BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)Nos.25561 and 25562 of 2024
and W.M.P(MD)Nos.21675 and 21676 of 2024

Ashwin Exim India Pvt Ltd.,
Rep by its Managing Director,
A.Viswanathan,
S/o. Alwarsamy,
No.111/N, State Bank Colony,
Polpettai,
Thoothukudi District. ... Petitioner in W.P.(MD)No.25561/2024

T.Ajai ... Petitioner in W.P.(MD)No.25562/2024

Vs.

1.The Inspector General of Registration,
120, Santhome High Road,
Santhome,
Chennai.

2.The Special Deputy Collector (Stamps),
Collector Office Building (3rd Floor)
Thoothukudi @ Tirunelveli,
Tirunelveli.

3.The Sub Registrar,
Thoothukudi Melur Sub Registrar Office,
Thoothukudi,
Thoothukudi District.

4.The Authorized Officer,
Indian Overseas Bank,
Regional Office, No.21, Victoria Road,
Thoothukudi,
Thoothukudi District-628001. ...Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the 3rd respondent made in 'வரிசை எண்கள்.6 மற்றும் 7/2024 நாள்.07.10.2024' respectively and quash the same as illegal, arbitrary and consequently, directing the respondents to release the sale certificates registered in Document Nos.4411 and 4412/2024 respectively dated 03.10.2024 and further directing the respondents to refund the excess amount of Rs.31,10,000/- and Rs.7,50,000/- respectively paid by the petitioners as stamp duty and registration charges for registration of the sale certificates within a time frame fixed by this Court.

For Petitioner (in both W.Ps) : Mr.B.Vinothkumar

For Respondents (in both W.Ps) : Mr.Veera Kathiravan,
Addl. Advocate General
Assisted by Mr.P.Subbaraj,
Spl. Govt. Pleader for R1 to R3

COMMON ORDER

These Writ Petitions have been filed seeking for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the 3rd respondent made in 'thpir vz;fs;.6 kw;Wk; 7/2024 நாள். 07.10.2024' respectively and quash the same as illegal, arbitrary and consequently, directing the respondents to release the sale certificates registered in Document Nos.4411 and 4412/2024 respectively dated 03.10.2024 and further directing the respondents to refund the excess amount of Rs.31,10,000/- and Rs.7,50,000/- respectively paid by the petitioners as stamp duty and registration charges for registration of the sale certificates within a time frame fixed by this Court.

2.It is the case of the petitioners that they have purchased the subject property through the E-auction conducted by the fourth respondent and the sale certificates were issued in favour of the petitioners on 01.10.2024. Subsequently, the four respondent forwarded the sale certificates for registration to the file of the third respondent. Third respondent initially registered the sale certificates vide document Nos.4411 and 4412 of 2024 dated 03.10.2024. But the third respondent insisted and demanded 7% stamp duty and 4% registering charges in the market value of the subject property. According to the petitioners, they have paid that amount and having registered the sale certificates now the third respondent referred the same to the second respondent for invoking proceedings under section 47(A) of the Indian Stamp Act. Challenging the same, the petitioners have filed these writ petitions.

3.The learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents 1 to 3, seeks time to file counter affidavit.

4.Heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

5.This issue is no longer *res integra*. This Court, in a batch of writ petition in ***W.P.Nos.415 of 2023*** and etc.,***(M/s.Sri Balaji Fibre Vs The Inspecter General of Registration and others)*** by on order dated 23.07.2024, has dealt with this issue in extensively, wherein this Court has framed the following issues:

> *"30. The issues arise for disposal of the writ petitions are as follows:*
>
> *1. Whether the sale certificate issued by the authorized officer under SARFAESI Act and forwarded by authorised officer*

is compulsorily registrable?

2. Whether the sale certificate filed under Section 89 of the Registration Act, requires stamp duty?

3.Whether the copy of the sale certificate filed under Section 89(4) of Registration Act will dispense with the stamp duty? Whether such sale certificate can be used for any purpose to claim right in immoveable property?

4.Whether the sale certificate operate as conveyance?

5. If the sale certificate is registered voluntarily what is the nature of the stamp duty and registration charges?

6. Whether the proceedings under Section 47-A of the Indian Stamp Act can be invoked at the time of registration of sale certificate?

