THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM:

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

W.A.No.215 of 2024
and
C.M.P.Nos.1293 & 1294 of 2024

M/s.Vijayalakshmi Marketing,
Partnership Firm Rep. by its Managing Partner,
N.Rajan Babu,
Having Office at,
No.90, V.K.Road, Peelamedu,
Coimbatore – 641 004. ...Appellant

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary to the Government,
Commercial Taxes & Registration Department,
Fort St. George, Chennai – 600 005.

2.The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 004.

3.The Sub-Registrar,
Sub Registrar Office, Thuraiyur,
Tiruchirapalli District. ...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 13.09.2023 passed in the writ petition in W.P.No.7194 of 2023.

For Appellant	:	Mr.S.Parthasarathy, Senior Counsel for Mr.P.Dinesh Kumar
For Respondents	:	Mr.L.S.M.Hasan Faizal

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J U D G M E N T

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

The petitioner in W.P.No.7194 of 2023 is on appeal aggrieved by the dismissal of its writ petition with the following prayer:-

"Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records of 3rd respondent pertaining to the impugned Refusal check slip in Refusal Number FRL/ Thuraiyur / 4/ 2023 dated 4.01.2023 and quash the same as arbitrary, illegal and without jurisdiction and consequently direct the respondents herein to refund the excess amount of Rs.1,35,33,970/- paid by the petitioner firm for registration of

sale certificate under protest as stamp duty and registration charges as claimed by the 3rd respondent and direct the respondents not to proceed with under Section 47(A) of Indian Stamp Act to fix any other value or seek valuation of the E-auctioned property under Court proceedings and in furtherance direct the 3rd respondent to release the registered sale deed vide Doc.No.47 of 2023 dated 04.01.2023."

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

2. The Company by name Cethar Limited formerly known as Cethar Vessels Pvt. Ltd., was directed to be wound up by the Chennai Bench of National Company Law Tribunal and one Thiru.V.Nagarajan was appointed as the Official Liquidator by the Tribunal with a direction to realise the assets of the Company. The Official Liquidator conducted a public auction (E-Auction) of the property measuring about 92.47 acres with a built up area of 8,32,945 sq.f. situate at Peramangalam Village of Trichirapalli District. The petitioner participated in the said public auction and was declared the successful bidder for a bid amount of Rs.27,06,77,000/-. The petitioner also paid the entire bid amount less the TDS applicable at 1%. The sale certificate to that effect was issued by the Official Liquidator appointed by the National Company Law Tribunal on 28.12.2022.

3. A sale deed was also executed by the Official Liquidator on 04.01.2023 and the same was presented for registration. The Sub-Registrar concerned demanded stamp duty. The petitioner paid the stamp duty at 5% as per G.O.Ms.No.46 of Commercial Taxes and All Department dated 27.03.2012 and 1% towards registration charges. The Sub-Registrar refused to accept the same and demanded stamp duty as per Article 18 read with Article 23 of Schedule-I to the Indian Stamp Act,1899 treating it as the conveyance. The petitioner however paid the amount under protest on 04.01.2023. Thereafter, the Sub-Registrar registered the instrument and referred it under Section 47-A claiming that there has been a wilful undervaluation of the property. Hence, the instant writ petition by the petitioner seeking the reliefs as aforesaid.

4. Though it has been held that a sale certificate does not amount to conveyance, if it is to be registered, the duty required under the Stamp Act has to be paid. Article 18 read with Article 23 makes it obligatory on the part of the purchaser to pay the stamp duty treating the sale certificate as a conveyance, if he wants registration of the instrument. However, by

G.O.Ms.No.46 of Commercial Taxes and All Department dated 27.03.2012 referred to above, the Government exercising powers under Section 9 of the Indian Stamp Act had remitted duty payable on sale certificate to 5%. It is not in dispute that the petitioner has paid 5% duty and 1% towards registration charges. Therefore, the petitioner has paid the proper stamp duty. When the Registrar made a demand for higher duty, the petitioner has paid it under protest and the petitioner is now seeking refund.

5. The issue relating to payment of stamp duty on sale certificate is no longer *res-integra*. One of us [Hon'ble Mr.Justice R.Subramanian] has in ***Bell Tower Enterprises LLP, Rep. by its Managing Partner Vs. State of Tamil Nadu, Rep. by its Secretary to Government,*** reported in ***2022 (5) CTC 454,*** after referring all the precedents on the issue of stamping of sale certificate had held that the stamp duty payable on the sale certificate is only 5% and the registration charges payable is 1% and had observed as follows:-

> *25. From the above discussion, it could be seen that in view of the pronouncement of the Hon'ble Supreme Court in* ***Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank,*** *the law as it stands today*

is that an Authorised Officer, who conducts a sale under the provisions of the SARFAESI Act, would be a Revenue Officer and the certificate issued by him in evidence of such sale, would be a document which is not compulsorily registrable under Section 17(2)(xii) of the Registration Act. It would be sufficient, if the document is lodged with the Registrar under Section 89(4) to be filed by him in the Book-I maintained by him. The decisions of this Court in the ***Inspector General of Registration v. K.K.Thirumurugan,*** *(Division Bench,)* ***The Inspector General of Registration v. Kanagalakshmi Ganaguru****, (Division Bench),* ***Dr.R..Thiagarajan v. Inspector General of Registration,*** *(Full Bench) and* ***The Inspector General of Registration v. Prakash Chand Jain,*** *(Division Bench) are no longer good law, in view of the pronouncement of the Hon'ble Supreme Court in* ***Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank.***

