BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)Nos.1752 & 1767 of 2023
and
W.M.P.(MD)Nos.13350 & 13459 of 2023

The Sub Registrar,
Sub Registrar's Office,
Sivakasi, Virudhunagar District. ... Appellant in W.A.(MD)No.1752 of 2023

The Sub Registrar,
Sub Registrar's Office,
Thallakulam, Madurai District. ... Appellant in W.A.(MD)No.1767 of 2023

Vs.

1.S.RathinChand
2.R.Sukumar
3.S.Uma ... Respondents in W.A.(MD)No.1752 of 2023

Meenakshi ... Respondent in W.A.(MD)No.1767 of 2023

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent Act, to set aside the orders passed in W.P.(MD)Nos.24379 & 24682 of 2022, dated 21.04.2023 on the file of this Court.

For Appellants : Mr.Veera Kathiravan,
Additional Advocate General,
assisted by Mr.S.Shanmugavel,
Additional Government Pleader

For Respondents : Mr.R.Shankar Ganesh
(in both W.As.)

COMMON JUDGMENT

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM, J.***)

These Writ Appeals have been directed against the orders dated 21.04.2023 passed in W.P.(MD)Nos.24379 & 24682 of 2022.

2.The refusal check slip issued by the appellants / Sub Registrars are sought to be quashed in the Writ proceedings. It is not in dispute that the respondents / auction purchasers presented sale certificates for registration under the Registration Act, 1908 (hereinafter referred to as 'the Act'). Therefore, the procedures contemplated under Section 89(4) of the Act would have no application. The sale certificates presented by the auction purchasers are to be construed as presented under Section 17 of the Act. Thus, the procedures contemplated for registration must be followed under the Act.

3.The learned Additional Advocate General appearing for the appellants mainly contended that stamp duty as required had not been paid by the respondents. Therefore, the Registering Authority is right in issuing refusal check slip. However, the learned counsel appearing for the respondents objected the said contention by stating that the respondents are ready and willing to pay the stamp duty at the rate of 5% and 1% registration charges, however, the Registering Authority is claiming over and above the charges applicable for registration of sale certificates under Section 17 of the Act.

4.The learned Additional Advocate General for the appellants relied on the Government Order issued in G.O.(Ms)No.28, Commercial Taxes and Registration (J2) Department, dated 23.03.2023, wherein stamp duty has been enhanced to 11%. However, the said Government Order was issued on 23.03.2023 and the notification issued would state that amendment shall come into force on 23.03.2023. But in the present case, the sale certificates were presented by the respondents long before the said Government Order and thus, the said Government Order has no application in respect of the sale certificates presented by the respondents. More so, the said Government Order has already been stayed by this Court in W.M.P.(MD)No.7754 of 2023 in W.P.(MD)No.8431 of 2023, dated 13.04.2023.

5.Since the respondents are ready and willing to pay applicable stamp duty and the registration charges on the date of presentation, we are of the opinion that the appellants have not established any ground for seeking enhanced stamp duty as per the said Government Order. However, the Registering Authority is empowered to demand stamp duty as per the rate prevailing on the date of presentation of the sale certificates by the respondents for registration.

6.In view of the facts and circumstances of the case, the orders of the learned Single Judge dated 21.04.2023 stand modified to the extent that the stamp duty and registration charges as applicable on the date of presentation of the sale certificates by the respondents are to be recovered for the purpose of proceeding with the registration by following the procedures as contemplated under the Act. The respondents are at liberty to approach the appellant Registering Authority by re-presenting the sale certificates for completion of registration in the manner contemplated under the Act. The appellant Registering Authority is directed to recover the stamp duty and registration charges as applicable on the date of original presentation of the sale certificates for registration and complete the process of registration within a period of four (4) weeks from the date of re-presentation of the documents by the respondents.

7.With this modification, these Writ Appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (V.L.N., J.)
29.11.2023

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

Yuva

S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

Yuva

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