7. Whether the transfer duty is payable on the sale certificate when it is registered?"

6.This Court, while answering the issue Nos.4 to 7, has held as follows:

"Issue Nos.4 to 7

61. The registration of the sale certificate by the parties is dealt under Article 18 of the Stamp Act which reads as follows:

"18. Certificate of Sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer—
(a) where the purchase-money does not exceed Rs. 10;
One rupee
(b) where the purchase-money exceeds Rs. 10 but does not exceed

Rs. 25;
Two rupees
(c) in any other case.
The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase money only."

62. Since, the authorised officer discharges his statutory duty and make a compulsorily sale, he is held to be a Revenue Officer, as already discussed in para 40. Article 18 of Stamp Act makes it clear that for sale certificate duty shall be same as a conveyance for consideration equal to the amount of purchase money only. The Legislatures were conscious of the fact that since the sale was conducted in public auction and sale consideration were fixed in a public auction, thought it fit to levy the duty only on the purchase money not beyond that. Article 23 of the Indian Stampt Act deals with Conveyance.

63. As per Article 23 of the Indian Stamp Act, five rupees for every Rs.100/- of the market value of the property which is the subject matter of conveyance. The word "Conveyance" is defined under Section 2(10) of the Stamp Act, which reads as follows:

"(10) Conveyance.-- "Conveyance" includes a conveyance on sale every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by schedule I"

64. The above provision makes it clear that only when the property is transferred inter vivos, the same will come within the ambit of conveyance. As far as the sale certificate issued by the *authorised officer is concerned, as discussed above, sale is only by operation of law not by transfer inter vivos. Therefore, stamp duty is payable only for conveyance. In such cases, 5% duty alone is payable, that too on the purchase money only. Therefore, invoking provisions under Section 47-A of Indian Stamp Act by the authorities for the registration of sale certificate is not permissible under law. Section 47-A can only be invoked when the registrar has reason to believe that the market value of the property of which is the subject matter of conveyance [exchange, gift, release of benami right or settlement] has not been truly set forth in the instrument, executed inter vivos not on the instrument by operation of law, when specific provision made under Stamp Act to levy duty on sale certificate under Article 18 of the Stamp Act, duty can be levied strictly according to that provision alone. Therefore, this Court is of the view that the authorities cannot treat the sale certificate as transfer by inter vivos for referring the instrument under Section 47-A of the Stamp Act, since, the sale certificate is not a transfer by act of parties rather it is by operation of law, i.e., compulsory sale.*

65. Only when there is a transfer by inter vivos and the registrar has reasons to believe that the market value of the property of which is the subject matter of conveyance has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property. Admittedly, as far as the sale certificate issued by the authorised officer is concerned is not transfer by inter vivos. It is *not a voluntary transfer or it is not a transfer by act of parties, it is a transfer by the operation of law. The authorised officer under the SARFAESI Act or any other Act by force of law makes a compulsory sale, such sale cannot be construed as a transfer by inter vivos, it is only a transfer by operation of law. Therefore, this Court is of the view that Section 47-A of Stamp Act cannot be invoked. When the sale certificate issued by the authorised officer is presented for registration by the parties, the duty liable only on the purchase money as per Article 18 of the Stamp Act.*

66. The contention of the learned Additional Advocate General that the authorised officer steps into the shoes of the mortgagee and the sale made by him comes within the ambit of the conveyance cannot be construed. This is a compulsory sale made under the statute. The statute directs the authorised officer for recovery of money by sale of the property of default borrowers. Such case, it cannot be said that such sale comes within the ambit of transfer by inter vivos. Similarly, the learned Additional Advocate General relying on the provision of Section 13(6) of the SARAESI Act contended that the right, title and interest in purchaser are thus transferred as if the transfer has been made by the owner of the asset himself. This Court is of the view that Section 13(6) of the SARFAESI Act cannot be interpreted to mean that it is only a transfer by inter vivos. Only in order to create marketable title, legal fiction is made as if the transfer is made by owner of the property. Therefore, when the very transfer itself is made under statute and it *is a compulsory sale, it cannot be said that such transfer is by the act of parties.*

67. It is also relevant to note that in a Division Bench of the Culcutta High Court in the case of BallyFabs International Limited v State of West Bengal reported in 2022 SCC Online Cal 863, while answering a reference held that Section 47-A does not apply and observed as follows:

