

M/S.Sri Balaji Fibre vs The Inspector General Of Registration on 23 July, 2024

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.07.2024

Pronounced on : 23.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.Nos.415 of 2023,
W.P.Nos.3696, 23276 & 22555 of 2023 & W.M.P.Nos.3791, 22815, 22816 &
22817 of 2023
and W.P.Nos.859, 6807, 6808, 6810, 9728, 9886, 10285, 10454, 11503,
12097, 12742, 12788, 15704, 16520, 16911, 17613, 18044 & 17205 of 2023
and W.M.P.Nos.10894, 10895, 13191, 13192, 13912, 13913, 13960, 13961,
13962, 17115, 18108, 18110, 18111, 18607, 18608 & 18610 of 2024

W.P.No.415 of 2023

M/s.Sri Balaji Fibre

Represented by its Partner

Mr.D.Kavi Kumar, Son of Devaraj

Survey No.13 & 14, Negamam Via

Virukalpatti Village & Post

Udumalpet, Tiruppur District – 642 120

.. Petition

Versus

1. The Inspector General of Registration
Office of the Inspector General of Registration
Santhome High Road
Chennai – 600 028

2.The Deputy Inspector General of Registration
6/1, GRD Road, Opp. Air Force Admin College
Coimbatore District

3.The District Revenue Officer (Stamps)
District Revenue Office
Collector Campus

<https://www.mhc.tn.gov.in/judis>

Gopalapuram, Coimbatore District
4.The District Registrar
Coimbatore, Coimbatore District

5.The Sub Registrar
Komangalam, Coimbatore District

.. Res

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari Mandamus, calling for the review of the impugned order in Na.Ka. No.47 of 2021 dated 13.12.2021 passed by the 5th respondent and consequential order passed by the 3rd respondent in Mu.Pa.No.247 of 2022 dated 18.04.2022 and quash the same as illegal and ultra vires and consequently direct the 1st respondent to refund the extra stamp duty and registration charges amounting to Rs.13,95,000/- paid by the petitioner for registration of sale certificates before the 5th respondent.

In W.P.No.10285 of 2024

For Petitioner
For Respondents

: Mr.Sharath Chandran
: Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.415 of 2023

For Petitioner

For Respondents

: Mr.A.S.Balaji
for Mr.A.V.Vignesh
: Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.3696 of 2023

For Petitioner
For Respondents

: Mr.Rahul Balaji
: Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.22555 of 2023

For Petitioner
For Respondents

: Mr.J.Ravikumar
: Mr.R.Ramanlal, AAG
assisted by

<https://www.mhc.tn.gov.in/judis>

Mr.B.Vijay

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Additional Government Pleader

In W.P.No.3696 of 2023

For Petitioner

For Respondents

: Mr.K.Harishankar
for Mr.S.Senthil
: Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.859 of 2024

For Petitioner

: Mr.K.Manikandan

For Respondents : Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.Nos.6807, 6808 & 6810, 12788 of 2024
For Petitioners : Mr.M.Suresh Kumar
for Ms.Amrutha Srinivasan
For Respondents : Mr.R.Ramanlal, AAG for R1 & R2
assisted by
Mr.B.Vijay
Additional Government Pleader
Mr.M.Arunachalam for R3

In W.P.No.9728 of 2024
For Petitioner : Mr.R.Munuswamy
For Respondents : Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.9886 of 2024
For Petitioner : Mrs.Dakshayini Reddy, Senior Counsel
for Mr.P.Rajavel
For Respondents : Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.10454 of 2024
For Petitioner : Mr.J.D.Srikanth Varma
For Respondents : Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay

<https://www.mhc.tn.gov.in/judis>

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Additional Government Pleader

In W.P.No.11503 of 2024
For Petitioner : Mrs.K.R.Ananda Gomathy
For Respondents : Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.12097 of 2024
For Petitioner : Mr.Srinath Sridevan, Senior Counsel
for Mr.I.Abrar Md Abdullah
For Respondents : Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.12742 of 2024
For Petitioner : Mr.N.Ponraj
For Respondent : Mr.R.Ramanlal, AAG
assisted by
Mr.B.Vijay
Additional Government Pleader

In W.P.No.15704 of 2024

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| For Petitioner | : Mr.I.Abrar Md Abdullah |
| For Respondent | : Mr.R.Ramanlal, AAG assisted by Mr.B.Vijay Additional Government Pleader |

In W.P.Nos.16520 & 16911 of 2024

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|----------------|--|
| For Petitioner | : Mr.M.Suresh Kumar for Ms.Amrutha Srinivasan |
| For Respondent | : Mr.R.Ramanlal, AAG assisted by Mr.B.Vijay Additional Government Pleader |

In W.P.No.17205 of 2024

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|----------------|---|
| For Petitioner | : Mr.S.Kingston Jerold |
| For Respondent | : Mr.R.Ramanlal, AAG assisted by Mr.B.Vijay |

<https://www.mhc.tn.gov.in/judis>

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Additional Government Pleader

In W.P.No.17613 of 2024

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|----------------|--|
| For Petitioner | : Mr.S.Santhosh Kumar |
| For Respondent | : Mr.R.Ramanlal, AAG assisted by Mr.B.Vijay Additional Government Pleader |

In W.P.No.18044 of 2024

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|----------------|--|
| For Petitioner | : Mr.T.V.Suresh Kumar |
| For Respondent | : Mr.R.Ramanlal, AAG assisted by Mr.B.Vijay Additional Government Pleader |

COMMON ORDER

Since, commonality involved in all the writ petitions, this Court is inclined to dispose of these writ petitions by way of this Common Order.

2.This writ petition is filed challenging the proceedings dated 13.12.2021 passed by the fifth respondent in referring the sale certificate presented by the petitioner under Section 47-A of the Stamp Act and consequential order dated 18.04.2022 passed by the third respondent seeking for payment of deficit stamp duty. It is the case of the writ petitioner that they have already paid 7% of the purchase value of the property as the stamp duty and 4% as registration charges on presentation of the sale certificate, hence, seeks for a direction to the respondents to refund the excess stamp duty and <https://www.mhc.tn.gov.in/judis> registration charges amounting to Rs.13,95,000/- and quashing the invocation of Section 47-A with regard to the presentation of the sale certificate.

