IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P. No.12916 of 2024

M/s.P&C Realty Promoters Private Limited,
Rep. By its Director Mrs.S.C.Parameswari,
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,
Sunguvarchatram SRO Office,
Vadiavambal Nagar, Sunguvarchatram,
Sriperumbudur Taluk, Kancheepuram-602 106.

3.The Authorised Officer,
IDBI Bank Ltd.,
NPA Management Group (NMG),
No.5-9-89/1&2, Chapel Road,
Hyderabad-500 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the Respondents 1 and 2 to enter the Sale Certificate dated 24.01.2024 in Book No.1 under Section 89(4) of the

Registration Act, 1908, issued by the 3rd Respondent under Rule 9(6) of the SARFAESI Rules, 2002, without insisting the stamp duty.

For Petitioner : Mr.P.Krishnan

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

ORDER

The petitioner herein seeks a direction to the Respondents 1 and 2 to enter the sale certificate dated 24.01.2024 in Book No.1 under Section 89(4) of the Registration Act, 1908, without insisting payment of stamp duty.

2. It is the case of the petitioner that she was the highest bidder of the property covered by the sale certificate dated 24.01.2024 in the e-auction conducted by the 3rd Respondent under the SARFAESI Act. After deposit of the entire sale consideration as per the bid, the 3rd Respondent issued sale certificate dated 24.01.2024. After handing over the original sale certificate to the petitioner, the 3rd Respondent forwarded a copy of the sale certificate to the 2nd Respondent on 04.03.2024 for making necessary entry in Book No.1 under Section 89(4) of the Registration Act. The 2nd Respondent kept the document pending without making necessary entry on the ground that it is liable for stamp duty. Therefore, the petitioner has come before this Court.

3. The learned counsel for the petitioner by relying on the following judgments submits that the sale certificate forwarded to the 2nd Respondent for making entry under Section 89(4) of the Registration Act, 1908, is not liable for stamp duty:

i) ***Sub-Registrar Joint-1, Ootacamund, The Nilgiris vs. Navaratan Bothra in W.A.No.1058 of 2024*** and

ii) ***Devendra Bhandari and others vs. The Inspector General of Registration and others in W.P.No.22896 of 2024.***

4. The learned Additional Government Pleader appearing for the Respondents submits that the sale certificate is liable to be affixed with stamp duty under Article 18 read with Article 23 of the Indian Stamp Act, 1899. He further submitted that as per G.O.Ms.No.28, Commercial cum Registration (J2) Department dated 23.03.2023, the petitioner is liable to pay filing charges at the rate of 11%.

5. The learned Additional Government Pleader appearing for the Respondents raised an oral submission that what was forwarded to the 2nd Respondent by the 3rd Respondent is the original sale certificate and therefore it is liable to be impounded for collection of stamp duty. He further orally

submitted that the said certificate was impounded. However in the counter affidavit filed by the 2nd Respondent, he has not taken a plea as if document was impounded.

6. The learned counsel for the petitioner disputed the oral argument made by the learned Additional Government Pleader by submitting that the original sale certificate was handed over to the petitioner by the 3rd Respondent and what was forwarded to the 2nd Respondent is only a copy of the sale certificate.

7. The petitioner also produced the original sale certificate issued to him by the 3rd Respondent before this Court to substantiate his claim that the original sale certificate was handed over to him by the 3rd Respondent.

8. A perusal of the covering letter dated 04.03.2024 of the 3rd Respondent addressed to the 2nd Respondent enclosed in the typed set of papers would show that he forwarded only a copy of the sale certificate for filing under Section 89(4) of the Registration Act. When the covering letter issued by the 3rd Respondent indicates that only a copy of the sale certificate was forwarded to the 2nd Respondent, it is not open to the registration authority to assume that it was the original certificate and insist payment of stamp duty. In fact, the original sale

certificate has been produced by the petitioner before this Court for perusal. Hence, it is not open to the 2nd Respondent to insist payment of stamp duty on the copy of the sale certificate forwarded to him for filing under Section 89(4) of the Registration Act. The 2nd Respondent is also not entitled to impound the document certified as copy of sale certificate by issuing authority namely 3rd Respondent in his covering letter. It is settled by Apex Court in ***Inspector General of Registration and another vs. G.Madhurambal and another*** reported in ***2022 SCC Online SC 2079*** that no stamp duty is payable on copy of sale certificates forwarded to registering authority for filing under Section 89(4) of Registration Act.