> *"Rule 8 can be pressed in action for sale of the immovable secured assets after exhausting the provision contained under Section 13(4) of the SARFAESI Act, 2002. Sub-Rule 5 of Rule 8 postulates that before effecting the sale of the immovable property referred to in Rule 9 (1) the authorized officer after obtaining the valuation of the property from the approved valuer and in consultation with the secured creditor may fix the reserve price and sell the property either by obtaining a quotation from a person dealing with the similar secured assets or otherwise interested in buying such assets or by inviting the tenders from the public or by holding public auction or by private treaty. The authorized officer if embarks to sell this immovable property by inviting tenders from the public or by holding public auction and not by a private treaty or by obtaining quotation from the persons dealing with the similar secured assets or otherwise interested therein such exercise would certainly come within the purview of the open market sale. The object of such rule is to secure the best price by selling the property in the open market to reduce the burden of the debt and it is inconceivable that such secured creditor would sell the property at the lower price than what it would fetch or would have fetched in the open market. The authorized officer is the statutory authority having no personal interest in the secured assets and in fact deals with the public money. Raising any suspicion would impinge upon the freedom and the competence as envisioned in the aforesaid provision. However, the checks and balances can be made in this regard in not bringing all the course of action as indicated in Rule 8 (5) of the said rules but if the sale is effected by public auction and by inviting a public*

bid it excludes the operation of Section 47A of the Stamp Act and be regarded as the sale effected in the open market."

68. The Division Bench of this Court in the case of the Inspector General of Registration vs. M/s.Sulochana Mills, made in W.A.No.1115 of 2017 dated 30.04.2024 also had held that stamp has to be paid only on the value mentioned in the sale certificate not on the market value or the guideline value of the property. Further, held that the stamp duty levied on a sale certificate shall be 5% of stamp duty under Article 18(c) read with Article 23 of the Schedule-I of Stamp Act, 2% transfer duty under the Tamil Nadu Duty on Transfers of Property(Municipal Areas) Act, 2009 and Rules and 1% of registration charges, totally 5%+2%+1%=8%.

69. It is relevant to note that the provisions for transfer of duty was initially governed by Section 116-A of the Tamil Nadu District Municipalies Act. Section 116-A is in pari materia with Section 147 of the Delhi Municipal Corporation Act, 1957. The question as to whether Section 147 applies to a sale certificate issued under the CPC came up for consideration in Municipal Corpn. of Delhi v. Pramod Kumar Gupta, (1991) 1 SCC 633, wherein it was held as under:

4. The expression "instrument" in Section 147 of the Act has the same connotation as the word has under the Indian Stamp Act, the reference to which has been expressly made. Clause (14) of Section 2 of the Stamp Act gives an inclusive definition of the expression as referring to any document by which any right or liability is purported to be created, transferred, limited, extended, extinguished or recorded. Clause (10) of the said section states that

> *“conveyance” includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos. The expression ‘instrument of sale of immovable property’ under Section 147 of Act must, therefore, mean a document effecting transfer. The title to the property in question has to be conveyed under the document. The document has to be a vehicle for the transfer of the right, title and interest. A document merely stating as a fact that transfer has already taken place cannot be included within this expression. A paper which is recording a fact or is attempting to furnish evidence of an already concluded transaction under which title has already passed cannot be treated to be such an instrument. The question, therefore, is as to whether a certificate issued by a court under Rule 94 of Order XXI can be said to be such an instrument so as to attract the provisions of Section 147 of the Act or not.”*

70. Following the above judgment, this Court in Dr.Meera Thinakaran's case [2012 (2) CTC 759] has held as follows:

> *“The Hon'ble Supreme Court has held in the above judgment that the title is conveyed by an order of confirmation made by the Court under Order XXI Rule 92. Thus, a Certificate issued to the purchaser subsequently under Order XXI Rule 94 is only a document of evidencing the conveyance, which had already taken place. Similarly as per the provisions of Income Tax Act, the title is conveyed, the moment an order of confirmation of sale is made under Clause 63 of the Second Schedule to Income Tax Act. Thereafter, a sale Certificate issued under Clause 65 is only a document evidencing the conveyance which had already taken place. Therefore, I have no doubt in my mind to hold that a sale Certificate issued by the Recovery Officer as provided in Clause 65 of the II Second Schedule to the Income Tax Act is not an instrument of conveyance (Sale Deed) and it is only a document evidencing conveyance which had already taken place. In view of all the above conclusion, as has been been held by the Hon'ble Supreme Court, Certificate of sale issued by the Recovery Officer under the Recovery of Debts due to Banks and Financial Institutions Act 1993 is not liable for surcharge as per Section 116-A of the Tamil Nadu District Municipalities Act.”*