3.It is the case of the writ petitioner that when the authorised officer has issued the sale certificate and forwarded a copy to the Sub Registrar under Section 89(4) of the Registration Act, the petitioner had paid 7% of the stamp duty and 4% of the registration charges, wherein, it is the contention that for filing under Section 89(4), no stamp duty is required and only 1% registration charges ought to be paid. Hence, seeks for a direction to refund the stamp duty and excess registration charges amounting to Rs.38,57,000/- and Rs.16,53,000/-, totalling to Rs.55,10,000/- which has been collected in excess for registration by the fourth respondent on the sale certificate issued under SARFAESI Act, 2002.

4. It is the case of the writ petitioner that when the authorised officer has issued the sale certificate and forwarded a copy to the Sub Registrar under Section 89(4) of the Registration Act, the petitioner had paid 7% of the stamp duty and 4% of the registration charges, wherein, it is the contention that for <https://www.mhc.tn.gov.in/judis> filing under Section 89(4), no stamp duty is required and only 1% registration charges ought to be paid. Hence, seeks for a direction to refund the stamp duty and excess registration charges amounting to Rs.7,65,700/- and Rs.3,28,500/-, totalling to Rs.10,94,200/- which has been collected in excess for registration by the fifth respondent on the sale certificate issued under SARFAESI Act, 2002.

5. This writ petition is filed challenging the proceedings dated 27.06.2023 passed by the first respondent in re-fixing the guideline value and impounding the sale certificate presented by the petitioner seeking for payment of deficit stamp duty. It is the case of the writ petitioner that they have already paid 7% of the purchase value of the property as the stamp duty and 4% of registration charges on presentation of the sale certificate, hence, seeks for a direction to the respondents to refund the excess stamp duty as well as the registration charges to an amount of Rs.9,81,000/- and Rs.14,71,500/- and quashing the proceedings of the first respondent and release the sale certificate in Doc.No.6527 of 2023.

<https://www.mhc.tn.gov.in/judis>

6. This writ petition is filed seeking for a direction to the respondents to refund the excess stamp duty and registration charges amounting to Rs.9,00,000/- which has been collected in excess (9%+2%) for registration before the third respondent on the sale certificate issued under SARFAESI Act, 2002.

W.P.Nos.6807, 6808 & 6810 of 2024

7. These writ petitions are filed challenging the order of the Sub- Registrar for payment of registration charges and stamp duty for filing the sale certificate issued by the authorised officer under Section 89(4) of the Registration Act. It is the case of the petitioners that for filing the sale certificate, stamp duty is not required except 1% registration charges, however, the impugned orders are passed.

8. This writ petition is filed seeking for a direction to the respondents to release the sale certificate presented for registration on 14.10.2019 which is pending as Pending Doc.No.987/2019. It is the

case of the writ petitioner that even after the payment of registration charges, the document has been impounded for the undervaluation for a period of more than 4 years and the <https://www.mhc.tn.gov.in/judis> document has not been released.

9. This writ petition is filed challenging the order of the third respondent in invoking Section 47-A of the Stamp Act and seeking for payment of excess stamp duty and the registration charges on the market value and further seeks for a direction to the respondents to refund the stamp duty and registration charges which has been collected in excess for registration before the third respondent on the sale certificate issued under SARFAESI Act, 2002.

10. This writ petition is filed seeking for a direction to the respondents to refund the excess stamp duty and registration charges amounting to Rs.45,85,661/- which has been collected in excess for registration before the second respondent on the sale certificate issued under SARFAESI Act, 2002.

11. This writ petition is filed challenging the order of the second respondent dated 25.03.2024 seeking for payment of stamp duty, registration fees and NOC, since, there is an attachment by Income Tax Department. It is the case of the writ petitioner that for filing a copy of sale certificate under <https://www.mhc.tn.gov.in/judis> Section 89(4), stamp duty is not required, except 1% registration charges and further the attachment is quashed by the Division Bench of this Court in W.A.No.60 of 2022 by judgment dated 01.09.2022.

12. This writ petition is filed seeking for a direction to the respondents to refund the excess stamp duty and registration charges (7%+4%) amounting to Rs.1,47,82,974/- which has been collected in excess for registration before the second respondent on the sale certificate issued under SARFAESI Act, 2002.

13. It is the case of the writ petitioner pursuant to the directions of this Court in W.P.Nos.25140 & 30359 of 2022 and Cont.P.No.672 of 2023 filed for filing the sale certificate Section 89(4), the document has been impounded as per Section 33 of the Indian Stamp Act and entered in Book-II. The impugned order is passed by imposing 10% stamp duty and 10 times penalty. Challenging the order, this writ petition is filed. <https://www.mhc.tn.gov.in/judis>

14. This writ petition is filed challenging the order of the Sub-Registrar for payment of registration charges and stamp duty (11%) for filing the sale certificate issued by the authorised officer under Section 89(4) of the Registration Act. It is the case of the petitioner that for filing the sale certificate, stamp duty is not required except 1% registration fees, however, the impugned order is passed.

15. This writ petition is filed challenging the order of the Sub-Registrar for payment of registration charges and stamp duty for filing the sale certificate issued by the authorised officer under Section 89(4) of the Registration Act. It is the case of the petitioner that for filing the sale certificate, stamp duty is not required except 1% registration charges, however, the impugned order is passed.

16. This writ petition is filed challenging the order of the Sub-Registrar for payment of registration charges and stamp duty for filing the sale certificate issued by the authorised officer under Section

89(4) of the Registration Act. It is the case of the petitioner that for filing the sale <https://www.mhc.tn.gov.in/judis> certificate, stamp duty is not required except 1% registration charges, however, the impugned order is passed.

17. This writ petition is filed challenging the order of the Sub-Registrar for payment of registration charges and stamp duty for filing the sale certificate issued by the authorised officer under Section 89(4) of the Registration Act. It is the case of the petitioner that for filing the sale certificate, stamp duty is not required except 1% registration charges, however, the impugned order is passed.

18. This writ petition is filed challenging the order of the Sub-Registrar for payment of registration charges and stamp duty for filing the sale certificate issued by the authorised officer under Section 89(4) of the Registration Act. It is the case of the petitioner that for filing the sale certificate, stamp duty is not required except 1% registration charges, however, the impugned order is passed.

