BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)Nos.2737 and 2738 of 2024
and
C.M.P.(MD)Nos.18886, 18887, 18889 and 18890 of 2024
and
C.M.P.(MD)Nos.292 and 294 of 2025

W.A.(MD)No.2737 of 2024:-

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. ... Appellants

Vs.

1.Ashwin Exim India Private Limited,
Rep by its Managing Director,
A.Viswanathan.

2.The Authorized Officer,
Indian Overseas Bank,
Regional Office,
No. 21, Victoria Road,
Thoothukudi,
Thoothukudi District - 628 001. ... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.25561 of 2024, dated 29.10.2024 on the file of this Court.

For Appellants : Mr.S.Saji Bino,
Spl. Government Pleader.

For Respondents : Mr.B.Vinothkumar for R1.
Mr.N.Dilipkumar for R2.

W.A.(MD)No.2738 of 2024:-

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. ... Appellants

Vs.

1.T.Ajai

2.The Authorized Officer,
Indian Overseas Bank,
Regional Office,
No. 21, Victoria Road,
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Thoothukudi District - 628 001. ... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.25562 of 2024, dated 29.10.2024 on the file of this Court.

For Appellants : Mr.S.Saji Bino,
Spl. Government Pleader.

For Respondents : Mr.B.Vinothkumar for R1.
Mr.N.Dilipkumar for R2.

COMMON JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The only question that calls for consideration is whether the registering authority could have invoked the power under Section 47A of the Stamp Act to make reference in the case of sale certificates presented to him for registration.

3.The learned Single Judge allowed the writ petitions by holding that the registering authority did not have the power to make the reference. In fact, the amounts paid by the writ petitioners were also ordered to be refunded. The department is on appeal challenging the said order.

4.The learned Special Government Pleader draws our attention to the decision of the Hon'ble Full Bench reported in ***2019 (4) CTC 839 (Dr.R.Thiagarajan Vs. Inspector General of Registration)*** in support of his contention.

5.We are of the view that the decision of the Hon'ble Full Bench should be taken to have been impliedly overruled ruled in view of the subsequent decision of the Hon'ble Supreme Court reported in ***2022 SCC OnLine SC 1554 (Registrar of Assurances Vs. ASL Vyapar Private Limited)***. After elaborately discussing the statutory scheme in Paragraph No.33, the Hon'ble Supreme Court held that in case of a public auction monitored by the Court, the discretion would not be available to the registering authority under Section 47A of the Act. This was followed by the Hon'ble Division Bench of this Court in the decision reported in ***(2024) 4 MLJ 754 (Vijayalakshmi Marketing, Partnership Firm Vs. State of Tamil Nadu)***. It is relevant to note that in the case of SARFAESI sale also, the same would be the position. Reference may be made to ***M/s.Esjaypee Impex Private Limited Vs. Assistant General Manager and Authorised Officer, Canara Bank***. Paragraph Nos.5 to 10 of the decision reported in ***(2024) 4 MLJ 754 (Vijayalakshmi Marketing, Partnership Firm Vs. State of Tamil Nadu)*** read as follows:-

> *"5. The issue relating to payment of stamp duty on sale certificate is no longer res-integra. One of us [Hon'ble Mr.Justice R.Subramanian] has in Bell Tower Enterprises LLP, Rep. by its Managing Partner Vs. State of Tamil Nadu, Rep. by its Secretary to Government, reported in 2022 (5) CTC 454, after referring all the precedents on the issue of stamping of sale certificate had held that the stamp duty payable on the sale certificate is only 5% and the registration charges payable is 1% and had observed as follows:-*
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> > *"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.*
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> *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)."*

6. The said judgment was also followed by another learned Single Judge of this Court in N.C.Suresh Kumar and another Vs. Inspector General of Registration reported in 2023 (5) MLJ 176. Therefore, the demand made by the Sub-Registrar that the petitioner must pay enhanced stamp duty is not justified.