71. It is relevant to note that Section 116-A was repealed in 2009 and was re-enacted as the Tamil Nadu Duty on Transfers of Property (In Municipal Areas) Act, 2009. Section 3 of this Act reads as follows:

"Levy Of Duty On Transfers Of Property:-

There shall be levied a duty on transfers of property in every municipal area-

? in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (Central Act II of 1899) (hereinafter referred to as the Stamp Act) as in force for the time being in the State of Tamil Nadu, on every instrument of the description specified below, which relates to immovable property situated within the limits of the municipal area; and

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? at such rate as may be fixed by the Government, not exceeding five per centum, on the amount specified below against such instrument:--

Description of instrument	*Amount on which duty should be levied.*
(i) Sale of immovable property.	*The market value of the property as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.*

(ii) Exchange of immovable property	*The market value of the property of the greater value as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.*
iii) Gift of immovable property	*The market value of the property as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.*
(iv) Mortgage with possession of immovable property.	*The amount secured by the mortgage, as set forth in the instrument.*
(v) Lease in perpetuity of immovable property	*An amount equal to onesixth of the whole amount or value of the rents which would be paid or delivered in respect of the first fifty years of the lease, as set forth in the instrument*

72. From a bare reading of the aforesaid provision the following aspects are clear:

a. A surcharge becomes payable on the duty imposed by the Indian Stamp Act, 1899.

b. on every instrument of the description specified on the 5 kinds of *instruments specified,*

c. which relates to immovable property situated within the limits of the municipal area

d. The five kinds of instruments specified are: sale, exchange, gift, mortgage and lease. All five transactions are covered by the provisions of the Transfer of Property Act. A sale certificate under the SARFAESI Act is not a conveyance as it is not an inter vivos transfer of property. Similarly, transfer duty is payable on the market value as per Section 3 of the Tamil Nadu Duty on Transfers of Property (In Municipal Areas) Act, 2009. Whereas, stamp on the sale certificate is payable as per Article 18 of the Stamp Act only on the market value of the purchase money only. Hence, this Court is of the view that sale certificate cannot be equated to the reference to the market value of the property.

73. It is also relevant to point out the Division Bench of this Court in Sulochana Mill's case has held that 2% transfer duty is payable apart from 1% of registration charges. It is relevant to note that provision under Section 3 of the Levy Of Duty On Transfers Of Property Act), nor the judgment in Meera Thinakaran (Dr.) v. State of Tamil Nadu, (2012) 2 LW 351 : (2012) 2 CTC 759, nor the judgment of the Supreme Court in Municipal Corpn. Of Delhi v. Pramod Kumar Gupta, (1991) 1 SCC 633 was brought to the notice of the Division Bench in Inspector General of Registration vs. M/s.Sulochana Mills, made in W.A.No.1115 of 2017 dated 30.04.2024. The judgment of the Hon'ble Apex Court in Munipal

Corporation of Delhi vs. Pramod Kumar Gupta reported in (1991) 1 SCC 633 has considered 147 of the Delhi Municipal Corporation Act, 1957, in pari materia with Section 116-A of the Tamil Nadu District Municipalities Act has held that sale certificate is a document merely stating as a fact that transfer has already taken place cannot be included with this expression of sale of "immovable properties". Such being a position, mere registering sale certificate for the purpose of making it as a admissible document as required under law to show the transfer has already taken place, this Court is of the view that the transfer duty of 2% namely surcharge cannot be levied on the sale certificate. Therefore, the levy of transfer duty on the sale certificate cannot be sustained in the eye of law. Accordingly, the stamp duty leviable is only 5% on the purchase money apart from 1 % of registration charges.

74. Following the above discussion, this Court hold that as follows:

(i) the sale certificate will not come under the purview of conveyance, since, it is not a transfer inter vivos, it is a transfer by operation of law.

(ii) Section 47-A of the Stamp Act cannot be invoked for the sale certificate presented for registration by the parties.

(iii) surcharge or transfer duty will not be payable for sale certificate when presented for registration.

(iv) mere filing the copy of the sale certificate forwarded by the authorised officer under Section 89(4) of the Registration Act will

not require any stamp duty.

(v) If the party seeks to use the sale certificate for any purpose and produced before the authorities mentioned under Sections 33 and 35 of the Indian Stamp Act, such sale certificate is amenable for impounding at the discretion of the authorities.

75. With regard to the writ petition in W.P.No.12097 of 2024, this Court is of the view that the impugned order imposing 10 times penalty suffers from malafides, the impugned order has been passed immediately after the contempt proceedings initiated by the petitioner against the official respondents.