<https://www.mhc.tn.gov.in/judis>

19. This writ petition is filed seeking for a direction to the 1st respondent to release the document in Doc.No.24127 of 2023 in connection with the sale certificate issued by the second respondent dated 22.12.2023. It is the case of the petitioner that the petitioner has paid the stamp duty and registration fee based on the value purchased, however, the document is impounded by the Sub Registrar for payment of deficit stamp duty.

20. This writ petition is filed challenging the order of the Sub-Registrar for payment of registration charges and stamp duty for filing the sale certificate issued by the authorised officer under Section 89(4) of the Registration Act. It is the case of the petitioner that for filing the sale certificate, stamp duty is not required except 1% registration charges, however, the impugned order is passed.

21. This writ petition is filed challenging the proceedings dated 01.03.2024 rejecting the request of the petitioner for refund of the stamp duty and registration charges. It is the case of the writ petitioner she has already paid 7% of the purchase value of the property as the stamp duty and 4% of <https://www.mhc.tn.gov.in/judis> registration charges, hence, seeks for a direction to the respondents to refund the excess stamp duty and registration charges amounting to Rs.23,00,000/-.

22. The learned counsel for the petitioners mainly would submit that as far as mere filing of the sale certificate under Section 89(4) of the Registration Act, except the fees for filing, no other stamp duty is leviable on the sale certificate. According to them, Section 89(4) of the Registration Act casts a statutory duty on the registrar to file a sale certificate in Book-1, therefore, mere filing of the sale certificate in Book-1 under Section 89(4), no stamp duty is required.

23. Further, when the sale certificate is voluntarily registered by the parties, the same is payable only as per the Article 18 of the Stamp Act, no transfer duty is payable. According to them, since the sale certificate cannot be construed as conveyance, the question of paying the stamp duty does not arise at all. It is the further contention that in Esjaypee Impex Private Limited Vs. Assistant General Manager and Authorised Officer, Canara Bank, reported in 2021 (11) SCC 537, the Hon'ble Apex

Court has clarified that filing of the sale certificate obviates the registration. Therefore, no stamp duty required to be paid. Similarly, the same view was taken by the Hon'ble Supreme Court in the <https://www.mhc.tn.gov.in/judis> case of Inspector General of Registration and another vs. Madhurambal reported in 2022 SCC OnLine SC 2079

24. It is the further contention that when the judgment of the full bench of this Court in the case of Dr.R.Thiagarajan vs. Inspector General of Registration reported in (2019) 6 MLJ 257 (FB) was brought to the notice of the Hon'ble Supreme Court, the Hon'ble Supreme Court has clearly held that no judgment of the High Court will impede their direction. Therefore, according to them, the judgment of the Full Bench of this Court was impliedly overruled by the Hon'ble Supreme Court.

25. In support of their contentions, they relied on the various judgments as follows:

a.Masarat-ul-Nissa vs Adit Ram, ILR 1880 Vol 5 568 b. MCD v Pramod Kumar Gupta, 1991 1 SCC 633 c.Chidambara Manickam v Shakeena, (2008) 1 CTC 660 d. Dr Meera Thinakaran v State of T.N, (2012) 2 LW 351 e.P.Pandian vs. Inspector General of Registration reported in (2016) 2 LW f. Esjaypee Impex v Assistant General Manager, (2021) 11 SCC 537 g.Order in O.S.A 122 of 2010 (S Martin v Official Liquidator) h.Inspector General of Registration v Madhurambal reported in 2022 SCC <https://www.mhc.tn.gov.in/judis> Online SC 2079 i.Haldiram Incorporation Private Limited v Amrit Hatcheries Private Limited reported in 2023 SCC Online SC 1706 j. Bell Tower Enterprises v State of TN, 2022 7 MLJ 549 h. N.C. Suresh Kumar. V Inspector General of Registration, 2023 5 MLJ

26. Whereas, Mr.R.Ramanlal, the learned Additional Advocate General would contend that the Hon'ble Apex Court in the Esjaypee's case have never considered the Stamp Act and other relevant provisions which require the stamp on the sale certificate. According to him, the Full Bench of this Court in Dr.R.Thiagarajan's case is still holding the field. Therefore, it is the contention that sale certificate requires a compulsory registration, unless properly stamped, it cannot be used for any other purposes. It is the contention of the learned Additional Advocate General that Section 54 of the Transfer of Property makes it very clear that any transfer of tangible immovable property of the value of one hundred rupees and upwards, can be made only be a registered instrument. According to him, the corresponding amendment is also made under Section 4 of the Transfer of Property Act. Paragraph 2 and 3 of the Section 54 of the Transfer of Property Act shall be read as supplemental to the Indian Registration Act. Therefore, this aspect is never considered by the <https://www.mhc.tn.gov.in/judis> Hon'ble Apex Court in Esjaypee and Madurambal's cases.

27. It is the further contention that sale certificate issued by the bank under SARFAESI Act will be a conveyance as per Section 2(10) of the Stamp Act. According to him, the authorized officer steps into the shoe of the mortgagee, therefore, it should be treated as inter vivos transfer. Therefore, as per Article 18 of the Stamp Act, stamp has to be paid compulsorily on the sale certificate. The Stamp Act makes compulsory duty and the stamp on the sale certificate, which has not been considered by the Hon'ble Supreme Court in Esjaypee and Madurambal's cases. If the document is required to be registered under the Transfer of Property Act has not been registered under the Registration Act,

such document is not admissible in evidence of any transaction affecting immovable properties. Further, Section 17(2) of the Registration Act deals with the sale only by the Court or the Revenue Officer whereas authorized officer would not come within the purview of the Revenue Officer. The Revenue Officer is only employed in business of any branch of public revenue. Therefore, Section 17(2) will not apply to the sale made by the authorized officer under SARFAESI Act. Such view of the matter, proceedings under Section 47-A is also permissible.

<https://www.mhc.tn.gov.in/judis>

28. In support of his submissions, he placed reliance on the following judgments.

a. Shanti Devi L. Singh v. Tax Recovery Officer reported in (1990) 3 SCC 605 b. Raghunath v. Kedar Nath, 1969 (1) SCC 497 c.B. Arvind Kumar v Govt of India reported in (2007) 5 SCC 745 d. Shree Vijayalakshmi Charitable Trust vs. The Sub Registrar reported in 2009 (5) CTC 15 e. In Re, The Official Liquidator, High Court, Madras reported in 2010 (2) CTC 113 f. Dr.R.Thiagarajan vs. Inspector General of Registration reported in (2019) 6 MLJ 257 (FB) g.Esjaypee Impex v Assistant General Manager, (2021) 11 SCC 537 h.Inspector General of Registration v Madhurambal reported in 2022 SCC Online SC 2079

29. Heard both sides and perused the materials placed on record. Only the legal pleadings are made in these writ petitions, counter is not filed in some of the matters.

