BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cont.P(MD)No.655 of 2022

R.Anandakrishnan ... Petitioner

Vs.

1.P.Thamaraiselvi,
The Sub Registrar,
Chekkanurani SRO,
Madurai.

2.The Secretary to Government,
Registration and Commercial Tax Department,
Government of Tamil Nadu,
Chennai.
(R2 suo motu impleaded vide Court order dated 24.02.2023) ... Respondents

PRAYER: Contempt petition is filed under section 11 of the Contempt of Courts Act to punish the 2nd respondent / contemnor for willful disobeyance to the order of this Court dated 04.03.2022 in W.P.(MD)No. 3989 of 2022 and punish respondent for contempt.

For Petitioner : Mr.T.Antony Arul Raj

For R1 : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.S.Shanmugavel
Additional Government Pleader

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O R D E R

This contempt petition has been filed alleging breach of the order passed by this Court in W.P.(MD)No.3989 of 2022 on 04.03.2022. The operative portion of the order reads as follows:

> *"7.Accordingly, the prayer sought for in this writ petition is granted and the writ petition is allowed and a direction is issued to the second respondent to file the sale certificate submitted by the third respondent in respect of the property purchased by the petitioner in Book-I as per the provisions of Section 89 of the Act within a period of two(2) weeks from the date of receipt of a copy of this order. The second respondent is also not empowered to insist for payment for stamp duty under the provisions that are applicable for normal registrations which fall under Book-II. There shall be no order as to costs."*

2.The grievance of the petitioner is that in view of the pressure faced by circumstances, they had to pay stamp duty and go for registration. The registration had taken place on 18.04.2022. The document had also been released. Only subsequently in June, appeal was filed against the aforesaid writ order along with the condone delay petition. Till date, the delay has not been condoned. The petitioners had remitted the stamp duty without prejudice to their contentions. The petitioner and others probably thought that the issue would be decided expeditiously as possible. We are now in February-2023 and till date the condone delay petition has not been disposed of. I can understand the plight of the petitioners. The issue has already been concluded by the Hon'ble Apex Court. The legal position has been reiterated vide order dated 11.11.2022 in *the Inspector General of Registration Vs G.Mathurambal and another (SLP No.16949/2022 dated 11.11.2022*). The order of the Hon'ble Apex Court reads 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 mentioned 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 as registration and obviates the requirement of any further action.

It is time that the authorities 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. "

3.In these circumstances, there is absolutely no justification for withholding the stamp duty paid in this regard. I therefore *suo motu* implead the Secretary to Government, Registration and Commercial Tax Department, Government of Tamil Nadu, Chennai. The Government is directed to refund the stamp duty paid by the petitioner within a period of four weeks from the date of receipt of a copy of this order. If the Government does not comply with this direction, interest will start running from the date of remittance. The contemnor is present before this Court. She produced a copy of the letter dated 18.04.2022.

4.The learned Additional Advocate General clarified that payment of stamp duty was an act of own volition by the petitioner and therefore the Registering Authority cannot be fastened with any liability. I endorse the said contention of the learned Additional Advocate General. It is clear that the contemnor did not commit any act of contempt. In the interest of justice, the Government has been directed to refund the amount collected from the petitioners, since the legal position is well settled.

5.With this direction to the Government, this contempt petition is closed. No costs.

24.02.2023

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

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1.The Sub Registrar,
Chekkanurani SRO,
Madurai.

2.The Secretary to Government,
Registration and Commercial Tax Department,
Government of Tamil Nadu,
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G.R.SWAMINATHAN,J.

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