BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.5792 of 2023

1.Nagaraj Sethupathi
2.Surendran ... Petitioners

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam,
Chennai – 600 028.

2.The Sub Registrar,
Thamaraipatti Sub Registrar Office,
Madurai District.

3.The Sub Registrar,
Melur West Sub Registrar Office,
Madurai District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to enter the sale certificate dated 16.08.2022 issued by the Secretary cum Coordinator of Administrative Committee in favour of the petitioner's in Book 1 under Section 89 of the Registration Act, 1908 without insisting for payment of any stamp duty.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.C.Satheesh
Government Advocate

ORDER

This writ petition has been filed in the nature of a Mandamus seeking a direction against the third respondent, Sub Registrar, Melur West Sub Registrar Office at Madurai, to enter the sale certificate dated 16.08.2022, issued by the Secretary cum Co-ordinator of Administrative Committee in favour of the petitioners in Book-I under Section 89 of the Registration Act, 1908 without insisting payment of any stamp duty.

2. In the affidavit filed in support of the writ petition, it had been stated that consequent to an order in W.P.(MD)No.8084 of 2017 before the Principal Bench of the Madras High Court, the properties of DISC Assets Lead India Limited, was directed to be identified and to be brought in public auction. The petitioner had purchased the properties as stated in the sale certificate issued consequent to such auction by the Secretary cum Co-ordinator of

Administrative Committee. A letter had been addressed by the said official to the second respondent enclosing the sale certificate. The territorial jurisdictional Sub Registrar is the third respondent herein. It had been stated that an order had been passed in W.P.No.20769 of 2021 dated 17.11.2021 that the sale certificate should be registered without insisting on stamp duty. The said order has been confirmed in W.A.Nos.589, 681 and 746 of 2022 batch and further confirmed by the Hon'ble Supreme Court in S.L.P.(C)Nos.16949 of 2022 batch. The petitioner had given a representation seeking registration of the sale certificate. Pending the writ petition, this Court had directed the petitioner herein to present the sale certificate.

3. Learned counsel for the petitioner stated that the third respondent had however refused to register the sale certificate and on the other hand had also issued a letter to the petitioner herein that consequent to a Government Order passed on 23.03.2023, the petitioner should pay necessary stamp duty at 11% of the value of the property.

4. Let me straightaway point out that the said order of the Government had been passed in March, 2023, whereas the petitioner had presented the sale certificate much earlier, on 16.08.2022. The issue whether the order would be

retrospective, need not be examined by this Court, since the order of the Government imposing 11% stamp duty had also been subsequently stayed by the order of the Court.

5. In the judgment referred aforementioned which had been reported in (2021) 8 MLJ 603, (Tripower Properties Limited, represented by its Director Vs Inspector General of Registration and others), a learned Single Judge of this Court had examined the provisions under Section 89 very elaborately and had finally stated as follows:

> *"8.As such when the purchaser goes for the registration of the original sale certificate issued by the Court Officer, Article 18 of the Indian Stamp Act would be attracted and stamp duty is to be paid as per Article 23 of the Registration Act treating it as conveyance namely auction purchase value of the property. But when a copy of the sale certificate presented before the second respondent not for the purpose of registration but only for purpose of filing it by the second respondent in his office as contemplated under Section 89(4) of the Registration Act, 1908. Therefore, the second respondent cannot refuse to file a copy of the sale certificate by demanding payment of stamp duty and registration fees to file the same in Book No.1, as contemplated under Section 89(4) of the Registration Act, 1908.*

9.In view of the above, the second respondent is directed to enter the sale certificate dated 22.03.2021 issued by teh third respondent in Book No.I as contemplated under Section 89 of the Registration Act, 1908 without insisting any stamp duty within a period of two weeks from the date of receipt of a copy of this order.

10. With the above direction, this writ petition stands allowed. There shall be no order as to costs. "

6. This reasoning of the learned Single Judge had been affirmed both by the Division Bench of this Court and also by the Hon'ble Supreme Court. The Judgement of the Hon'ble Supreme Court alone is now extracted by me. The Hon'ble Supreme Court in S.L.P(C)No.16949/2022 (Inspector General of Registration and another Vs G.Madhurambal and another, had held as follows:

"Learned counsel for the petitioner(s) has made a valiant endeavor to persuade us to interfere with the impugned judgment(s) but not successfully. 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 mentined in clause(b) of Section 17 of 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 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 s registration and obviates the requirement of any further action.

It is time that the authoritise 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.

Pending applications stand disposed of. "

7. In view of the ratio laid down, a direction is issued to the third respondent to register the sale certificate presented by the petitioner herein

within a period of three weeks from the date of receipt its presentation and without insisting of stamp duty.

8. This Writ Petition stands allowed. No costs.

07.06.2023

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

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To

1.The Inspector General of Registration, No.100, Santhome High Road, Foreshore Estate, Pattinapakkam, Chennai – 600 028.

2.The Sub Registrar, Thamaraipatti Sub Registrar Office, Madurai District.

3.The Sub Registrar, Melur West Sub Registrar Office, Madurai District.

C.V.KARTHIKEYAN, J.

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