7. As regards the reference made under Section 47-A of the Stamp Act we are constrained to hold that such a reference is *not authorized by Section 47-A. The Hon'ble Supreme Court in Registrar of Assurances and another Vs. ASL VYAPAR Private Ltd. & another made in Civil Appeal No.8281 of 2022 dated 10.11.2022 after referring to the earlier judgment in V.N.Devadass Vs. Chief Revenue Control Office -cum-Inspector and others reported in (2009) 7 SCC 438 held that a reference under Section 47-A cannot be resorted, where a sale is by public auction by the officers appointed by the Court. In doing so the Hon'ble Supreme Court observed as follows:-*

> *"22. On the conspectus of the matter, we have not the slightest hesitation in upholding the view that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through court process/receiver as that is the most transparent manner of obtaining the correct market value of the property.*
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> *23. It is no doubt true that in a court auction, the price obtainable may be slightly less as any bidder has to take care of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. But then that is a price obtainable as a result of the process by which the property has to be disposed of. We cannot lose sight of the very objective of the introduction of the Section whether under the West Bengal Amendment Act or in any other State, i.e., that in case of under valuation of property, an aspect not uncommon in our country, where consideration may be passing through two modes – one the declared price and the other undeclared component, the State should not be deprived of the revenue. Such transactions do not reflect the correct price in the document as something more has been paid through a different method. The objective is to take care of such a scenario so that the State revenue is not affected and the price actually obtainable in a free market should be capable of being stamped. If one may say, it is, in fact, a reflection on the manner in which the transfer of an*

> *immovable property takes place as the price obtainable in a transparent manner would be different. An auction of a property is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a court monitored auction, the Registering Authority would have a say on what is the market price, would amount to the Registering Authority sitting in appeal over the decision of the Court permitting sale at a particular price."*

8. The Court upheld the view expressed in V.N.Devadass Vs. Chief Revenue Control Office (supra) and answered the reference as follows:-

> *"31. We are, thus, of the view that this reference is required to be answered by opining that in case of a public auction monitored by the court, the discretion would not be available to the Registering Authority under Section 47A of the Act."*

9. In view of the above categoric pronouncement of the Hon'ble Supreme Court we conclude that the impugned action of the Sub-Registrar viz., the 3rd respondent are unwarranted and against law. The learned Single Judge however dismissed the writ petition at the admission stage itself and concluded that it will be open to the petitioner to raise all the issues in the 47-A proceedings. Unfortunately the attention of the learned Single Judge was not drawn to the recent pronouncement of the Hon'ble Supreme Court in Registrar of Assurances and another Vs. ASL VYAPAR Private Ltd. & another (supra). Hence, we are forced to interfere with the order of the learned Single Judge.

10. In fine, the writ appeal is allowed the order of the learned Single Judge dismissing the writ petition is set aside. The demand made by the sub-Registrar is also set aside. The 47-A *proceedings are quashed. All duty collected from the appellant except the duty of 5% + 1% i.e., found payable as per the judgment of this Court in Bell Tower Enterprises LLP, Rep. by its Managing Partner Vs. State of Tamil Nadu, Rep. by its Secretary to Government (Supra) will be refunded to the petitioner with interest at 9% from the date of payment till date of repayment. It is seen that the petitioner has also paid a sum of Rs.74,50,000/- towards additional duty in the proceedings under Section 47-A of the Stamp Act. The said sum will also be refunded to the petitioner with interest at 9% from the date of payment viz., 22.03.2024 till date of repayment. No costs. Consequently, the connected miscellaneous petitions are closed."*

The learned Single Judge had only followed the subsequent decisions of the Hon'ble Supreme Court and that of Hon'ble Division Bench. Interference with the said order is not warranted and the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.,) & (K.R.S. J.,)
12.06.2025

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

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G.R.SWAMINATHAN, J.
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