IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.03.2025

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.4473 of 2025

Tamil nadu Mercantile Bank Limited
Represented by its Authorised Officer,
Kunnathur Branch,
380/2-4 First Floor,
Perundurai Road,
Kunnathur – 638 103 ..Petitioner

Vs.

The Sub Registrar
Bhavani, Erode District ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the respondent in Letter Number XXX /2024 dated 08.07.2024, consequential order in Letter Number XXX/2024 dated 20.12.2024 demaning additional stamp duty of Rs.54,100/- and quash the same also further direct the respondent to refund the excess amount of Rs.2,19,600/- illegally collected towards the stamp duty and registration fees towards cancellation of sale certificate under Doc No.4026 of 2024 and consequently, direct the respondent to release the cancellation deed document registered as Doc No.4026 /2024 within the time frame fixed by this Court.

For Petitioner : Mr. V.Chandrasekaran

For Respondent : Mr.B.Vijay
Additional Government Pleader

O R D E R

This writ petition has been filed challenging the impugned communication dated 08.07.2024 and the consequential communication dated 20.12.2024 demanding for deficit stamp duty of Rs.54,000/- and for a direction to the respondent to refund the excess amount of Rs.2,19,600/- which was collected towards the stamp duty and registration fees while registering the deed of cancellation of sale certificate dated 02.07.2024 registered as document No.4026 of 2024.

2. The specific case of the petitioner is that initially a sale certificate was issued in favour of one Janardhanan and it was registered as document No.6709 of 2018 dated 06.12.2018. The auction purchaser filed a writ petition before this Court in WP No.2922 of 2020 seeking for the refund of the sale consideration on the ground that the survey number itself has been wrongly mentioned. The writ petition was disposed of by an order dated 08.02.204 by setting aside

the sale certificate and with a further direction to refund the sale consideration with 9% interest.

3. In complaince of the above order, the sale consideration was refunded with interest and a deed of cancellation of sale certificate dated 28.06.2024 was prepared and it was presented for registration before the respondent. The respondent demanded the payment of Rs.2,19,600/- towards stamp duty and registration fees and the same was paid under protest in order to comply with the directions issued by this Court.

4. The petitioner has now sought for the refund of the excess stamp duty and registration fees collected from the petitioner on the ground that the deed of cancellation of sale certificate cannot be construed as a deed of reconveyance.

5. The further grievance of the petitioner is that the impugned notice dated 20.12.2024 was issued demanding for an additional stamp duty of Rs.54,100/- from the petitioner.

6. A counter affidavit has been filed by the respondent and the respondent has taken a stand that the title has passed on to the auction purchaser and once the sale certificate is cancelled and the sale consideration amount is refunded, the title is reconveyed to the petitioner and therefore, the document has to be treated as a deed of reconveyance. In view of the same, the petitioner is liable to pay the stamp duty as per the provisions of Article 23 r/w Section 2(10) of the Stamp Act. That apart, it was found that a sum of Rs.54,100/- is liable to be paid by the petitioner due to under valuation and the same was sought to be recovered by issuing the impugned notice. In view of the same, the respondent has sought for the dismissal of this writ petition.

7. Heard Mr. V.Chandrasekaran, learned counsel for the petitioner and Mr.B.Vijay, learned Additional Government Pleader for respondent.

8. The learned Special Government Pleader on instructions submitted that the respondent is not intending to recover the additional stamp duty of Rs.54,100/- from the petitioner and that the

impugned notice dated 26.12.2924 is withdrawn.

9. In the light of the above submission, the only other issue to be gone into is as to wheather the deed of cancellation of the sale certificate can be construed as a deed of reconveyance, which attracts stamp duty payable under Article 23 of the Stamp Act.

10. The learned Special Government Pleader heavily relied upon the judgement of the Full Bench in ***[Atif Estate Line India Ltd., rep. by its Managing Director Vs. Hadeeja Ammal and others]*** reported in ***2011 2 CTC 1***. Specific reliance was made to paragraph No.59(ii) and the same is extracted hereunder :-

> ***59.*** *After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:*
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> *(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a Deed of Cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.*

11. In the considered view of this Court, the above preposition that was expounded by the Full Bench will apply to a case where sale deed is executed by one party to another which results in the transfer of title in the property. Once such sale deed is sought to be cancelled, the proper course to be adopted is to reconvey the property through a deed of reconveyance. In such a case, the stamp duty payable under Article 23 will come into play.

12. Insofar as the sale certificate is concerned, the scope of sale certificate was considered in detail by this Court in ***[Sri Balaji Fibre Vs.Inspector General of Registration and others]*** reported in **2024 6 CTC 70**. This Court after considering all the earlier judgements went on to hold that a sale certificate will not come within the purview of conveyance, since it is not a transfer intervivos and such a transfer takes place by operation of law. It was clarified that a sale certificate is a document which merely records the transfer which has already taken placed by operation of law and therefore, the certificate of sale will not attract levy of transfer duty.

13. In the case in hand, what was executed in favour of the successful bidder was a sale certificate. Therefore, when the sale certificate is cancelled, it cannot be equated to a deed of reconveyance.

14. It must also be borne in mind that such a document came to be executed in order to comply with the orders passed by this Court and in order to refund the entire sale consideration along with interest. Hence, by virtue of the deed of cancellation of the sale certificate, there is no reconveyance of title in favour of the petitioner.

15. In the light of the above discussion, the excess stamp duty and the registration charges collected from the petitioner is liable to be refunded and there shall be a direction to the respondent to refund the excess amount of Rs.2,19,600/- collected from the petitioner within a period of four weeks from the date of receipt of a copy of this order. If the amount is not refunded within the time frame stipulated by this Court, it will attract interest at the rate of 6% from the date of collection of the excess stamp duty till the date of actual payment.

16. Insofar as the additional demand that was made by virtue of the impugned notice dated 2012.2024, since it is being withdrawn, no further orders are required to be passed.

17. In the result, this writ petition is allowed with the above directions. No costs.

19.03.2025

Internet : Yes
Index : Yes
Speaking Order
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To
The Sub Registrar
Bhavani, Erode District

N. ANAND VENKATESH, J.

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