THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM:

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

**W.A.No. 1606 of 2021**
**and**
**C.M.P.No. 10009 of 2021**

1.The Inspector General of Registration,
Mylapore, Chennai.

2.The Sub-Registrar,
Annur, Coimbatore District. ...Appellant

Vs.

Trinity Colour India (P) Limited,
Rep. by its Director, Mr.A.Yogeshkumar,
S/o C.Ayyakkan,
No.27, Annamalai Nagar,
Off: Mettur Road, Erode - 638 011. ...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 05.02.2021 made in W.P.No. 27199 of 2017.

For Appellant : Mr.L.S.M.Hasan Faizal
Additional Government Pleader

For Respondent : Mr.M.Santhanamari for
Mr.E.J.Ayyappan

**JUDGMENT**

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

The Inspector General of Registration is on appeal, aggrieved by the direction to refund 2% surcharge that was collected while registering the sale certificate dated 17.11.2016. The respondent participated in a public auction conducted by the Authorized Officer of State Bank of India and was declared highest bidder. A sale certificate was also issued in favour of the respondent. When it was presented for registration, the Sub-Registrar, Annur demanded and collected 7% of the bid amont which is split as follows:- "5% towards stamp duty and 2% towards surcharge".

2.The respondent filed a Writ Petition seeking a Writ of Mandamus for refund of the 2% surcharge that has been collected on the ground that since it has been held that a sale certificate is not a conveyance and hence, surcharge is not payable. Reliance was placed by the respondent on the judgment of the single Judge of this Court in ***P.Pandian Vs. The Inspector General of Registration and another*** in ***W.P.No. 28343 of 2015***.

3. The claim was resisted by the appellant contending that in view

of the Full Bench judgment in ***Dr.R.Thiagarajan Vs. The Inspector General of Registration, Chennai and others*** reported in ***2019 (4) CTC 839***, the levy of surcharge is justified. The Writ Court, however, held that the judgment of the Full Bench in ***Dr.R.Thiagarajan Vs. The Inspector General of Registration*** is not applicable to the facts of the case on hand and concluded that the appellant is liable to refund 2% of the amount of the sale consideration collected as surcharge.

4. We have heard Mr.L.S.M.Hasan Faizal, learned Additional Government Pleader for the appellant and Mr.M.Santhanamari for Mr.E.J.Ayyappan, learned counsel for the respondent.

5. The issue is no longer res-integra. A Division Bench of this Court in ***Bell Tower Enterprises LLP, Rep. by its Managing Partner Vs. State of Tamil Nadu, Rep. by its Secretary to Government,*** reported in ***2022 (7) MLJ 549***, to which one of us (Hon'ble Mr.Justice R.Subramanian) was a party has held that surcharge is not payable for registration of sale certificates. Recently, another single Judge of this Court in ***Sri Balaji Fibre Vs. Inspector General of Regisration and Others*** made in ***W.P.Nos. 415 of 2023 etc., batch*** has also taken the same view. The conclusions of this Court

are based on the pronouncement of the Hon'ble Supreme Court in ***Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank*** and the ***Inspector General of Registration v. K.K.Thirumurugan*** wherein, the Hon'ble Supreme Court clearly held that the sale certificate is not a conveyance.

6. Both in ***Bell Tower Enterprises*** and ***Sri Balaji Fibre*** referred to supra**,** it has been held that if a sale certificate was presented for registration, duty payable is 5% towards stamp duty and 1% towards registration charges. Therefore, the State is entitled to collect 6% of the bid amount. In the case on hand, we find that 7% has been collected. Therefore, the appellant would be liable to refund 1% of the stamp duty that has been collected from the respondent.

7.This Writ Appeal is **allowed** to that limited extent. The direction to refund 2% is modified as 1%. The said 1% will carry interest at 9% per annum from the date of collection till date of repayment. No costs. Consequently, connected miscellaneous petition is closed.

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

01.08.2024

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Internet:Yes
Index: No
Speaking
Neutral Citation : No

To:-

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Mylapore, Chennai.

2.The Sub-Registrar,
Annur, Coimbatore District.

**R.SUBRAMANIAN, J.**
**and**
**R.SAKTHIVEL, J.**

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