person by exercising the auction presented the Sales Certificate for registration under Section 17 of the Registration Act, then he is liable to pay the registration and other charges, which is recoverable under Section 17 of the Registration Act.

15. When option has been given to persons under the Registration Act, it is for such persons, who exercise the option as per their wish. Once they have decided to register the Sales Certificate under Section 17 of the Act, then charges are liable to be paid. In the event of communicating the copy of the Sales Certificate by the authorised officer under the SARFAESI Act, 2002 to the registering authority, then the process of registration will not be carried on, but it will be entered in the book of register.

16. This being the distinction between Section 17 and 89(4), the petitioners in the present case has opted to register under Section 17 and paid the registration charges and got the Sales Certificate registered and released. That being the factum, they cannot turn around and claim refund after completion of the process of registration.

17. The learned counsel for the petitioners raised a ground that the Sales Certificate itself would not convey any right to the petitioners and it has no value. However, the very certificate of sale of immovable property issued by the Debt Recovery Tribunal reveals that the petitioners have paid a sum of Rs.92,82,000/- and has been declared as a purchaser at the sale by public e-auction held on 20.11.2021 of the under mentioned immovable properties in execution of DRC No.137 of 2002 dated 16.05.2014 drawn up by the Hon'ble Presiding Officer, DRT, Chennai issued under Section 19(22) of the Recovery of Debts and Bankruptcy Act, 1993 in O.A.No.218 of 1998 forwarded by the presiding officer, Debt Recovery Tribunal, Chennai.

18. The above Sales Certificate unambiguously indicates that the petitioners are the purchasers of the immovable property by public e-auction and they have paid a sum of Rs. 92,81,000/- towards sale consideration. This being the nature of the certificate issued, the document presented under Section 17 requires the registration charges to be paid. The value of the document was made based on the sale consideration indicated in the Sales Certificate and therefore, the contention of the petitioners that the certificate has no value is incorrect and deserve no merit consideration.

19. The very purpose and object of registration of documents under the provisions of the Registration Act has been considered by the Hon'ble Supreme Court of India in ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Another*** in **[(**2009**)** 7 SCC 363].

> *" 15. The Registration Act, 1908 was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.*

16. Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs 100 and upwards to or in immovable property.

17. Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affecting such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed.

18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of *the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified."*

20. In the context of the object as enumerated by the Apex court of India, the registration being an optional, it is for the persons to take a decision to register the documents under Section 17 of the Registration Act. Once a decision is taken and

the documents are presented under Section 17 of the Registration Act, then the registering authority is empowered to collect the registration and other charges, as applicable. If the Sales Certificate has been communicated by the authorised officer under the SARFAESI Act by following the procedures, as contemplated under Section 18(4) of the Act, then no registration is required under Section 17 of the Act and the registering authority shall make entries in the book of register in respect of the Sales Certificate communicated by the authorized officer under the SARFAESI Act. Thus, persons opting to register the Sales Certificate under Section 17 is liable to pay the registration and other charges and in the event of communicating the Sales Certificate by the authorised officer under SARFAESI Act, then the procedures contemplated under Section 89(4) is to be adjudicated.

21. In view of the facts and circumstances that the petitioners have already presented the Sales Certificate for registration under Section 17 of the Registration Act, which was registered by collecting the registration and other charges, now they cannot turn and seek refund of the registration charges, which is impermissible.

22. Accordingly, the writ petition stands dismissed. No costs.

07.07.2023
2/2

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Index : Yes
Speaking order
Neutral Citation : Yes

To

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

2.The Sub-Registrar,
Sub-Registration Office, Periamet,
1103, Poonamallee High Road,
Park Town, Poongavanapuram,
Chennai – 600 007.

S.M.SUBRAMANIAM, J.

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W.P.No.19921 of 2023

07.07.2023

2/2