BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.06.2026**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.3296 of 2025
and
C.M.P.(MD)No.20664 of 2025

1.The Inspector General of Registration,
Santhome, High Road,
Chennai-600 028.

2.The Sub-Registrar,
Kodaikanal-624 101. ...Appellants

Vs.

M/s.Dugar,
A Partnership Firm,
Rep.by Authorized Representative,
Mr.P.K.Rajendhran,
S/o.Kuppuswamy,
Having its place of business at
No.25, SR Lakshmanan Nagar,
Singanallur,
Coimbatore-641 101. ...Respondents

PRAYER:- Writ Appeal – filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P.(MD)No.25436 of 2025 dated 19.11.2025.

For Appellant : Mr.P.V.Balasubramanian
Additional Advocate General
assisted by Mr.M.P.Senthil
Counsel for the State of Tamil Nadu

For Respondent : Mr.Sharath Chandran

JUDGMENT

(Judgment of the Court was delivered by **N.SATHISH KUMAR, J.)**

Challenging the order of the learned Single Judge allowing the writ petition with a direction to the Sub Registrar to refund a sum of Rs.11,10,000/- lakhs collected towards surcharge for registration of the sale certificate, dated 20.08.2023 issued in favour of the writ petitioner, the present writ appeal has been filed.

2.The writ petitioner was a successful bidder in a public auction conducted by the official liquidator of the High Court of Madras in C.P.No.17 of 2004. On payment of entire sale consideration, the sale certificate was issued by the official liquidator to the writ petitioner on 10.11.2023. When the sale certificate was presented for registration, the Sub Registrar demanded payment of 5% Stamp duty, 2% Registration charges, and 2% surcharge. Though the petitioner is liable to pay stamp duty and registration fee in order to register the document, he has paid surcharge of 2% under protest. Thereafter only, the sale certificate was registered as document No.2238 of 2025. Hence, the writ petitioner/respondent sought for refund of the surcharge.

3.It is the stand of the Registering Authority before the writ Court that collection of surcharge amount was as per Section 3 of the Tamil Nadu Duty on Transfers of Property (in Municipal Area) Act, 2009 (Act 32 of 2009) (hereinafter referred as 'the Act, 2009' for the sake of brevity). Further, it is the contention that filing of a sale certificate under Section 89(1) of the Registration Act, no duty is required to be paid. Whereas, when the sale certificate is registered, it acquires the character of conveyance. Hence, the purchaser is required to pay stamp duty, registration fee and also surcharge duty. Hence, he opposed for refund of the surcharge amount.

4.The learned Single Judge has allowed the writ petition considering the fact that similar issue has already been decided by this Court in the case of ***Sri Balaji Fiber vs. Inspector General of Registration and others [2024 SCC Online Mad 3737]*** and by the

Hon'ble Supreme Court in ***Fardabad Complex Admn, vs. Hindustan Milkfood Manufacturers Ltd., [1991 Supp (2) SCC 262]*** and ***Belapur Sugar and Allied Industries Ltd., vs. CCE, [(1999) 4 SCC 103].*** Aggrieved by the same, the Registering Authority has filed this appeal.

5.It is the contention of the learned counsel appearing for the appellants that the learned Single Judge ought not to have allowed the writ petition, when there is a judgment of the Division Bench of this Court, which permits levy of the surcharge on the sale certificate in the case of ***Inspector General of Registration vs. M/s.Sulochana Cotton Spinning (P) Limited [W.A.No.1115 of 2017 dated 03.04.2024]***.

6.It is the further submission of the appellants that though in the judgment of ***Inspector General of Registration vs. Trinity Colour Indian (P) Limited [W.A.No.1606 of 2021 dated 01.08.2024],*** the Division Bench has held that surcharge is not leviable, the said judgment is put under challenge before the Hon'ble Supreme Court in SLP (Civil) Diary No.53340 of 2024 and notice has been issued. He further submits that at any event, when there is a conflicting judgment of the Division Bench, the learned Single Judge ought to have referred the matter to a

Larger Bench, instead the learned Single Judge allowed the writ petition, which is incorrect. Further, it is contended that levy is backed by the Act, 2009. Hence, the appellants prayed to allow the writ appeal.

