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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.21882 of 2023
and
W.M.P.No.21209 of 2023

N.Jeyalakshmi ... Petitioner

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalaipuram, Chennai-28.

2. The Deputy Inspector General Of Registration(Dig)
Chennai Zone, 26FJ + GV8, Integrated Building For Offices of
The Commercial Taxes and Registration Department,
Fanepet, Nandanam, Chennai, Tamil Nadu-35.

3. The Registrar,
Chennai Central Registration District,
268, Bharathi Salai, Express Estate,
Royapettah, Chennai-14.

4. The Sub Registrar,
Kodambakkam, KPK Towers,
No.63, 100 Feet, Jawaharlal Nehru Salai,
Arumbakkam, Chennai-106 ... Respondents

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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing them to take the Sale Certificate in A No.8677 of 2018 in CS No.475 of 1998 on the file of this Honourable Court issued on 27.09.2022 by this Honourable Court on the file of the Book I maintained by the 4th respondent.

For Petitioner : Mr.R.Subramanian for
Ms.T.Sugirtha

For Respondents
(for R1 to R4) : Mr.R.Ramanlaal
Additional Advocate General,
assisted by
Mr.T.Arun Kumar
Additional Government Pleader

O R D E R

The Writ on hand had been instituted to direct the respondents to take the Sale Certificate in A No.8677 of 2018 in CS No.475 of 1998 on the file of this Honourable Court issued on 27.09.2022 by this Honourable Court on the file of the Book I maintained by the 4th respondent.

2. Detailed adjudication of facts may not be required since the issue raised in this writ petition is whether the sale certificate issued by the

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authorised officer under the SARFAESI Act is to be entered in the Book No.1 by the Registering Authority under the Registration Act.

3. The subject property had been auctioned to recover the dues as per the Civil Court Decree. The properties were sold through public auction. The purchaser of the property was issued with the Sale Certificate by the Court. The Sale Certificate was communicated to the Registering Authority by the Court under Section 89(2) of the Registration Act for making necessary entries in Book No.1 by following the procedures as contemplated. Since the said exercise has not been done by the registering authority, the petitioner is constrained to move the present writ petition.

4. 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,***

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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."*

5. 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*

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judgment. Our order to be duly complied by the registering authority.

The applications stand disposed of."

6. 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*

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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."

7. The learned Additional Advocate General, appearing on behalf of the State made a submission that the Government suffered revenue loss on account of the registration of Sale Certificate under Section 89(2) of the Act without recovering the stamp duty. However, the amendment made in this regard by the Government has been challenged before this Court and an interim stay was granted.

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8. 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.

9. 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

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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.

10. 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.

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11. 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.

12. The present writ petition is falling under Section 89(2) of the Registration Act and therefore, there is no other impediment for the purpose of proceeding with the registration in the manner contemplated. Thus, the following orders are passed:

(i) The Registering Authority shall proceed with the registration of the sale certificate issued by the competent Court of law by following the procedures as contemplated under Section 89(2) of the Registration Act.

(ii) On receipt of the Sale Certificate, the Registering Authority shall make necessary entries in Book No.1 or get it scanned.

(iii) 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

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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.

(iv) 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(2) of the Registration Act.

(v) 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. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking Order
Neutral Citation : Yes
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S.M.SUBRAMANIAM. J.,

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