THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.No.940 of 2024
and
C.M.P.No.6714 of 2024

1.The Inspector General of Registration,
Office of the I.G. of Registration,
100, Santhome High Road,
Chennai.

2.The Sub-Registrar,
Sulur Sub-Registrar Office,
New No.423, Trichy Road,
Sulur – 641 402.
Coimbatore District. ... Appellants

Vs.

1.Kovai Medical Center and Hospital Limited.,
Represented by its Chief Operating Officer,
Dr.J.Sivakumaran,
99, Avinashi Road,
Coimbatore – 641 104.

2.The Authorised Officer,

Karur Vysya Bank,
Asset Recovery Branch Maurai,
170/9, Mattuthavanai-Melur Road,
Near Mattuthavanai Bus Stand,
Madurai – 625 107. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 14.08.2023 made in W.P.No.3195 of 2023 and allow this writ appeal.

For Appellants	:	Mr.Ramanlal, Additional Advocate General Assisted by Mr.L.S.M.Hasan Fizal, Additional Government Pleader
For 1st Respondent	:	Mr.Sharath Chandran

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J U D G M E N T

*(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)*

This writ appeal is at the instance of the Inspector General of Registration. Challenge is to the order of the learned Single Judge made in W.P.No.3195 of 2023.

2. The prayer in the said writ petition reads as follows:-

> *Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a writ of certiorarified mandamus, to call for the records of the proceedings in Na.Ka.En.No.675/2022, dated 30.12.2022 on the file of the 2nd respondent and to quash the same as one without jurisdiction and to consequently direct the 2nd respondent to file the sale certificate, dated 14.10.2022 issued by the 3rd respondent in Book I in terms of Section 17(2)(xii) and 89(4) of the Registration Act, 1908.*

The short facts that led to the filing of the writ petition are as follows:-

3. The petitioner purchased certain immovable properties in an auction sale (E-auction) that was held by the authorized officer of Karur Vysya Bank on 07.09.2022. Having been declared as the highest bidder, the sale certificate was issued in favour of the petitioner on 14.10.2022. The sale certificate was forwarded by the authorized officer to the sub-Registrar for being filed under Section 89(4) of the Registration Act. The same was returned by the Sub-Registrar under cover of an order dated 30.12.2022, wherein, it was stated that the sale certificate is to be stamped as a conveyance and it should be referred under Section 47-A of the Stamp Act for proper stamp duty and therefore, it cannot be filed under Section 89(4) of the Registration Act. It is this proceeding of the Registrar which was subject matter of challenge in the writ petition.

4. The learned Single Judge after examining the relevant provisions of the Registration Act and the pronouncements of this Court concluded that the action of the Registrar in returning the sale certificate without filing it under Section 89 is wrong and hence allowed the writ petition quashing the said order and directing the Registrar to file the sale certificate under Section 89(4) of the Registration Act. Aggrieved the State is on appeal.

5. We find that the issue in question is squarely covered by the judgment of the Hon'ble Supreme Court in ***Inspector General of Registration and another Vs. G.Madhurambal and another*** reported in ***2022 SCC OnLine SC 2079,*** where the Hon'ble Supreme Court held as follows:-

1. *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*** *reported in* ***1883 SCC OnLine All 116*** *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*** *reported in* ***(2021) 11 SCC 537*** *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.*

***2.** 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.*

***3.** The needful be done in terms of the impugned judgment(s) within 15 days from today.*

***4.** The special leave petitions are dismissed.*

***5.** Pending applications stand disposed of.*

6. We must also point out that the judgment in ***Inspector General of Registration and another Vs. G.Madhurambal and another*** referred to *supra* arose out of an attempted special leave petition against the judgment of the Division Bench of this Court in ***W.A.Nos.633 and 1503 of 2022,***

wherein the Division Bench has specifically held that an authorized officer of Bank will also fall under the category of revenue officer mentioned in Section 89 of the Registration Act. In holding so, the Division Bench in paragraph No.23 held as follows:-

> *23. In common parlance, if anyone is holding the responsibility of civil nature, other than any officer in Military or Naval service, then he would be reckoned to be a "Civil Officer". In the light of the aforesaid, the Authorised Officer of the bank would fall within the definition of "Civil Officer", especially when he is an officer of the nationalized bank. In that view of the matter, Section 17(2)(xii) of the Registration Act would be applicable to the facts of the case and thereby the sale certificate issued by the Authorised Officer is not one of the documents that requires compulsory registration.*

7. In view of the above, the objection that the Authorized officer of a Bank cannot be treated as a revenue officer cannot be sustained and on the question of stamp duty also the Division Bench held that once the sale certificate is issued by the authorized officer, it shall be filed under Section 89 of the Registration Act without insisting upon any stamp duty.

8. This position of law was confirmed in ***Inspector General of Registration and another Vs. G.Madhurambal and another*** referred to *supra*. Since it has been held that the sale certificate is not a conveyance in itself, Section 47-A of the Stamp Act cannot also be invoked. More over, in ***V.N.Devadass Vs. Chief Revenue Control Office -cum-Inspector and others*** reported in ***(2009) 7 SCC 438,*** the Hon'ble Supreme Court had held that unless there is an element of willful undervaluation involved, the Registrar cannot invoke Section 47-A of the Stamp Act.

9. Here the sale is done by public auction. Therefore, there cannot be any question of undervaluation. A Division Bench of this Court in ***S.Martin Vs. The Official Liquidator*** made in ***O.S.A.No.122 of 2010*** dated ***19.01.2017,*** held that a sale by public auction cannot attract Section 47-A of the Stamp Act. While dealing with a sale by public auction the Registrar cannot invoke Section 47-A of the Stamp Act and claim that the document is undervalued.

10. In view of the above pronouncements it is clear that none of the grounds on which the Registrar has chosen to return the document without filing can be sustained. The learned Single Judge was therefore perfectly justified in allowing the writ petition. We see no merit in this writ appeal. Therefore, the writ appeal fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) **(R.S.V., J.)**

30.07.2024

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Index : No
Internet : Yes
Neutral Citation : No
Speaking order

To:-

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Office of the I.G. of Registration,
100, Santhome High Road,
Chennai.

2.The Sub-Registrar,
Sulur Sub-Registrar Office,
New No.423, Trichy Road,
Sulur – 641 402.
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