76. Imposing penalty is defined under Section 40(b) of the Indian Stamp Act, which reads as follows:

> *40(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the five rupees, or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees*

77. This Court is of the view that imposing penalty is discretionary. It is relevant to point out that this Court in the case of K.Sankara Narayanan Vs. Central Registrar of Multi State Co-operative Societies and other in Arb.O.P.No.384 of 2018 etc., dated 19.03.2024, has dealt with the word 'discretion', which reads as follows:

"34. In WHARTON'S LAW LEXICON - Fifteenth Edition, taking reference from the judgment of the Hon'ble Supreme Court in the case of Aero Traders Pvt. Ltd. v. Ravinder Kumar Suri [AIR 2005 SC 15], the legal meaning of word 'discretion' has been explained as under"-

"The word 'discretion' connotes necessarily an act of a judicial character, as used with reference to discretion exercised judiciously, it implies the absence of a hard and fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination and a knowledge of the facts upon which discretion may properly operate. When it is said that something is to be done according to the rules of reason and justice and not according to the private opinion; according to law and not honour. It only gives certain latitude liberty accorded by statute or rules, to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him.

35. The above would make it clear that the word 'discretion' connotes necessarily an act of a judicial character and discretion should be exercised judiciously.

36. In WHARTON'S LAW LEXICON – Sixteenth Edition, taking reference from the judgment of the Hon'ble Supreme Courts in the cases of Veerayee Ammal v. Seeni Ammal [(2002) 1 SCC 134] and Azar Sultana v. B.Rajamani [(2009) 17 SCC 27, the legal meaning of the word - reasonable- has been explained as under:-

"The word 'reasonable' has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably know or ought to know as to what was reasonable. The reason varies in

its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks.

37. Similarly WHARTON'S LAW LEXICON - SIXTEENTH EDITION, taking reference from the judgment of the Hon'ble Supreme Court in the cases of V.Subramaniam v. Rajesh Raghavendra Rao [(2009) 5 SCC 608]; and Chintamanrao v. State of M.P. [AIR 1951 SC 118], the legal meaning of the word 'reasonable' has been explained as under:-

"The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictate."

78. The above provision makes it clear that the penalty of five rupees, or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees can be levied. Imposing penalty is the discretion of the authority, however, the discretion has to be exercised judicially, it should not be based on other consideration. Admittedly, the petitioner has filed several writ petitions challenging the orders of authorities and finally contempt petition is also filed, the petitioner has also presented the document for registration of sale certificate. The impugned order is passed immediately after the filing of the contempt petition. Considering the above facts and circumstances, this Court is of the view that the discretion in imposing 10 times of penalty suffers from malafides. Though this order is revisable, considering the fact that this writ petition is heard along with other writ petitions, in order to give quietus, this Court exercising its power under Article 226 of the Constitution of India is inclined to reduce the penalty from 10% to 1%. Further, with regard to the stamp duty, as already discussed, with regard to registering the sale certificate 5% stamp duty has to be paid on the purchase money apart from 1% registration fees. Accordingly, the impugned order is modified to the extent i.e., 1% registration fees, 5% stamp duty and 1% penalty, payable by the petitioner."

7.In such view of the matter, as the law is settled in this regard, the excess stamp duty collected by the respondents has to be refunded. As far as the initiation of proceedings under section 47(A) of the Indian Stamp Act is concerned, this Court is of the view that the same cannot be valid in the eye of law and therefore, the same are liable to be set aside.

8.Accordingly, the impugned orders are set aside and writ petitions are allowed. The respondents are directed to repay the excess amount other than the 5% stamp duty, 1% penalty and 1% registration to the petitioners, within a period of three weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

29.10.2024

NCC : Yes/No
Index : Yes/No
vsm

N.SATHISH KUMAR, J.

vsm

To

1.The Inspector General of Registration,
120, Santhome High Road,
Santhome,
Chennai.

2.The Special Deputy Collector (Stamps),
Collector Office Building (3rd Floor)
Thoothukudi @ Tirunelveli,
Tirunelveli.

3.The Sub Registrar,
Thoothukudi Melur Sub Registrar Office,
Thoothukudi,
Thoothukudi District.

4.The Authorized Officer,
Indian Overseas Bank,
Regional Office, No.21, Victoria Road,
Thoothukudi,
Thoothukudi District-628001.

W.P.(MD)Nos.25561 and 25562 of 2024

29.10.2024