IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

W.P.No.35002 of 2023

K.Gowri ... Petitioner

Vs.

1. The Inspector General of Registration,
Government of Tamil Nadu,
100, Santhome High Road,
Mullimanagar,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai – 600 028.

2. The District Revenue Officer,
District Collectorate,
Coimbatore – 641 018.

3. The District Collector,
Coimbatore District,
District Collectorate Campus,
Coimbatore – 641 018.

4. The Joint I Sub-Registrar,
Corporation Kalyana Mandapam,
Poo Market Post,
Coimbatore – 641 001. ... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to refund the excess amount of Rs.10,55,500/- (Rupees Ten Lakhs Fifty five Thousand Five hundrend only) along with interest at the rate of 9% from the date of payment till date of realisation.

For Petitioner : Mr.M.S.Seshadri

For Respondents : Mr.R.Ramanlaal
Additional Advocate General
Assisted by
Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

O R D E R

This Writ Petition has been filed to issue a Writ of Mandamus to direct the respondents to refund the excess stamp duty and registration charges paid by the petitioner.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondents.

3. Learned counsel for the petitioner submitted that the petitioner was the successful bidder in an auction conducted by Indian Bank under the SARFAESI Act. The document presented for registration is a sale certificate issued by the authorised officer of the financial institution under SARFAESI Act. The Registering officers instead of collecting 5% stamp duty and 1% for registration charge, they have collected excess amount. The judgment of the Hon'ble Supreme Court in *Esjaypee Impex Private Limited Vs. Assistant General Manager and Authorised Officer, Canara Bank*, reported in **2021 (11) SCC 537** held that sale certificate issued by the Recovery officer under SARFAESI Act is not a conveyance and does not require registration under Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908. Following the said judgment, this Court in *Bell Tower Enterprises LLP Vs. IG Registration* case, held that authorised officer who conducts sale by auction under SARFAESI Act is a Revenue Officer and sale certificate issued by him is not compulsorily registrable under Registration Act. The respondents have neither followed the Act nor the decisions of the

Court, collected the excess stamp duty. Since the respondents have not come forward to refund the excess stamp duty and registration charges, the petitioner is constrained to file the present writ petition.

4. The Additional Advocate General appearing for the respondents submitted that there was no demand made by the respondents with regard to stamp duty from the petitioner. The petitioner valued the subject property and paid the stamp duty voluntarily. Hence she is not entitled to refund of stamp duty paid by her.

5. Admittedly the document presented for registration is a sale certificate issued by the authorised officer of the financial institution under SARFAESI Act. As per decision of the Hon'ble Supreme Court and this Court as above mentioned, the petitioner is liable to pay 5% Stamp Duty and 1% towards Registration Charges. The respondents have collected 7% Stamp Duty and 4% towards Registration Charges, which is against the principles of law laid down by the Hon'ble Supreme

Court and this Court. Hence, the respondents are directed to refund the excess stamp duty and registration charges collected from the petitioner.

6. With the abovesaid direction, the Writ Petition is allowed. There shall be no order as to costs.

19.01.2024

mfa
Index:Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

To

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P.VELMURUGAN, J.

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