7.Whereas, it is the contention of the learned counsel for the respondent that the judgment of the Hon'ble Supreme Court in ***Municipal Corporation of Delhi v. Pramod Kumar Gupta [(1991) 1 SCC 633]*** was not brought to the notice of the Division Bench of this Court while deciding *Sulochana Cotton Spinning (P) Ltd.'s case* (referred to supra).

8.The further contention of the learned counsel for the respondent is that Section 3 of the Act, 2009 cannot be applied to a sale certificate, as a sale certificate does not constitute a transfer of property by an act inter vivos. According to him, the duty contemplated under the Act is payable only in respect of transfers effected by the act of the parties and not by operation of law. In support of the said contention, he placed reliance upon the judgment of this Court in ***Balaji Fibre's*** case (supra), which has also been approved by the Division Bench in the case of ***Inspector General of Registration and others vs. Riddhi Siddhi***

Cotex Private Limited [W.A. No. 459 of 2026 and batch., dated 15.04.2026]. Hence, he would submit that the learned Single Judge was right in allowing the writ petition and the same need no interference.

9.Heard the learned counsel appearing on either side and perused the materials placed on record.

10.In light of the above submissions, the only point that arises for consideration in this writ appeal is ***'whether surcharge is leviable under Section 3 of the Act, 2009 on a sale certificate presented for registration?".***

11.It is not in dispute that the writ petitioner/respondent has purchased the subject property as a successful bidder in the auction conducted by the liquidator of the Madras High Court and the sale certificate was issued in respect of the subject property on 10.11.2023. Later, the sale certificate was registered. While registering the document, surcharge of 2% was demanded by the Sub Registrar and the same was paid under protest.

12.The contention of the appellants is that surcharge is leviable under the provisions of Section 3 of the Act, 2009. For easy and ready reference, Section 3 of the Act, 2009 is extracted below:

"Section 3 - Levy of duty on transfers of property:

There shall be levied a duty on transfers of property in every municipal area,-

(a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (Central Act II of 1899) (hereinafter referred to as the Stamp Act) as in force for the time being in the State of Tamil Nadu, on every instrument of the description specified below, which relates to immovable property situated within the limits of the municipal area; and

(b) at such rate as may be fixed by the Government, not exceeding five per centum, on the amount specified below against such instrument:--

Description of instrument	*Amount on which duty should be levied.*
(i)Sale of immovable property.	*The market value of the property as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.*
(ii)Exchange of immovable property.	*The market value of the property of the greater value as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.*
(iii)Gift of immovable property.	*The market value of the property as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.*

(iv)Mortgage with possession of immovable property.	*The amount secured by the mortgage, as set forth in the instrument.*
(v)Lease in perpetuity of immovable property.	*An amount equal to one-sixth of the whole amount or value of the rents which would be paid or delivered in respect of the first fifty years of the lease, as set forth in the instrument.*

13.The above provision makes it clear that surcharge is leviable only in respect of five categories of instruments, namely, sale, exchange, gift, mortgage and lease. Where the property covered by such instrument is situated within the limits of a municipal area, surcharge is payable on the market value of the property as set forth in the instrument. The very section itself provides for levy of duty only on transfer of property in every municipal area.

14.It is useful to refer Section 5 of the Transfer of Property Act for better appreciation:

> *"5.'**Transfer of property' defined**- In the following sections 'transfer of property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, [or to himself] and one or more*

other living persons; and 'to transfer property' is to perform such act."

15.The preamble to the Transfer of Property Act also indicates that the object of the enactment is to regulate transfers of property effected by the act of parties and not by operation of law. In this context, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Bharat Petroleum Corporation Limited v. P.Kesavan and another [(2004) 9 SCC 77]***, wherein the scope and nature of transfers contemplated under the Transfer of Property Act were considered.

16.The above judgment makes it very clear that the Transfer of Property Act applies only when the transfer of property takes place by act of parties not by operation of law.

