BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.11.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)Nos.29266, 29276, 29279 & 29282 of 2022

W.P.(MD)No.29266 of 2022

Ponmudi. K ... Petitioner

/Vs./

1. The District Registrar
Pudukkottai,
Pudukkottai District

2. The Sub Registrar
Perungalur Post,
Pudukkottai District .. Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, thereby call for the records relating to the order passed by the second respondent in Letter No. 72/2022 dated 13.12.2022 and quash the same as illegal and arbitrary and in consequence thereof direct the respondents to remove the entry in the encumbrance certificate with regard to the payment of stamp duty and registration charges.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

W.P.(MD)No.29276 of 2022

K.Anandan ... Petitioner

/Vs./

1. The District Registrar
Pudukkottai,
Pudukkottai District

2. The Sub Registrar
Perungalur Post,
Pudukkottai District .. Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, thereby call for the records relating to the order passed by the second respondent in Letter No. 72/2022 dated 13.12.2022 and quash the same as illegal and arbitrary and in consequence thereof direct the respondents to remove the entry in the encumbrance certificate with regard to the payment of stamp duty and registration charges.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

W.P.(MD)No.29279 of 2022

A.Senthil Kumar ... Petitioner

/Vs./

1. The District Registrar
Pudukkottai,
Pudukkottai District

2. The Sub Registrar
Perungalur Post,
Pudukkottai District .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, thereby call for the records relating to the order passed by the second respondent in Letter No. 72/2022 dated 13.12.2022 and quash the same as illegal and arbitrary and in consequence thereof direct the respondents to remove the entry in the encumbrance certificate with regard to the payment of stamp duty and registration charges.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

W.P.(MD)No.29282 of 2022

S.Marudhamuthu ... Petitioner

/Vs./

1. The District Registrar
Pudukkottai,
Pudukkottai District

2. The Sub Registrar
Perungalur Post,
Pudukkottai District .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, thereby call for the records relating to the order passed by the second respondent in Letter No. 72/2022 dated 13.12.2022 and quash the same as illegal and arbitrary and in consequence thereof direct the respondents to remove the entry in the encumbrance certificate with regard to the payment of stamp duty and registration charges.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.M.Sarangan
Special Government Pleader

**COMMON ORDER**

These Writ Petitions have been filed challenging the notice dated 13.12.2022 issued by the second respondent, thereby, directed the petitioners to pay the deficit stamp duty and deposit registration charges, failing which, the recovery shall be made under the Revenue Recovery Act.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The properties, comprised in various survey numbers to an extent of 43.45 Acres, situated at Vathanakottai and Temmavur village, Kulathur Taluk, Pudukkottai District, owned by M/s.Maxworth Orchards

(India) Ltd., underwent the process of liquidation and it is immovable properties, have been vested with the official liquidator attachment of the Principal Bench of this Court by order dated 17.09.2010 in C.A.No.884 to 886 of 2008 in C.P.No.57 of 1998, in which, Administrator was appointed to deal with the property. The Administrator had brought 24 items of immovable properties of M/s.Maxworth Orchards (India) Ltd., for auction sale. The public auction was held on 10.01.2022, in which, the petitioner was the highest bidder to the tune of Rupees One Crore Sixty Lakhs only for the entire extent situated in Themmavur and Vathanakottai Village and the sale of the said properties were confirmed by an order dated 07.04.2022. The Principal Seat of this Court also directed the Administrator to issue sale certificate to the petitioner or his nominees. Originally, the sale certificate was issued in favour of the petitioners for the entire extent of the property on 21.07.2022. Thereafter, the petitioners requested to issue sale certificate in respect of portions of the land in favour of other third parties. Insofar as the petitioners are concerned they were issued sale certificate on 21.07.2022. It was presented for registration with registration fees and stamp duty and got registered in favour of the petitioners on 28.07.2022. After registration, it was returned to the petitioners. As request made by the petitioner in W.P.(MD)No.29279 of 2022, the petitioner was issued sale certificate. Thereafter, the second respondent issued impugned notice in these Writ Petitions on 13.12.2022, thereby, directed the petitioners to pay the deficit stamp duty as well as deposit registration fees.

4. The learned counsel for the petitioner in all the petitions would submit that for the entire properties to an extent of 43.45 Acres are split into five parts and issued sale certificate in favour of five persons. Therefore, for the entire sale consideration of Rupees One Crore and Sixty Lakhs for the entire extent of property ie.,43.45 Acres, comprised in various survey numbers by five persons, as per their extent of the property. Therefore, there is no question of loss for exchequer by paying any deficit stamp duty or deposit registration fees.

5. On perusal of the counter, it revealed that after registration of the documents, there was an Audit and found that the petitioners had paid less stamp duty as well as less registration fees. Therefore, action has been initiated under Section 33-A of the Indian Stamp Act, 1899, and

issued notice to the petitioners. It is pre-matured to challenge the notice, since only after giving opportunity to them by receiving explanation from the petitioners, the final orders passed only by the jurisdictional District Registrar. Originally, the sale certificate was issued in favour of one person and subsequently on the request made by the purchasers, the entire land has been split into five persons and issued separate sale certificates in favour of five persons. Therefore, there is deficit stamp duty as well as the deficit registration fees.

6. It is relevant to extract the provision of Section 33 of Indian Stamp Act,1899 :-

> "*33. Examination and impounding of instruments. —*
>
> *(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a pubic office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*

*(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:*

*Provided that—*

*(a) nothing herein contained shall be deemed to require any Magistrate of Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1989);*

*(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.*

*(3) For the purposes of this section, in cases of doubt, —*

*(a) the State Government may determine what offices shall be deemed to be public offices; and*

*(b) the State Government may determine who*

*shall be deemed to be persons in charge of public offices"*

7. Accordingly, after registration, if anything is found about the stamp duty as well as improper registration fees, the deficit stamp duty as well as the deficit registration fees can be recovered as an arrear of land revenue within a period of three years from the date of registration of the instruments. Before that, an opportunity has to be given to the persons concerned and certificate to be issued by the District Registrar. In fact, if there is any grievance over the certificate issued by the District Registrar, it can be appealable before the Chief Controlling Revenue Authority.

8. In view of the above, the petitioners in all the petitions are directed to submit explanation in respect of their sale certificates and also payment of registration fees and the stamp duty before the first respondent within a period of two weeks from the date of receipt of copy of this order. On receipt of the same, the first respondent is directed to conduct a detailed enquiry and pass appropriate orders as contemplated under Section 33-A of the Indian Stamp Act, within a period of two weeks thereafter.

9. It is also made clear that the first respondent is directed to take into account that the total extent of the property has been split among five persons and purchased by them and they had paid stamp duty as well as registration fees as per their sale consideration. Accordingly, all the five persons have paid stamp duty and registration fees for the total sale consideration of Rs.1.60 Crores for entire extent of the properties i.e., 43.45 Acres. Till passing of final orders by the first respondent, any entries made in the encumbrance of the subject property cannot be sustained and the petitioners can very well deal with the subject property.

10. With the above direction, these Writ Petitions are disposed of. No costs.

**21.11.2024**

Index : Yes / No
Internet : Yes/No
NCC : Yes / No
LS

TO:-

1. The District Registrar
   Pudukkottai,
   Pudukkottai District

2. The Sub Registrar
   Perungalur Post,
   Pudukkottai District

**G.K.ILANTHIRAIYAN, J.**

LS

Order made in
W.P.(MD)Nos.29266, 29276,
29282 & 29279 of 2022

Dated:
21.11.2024