BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.1033 of 2023

Tamil Selvan ... Petitioner

Vs.

1.The Sub Registrar,
Office of the Sub Registrar,
Rajapalayam.

2.The Authorised Officer,
Assistant General Manager and Clo-I,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja St, Avinashi Road,
Coimbatore - 641 037. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 1st respondent to register the sale certificate dated 21.11.2022 issued by the second respondent, under rule 9(6) of the rules framed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (Act 3 of 2002) as requested in the representation dated 22.12.2022 by collecting Stamp duty at 5% and registration fees at 1% and return the said document to the petitioner, within a time to be stipulated by this Court.

For Petitioner : Mr.A.Sivaji

For R1 : Mr.M.Prakash
Additional Government Pleader

For R2 : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The writ petition has been filed in the nature of Mandamus seeking a direction against the first respondent, Sub Registrar, Rajapalayam, to register the sale certificate dated 21.11.2022 which had been issued by the second respondent, Authorised Officer, Assistant General Manager and Clo-I, State Bank of India, Stressed Assets Management Branch, Coimbatore, under Rule 9(6) of the Rules framed under the SARFAESI Act 2002 and for which the petitioner had given a representation dated 22.12.2022. The petitioner seeks that stamp duty of 5% and registration fee of 1% may be collected and thereafter the document may be registered.

2.In the affidavit filed in support of the writ petition, it had been stated that the petitioner was a successful bidder in an auction of the second respondent, with respect to land measuring 7.21 acres as per the document and 6.615 acres land actual with building situated in S.F.No.667/1B, 3A, 3B, 3C, 697/1, 2, 700/1A, 6, 1B at Door No.5/361 and 5/362 Muthukudi to Rajapalayam Taluk, Virudhunagar District. The petitioner had presented the sale certificate should be routed through the second respondent.

3. The learned counsel for the petitioner stated that scanned copy can be presented for registration and accordingly a scanned copy of the sale certificate has also been presented for registration. In this connection, the learned counsel for the petitioner placed reliance on the judgment of a learned Single Judge of this Court reported in ***2022 (5) CTC 454*** (***Bell Tower Enterprises LLP, represented by its Managing Partner Vs State of Tamil Nadu, represented by its Secretary to Government, Commercial Taxes and Registration Department, Secretariat, Fort St.George, Chennai - 600 005, and others***.), wherein the very same issue had come up for consideration and the learned Single Judge had held as follows:

> *"13.A reading of Section 17(2)(xii) would show that a Certificate of Sale issued by a Civil or a Revenue Officer in evidence of a sale conducted by way of Public Auction is not compulsorily registrable. Section 89(4) imposes an obligation on the Revenue Officer, who conducts an Auction Sale to forward the Certificate to the Registering Authority to enable him to file the same in Book-I maintained by him. Article 18 of the Stamp Act, deals with payment of duty on a Certificate of Sale and Article 23 of the Stamp Act,*

deals with payment of duty on a conveyance. If a direct question is to be posed, as to whether, a Certificate of Sale issued by a Court or a Revenue Officer, if evidence of a sale conducted by Public Auction requires registration or not, the answer has to be a firm 'no'. This would be the natural inference from a reading of the provisions extracted above.

25. From the above discussion, it could be seen that in view of the pronouncement of the Hon'ble Supreme Court in ***Esjaypee Impex Pvt.Ltd v.Assistnt General Manager and Authorised Officer, Canara Bank****, the law as it stands today is that an Authorised Officer, who conducts a sale under the provisions of the SARFAESI Act, would be a Revenue Officer and the Certificate issued by him in evidence of such sale, would be a document which is not compulsorily registrable under Section 17(2)(xii) of the Registration Act. It would be sufficient, if the document is lodged with the Registrar under Section 89(4) to be filed by him in the Book-I maintained by him. The decision of this Court in the* ***Inspector General of Registration v. K.K.Thirumurugan*** *(Division Bench),* ***Inspector general of Registration V. Kanagalakshmi Ganaguru*** *(Division Bench),* ***Dr.R.Thiagarajan v. Inspector General of Registration*** *(Full Bench) and* ***Inspector General of Registration v. Prakash Chand Jain*** *(Division Bench) are no longer good law, in view of the pronouncement of the Hon'ble Supreme Court in* ***Esjaypee Impex Pvt. Ltd. v. Assistant General Manager and Authorised Officer, Canara Bank.***

26. The next question that would arise is to the amount of Stamp Duty and Registration charges payable, if such Certificate is *presented for registration. Article 18 of the Stamp Act, provides for Stamp Duty payable on a Certificate of Sale granted by a Civil or Revenue Court or Collector or other Revenue Officer. Clause (c) of Article 18 makes the duty payable for a conveyance would apply to a Sale Certificate also. Under Article 23 of the Stamp Act, the Stamp Duty payable on a sale is 5% as per G.O.Ms.No.46, CT and All Department, dated 27.3.2012. As already pointed out since the document would not be a conveyance, there is no question of payment of any Surcharge either under Section 116-A of the Tamil Nadu District Municipality Act, 1920 or under the Tamil Nadu Duty on Transfer of Property (in Municipal Areas) Act (32 of 2009).*

27.Insofar as the Registration charges are concerned, the State Government has fixed the Registration charges at 1% under Section 78 of the Registration Act and the same has been published in the Tamil Nadu Government Gazette, as requiered under Section 79 of the Registration Act. By G.O.Ms.No.49, dated 8.6.2017, the following Proviso was added to Article 1 of the Table of Fees:

> *"Provided further that notwithstanding anything contained in this Table, in case of Deeds of Conveyance, Exchange, Gift and Settlement among non-family members, the Registration Fee shall be levied at the rate of Rupees four per Rupees hundred or part thereof on the value or amount on which Stamp Duty under the Indian Stamp Act, 1899 (Central Act II of 1899) is payable". "*

4. The said judgment as on date holds the field and accordingly a direction is given that the scanned copy may be presented for registration and

taken up for consideration by the first respondent and stamp duty of 5% and registration charges of 1% may be collected and the registration may be done. The entire exercise may be completed within a period of three weeks from the date on which the scanned copy is made available before the first respondent.

5. This Writ Petition is disposed of. No costs.

20.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

pnn

To

The Sub Registrar, Office of the Sub Registrar, Rajapalayam.

C.V.KARTHIKEYAN, J.

pnn

W.P(MD)No.1033 of 2023

20.04.2023