9. A Division Bench of this Court in ***Sub-Registrar Joint-1, Ootacamund, The Nilgiris vs. Navaratan Bothra in W.A.No.1058 of 2024*** while considering the question with regard to the payment of stamp duty at the time of filing of sale certificate after referring to law settled by Apex Court in Madhurambal case, observed as follows:

> *"5. .... The issue relating to payment of stamp duty on a sale certificate is no longer res integra. The Hon-ble Supreme Court in The Inspector General of Registration & Another vs.G.Madhurambal and Another, reported in 2022 SCC Online SC 2079, had held that no stamp duty is payable on sale certificates*

which are filed for registration. The contention of the Government that the Authorised Officer of a Bank will not the Revenue Officer within the meaning of Section 89 (4) of the Registration Act, was also rejected by the Division Bench in The Sub Registrar, Neelangarai vs. Tripower Enterprises (P) Limited, made in W.A.No.633 and 1503 of 2022."

10. I had an occasion to answer a similar question in ***Devendra Bhandari and others vs. The Inspector General of Registration and others in W.P.No.22896 of 2024*** and the relevant observation reads as under:

> *"10. In view of the law laid down in above mentioned decisions, it is clear that the respondents are not entitled to insist on payment of stamp duty on the copy of the sale certificate forwarded to them for filing in Book No.1 under Section 89(4) of Registration Act. Therefore, the second respondent is directed to enter the revalidated sale certificate dated 20.01.2024 issued by the third respondent in Book No.1 as per the provision of section 89(4) of Registration Act without insisting on payment of any stamp duty within a period of two weeks from the date of receipt of copy of this order. It is also made clear that the order passed by this Court is subject to the outcome of writ petition in W.P.(MD).No.8431 of 2023."*

11. In view of the law settled in the above mentioned cases, there is no

difficulty in coming to the conclusion that the Respondents 1 and 2 are not entitled to insist payment of stamp duty on the copy of the sale certificate forwarded to them under Section 89(4) of the Registration Act.

12. As far as the contention raised by the learned Additional Government Pleader that the petitioner is liable to pay registration charges as per G.O.Ms.No.28 mentioned above is concerned, the operation of the said G.O. was stayed by this Court by order dated 23.04.2023 in W.P.(MD)No.8431 of 2023. Therefore, the 2nd Respondent is also not entitled to claim registration charges at the rate of 11% based on the Government Order stayed by this Court.

13. Though the learned Additional Government Pleader appearing for the Respondents submitted that the document has already been impounded in view of the fact what was forwarded to the 2nd Respondent was only a copy of the sale certificate, the 2nd Respondent is not entitled to impound the same. The Respondents are directed to file the copy of the sale certificate under Section 89(4) of the Registration Act within a period of 4 weeks from the date of receipt of a copy of this order. In view of the order referred above staying G.O.Ms.No.28 dated 23.03.2023, it is made clear, this order is subject to the result of the writ petition in W.P.(MD).No.8431 of 2023.

14. With these directions, the writ petition stands allowed. No costs.

23.10.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
mka

To:

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

2.The Sub-Registrar,
Sunguvarchatram SRO Office,
Vadiavambal Nagar, Sunguvarchatram,
Sriperumbudur Taluk, Kancheepuram-602 106.

3.The Authorised Officer,
IDBI Bank Ltd.,
NPA Management Group (NMG),
No.5-9-89/1&2, Chapel Road,
Hyderabad-500 001.

S.SOUNTHAR, J.

mka

W.P. No.12916 of 2024

23.10.2024