26. The next question that would arise is to the amount of stamp duty and registration charges payable, if such

certificate is presented for registration. Article 18 of the Stamp Act, provides for Stamp Duty payable on a certificate of sale granted by a Civil or Revenue Court or Collector or *other Revenue Officer. Clause (c) of Article 18 makes the duty payable for a conveyance would apply to a Sale Certificate also. Under Article 23 of the Stamp Act, the Stamp Duty payable on a sale is 5% as per G.O.Ms.No.46, CT and All Department dated 27.03.2012. As already pointed out since the document would not be a conveyance, there is no question of payment of any Surcharge either under Section 116-A of the Tamil Nadu District Municipality Act, 1920 or under the Tamil Nadu Duty on Transfer of Property (in Municipal Areas) Act (32 of 2009).*

6. The said judgment was also followed by another learned Single Judge of this Court in ***N.C.Suresh Kumar and another Vs. Inspector General of Registration*** reported in ***2023 (5) MLJ 176.*** Therefore, the demand made by the Sub-Registrar that the petitioner must pay enhanced stamp duty is not justified.

7. As regards the reference made under Section 47-A of the Stamp Act we are constrained to hold that such a reference is not authorized by Section

47-A. The Hon'ble Supreme Court in ***Registrar of Assurances and another Vs. ASL VYAPAR Private Ltd. & another*** made in ***Civil Appeal No.8281 of 2022*** dated ***10.11.2022*** after referring to the earlier judgment in ***V.N.Devadass Vs. Chief Revenue Control Office -cum-Inspector and others*** reported in ***(2009) 7 SCC 438*** held that a reference under Section 47-A cannot be resorted, where a sale is by public auction by the officers appointed by the Court. In doing so the Hon'ble Supreme Court observed as follows:-

> *22. On the conspectus of the matter, we have not the slightest hesitation in upholding the view that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through court process/receiver as that is the most transparent manner of obtaining the correct market value of the property.*
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> *23. It is no doubt true that in a court auction, the price obtainable may be slightly less as any bidder has to take care of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. But then that is a price obtainable as a result of the process by which the property has to be disposed of. We cannot lose sight of the very*

objective of the introduction of the Section whether under the West Bengal Amendment Act or in any other State, i.e., that in case of under valuation of property, an aspect not uncommon in our country, where consideration may be passing through two modes – one the declared price and the other undeclared component, the State should not be deprived of the revenue. Such transactions do not reflect the correct price in the document as something more has been paid through a different method. The objective is to take care of such a scenario so that the State revenue is not affected and the price actually obtainable in a free market should be capable of being stamped. If one may say, it is, in fact, a reflection on the manner in which the transfer of an immovable property takes place as the price obtainable in a transparent manner would be different. An auction of a property is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a court monitored auction, the Registering Authority would have a say on what is the market price, would amount to the

Registering Authority sitting in appeal over the decision of the Court permitting sale at a particular price.

8. The Court upheld the view expressed in ***V.N.Devadass Vs. Chief Revenue Control Office*** *(supra)* and answered the reference as follows:-

> *31. We are, thus, of the view that this reference is required to be answered by opining that in case of a public auction monitored by the court, the discretion would not be available to the Registering Authority under Section 47A of the Act.*

9. In view of the above categoric pronouncement of the Hon'ble Supreme Court we conclude that the impugned action of the Sub-Registrar viz., the 3rd respondent are unwarranted and against law. The learned Single Judge however dismissed the writ petition at the admission stage itself and concluded that it will be open to the petitioner to raise all the issues in the 47-A proceedings. Unfortunately the attention of the learned Single Judge was not drawn to the recent pronouncement of the Hon'ble Supreme Court in ***Registrar of Assurances and another Vs. ASL VYAPAR Private Ltd. & another*** *(supra)*. Hence, we are forced to interfere with the order of the learned Single Judge.

10. In fine, the writ appeal is allowed the order of the learned Single Judge dismissing the writ petition is set aside. The demand made by the sub-Registrar is also set aside. The 47-A proceedings are quashed. All duty collected from the appellant except the duty of 5% + 1% i.e., found payable as per the judgment of this Court in ***Bell Tower Enterprises LLP, Rep. by its Managing Partner Vs. State of Tamil Nadu, Rep. by its Secretary to Government*** *(Supra)* will be refunded to the petitioner with interest at 9% from the date of payment till date of repayment. It is seen that the petitioner has also paid a sum of Rs.74,50,000/- towards additional duty in the proceedings under Section 47-A of the Stamp Act. The said sum will also be refunded to the petitioner with interest at 9% from the date of payment viz., 22.03.2024 till date of repayment. No costs. Consequently, the connected miscellaneous petitions are closed.

11. There will be a direction to the Sub-Registrar to return the registered sale deed within a period of fifteen (15) days from the date of issuance of the certified copy of the order.

(R.S.M., J.) **(R.S.V., J.)**
23.07.2024

dsa
Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order

Note:-

The Registry is directed to issue certified copy of this order by **25.07.2024.**

To:-

1.The Secretary to the Government,
State of Tamil Nadu,
Commercial Taxes & Registration Department,
Fort St. George, Chennai – 600 005.

2.The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 004.

3.The Sub-Registrar,
Sub Registrar Office, Thuraiyur,
Tiruchirapalli District.

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

dsa

W.A.No.215 of 2024

23.07.2024