IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.27224 of 2023

R.Chandrasekar ... Petitioner

versus

1.The State of Tamil Nadu,
Represented by its
Secretary to Government
Commercial Taxes and Registration Department,
Secretariat, Fort St.George,
Chennai – 600 005.

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

3.The Registrar (Administration),
District Registrar Office,
Sirian Church Road,
Corporation Kalyana Mandapam,
Coimbatore – 641 001.

4.The Sub Registrar,
Sulur Sub Registrar Office,
Trichy Road, Sulur – 641 402. ..... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondents to refund the excess stamp duty and registration charges amounting to Rs.8,70,500/- (Rupees Eight Lakhs Seventy Thousand and Five Hundred only) collected by the 4th respondent while registering Sale Certificate dated 21.10.2022 registered as document No.17818 of 2022 in SRO Sulur issued by the Authorised Officer of the Tamil Nadu Mercantile Bank Ltd., under the SARFAESI Act read with Security Interest (Enforcement) Rules, 2002, within a reasonable time frame.

For Petitioner	: Mr.K.Balamurali for M/s.Shiva Kumar and Suresh
For Respondents	: Mr.P.Gurunathan Additional Government Pleader

ORDER

The petitioner seeks for a direction to the respondents to refund the excess Stamp Duty and Registration charges amounting to Rs.8,70,500/- (Rupees Eight Lakhs Seventy Thousand and Five Hundred only), which, according to the petitioner, has been collected in excess by the fourth respondent while registering Sale Certificate dated 21.10.2022 registered as document No.17818 of 2022 on the file of SRO, Sulur issued by the

Authorised Officer of the Tamil Nadu Mercantile Bank Ltd., under the SARFAESI Act read with Security Interest (Enforcement) Rules, 2002, within a reasonable time frame.

2. It is the claim of the petitioner that the petitioner emerged as a successful bidder in the auction conducted by the Authorised Officer of the Tamil Nadu Mercantile Bank Limited and was favoured with a Sale Certificate for the property measuring an extent of 7737 sq.ft comprised in S.F.No.243/1 new S.F.No.243/1A together with building thereon at Karumathampatti Village, Palladam Taluk, Coimbatore District purchased by the petitioner in the said auction. While registering the document, the respective Registering Officer have collected Stamp Duty at 7% and Registration charges at 4% for the Sale Certificate. According to the petitioner, the collection of Stamp Duty under Article 23 of the Indian Stamp Act, treating the Sale Certificate issued as a conveyance itself is erroneous and the fourth respondent ought to have collected Stamp Duty at 5% under Article 18 of the Stamp Act and as per G.O.Ms.No.46, dated 27.03.2012. According to the petitioner, the Sale Certificate issued by the Authorised

Officer under the SARFAESI Act would not amount to a conveyance as defined under Article 23 of the Stamp Act. It could at the best be treated as a Certificate of Sale granted by the Revenue Officer, which would fall within Article 18 of the Indian Stamp Act. Further, according to the petitioner, the fourth respondent ought to have collected 1% for registration charges as per Article 1 of the Table of Fees Prescribed by the State Government under Section 78 of the Registration Act, 1908.

3. Upon knowing the fact that excess amount has been collected, the petitioner made a representation on 18.07.2023 seeking refund of the excess Stamp Duty and Registration charges paid to the tune of Rs.8,70,500/- to respondents 3 and 4. Since there was no response, the petitioner has come up with the above Writ Petition.

4. In support of his contention, the learned counsel for the petitioner invited the attention of this Court to the order of this Court in the case of ***Bell Towers Enterprises LLP Vs. Indian Overseas Bank State of Tamil Nadu and Others [W.P.No.23237 of 2018]*** reported in ***2022 (5) CTC 454 ,***

wherein this Court had held that the Stamp Duty payable was only 5% on the guideline value under Article 18 of the Indian Stamp Act and the Registration charges payable was 1% on the guideline value as applicable and directed the respondents to refund the excess amount to the auction purchaser.

5. The learned counsel for the petitioner further submitted that the first respondent had issued G.O.Ms.No.69, Commercial Taxes and Registration (32) Department, dated 07.07.2023, wherein the first respondent revised the registration fee for registration of Sale Certificate to 4% of the sale price in exercise of the powers conferred by Section 78 of the Indian Registration Act, 1908 with effect from 10.07.2023 and the same would clearly prove that at the time of registration of the said Sale Certificate in favour of the petitioner i.e. on 21.10.2022, the registration fees was only 1% and thus, the levy of 4% registration fee was illegal.

6. The learned Additional Government Pleader appearing for the respondents filed a counter affidavit of the fourth respondent. The relevant

paragraph of the counter affidavit is extracted hereunder :

> *"4.Therefore, the levy of registration charges of 4% and Stamp duty of 7% for the document registered by the petitioner bearing Doc.No.17818 dated 21.10.2022 registered on the file of the 4th respondent there by collecting stamp duty for a sum of Rs.12,18,700/- (Rupees Twelve Lakh Eighteen Thousand Seven Hundred) and 4% registration charges aggregating Rs.6,96,400/- (Rupees Six Lakhs Ninety Six Thousand Four Hundred) altogether a sum of Rs.19,15,100/- (Rupees Nineteen Lakhs Fifteen Thousand One Hundred) imposed and collected as per the guideline value within the ambit of guidelines fixed and framed by this Hon'ble High Court and circular of Inspector General of Registration."*

Therefore, the fourth respondent collected the aforesaid Stamp Duty only under the strict guidelines issued by the second respondent and hence, this Writ Petition is not maintainable.

7. It is seen from the records that the petitioner presented the Sale Certificate for registration on 21.10.2022 and the fourth respondent

collected Stamp Duty at 7% and Registration charges at 4% for the Sale Certificate. The first respondent revised the registration fee for registration of Sale Certificate to 4% in G.O.Ms.No.69, Commercial Taxes and Registration (32) Department, dated 07.07.2023 and the same came into force only on 10.07.2023, however, the sale was taken place prior to the amendment. Further, this Court in the case of ***Bell Tower Enterprises*** cited supra had held that the Stamp Duty payable was only 5% on the guideline value under Article 18 of the Indian Stamp Act and the Registration charges payable was 1% on the guideline value as applicable. In the present case, the fourth respondent neither followed the decision of this Court nor the Government Order and contrarily collected the Stamp duty as well the Registration fees, which warrants interference of this Court.

8. In the light of the above discussion, the Writ Petition has to be necessarily allowed and the excess Registration fees and the Stamp Duty collected will have to be refunded by the fourth respondent. Therefore, this Writ Petition is allowed, a Writ of Mandamus directing the fourth respondent to refund the excess Stamp Duty and Registration fees to the

tune of Rs.8,70,500/- to the petitioner as expeditiously as possible within a period of six weeks. There shall be no order as to costs.

02.11.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

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P.VELMURUGAN, J.

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