17.The other ground raised by the appellants is that once the sale certificate is registered, it will attain the character of conveyance. At this juncture, it is relevant to extract Section 2(10) of the Stamp Act as under:

"2(10).Conveyance-'Conveyance' includes a conveyance on sale very instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule-I"

18.The very definition makes it clear that an instrument would fall within the ambit of a conveyance only when it effects a transfer of property by act of parties. Therefore, merely because stamp duty on a sale certificate is made chargeable as a conveyance under Article 18 of Schedule-I to the Indian Stamp Act, it cannot be contended that the character of a sale certificate is transformed into a sale effected by the act of parties. Article 18 of the Stamp Act merely prescribes the nature and extent of stamp duty payable on a sale certificate, which is calculated on the purchase money and not on the market value of the property. In such circumstances, levy of 2% surcharge under Section 3 of the Act, 2009, in our considered view, is not correct. In this regard, it would be useful to refer to the relevant portion of the judgment of this Court in *Balaji Fibres (supra)*.

"69. It is relevant to note that the provisions for transfer of duty was initially governed by Section 116-A of the Tamil Nadu District Municipalies Act. Section 116-A is in pari materia with Section 147 of

the Delhi Municipal Corporation Act, 1957. The question as to whether Section 147 applies to a sale certificate issued under the CPC came up for consideration in ***Municipal Corpn. of Delhi v. Pramod Kumar Gupta, (1991) 1 SCC 633****, wherein it was held as under: (SCC p.634, para 4).*

"4.The expression 'instrument' in Section 147 of the Act has the same connotation as the word has under the Indian Stamp Act, the reference to which has been expressly made. Clause (14) of Section 2 of the Stamp Act gives an inclusive definition of the expression as referring to any document by which any right or liability is purported to be created, transferred, limited, extended, extinguished or recorded. Clause (10) of the said section states that "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos. The expression 'instrument of sale of immovable property' under Section 147 of Act must, therefore, mean a document effecting transfer. The title to the property in question has to be conveyed under the document. The document has to be a vehicle for the transfer of the right, title and interest. A document merely stating as a fact that transfer has already taken place cannot be included within this expression. A paper which is recording a fact or is attempting to furnish evidence of an already concluded transaction under which title has already passed cannot be treated to be such an instrument. The question, therefore, is as to whether a certificate issued by a court under Rule 94 of Order XXI can be said to be such an instrument so as to attract the provisions of Section 147 of the Act or not."

70. Following the above judgment, this Court in Dr.Meera Thinakaran's case [2012 (2) CTC 759] has held as follows:

"The Hon'ble Supreme Court has held in the above judgment that the title is conveyed by an order of confirmation made by the Court under Order XXI Rule 92. Thus, a Certificate issued to the purchaser subsequently under Order XXI Rule 94 is only a document of evidencing the conveyance, which had already

taken place. Similarly as per the provisions of Income Tax Act, the title is conveyed, the moment an order of confirmation of sale is made under Clause 63 of the Second Schedule to Income Tax Act. Thereafter, a sale Certificate issued under Clause 65 is only a document evidencing the conveyance which had already taken place. Therefore, I have no doubt in my mind to hold that a sale Certificate issued by the Recovery Officer as provided in Clause 65 of the II Second Schedule to the Income Tax Act is not an instrument of conveyance (Sale Deed) and it is only a document evidencing conveyance which had already taken place. In view of all the above conclusion, as has been been held by the Hon'ble Supreme Court, Certificate of sale issued by the Recovery Officer under the Recovery of Debts due to Banks and Financial Institutions Act 1993 is not liable for surcharge as per Section 116-A of the Tamil Nadu District Municipalities Act."

19.Section 116-A of the Tamil Nadu District Municipalities Act was dealing with levy of surcharge. Section 116-A of the Tamil Nadu District Municipalities Act was in pari materia with Section 147 of the Delhi Municipal Corporation Act, 1957. Section 116-A was repealed and the present Act, namely Section 3 of the Act was brought.

20.Therefore, merely because the stamp duty has been collected as conveyance, for the purpose of collection of the revenue, the respondent cannot invoke Section 3 of the Act, 2009 to levy surcharge on the sale certificate, since the sale certificate is only a document evidencing transfer, which has already been taken place. Further, this is a sale by operation of law, not by act of parties. Hence, the surcharge cannot be levied.

21.Hence, we do not find any merits in this writ appeal. Accordingly, this writ appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

[N.S.K., J.] & [M.J.R., J.]
04.06.2026

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