BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.01.2025**

CORAM:

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

W.P.(MD)No.31479 of 2024

D.Kannabiran ... Petitioner

/Vs./

1. The District Registrar,
   Court Compound, 1st Floor,
   Tiruchirappalli Cantonment,
   Trichy 600 028.

2. The Sub Registrar,
   Sub Registrar Office,
   4th Street, Vin Nagar Main Street,
   Kattur, Thiruverumbur,
   Trichy 620 019. ... Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the 2nd respondent to register the pending document of the sale certificate vide Doc.No.P/ Thiruvarumpur / 100/2024 and to release the same in accordance with law.

For Petitioner : Mr.S.Pradeep

For Respondents : Mr.Veera Kathiravan,
Addl. Advocate General,
Assisted by Mr.S.P.Maharajan,
Special Government Pleader

ORDER

This writ petition has been filed seeking for a direction to the second respondent to register the sale certificate, which is impounded and kept pending as pending Document No.100/2024 and to release the same.

2. Heard the learned counsel on either side and perused the materials placed before this Court.

3. The petitioner had purchased the property comprised in Door No.D-57 & D-58 in SF No.707 part, SF No.708 part and SF No.718 part situated at Industrial Estate Thuvakudi, Thuvakudi Village, Thiruverumbur Taluk, Trichy, through e-auction held on 20.06.2024 conducted by the banker under SARFAESI proceedings. The sale of the said property was confirmed and the petitioner was issued sale certificate for the said property on 12.09.2024. The petitioner presented the sale certificate for registration before the second respondent and also paid 5% as stamp duty and 1% as registration charges. On receipt of the same, the said document was kept pending in pending Document No.100/24.

Subsequently, the petitioner was issued a receipt stating that said document was impounded and kept as pending document.

4. The learned counsel appearing for the petitioner submitted that the sale certificate cannot be impounded and no order has been passed to impound the sale certificate, which was presented for registration. Initially, the sale certificate was kept pending and subsequently, the petitioner was informed that the sale certificate was impounded without stating any reasons. However, the second respondent filed a counter affidavit in order to substantiate the impounding of the documents by stating various reasons. The order of impound cannot be substantiated by filing a counter stating various reasons.

5. The learned Additional Advocate General appearing for the respondents submitted that as per the counter, the petitioner failed to pay stamp duty at 7% and also failed to pay registration charges at 4%. and therefore, the sale certificate was impounded. The sale certificate cannot be treated as conveyance and as such, there is no question of reference made under Section 47A of the Indian Stamp Act, 1899. The sale

certificate is not a transfer by the act of parties, rather than it is operation of law ie., compulsory sale. He further submitted that surcharge is payable on the stamp duty imposed under the Indian Stamp Act, 1899 on every instrument of the description relating to the immovable property situated within the limits of the municipal area. Therefore, the sale certificate issued under the SARFAESI Act is not a conveyance and it is not an *inter vivos* transfer of property. Therefore, the stamp duty on the sale certificate is payable as per Article 18 of the Indian Stamp Act, 1899, on the market value of the purchase money. Hence, the sale certificate cannot be equated to the reference on the market value of the property. In support of his contention, he relied upon the judgment of this Court passed in a batch of writ petitions in ***WP.Nos.415 of 2023 etc.,*** reported in ***2024 (6) CTC 70***.

6. The learned Additional Advocate General appearing for the respondents, by relying upon the counter filed by the second respondent, also submitted that though the second respondent filed a counter stating that the sale certificate was presented for registration with deficit stamp duty and registration charges, as per GO(Ms)No.69, Commercial Taxes

and Registration (J2) Department, dated 07.07.2023, the registration charges should be paid at 4% and the stamp duty should be paid at 5%. Further, he fairly conceded that the stamp duty should be paid only on the market value of the purchase money, insofar as the sale certificate is concerned. It is relevant to extract the relevant portion of the aforesaid judgment which reads as follows:-

> *"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.

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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."

7. In view of the above, the second respondent cannot refer the sale certificate under Section 47A of the Indian Stamp Act, 1899, since the sale certificate cannot be treated as 'conveyance' and the stamp duty shall be paid on the sale certificate on its market value of the purchase money. However, as per the applicable provisions, the petitioner ought to have paid the stamp duty on the market value of the purchase money of the said property and as per GO(Ms)No.69, Commercial Taxes and Registration (J2) Department, dated 07.07.2023, the petitioner ought to have paid the registration fees at 4%. The petitioner had already paid 5%

stamp duty on the market value of the purchase money and 1% registration fees. In view of the same, the petitioner is directed to pay the deficit 3% registration fees within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the second respondent is directed to register the sale certificate and release the same forthwith.

8. With the above direction, this writ petition is disposed of. No costs.

23.01.2025

Index : Yes / No
NCC : Yes / No
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TO:-

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   Tiruchirappalli Cantonment,
   Trichy 600 028.

2. The Sub Registrar,
   Sub Registrar Office,
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   Trichy 620 019.

G.K.ILANTHIRAIYAN, J.

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Order made in
W.P.(MD)No.31479 of 2024

Dated:
23.01.2025