IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.381 of 2024

M/s. P & C Energy Infra Private Limited
Rep.by its Director Mrs.D.Sowmiya
SF.No.87/2A, P & C Garden
Mogappair West
Chennai 600 037. ...Petitioner

Vs.

1.The Inspector General of Registration
100, Santhome High Road
Chennai 600 028.

2.The Sub-Registrar
Sub-Registrar-in Charge
Konnur
Ambattur
Chennai 600 053.

3.The Authorised Officer
Tamil Nadu Mercantile Bank Ltd
Chennai GT Branch
194A, Annapillai Street
George Town
Chennai 600 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order made in C.No.327/2023 dated 22.12.2023 passed by the second respondent, quash the same and consequently, direct the respondents 1 & 2 to enter the sale certificate dated 21.10.2023 issued by the third respondent in Book-I as per Section 89(4) of the Registration Act, 1908 without insisting registration fees from the petitioner.

For Petitioner : Mr.P.Krishnan

For Respondents : Mr.B.Vijay for R1 & R2
Additional Government Pleader

ORDER

This Writ Petition is filed challenging the order passed by the respondents directing the petitioner to pay filing fee at the rate of 11% on the sale certificate sent to the respondents for filing under Section 89 (4) of the Registration Act.

2. It is the case of the petitioner company that it was the successful bidder in the e-Auction sale conducted by the third respondent under the provisions of SARFAESI Act. The property situated in S.Nos.6/3 part, 6/3A, 6/4B, 6/4A and 6/3 part measuring 166.5 cents with building admeasuring about 38480 sq.ft., was the subject matter of the auction conducted by the third respondent. The petitioner deposited entire auction amount of Rs.20,50,000,00/- before the third respondent and he issued sale certificate in favour of the petitioner on 21.10.2023. Thereafter, a copy of the said sale certificate was sent to the third respondent for filing in Book-1 under Section 89 (4) of the Registration Act, 1908. However, the respondents refused filing of the document and passed the impugned order on the ground that the original sale certificate was forwarded to the respondents and he could only send authenticated copy of the sale certificate under Section 89(4) of the Registration Act. In the impugned order, the respondents also directed the petitioner to pay filing fee at the rate of 11% as per GO.Ms.No.28, Commercial cum Registration Department, dated 23.03.2023. Aggrieved by the same, the petitioner has come by way of this Writ Petition.

3. The learned counsel for the petitioner by relying on the judgment in ***Chettinad Academy of Research and Education and others, Vs. The Inspector General of Registration in W.P.No.8512 of 2023 and M/s.Tripower Properties Ltd., Vs. The Inspector General of Registration in W.P(MD).No.24736 of 2023*** submitted that the respondents are not entitled to claim filing fee at the rate of 11% in view of the order passed by this Court in W.P.No.8431 of 2023.

4. The learned Additional Government Pleader appearing for the respondents would submit that under Section 89 (4) of the Registration Act, only the authenticated copy of the sale certificate can be sent for filing, however, in the case on hand, the original sale certificate was sent to the respondents for filing. Therefore, the impugned order was passed directing the petitioner to produce the authenticated copy of the sale certificate.

5. The learned Additional Government Pleader appearing for the respondents further submitted that as per GO.Ms.No.28 dated 23.03.2023 the respondents are entitled to collect filing charges at the time of filing authenticated copy.

6. In ***Chettinad Academy of Research and Education and others, Vs. The Inspector General of Registration in W.P.No.8512 of 2023*** while considering the similar issue, this Court observed as follows:

> *"9.Section 17 of the Registration Act speaks about documents of which registration is compulsory. Therefore, if any person is presenting a Sale Certificate for registration under Section 17 of the Registration Act, the Registering Authority is empowered to recover the Stamp Duty as applicable and register the sale certificate by following the procedure as contemplated. But, if the sale certificate issued under the SARFAESI Act by the Authorized Officer has been communicat4ed to the Registering Authority under Section 89 (4) of the Registration Act, then the Registering Authority shall file the copy of the sale certificate in his Book No.1 or get it scanned. In such circumstances, the Registering Authority shall not recover the Stamp Duty since, the process of Registration under Section 17 has not undergone.*
>
> *10. The procedure to be followed under Section 17 and under Section 89(4) are distinct and different. Section 89(4) was intended in respect of the recovery*

of public dues and thus, the process contemplated W.P.Nos.8512 of 2023 etc., batch under Section 17 of the Registration Act has been waived. Thus, the Authorised Officer is at liberty to communicate the sale certificate to the Registering Authority by specifically quoting the provision under Section 89 (4) of the Registration Act and in the event of any such preceding or any such communication from the Authoirized Officer under the SARFAESI Act, the Registering Authority has to make entries in his Book No.1 or get it scanned as contemplated under Section 89 (4) of the Registration Act. The entry of sale certificate in Book No.1 under Section 89 (4) of the Registration Act has the same effect as registration and obviates requirement of no further action. In the case of G.Madhurampal cited supra, the Hon'ble Apex Court reiterated the above position."

7. The said decision is followed in another case in ***M/s.P & C Energy Infra Private Limited vs. Inspector General of Registration*** in W.P.No.34183 of 2023 and the relevant observation of this Court reads as follows:

" Since we find that the impugned Rule is in violation of the order of the Honourable Supreme

Court in the Inspector General of Registration & another Vs. G.Madhurambal & another, dated 11.11.2022 and in view of the settled position of law that a judgment of the Court cannot be overruled by an amendment introduced by the executive order, there will be an order of the interim stay of operation of the impugned amendment until further orders.

2. The Authority shall accept the certificate without insisting of filing fee. Such filing will be subject to the result of this Writ Petition. The concerned Registrar shall make an endorsement regarding pendency of this Writ Petition while filing those documents."

8. In view of the law laid down by the above mentioned cases, it is clear that the respondents are not entitled to insist for payment of Stamp Duty or filing fee on the copy of the sale certificate forwarded to them for filing in Book No.1 under Section 89(4) of the Registration Act. The GO.Ms.No.28 referred by the respondents in the impugned order was stayed by this Court in W.P.(MD).No.8431 of 2023. Therefore, the impugned order passed by the respondents to the extent directing the petitioner to pay filing fee at the rate of 11% is quashed.

9. The petitioner is directed to ensure that 3rd respondent shall forward the authenticated copy of the sale certificate to the 2nd respondent within a period of four weeks from the date of receipt of copy of this order. If authenticated copy of the sale certificate is forwarded to the 2nd respondent by the 3rd respondent within the time mentioned above, the respondents shall file the same, without insisting filing fee as per GO.Ms.No.28 dated 23.03.2023. This order is subject to the result of the Writ Petition in W.P.(MD).No.8431 of 2023 and the respondents shall file the same within a period of one week from the date of receipt of authenticated copy.

10. With the above directions, this Writ Petition is allowed. No costs.

01.10.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
dna

To

1.The Inspector General of Registration
100, Santhome High Road
Chennai 600 028.

2.The Sub-Registrar
Sub-Registrar-in Charge
Konnur
Ambattur
Chennai 600 053.

3.The Authorised Officer
Tamil Nadu Mercantile Bank Ltd
Chennai GT Branch
194A, Annapillai Street
George Town
Chennai 600 001.

S.SOUNTHAR, J.

dna

W.P No.381 of 2024

01.10.2024