BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2023

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.5772 of 2023

Ganeshan ... Petitioner

Vs.

1.The State of Tamilnadu,
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,
No.100, Santhome High Road,
Santhome, Chennai - 600 004.

3.The Authorized Officer,
Stressed Assets Recovery Branch (SARB),
State Bank of India,
Vinayaganagar Branch (Upstairs),
8 Dr.Ambedkar Road,
Madurai - 625 020.

4. The Branch Manager,
State Bank of india,
Sivakasi Branch, Sivakasi,
Virudhunagar District.

5.The Sub-Registrar,
Sivakasi,
Virudhunagar 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 5th respondent to receive and register a sale deed on payment of 4% stamp duty and 1% registration charges in view of the petitioner's representation dated 27.02.2013 and release the same within the stipulated time.

For Petitioner : Mr.M.Jothi Basu

For R1, R2 & R5 : Mr.M.Prakash
Additional Government Pleader

For R3 and R4 : Mr.P.Pethu Rajesh

ORDER

The writ petition has been filed in the nature of Mandamus seeking a direction against the fifth respondent/ Sub Registrar, Sivakasi in Virudhunagar District, to receive and register the sale deed on payment of 4% stamp duty and 1% registration charges. The petitioner had given a representation dated 27.02.2023.

2. In the affidavit filed in support of the writ petition, it had been stated that the third respondent, Authorised Officer, Stressed Assets Recovery Branch (SARB), State Bank of India, Madurai, had conducted an e-auction with

respect to property in new Door No.1141 and 1141/1, Old Door No. 112C/12 and 112C/13 in Survey No.727/14, P.K.N.Road, Sivakasi Town, Virudhunagar District. The petitioner was the highest bidder. The third respondent had issued a sale confirmation notice. The petitioner paid the entire sale consideration. Now the sale certificate will have to be registered by the fifth respondent.

3. In this connection, the learned counsel for the petitioner placed reliance on the judgment of the 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. A direction is given to the third respondent to forward through online to the fifth respondent, the sale certificate with respect to the sale deed in

favour of the petitioner herein and on receipt of a scanned copy, the fifth respondent may register the same, after receiving stamp duty of 5% and Registration charges of 1%. The petitioner had stated that the stamp duty is 4% and registration charges is 1%. It is clarified by the learned Additional Government Pleader that the correct stamp duty is 5% and not 4%. The entire exercise may be completed within a period of three weeks from the date on which the scanned copy is forwarded to the office of the fifth respondent / Sub Registrar, Sivakasi, Virudhunagar District.

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

20.04.2023

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

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To

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5.The Sub-Registrar, Sivakasi, Virudhunagar District.

C.V.KARTHIKEYAN, J.

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