BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.24682 of 2022

Meenakshi ... Petitioner

Vs.

The Sub Registrar,
Sub Registrar's Office,
Thallakulam,
Madurai District. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Refusal Check Slip bearing No.RFL/Thallakulam/5/2022 dated 26.10.2022 on the file of the respondent and set aside the same as illegal and consequently direct the respondent to register the sale certificate dated 29.09.2022 presented by the petitioner by receiving the stamp duty at 5% and registration fee at 1%.

For Petitioner : Mr.R.Shankar Ganesh

For Respondent : Mr.M.Prakash
Additional Government Pleader

ORDER

The writ petition has been filed in the nature of Certiorarified Mandamus seeking interference with the refusal check slip bearing No. No.RFL/Thallakulam/5/2022 dated 26.10.2022 and direct the respondents to register the sale certificate dated 29.09.2022, after receiving stamp duty at 5% and registration charges at 1%.

2. The petitioner had purchased the schedule mentioned property after participating in an auction sale and had come out as a successful bidder. She had also paid the entire sale consideration. Necessary sale certificate had also been issued. The sale certificate will have to be registered by the respondent that has been refused to be registered by the impugned order. In the impugned order, the reason given for such refusal is that 7% stamp duty should be paid and 4% registration charges should be paid.

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.*
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> *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 ratio laid down therein has been consistently followed by this Court. It is seen that the same ratio would apply to the petitioner herein. In view of the same, a direction is issued to the respondent / Sub Registrar, Thallakulam, to register the sale certificate whenever presented, after following due procedure by the petitioner and the respondent may collect 5% of stamp duty and 1% registration charges. The registration should be effected within a period of 10 working days from the date on which the sale certificate is again presented by the petitioner.

5. This Writ Petition is allowed. No costs.

21.04.2023

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

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C.V.KARTHIKEYAN, J.

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To

The Sub Registrar, Sub Registrar's Office, Thallakulam, Madurai District.

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