BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.31119 of 2023

S.A.G.Ramasamy Nadar ... Petitioner

Vs.

1.The State represented by
The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
St.George Fort,
Chennai – 600 005.

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

3.The Sub Registrar,
Joint -II Sub Registrar Office,
Palani,
Dindigul District – 624 601.

4.The Special Deputy Collector (Stamps),
District Collector Office,
Madurai – 625 020. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to refund the excess stamp duty and registration charges amounting to Rs.2,60,000/-(Rupees Two Lakhs Sixty Thousand Only) to the petitioner which has been collected in excess by the third respondent and consequently direct the respondents to refrain themselves from demanding further stamp duty and registration charges as demanded vide notice Na.Ka.No.61/2 ESaa.Pa/2013 dated 27.03.2013 and 25.04.2013 and also further demand of interest at 1% per month on the further demanded stamp duty and registration charges stated above through notice dated 10.10.2022 and other consequential orders and notice of demand including consequential notice dated 21.11.2023 in S.R.No. 967/2013 for other consequential reliefs.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.B.Saravanan

ORDER

Heard both sides.

2.The writ petitioner purchased the petition mentioned property at an auction sale held by the South Indian Bank, Coimbatore on 30.10.2012. The petitioner purchased the property for a sum of Rs.1 Crore 30 Lakhs. The sale certificate dated 05.02.2013 was issued by the authorised officer of the Bank in favour of the petitioner, one G.Jothimani and his son R.Giridharan. The sale certificate was presented for filing. Stamp duty at the rate of 7% and registration fees at the rate of 1% of the sale value was collected. But the sale certificate was kept as a pending document. Further sum was demanded from the petitioner. The authority treated the document as a sale deed instead of treating it as a sale certificate.

3.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."

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 petitioner. 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 petitioner. I refrain from directing the respondents to pay interest. This is because, the excess amounts were voluntarily paid by the petitioner though under a mistaken impression. The respondents are directed to release the petition mentioned documents that have been kept pending. This shall be done immediately and without delay.

4.This writ petition is allowed accordingly. There shall be no order as to costs.

21.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MGA

To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
St.George Fort,
Chennai – 600 005.

G.R.SWAMINATHAN,J.

MGA

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

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