IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

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THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

WP Nos.32107, 32109 & 32111 of 2022

Sudarshan Kumar Rungta : Petitioner in all writ petitions

versus

1.The Authorised Officer
Bank of India,
Chennai Asset Recovery Department
Star House 4th Floor No.30 (Old No.17)
Errabalu Street, Chennai-600 010.

2.The Assistant General Manager
Bank of India Asset Recovery Branch (ARB)
Star House 4th Floor No.30 (Old No.17)
Errabalu Street Chennai-600 010.

3.The Sub Registrar
Red Hills, No.2 Sothupakkam Road
Palavoyal Red Hills
Chennai-52.

4.Land Acquistion Tribunal
Separate District Revenue Officer
Tamil Nadu Road Development Project-II
Chennai.

5.The Divisional Engineer (N)(C(M)P)
Thiruvallur 2 Separate District Collector

Chennai Border Road Project
Unit 1 Ponneri.

6.The Commissioner of Income Tax (TDS)
AAYKAR Bhawan No.31
Nungambakkam High Road, Chennai-34. : Respondents

Prayer: WP No.32107 of 2022 filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 or 2 to modify/amend the Sale Confirmation dated 27.01.2022 and Sale Certificate dated 27.09.2022 by excluding the compulsory acquired land comprised in present survey Nos.185/2A1B (Old Survey No.185) measuring 1.43 acres and land comprised in present survey Nos.185/2A1B (Old Survey No.185) measuring 0.19 acres totaling in all 1.62 acres which is forming part of land in Item Nos.(ii) and (iii) of Schedule Properties to the above Sale Certificate and consequently refund the amount of Rs.2,25,03,193/- together with interest thereon relating to sale price of the aforesaid acquired properties.

Prayer: WP No.32111 of 2022 filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 3rd respondent to register the Sale Certificate dated 29.07.2022 issued u/s 13(2) of the SARFAESI Act r/w Rule 9(6) of the Security Interest (Enforcement) Rules 2002 by the 2nd respondent u/s 89(4) of the Registration Act in Book-I as per the principles laid down by this Honourable Court in WA No.633 and 1503 of 2022 dated 01.09.2022 in the case of Sub-Registrar Neelangarai Vs Tripower enterprises Pvt Ltd and another and confirmed by the Supreme Court by dismissing SLP(c) No.16949/2022 dated 11.11.2022.

Prayer: WP No.32111 of 2022 filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 and 2 to remit TDS at 1 percent as per section 194-IA of the Income Tax Act for Rs.17,34,968/- out of the sale consideration of Rs.17,34,96,807/- for purchase of remaining schedule properties in E-Auction excluding the acquired extent.

For the Petitioner	:	Mr.E.Om Prakash, Senior Counsel, for Mr.P.Prithvi Chopda in WP Nos.32107 & 32111 of 2022 Mr.T.Pramod Kumar Chopda for Mr.P.Prithvi Chopda in WP No.32109 of 2022
For Respondents 1 & 2	:	Mr.F.B.Benjamin George
For Respondent No.3	:	Mrs.R.Anitha, Special Government Pleader
For Respondent No.6	:	Dr.B.Ramaswamy, SSC

Not ready in notice for respondents 4 and 5

COMMON ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.E.Om Prakash, learned Senior Counsel, for petitioner in WP Nos.32107 and 32111 of 2022, Mr.T.Pramod Kumar Chopda, learned counsel for the petitioner in WP No.32109 of 2022, Mr.F.B.Benjamin George, learned counsel for respondents 1 and 2, Mrs.R.Anitha, learned Special Government Pleader, for the third respondent and Dr.B.Ramaswamy, learned counsel for the sixth respondent.

2. It appears that the petitioner is a purchaser in an auction conducted by the bank under the provisions of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. The petitioner purchased 14.11 acres of land for a consideration of Rs.19,60,00,000/- (Rupees Nineteen Crore and Sixty Lakh only). Initially, petitioner deposited Rs.19,60,00,000/- (Rupees Nineteen Crore and Sixty Lakh only) deducting the TDS amount of Rs.19,60,000/- (Rupees Nineteen Lakh Sixty Thousand only). Subsequently, the amount of Rs.19,60,000/- (Rupees Nineteen Lakh Sixty Thousand only) was also paid to the bank.

4. According to the learned counsel for the bank as per the terms and conditions of sale, the amount of TDS is to be borne by the auction-purchaser.

5. The bank has received the total consideration of Rs.19,60,00,000/- (Rupees Nineteen Crore and Sixty Lakh only).

6. It does not appear to be a disputed question of fact that about 1.62 acre of land from and out of 14.11 acre that was auctioned, was already acquired prior to the auction, and the amount in respect of the same is deposited in Court.

7. The learned senior counsel for the petitioner submits that the bank may withdraw the said amount and give it to the auction-purchaser/petitioner, or the petitioner be authorised and permitted to withdraw the same.

8. The learned counsel for the bank submits that the bank has no objection if the petitioner withdraws the said amount deposited in the Court upon acquisition of 1.62 acres.

9. In light of that, the petitioner may pay the additional amount of Rs.19,60,000/- (Rupees Nineteen Lakh Sixty Thousand only) to the Income Tax Department. The petitioner may apply to the Court for withdrawal of the amount deposited pursuant to the acquisition of 1.62 acres. The bank may give such affidavit or authorisation as may be required for withdrawal of the amount by the petitioner.

10. The learned counsel for the bank submits that the bank is ready to register the sale certificate i.e. revised sale certificate by deducting the area under acquisition. The learned counsel for the bank submits that within four weeks, the revised sale certificate would be issued and the further process shall be completed with regard to the presentation and/or registration of the sale certificate. The parties shall cooperate with each other.

11. With these observations and directions, the writ petitions stand disposed. There will be no order as to costs.

(S.V.G., CJ.) **(P.D.A., J.)**
27.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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