30. The issues arise for disposal of the writ petitions are as follows:

1. Whether the sale certificate issued by the authorized officer under <https://www.mhc.tn.gov.in/judis> SARFAESI Act and forwarded by authorised officer is compulsorily registrable?
2. Whether the sale certificate filed under Section 89 of the Registration Act, requires stamp duty?
3. Whether the copy of the sale certificate filed under Section 89(4) of Registration Act will dispense with the stamp duty? Whether such sale certificate can be used for any purpose to claim right in immoveable property?
4. Whether the sale certificate operate as conveyance?
5. If the sale certificate is registered voluntarily what is the nature of the stamp duty and registration charges?
6. Whether the proceedings under Section 47-A of the Indian Stamp Act can be invoked at the time of registration of sale certificate?
7. Whether the transfer duty is payable on the sale certificate when it is registered?

31. It is relevant to note that the Preamble of the Transfer of Property Act, 1882 reads as follows:

“Preamble.- Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of <https://www.mhc.tn.gov.in/judis> parties”

32. Therefore, provisions under the Transfer of Property Act apply only to the transfer made by the act of parties not to the transfer by the operation of law. In this regard, the Hon'ble Apex Court in the case of Bharat Petroleum Corporation Ltd vs. P.Kesavan and another reported in (2004) 9 SCC 77, in paragraphs 12 and 20 held as follows:

"12. As would appear from the preamble of the Transfer of Property Act, the same applies only to transfer by act of parties. A transfer by operation of law is not validated or invalidated by anything contained in the Act. A transfer which takes place by operation of law, therefore, need not meet the requirement of the provisions of the Transfer of Property Act or the Indian Registration Act.

...

" 20. The provisions of the Transfer of Property Act have no application in a case where a transfer of property takes place by operation of law."

33. It is also relevant to refer the judgment of the full bench in the case of Masarat-un-Nissa vs. Adit Ram reported in ILR 1880 Vol V 568, wherein, it is held as follows:

" The documents, the registration of which is compulsory under S.17 of the Registration Act, are instruments brought into existence by the Act of private parties themselves, the publication and preservation of which can alone be secured by means of their registration; but a sale-certificate is not such an instrument but an act of the Court granting it; and as regards the publication <https://www.mhc.tn.gov.in/judis> and preservation it is in this position:- S.316 of Civil Procedure Code provides that: "Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before; provided that the decree under which the sale took place was still subsisting at that date." But although of itself it constitutes a title to the property sold, the sale certificate is not to be left merely in the private custody of the purchaser, for by S.89 of the Registration Act, as amended by Act XII of 1879, it is provided that "every Court granting a certificate under S.316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer, within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situated and such officer shall file the copy in his Book No. 1," which Book 1 is directed by S.51 of the same Act to be kept as a register of non-testamentary documents relating to immoveable property."

34. In *B. Arvind Kumar v Govt of India* reported in (2007) 5 SCC 745, the Hon'ble Supreme Court considered the issue as to whether a certificate of sale issued in a public auction was compulsorily registrable under Section 17 of the Registration Act, 1908. It was held:

“When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate <https://www.mhc.tn.gov.in/judis> issued by a court or an officer authorised by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non- testamentary documents which require registration under sub- sections (b) and (c) of Section 17(1) of the said Act.”

35. This decision of the Supreme Court was followed by a Division Bench of this Court in the case of *K. Chidambara Manickam v Shakeena* reported in (2007) 6 MLJ 488. The Division Bench has held that a sale becomes final when it is confirmed in favor of the purchaser. It was also held that sale certificate under the SARFAESI Act does not require registration. The relevant observations are as follows:

“10.16. In this case, the Authorised Officer of the secured creditor, exercising the power conferred on him by SARFAESI Act, pursuant to the proceedings initiated by him brought the secured assets of the borrowers for sale in public auction, and, in view of the default in repayment of the loan, confirmed the sale in favour of the highest bidder, the appellant herein and issued the sale certificate on 6-1-2006.

10.17. The ratio laid down by the Division Bench of this Court in *Arumugham, S. & 2 others v. C.K. Venugopal Chetty & 5 others*, 1994 (1) LW 491, and the Supreme Court in *B. Arvind Kumar v.*

Government of India and Others, MANU/SC/2834/2007, squarely applies to the case on hand and we, therefore, have no incertitude to hold that the sale which took place on 19-12-2005 has become final when it is confirmed in favour of the auction purchaser and the auction purchaser is vested with rights in relation to the property purchased in auction on issuance of the Sale Certificate and he has become the absolute owner of the property. Further, as held by the Division Bench of this Court in *Arumugham, S. & 2* <https://www.mhc.tn.gov.in/judis> *others v. C.K. Venugopal Chetty & 5 others* and the Supreme Court in *B. Arvind Kumar v. Government of India and Others*, referred supra, the Sale Certificate issued in favour of the appellant does not require any registration in view of Section 17(2)(xii) of the Registration Act as the same has been granted pursuant to the sale held in public

auction by the Authorised Officer under SARFAESI Act.

10.18. The finding of the learned Single Judge that the sale is not complete without registration of sale certificate, therefore, is not sustainable in law and the same is liable to be set aside.”

36. It is relevant to note that the above judgment of this Court was affirmed by the Hon'ble Supreme Court in the case of Shakeena Vs. Bank of India reported in (2021) 12 SCC 761.

37. However, the other Division Bench in the case of P.M. Associates v. IFCI Limited reported in (2013) 8 Mad LJ 1 held that sale certificate issued under SARFAESI Act is not exempted under 17(2)(xii) of the Registration Act, since, the same was not issued by a Revenue or Civil Officer. Other Division Bench in the case of Inspector General of Registration v K.K Thirumurugan reported in 2015 1 CTC 526 held that the provisions of Section 47-A cannot be applied to an auction sale under the SARFAESI Act, 2002. However, the another Division Bench of this Court in the case of Inspector General of Registration v Kanagalakshmi Ganagaru reported in (2017) 2 CWC 780 has held that a sale certificate under the SARFAESI Act, 2002 was amenable to <https://www.mhc.tn.gov.in/judis> Section 47-A of the Stamp Act, 1899.

