IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.22896 of 2024
and WMP.No.24932 of 2024

1.Devendra Bhandari
2.Jitendra Bhandari
3.Mahendra Bhandari ... Petitioners

vs.

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

2.The Sub Registrar,
Velapady Sub Registrar Office,
Velapady,
Vellore District.

3.The Authorised Officer,
Indian Bank,
Stressed Assets Management Branch,
No.55, Ethiraj Salai,
Chennai – 600 008.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to enter the revalidated Sale Certificate dated 20.01.2024 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 Petitioners : 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 revalidated Sale Certificate dated 20.01.2024 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 payment of the stamp duty.

2. It is the case of the petitioner that the 3rd respondent conducted an e-auction sale on 20.01.2024 under *SARFAESI* Act. The petitioner had participated in the said e-auction sale and he was declared as a successful bidder in respect of the properties. The 3rd respondent issued sale certificate on 16.05.2011. Since the same was issued without taking

possession from the borrower, the petitioner filed writ petitions in W.P.Nos.17485 and 17488 of 2023, seeking direction to the respondents therein to hand over possession and issue revalidated sale certificate. The writ petitions were disposed of this Court on 18.07.2023. Thereafter, the 3rd respondent issued revalidated sale certificate on 20.01.2024 and forwarded the same to the second respondent for making necessary entry in Book No.1 under Section 89 of Registration Act. The second respondent is keeping the sale certificate pending with him on the ground that sale certificate would attract stamp duty as per G.O.Ms.No.28 dated 23.03.2023. It is brought to the notice of this Court by the learned counsel for the petitioner that the said Government Order was stayed by the Madurai Bench of this Court in WMP(MD).No.7754 of 2023 in WP(MD).No.8431 of 2023.

3. The learned counsel appearing for the petitioner by relying on Section 17(2) of Registration Act submits that sale certificate is not a document which requires compulsory registration and hence demand for payment of stamp duty on the sale certificate by treating the same as original deed is untenable in law.

4. In support of the said contention, the learned counsel relied on the following judgment passed by this Court in W.P.Nos.8512 of 2023 and batch cases. The learned counsel also placed reliance on ***M/s.Sri Balaji Fibre Vs. The Inspector General of Registration and others*** in W.P.Nos.415 of 2023 etc., batch cases.

5. The learned Additional Government Pleader appearing for the respondents would submit that as per G.O.Ms.No.28, dated 23.03.2023, the petitioner is liable to pay one time registration fees at the rate of 11%. even for the purpose of recording the document under Section 89(4) of Registration Act. He also further submitted that the petitioner has to produce the original sale certificate by booking registration slot through online e-portal as per Circular No.28442/C1/2018, dated 07.07.2023.

6. The petitioner is not seeking registration of the sale certificate, he is only seeking recording of the sale certificate as per the provisions of Section 89(4) of Registration Act. Section 89(4) of

Registration Act reads as follows:

> *(4) Every Revenue Officer granting a certificate of the sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1 (or get it scanned).*

7. A reading of the above provision would make it clear whenever a Revenue Officer granting a certificate of sale, forward the copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property covered by the certificate is situate, and such officer shall file the copy in his Book No.1. Therefore, it is a statutory mandate for the registering officer to file sale certificate when the copy of same is forwarded to him by any Revenue Officer granting a certificate of sale.

8. It is settled by the various decisions of this Court, the Authorized Officer of the bank conducting auction under SARFAESI Act is

a Revenue Officer within the meaning of Section 89(4) of Registration Act. The petitioner is not seeking registration of the certificate and the original of the said certificate is also not before the registering authority. Hence, it is not open to him to demand stamp duty on copy of sale certificate. In such circumstances, following mandate under Section 89(4) of Registration Act, it is the duty of the registering authority to register the document without insisting stamp duty. The issue in this regard was already considered by this Court in ***Chettinad Academy of Research and Education, represented by its Authorized Signatory Vs. The Authorized Inspector General of Registration and others*** in W.P.No.8512 of 2023, etc batch cases. The relevant observation of this Court in this regard reads 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 procedures as contemplated. But, if the Sale Certificate issued under the SARFAESI Act by the Authorised Officer has been communicated 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 Authorised 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.

9. The said decision was 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***. The relevant observation of this Court in this regard reads as follows:

As far as the collection of Stamp Duty is concerned, in the case of Senthil Kumaraiah.J Vs. State of Tamil Nadu & another, in WMP.(MD).No.7754 of 2023 in W.P.No.8431 of 2023, the Madurai Bench of this Court passed an interim order, directing the second respondent / Inspector of General of Registration, to accept the sale certificate for registeration without insisting on stamp duty, by citing the Judgment of the Hon'ble Supreme Court of India, in the Inspector General of Registration & another Vs. G.Madurambal & another, wherein the appeal by the Registering authority was dismissed. Therefore, this Supreme Court has also settled the issue with respect to the collection of Stamp duty pertaining to the registration of sale certificate. It is also useful to extract the similar order passed by this Court in WMP.(MD).No.7754 of 2023 in WP.(MD).No.8431 of 2023 dated 13.04.2023, (cited supra), which reads as follows:-

"Since we find that the impuged 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."

4. In view of the above submissions made by the learned Senior Counsel for the petitioner, as far as the collection of Stamp duty is concerned, already following the decisions of the Hon'ble Supreme Court and this Court had already granted stay, and therefore, this Court directs the concerned respondents not to insist the persons who presented the sale certificate for registration for payment of Stamp duty. Therefore, the respondents are directed to register the document and release the same to the petitioner with appropriate endorsement and payment of the stamp duty shall be subject to the outcome of the pending writ petition before the Madurai Bench in W.P.(MD).No.8431 of 2023".

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 3rd 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. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2024

Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No
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To
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100, Santhome High Road,
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S.SOUNTHAR, J.

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