BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.12.2023

Pronounced On : 03.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.1836 & 1768 of 2023
and
W.M.P.(MD)Nos.1628 &1571 of 2023

SJLT Textiles Private Limited
A company incorporated under the Companies Act, 1956,
Represented by its Managing Director &
Authorised Signatory, V.Selvadurai
Having its Registered office at
No.2E, Prince Arcae,
No.2E, 2nd Floor, 22-A,
Cathedral Road,
Chennai-600 086. ... Petitioner in W.P.(MD)No.1836 of 2023

SJLT Spinning Mills Private Limited
A company incorporated under the Companies Act, 1956,
Represented by its Managing Director &
Authorised Signatory, V.Selvadurai
Having its Registered office at
No.2E, Prince Arcae,
No.2E, 2nd Floor, 22-A,
Cathedral Road,
Chennai-600 086. ... Petitioner in W.P.(MD)No.1768 of 2023

Vs.

1.The Sub Registrar,
Vedachandhur,
Dindigul District.

2.The District Revenue Officer (Stamps),
Old Ramanathapuram Collector Office,
Room No.104, Madurai 20.

3.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-28. ... Respondents in both W.Ps.

Prayer in W.P.(MD)No.1836 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent vide notice dated 04.08.2021, quash the same as illegal, arbitrary and unconstitutional and consequently, direct the respondents to return the Document vide Doc No.3189 dated 10.12.2020 on the file of the first respondent and consequently, refund of excess stamp duty of 2% amounting to Rs.26,41, 120/- and additional registration fee of 3% amounting to Rs.39,62,024/- already paid by the petitioner.

Prayer in W.P.(MD)No.1768 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent vide notice dated 04.08.2021, quash the same as illegal, arbitrary and unconstitutional and consequently, direct the respondents to return the Document vide Doc No.3190 dated 10.12.2020 on the file of the first respondent and consequently, refund of excess stamp duty of 2% amounting to Rs.18,69,431/- and additional registration fee of 3% amounting to Rs.28,03,186/- already paid by the petitioner.

For Petitioner : Mrs.Ananda Gomathy

For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.C.Satheesh
(in both W.Ps.) Government Advocate

COMMON ORDER

Heard both sides.

2. The writ petitioners are companies registered under the provisions of the Companies Act. They participated in an e-auction conducted by M/s.Omkara Asset Reconstruction Company and purchased the petition mentioned properties. The authorised officer conveyed an extent of land measuring 24 acres and 93 cents in Vedachandur Taluk, Kalvarpatti Village to SJLT Spinning Mills Pvt., Ltd and the land measuring 23.09 acres to SJLT Textiles Pvt Ltd and the value of the land bid by SJLT Textiles Pvt Ltd was Rs.13,20,47,600/- and the value of the land bid by SJLT Spinning Mills Private Limited was Rs.9,34,31,379/-.

3. The authorised officer issued sale certificates in favour of the writ petitioners on 05.12.2020. They were presented for registration before the first respondent. The registering authority impounded the documents. The transaction was treated as conveyance and the petitioner was called upon to pay stamp duty and registration charges at the rate of 7% & 4%. The petitioner complied with the said demand. The petitioner realized only later that the stamp duty and registration charges payable on a sale certificate was 5% & 1% respectively. The registering authority further was of the opinion that the transaction has been undervalued. According to the department, stamp duty and registration fee were payable on the market value of the properties purchased by the petitioners. Proceedings under Section 47A of the Stamp Act was also taken and final orders were passed. The impugned notices dated 04.08.2021 were issued calling upon the petitioners to pay additional stamp duty and registration charges to the tune of R.3,03,65,996/-. Challenging the same and seeking return of the documents, the present writ petitions came to be filed.

4. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petitions and called upon this Court to set aside the impugned notices and grant relief as prayed for. The stand of the learned counsel is that the issue raised in the writ petitions is no longer *res integra* and that it has been answered already.

5. The registering authority has filed counter affidavit. The learned Additional Advocate General took me through its contents and contended that the writ petitions are bereft of merit and that they deserve to be dismissed.

6. I carefully considered the rival contentions and went through the materials on record. The entire defence of the department is anchored on the Full Bench decision reported in ***2019 (4) CTC 839 (R.Thiagarajan Vs. IG of Registration)***. As rightly pointed out by the learned counsel for the petitioner, the authorities are refusing to take cognizance of the subsequent developments. A learned Judge of this Court vide order dated

12.09.2022 in W.P.No.23237 of 2018 ***(Bell Tower Enterprises LLP Vs. State of Tamil Nadu and others)*** held 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).

27. Insofar as the registration charges are concerned, the State Government has fixed the registration charges at 1% under Section 78 of the Registration Act and the same has been published in the Tamil Nadu Government Gazette, as required under Section 79 of the Registration Act. By G.O.Ms.No.49 dated 08.06.2017, the following proviso was added to Article 1 of the table of the fees:

> "Provided further that notwithstanding anything contained in this Table, in case of deeds of conveyance, exchange, gift and settlement among non- family members, the Registration Fee shall be levied at the rate of Rupees four per Rupees hundred or part thereof on the value or amount on which stamp duty under the Indian Stamp Act, 1899 (Central Act II of 1899) is payable".

28. It is the contention of Mr.Sharath Chandran, learned counsel for the petitioner that the proviso would apply only in cases of deeds of conveyance, exchange, gift and settlement among non-family members. Inasmuch as a sale certificate would not amount to a conveyance, the registration fee payable would be as provided under Article 1 that is at 1% and nothing more. The judgment of this Court in Sakthi Foundations Pvt. Ltd., v The Inspector General of Registration, supports the contention of the learned counsel for the petitioner on this point. This Court after examining the language of the proviso had held that it would not apply to a sale certificate issued under SARFAESI Act. This renders the collection of registration charges at 4% from the petitioner also illegal.

29. In the upshot of the above discussions, the Writ Petition has to be necessarily allowed and the excess fee and the stamp duty collected will have to be refunded by the respondents. The Writ Petition stands allowed, a Writ of Mandamus will issue directing the respondents to refund the excess stamp duty and registration fee to the tune of Rs.19,72,620/- with interest at 9% per annum from the date of filing of this Writ Petition till date of payment. There shall be no order as to costs."

7. The aforesaid decision does not leave any room for doubt. When sale certificate is presented for registration by the purchaser, the stamp duty payable is 5% and the registration charges is 1%. They are on the bid amount and not on the market value. Therefore, the respondents are not justified in demanding payment of additional stamp duty and registration charges. On the other hand, they are bound to refund the excess amount collected from the petitioners. Respectfully applying the ratio laid down in W.P.No.23237 of 2018 dated 12.09.2022, the impugned notices are quashed. The respondents are directed to refund the excess stamp duty and registration fee collected from the petitioners. I refrain from directing the respondents to pay interest. This is because, the excess amounts were voluntarily paid by the petitioners though under a mistaken impression. The documents have been presented for registration on 10.12.2020. The decisions in favour of the petitioners came subsequently. The respondents are directed to release the petition mentioned documents that have been kept pending. This shall be done immediately and without delay.

8. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Sub Registrar,
Vedachandhur,
Dindigul District.

2.The District Revenue Officer (Stamps),
Old Ramanathapuram Collector Office,
Room No.104, Madurai 20.

3.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-28.

G.R.SWAMINATHAN, J.

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