38. In view of the conflicting judgments, the matter was referred to the Full Bench in the case of Dr.R.Thiagarajan's case. The full bench confirmed the view taken by the Division Bench in Kanagalakshmi Ganagaru's case and held that the authorized officer under SARFAESI Act is neither civil nor a revenue officer/Court, a certificate of sale requires mandatory registration and payment of stamp duty under Articles 18(c) and 23 of the Stamp Act, 1899 without which it is a stillborn child/ a void document and in the event of undervaluation of the property, which is the subject matter of the Sale Certificate, the Registering Officer is entitled to proceed in accordance with Section 47-A of the Indian Stamp Act. The Full Bench judgment was delivered on 05.08.2019. The Full Bench also considered the K.Chidambara Manickam's case, wherein, the Division Bench held that a sale certificate issued under SARFAESI Act does not require registration. The Full Bench has recorded and held that sale certificate requires a registration since it is issued under the authority. It is relevant to note that subsequent to the delivering of the judgment of the Full Bench of this Court, K.Chidambara Manickam's case was confirmed by the Hon'ble Apex Court on 20.08.2019 in Shakeena's case. <https://www.mhc.tn.gov.in/judis> Therefore, when the ratio laid down in the Division Bench of this Court is confirmed by the Hon'ble Supreme Court later, now, the Department cannot still rely on the judgment of the Full Bench in Dr.R.Thiagarajan's case.

39. It is also relevant to note that the Hon'ble Apex Court in the case of Shanti Devi L. Singh v. Tax Recovery Officer reported in (1990) 3 SCC 605, has considered the provisions of Section 89(2) and (4) of the Registration Act, 1908. In paragraph 6, it is held as follows:

“In our opinion, there is no need to read the term ‘revenue officer’ in any restricted sense and that it is wide and comprehensive enough to include the TRO who effects a compulsory sale for the recovery of an income tax demand.”

40. In view of the above position, now, after the advent of the SARFAESI Act, this Court is of the view that the term "Revenue Officer" has to be liberally construed to include the authorized officer under SARFAESI Act effecting compulsory sale for recovery of a demand. The function of an authorised officer under the SARFAESI Act, 2002 is to effect a compulsory sale under the Act and issue a sale certificate thereof in terms of Rule 9 after completing all the procedures under the SARFAESI Act. Therefore, the real test as to whether a particular officer is a revenue officer or not is whether such an officer exercises the power of compulsory sale under a statute. The answer is affirmative. That the officer exercising statutory duty for recovery of public <https://www.mhc.tn.gov.in/judis> money by way of compulsory sale will certainly fall within the ambit of expression "Revenue Officer". Therefore, now, it cannot be said that only the Court and the Revenue Officer as referred under the Stamp Act in respect of the sale certificate alone will come under Section 17(2) of the Registration Act which makes registration optional.

41. It is also to be noted that as already indicated, Section 54 and the amendment brought under Section 4 of the Transfer of Property Act relates to the transfer by inter vivos, it is relevant to note that the "Transfer of property" under Section 5 of the Transfer of Property Act, 1882 is defined as follows:

"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.

[In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

42. The above provision makes it clear that the transfer of property is by act of parties not by operation of law. Therefore, the contention of the learned Additional Advocate General that all the sale of the immovable properties <https://www.mhc.tn.gov.in/judis> valued more than one hundred rupees is compulsorily registrable under Section 54 of the Transfer of Property Act, 1882 cannot be applied mechanically, to the transfer made by the operation of law. It is also to be noted that in Esjaypee's case, the Hon'ble Supreme Court, in paragraph 15 and 16 as held as follows:

"15. The learned counsel for the Bank agreed that the sale certificate has to be further validated and assured that the needful will be done within two weeks. However, a submission was made that the sale certificate was then to be handed over to the registering authority for registration and payment of stamp duty."

16. We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the authorised officer of the Bank under the Sarfaesi Act to hand over the duly validated sale certificate to the auction-purchaser with a copy forwarded to the registering authorities to be filed in

Book I as per Section 89 of the Registration Act.”

43. After the above judgment when an auction purchaser in the Esjaypee Implex (P) Ltd has once approached the Sub-Registrar, Purasaiwakkam, the Sub-Registrar had refused to file the sale certificate in Book I citing the order of the Full Bench and a circular dated 04.09.2019 issued by the Inspector General of Registration on the basis of the Full Bench judgment. Therefore, again, I.A 101635 of 2021 in MA (Diary) No 19262 of 2021 was filed before Hon'ble Supreme Court by Realty Associates with the following averments:

<https://www.mhc.tn.gov.in/judis> “It is submitted that pursuant to the above order, the Authorized Officer of the bank has issued a sale certificate dated 22.01.2021 and also duly forwarded the sale certificate to the jurisdictional Sub Registrar, Pursaiwakam, Chennai -12. However, the Sub Registrar has not acted upon the above direction and failed to enter the sale certificate dated 22.01.2021 in Book-1 as per section 89(4) of the Registration Act, 1908. In fact the applicant/1st respondent has approached the Sub Registrar with a request to enter the sale certificate in Book-1. While so, the Sub Registrar, Purasawalkam, was informed about the circular No. 30437/E3/2019 dated 04.09.2019 issued by the Inspector General of Registration, Chennai to treat the sale certificate issued under SARFAESI Act, 2002 as a “Conveyance” warranting payment of Stamp Duty under Article 23 of the Indian Stamp Act. The said circular was issued in view of the Full Bench judgment of the Madras High Court in Dr. Thiyagarajan Vs. The IG of Registration, Chennai (2020 (5) LW 69 (FB)).

The Inspector General of Registration and Sub Registrar are necessary party for compliance of the orders of this Hon'ble court and for this purpose the applicant seeks indulgence of this Hon'ble court to implead them as a party.

It is submitted that any Officer or Authority who is legally empowered to conduct public auction in respect of an immovable property, shall be deemed to be a ‘Revenue Officer’ within the meaning of Sec. 89 (4) of the Act, 1908.

It is submitted that a copy of the Sale Certificate filed in Book No. 1 contains all the relevant details. It is open to inspection for all persons. Further when the sale itself being not compulsorily registerable as per Section 17(2) (xii) of the Act, 19008, there is no legal bar for the Registering officer to enter it in Book No. 1.

Now, the I.G. of Registration issued Circular No. 30437/E3?2019 dated 04.09.2019 in line with the Full Bench Judgment in 2020 (5) LW 69, which is standing in the way of a Registering Authority to enter the Sale Certificate issued under the SARFAESI Act in Book I under Section 89 (4) of the Registration Act, 1908. In light of the submissions made above, the Applicants move the present Application before this Hon'ble Court for impleading the following persons viz the Inspector General of Registration, 100, Santhome Main Road, Chennai 600 082 and The Sub Registrar Purasawalkkam, Chennai -600 011 and they are necessary party <https://www.mhc.tn.gov.in/judis>

for compliance of the orders of this Hon'ble court.”

44. It is to be noted that judgment of the Full Bench of this Court in Dr.R.Thiagarajan's case was brought to the notice of the Hon'ble Supreme Court. Thereafter, the Inspector General of Registration and the Sub-Registrar, Purasaiwakkam were impleaded as parties before the Hon'ble Supreme Court. On 29.10.2021, the Hon'ble Supreme Court passed the following order:

“The concerned impleaded authorities are before us now.

The direction has already been passed on 05.01.2021 for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act. We may note that the effect of filing of the copies under the said Section 89 has the same effect as registration and obviates the requirement of any further action. The compliance of our direction already made on 05.01.2021 will not be impeded by any High Court judgment. Our order to be duly complied by the registering authority.”

45. The above order makes it clear that Full Bench Judgment of this Court in Dr.R.Thiagarajan v. Inspector General of Registration, (2019) 4 CTC 839 has not been approved. In fact, the Hon'ble Supreme Court reiterated its directions passed on 05.01.2021. Therefore, this Court is of the view that when the Hon'ble Supreme Court took note of the Full Bench Judgment and stick on its directions, the Full Bench of this Court is impliedly overruled. Even <https://www.mhc.tn.gov.in/judis> thereafter, it appears that the order has not been complied. This led to the filing of Contempt Petition 123 of 2022 before the Hon'ble Supreme Court. On 21.03.2022, the Hon'ble Supreme Court issued notice in the contempt application. On 25.04.2022, the following order was passed:

“Even in a contempt petition after service of notice, the counter affidavit has not been filed. If the orders dated 05.01.2021 and 29.10.2021 are not complied with by the next date, the respondents shall remain personally present in Court.”

46. On 13.05.2022, the Contempt Application was disposed with the following directions:

“We have perused the affidavit. The stand of the Department in the contempt proceedings is that while they have waived the registration charges of 4%, the same certificate in question is required to be stamped by 5% if it is issued by the Court and 7% if it is issued by recovery authority.

Learned counsel for the petitioner states that in the past the sale certificates have been entered in the register without requirement of stamp duty. He submits this happened in the “S. Martin vs The Official Liquidator”, decided on 19 January 2017 by the Madras High Court, no stamp duty was paid on the sale certificate but only on the settlement deed in favour of his wife.

In view of the aforesaid and on hearing learned counsel for parties we consider it appropriate to direct that if the aforesaid is correct and no stamp duty was paid on that sale certificate but only on the settlement deed executed subsequently in favour of his wife, then in the present case also no stamp duty would be payable on the sale certificate and the sale certificate would be filed in Book-I. If on the sale certificate in that case stamp duty had been paid then in the present case also stamp duty would be payable at the admissible rate. No other issue will be raised by <https://www.mhc.tn.gov.in/judis> the respondents to do the needful and it would solely depend on whether the stamp duty was paid on the original sale certificate in case of S. Martin referred to aforesaid.

We hope the respondents do not give another opportunity to revive the contempt proceedings which will have serious consequences.

The documents of S. Martin's case be supplied within a week's time to the respondents.

The needful be done within 15 days from receipt of the documents.

The contempt petition stands disposed of in terms aforesaid."

47. Therefore, It is clarified by the Hon'ble Apex Court that the copy of the sale certificate has to be filed in Book-1 when forwarded by the authorised officer as per Section 89 of the Registration Act. Such case registration is not required and no stamp duty is payable. Again the contention was raised in the same line in the case of Inspector General of Registration v Tripower Enterprises reported in 2022 7 MLJ 113, the Division Bench of this Court in paragraphs 15, 19 & 20 as follows:

"15. The contention of the Additional Advocate General is that the second respondent, the Authorised officer of the bank is not a civil or revenue officer. The counsel relies heavily on the Full Bench Judgment of this Hon'ble Court in the case of Dr. R. Thiagarajan v. Inspector General of Registration,(2019) 4 CTC "19.The Hon'ble Supreme Court in the case of Esjaypee Impex Private Limited v. Assistant General Manager and Authorised Officer, Canara Bank, (2021) 11 SCC 537, held as follows:

"16. We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the authorised officer of the Bank under the SARFAESI Act to hand over the duly <https://www.mhc.tn.gov.in/judis> validated sale certificate to the auction-purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act."

20. It is pertinent to note that the said judgment is later to the Full Bench Judgment. In fine, we hold that the learned single Judge is right in his view that the original sale

certificate will need stamping and registration only when the auction purchaser presents it for registration. But when the copy of sale certificate is forwarded for filing in Book I under Section 89 (4) of the Registration Act, the appellant cannot refuse to file a copy and demand payment of stamp duty and registration fee.”

48. This decision of the Division Bench was once challenged before the Hon'ble Supreme Court and was heard along with another batch of cases in Inspector General of Registration v G. Madhurambal, reported in 2022 SCC Online SC 2079. The Hon'ble Supreme Court held as follows:

“Learned counsel for the petitioner(s) has made a valiant endeavour to persuade us to interfere with the impugned judgment(s) but not successfully. It is logically so as this issue has been repeatedly settled and if one may say, a consistent view followed for the last 150 years. We may refer to the judgments by the Madras High Court in the Board of Revenue No. 2 of 1875 (In Re : Case Referred) dated 19.10.1875 opining that a certificate of sale cannot be regarded as a conveyance subject to stamp duty, by the Allahabad High Court in Adit Ram v.Masarat-un-Nissa opining that a sale certificate is not an instrument of the kind mentioned in clause (b) of Section 17 of Act III of 1877 and is not compulsorily registrable and this Court's view in Esjaypee Impex Pvt. Ltd. v. Asst. General Manager and Authorised Officer, Canara Bank opining that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the Authorised Officer of the Bank under the SARFAESI Act to hand over the duly validated Sale Certificate to the Auction Purchase with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the <https://www.mhc.tn.gov.in/judis> Registration Act and order of this Court in M.A. No. 19262/2021 in SLP(C) No. 29752/2019 dated 29.10.2021 opining that once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act, it has the same effect as registration and obviates the requirement of any further action.

2. It is time that the authorities stop filing unnecessary special leave petitions only with the objective of attaining some kind of a final dismissal from this Court every time. Costs this time has been spared but will not be spared the next time.

3. The needful be done in terms of the impugned judgment(s) within 15 days from today.

4. The special leave petitions are dismissed.”

49. It is relevant to note that thereafter, the Hon'ble Supreme Court in the case of Haldiram Corporation Limited vs. Amrit Hatcheries Private Limited, reported in 2023 SCC Online SC 1706 followed the judgment of Esjaypee's case.

50. Thereafter, once again, this Court, in the case of Bell Tower Enterprises v State of Tamil Nadu reported in (2022) 7 MLJ 549 has also held that the the authorised officer, who conduct a sale under the provisions of SARFAESI Act, would be a Revenue Officer. Registration of sale certificate is not mandatory in view of the provisions of Section 17(2)(xii) of the Registration Act. It was sufficient, if the document is lodged with the Registrar under Section 89(4) in Book-I maintained by him.

<https://www.mhc.tn.gov.in/judis>

51. Above position makes it clear that sale certificate issued by the authorised officer is not compulsorily registrable. Mere filing under Section 89(4) of the Registration Act itself is sufficient when the copy of sale certificate is forwarded by the authorised officer. However, it is made clear that when the party present the sale certificate for registration, it attracts stamp duty as per Article 18 of the Stamp Act. Mere filing of the copy of the sale certificate forwarded by the authorised officer, no stamp duty is payable.

52. The contention of the learned Additional Advocate General to the effect that the Stamp Act is a fiscal legislation and the stamp is compulsorily required. From the settled positions from the various judgments, this Court is of the view that mere filing of sale certificate forwarded under Section 89(4) does not require stamp. Further, when the sale certificate is presented for registration, certainly it requires stamp duty. It is also to be noted that registration is optional for the sale certificate, it is for the parties to chose as to whether to compulsorily register it or not. In the event, when the sale certificate was not registered and merely filed under Section 89(4), it would be not admissible as an evidence to establish any title over the immovable properties. When the party choses to rely upon the certificate of sale as a piece <https://www.mhc.tn.gov.in/judis> of evidence before the Court or an authority as an evidence, such authority may impound the document under Section 33 of the Indian Stamp Act, 1899. This has also been observed by the Hon'ble Apex Court in Shanti Devi L.Singh's case, which reads as follows:

“8. On the other hand, the process of filing that is contemplated under the Act is somewhat different though the Act does interchange the two expressions in some places. For instance, Section 51(2) itself refers to all documents or memoranda registered under Section 89 being entered or filed in Book No. 1. But there appear to be vital differences between the two processes:

(i) It is the original of a document that is registered whereas only copies or memoranda are filed;

(ii) The executant of a document which is required to be registered, has to present it for registration and go through the attendant and subsequent processes described above. A copy to be filed under Section 89 or memoranda that are filed under Sections 64 to 66 is simply transmitted to the concerned Sub-

Registrar for being filed. Apparently, the procedure of presentation is dispensed with in regard to the latter because they are issued by public authorities discharging their official duties.

(iii) Additional particulars relevant to a document admitted to registration need to be got endorsed thereon from time to time as contemplated in Sections 58 and 59 but this rule does not apply to a copy or memorandum filed under the Act.

(iv) When a document is registered, the entirety of the document has to be copied out into the relevant book and the original document returned to the person who presents the document with necessary endorsements. This requirement is absent in the case of a copy or memorandum which is just filed.

(v) Where a document is registered, a certificate of registration has to be issued which will be admissible to prove the due registration of the document.

9. There are thus some differences between the two procedures and this aspect has been touched upon in some very early <https://www.mhc.tn.gov.in/judis> decisions under the Registration Act, 1877 : vide, *Fatteh Singh v.*

Daropadi [1908 Punj Rec Case No. 142 : 1908 PWR 186] , *Siraj- un-nissa v. Jan Muhammad* [2 All WN 51] , *Masarat-un-nissa v. Adit Ram* [(1883) ILR 5 All 568 (FB) : 1883 Awn 159] .

Reference may also be made to *Premier Vegetable P. Ltd. v. State of M.P.* [AIR 1986 MP 258] We need not, however, consider for the purposes of this case whether filing and registration mean one and the same thing for all purposes and what the legal effect of these differences is. For, though the processes are different, the purchaser at a court or revenue sale is under no disadvantage because of the lack of registration. The certificate of sale itself not being a compulsory registrable document : vide Section 17(2)(xii), the transfer of title in his favour is not vitiated by the non-registration of the certificate. The copy of the certificate filed in Book No. 1 contains all the relevant details. These details are reflected in the indices maintained under Section 55 which are open to inspection to all persons. [We may point out here that Section 55(2) only refers to memoranda filed but it seems clear, particularly in the light of various State amendments, that the index to Book No. 1 should also contain the details of copies of document filed by him]. These requirements are sufficient to ensure that any person intending to purchase or deal with the property is put on notice about the principal contents of the certificate of sale provided he inspects the relevant book and/or index. It is sufficient to say, for the purposes of this case, that all that the Sub-Registrar required to do is to file the copy of the certificate in Book No. 1 and no more. He does not have to copy out the certificate or make any other entries in Book No. 1. ...

11. There are two provisions in the Stamp Act which provide for the adjudication of stamp duty. Under Section 31, it is open to the executants of any document, at any stage but within the time limit set out in Section 32, to produce a document before the Collector of Stamps and require him to adjudicate on the question whether the document should bear any stamp duty. The Collector thereupon may adjudicate the stamp duty himself or refer the matter to the Chief Controlling

Revenue Authority of the State. In turn, it is open to the Chief Controlling Revenue Authority to refer the matter to the High Court for an authoritative decision <https://www.mhc.tn.gov.in/judis> (Sections 32 and 56). This procedure could have been followed by the petitioners if they wished to seek an answer to the question whether the certificate of sale is liable to stamp duty but they have not done it and the time limit under Section 32 has run out. The other provision that may become applicable is Section 33. Under this section, if any document (and this includes a certificate of sale) is presented to the Registrar for registration and the Registrar is of opinion that it is a document which should bear stamp duty but that it has not been stamped, it is his duty to impound the document and send it on to the Collector of Stamps for necessary adjudication (Section 38). This contingency has also not happened. The third contingency, also provided for in Section 33 is when a party wishes to rely upon the certificate of sale as a piece of evidence before a court or an authority entitled to take evidence. Such court or authority will also have to impound the document and shall not admit the same in evidence unless the stamp duty chargeable and the stipulated penalty are paid. This situation has not arisen so far but may arise at some time in future. It is unnecessary to anticipate the same and decide the issue. We shall therefore leave the issue of stamp duty to be adjudicated upon in the normal course, as and when found necessary, and express no views thereon at this stage.”

53. The above judgment makes it clear that mere filing of the sale certificate, Sub-Registrar is to just file a copy of certificate in Book No.I and no more. He does not have to copy out the certificate or make any other entries in Book No.I. Similarly, this Court in the case of Dr.Meena Thinakaran vs. The State of Tamil Nadu reported in 2012 (2) CTC 579, in paragraph 21 has held as follows:

“21.The learned Advocate General would nextly contend that if the sale Certificate is to be registered, necessarily registration charges are to be paid. But the learned Counsel for the Petitioner would submit that the Sale Certificate in question does not <https://www.mhc.tn.gov.in/judis> require to be registered. According to him, the purpose of forwarding the Sale Certificate to the Sub-Registrar is only to enter the same in Book No. 1 or to get it scanned. Section 89(2) of the Registration Act reads as follows:

“89(2) Every Court granting a Certificate of Sale of immovable property under the Code of Civil Procedure, 1908 (V of 1908), shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1 or get it scanned”.

In view of Section 89(2) of the Tamil Nadu Registration Manual Act, I am of the view that it would be suffice if the Sale Certificate in question is entered by the Third Respondent in Book No. 1 and he need not register the same. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a Certificate of Sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents, which require compulsory registration under sub-sections (b) & (c) of Section 17(1) of the said Act.

Thus, the registration is purely optional in respect of a Certificate of Sale issued by a Civil or Revenue Officer. The only legal implication is, if the Certificate of Sale is not registered, it is not admissible in evidence under Section 35 of the Indian Stamp Act and Section 49 of the Registration Act, in view of the law laid down by the Hon'ble Supreme Court in *Raghunath v. Kedar Nath*, 1969 (1) SCC 497. In the instant case, the learned Counsel for the Petitioner would submit that the Petitioner has opted not to get the Sale Certificate registered. Therefore, in this case, question of paying registration charges does not arise at all."

Emphasis supplied

54. The Division Bench of this Court in *S.Martin vs. The Official Liquidator* made in O.S.A 122 of 2010, dated 19.01.2017, held as follows:

<https://www.mhc.tn.gov.in/judis> "15. On consideration of the legal proposition emerging aforesaid in the facts of the present case, we are of the view that the occasion for affixation of stamp duty on the sale certificate really does not arise as all that the petitioner was demanding was the issuance of the sale certificate. The Registry of the Court was only required to send the copy of this sale certificate to the Sub Registrar as per the mandate contained in Section 89(4) of the Registration Act and nothing more or nothing less. As to whether the petitioner thereafter gets the sale certificate stamped or not would be responsibility of the petitioner. The document undoubtedly is not compulsorily registrable. If the petitioner seeks to use the document for any purpose and that forum is of the view that it is not stamped which it ought to be, the question of impounding it and referring it to Collector of stamps could arise. This is not the responsibility of the Registry of the Court which was only required to issue a sale certificate and the rest had to be left to the petitioner. In fact, this is in consonance with the view expressed in *Smt. Shanti Devi L. Singh's case* (supra) where second question was left unaddressed because it did not really arise in the case. In fact, it is not for the Sub Registrar even to demand stamp duty when a copy of the sale certificate has been sent to it for purpose of filing in Book-I, as aforesaid." Emphasis supplied

55. It is relevant to note that this Court, in *W.P.No.24774 of 2016 [Lissy Lakshmi vs. Joint Sub Registrar-II]* dated 30.04.2019 has passed the following order:

"17. Thus, in the instance case the sale certificate issued in the auction sale to the petitioner is not compulsorily registrable under the Registration Act and that the title passes on to the auction purchaser upon issuance of the sale certificate. Once the title of the joint owners are confirmed, there is no impediment in releasing the title to the other co-owner. Curiously, the Release Deed presented for Registration is in order and the same is registered. As stated supra, once sale is confirmed and Sale Certificate issued as early as on 04.05.2005, the respondent is <https://www.mhc.tn.gov.in/judis> wrong in demanding the stamp duty for the Sale

Certificate.”

56. The above referred writ petition was challenged in W.A.No.1793 of 2022 [Joint Sub Registrar-II vs. Lissy Lakshmi] and the Division Bench of this Court, vide judgment dated 05.08.2022 has observed as follows:

“5. The operative portion of the order quoted above, goes beyond the prayer made by the writ petitioner and otherwise shown to be in ignorance of Section 35 of the Indian Stamp Act. Distinction has to be made between compulsory registration of the document and the stamping of the document. It may be that the document may not require compulsory registration under the Registration Act, but, it does not mean that for further purpose of conveying the property, even the stamp duty is to be ignored. Section 35 of the Indian Stamp Act requires stamping of document and otherwise, it would not be admissible in evidence. When the document is not admissible in evidence, it cannot be used for purposes, unless it is stamped.

6. In view of the above, we find reason to modify the operative portion of the order of the learned Single Judge in reference to the provisions of the Indian Stamp Act. Accordingly, the appellant is directed to hand over the release deed to the writ petitioner with necessary endorsement as per the provisions of law. The writ petitioner would be at liberty to take the remedy thereupon, if she so chooses and as provided under law.”

57. The above judgment makes it clear that distinction has to be made between compulsory registration of the document and the stamping of the document. It may be that the document may not require compulsory registration under the Registration Act, but, it does not mean that for further <https://www.mhc.tn.gov.in/judis> purpose of conveying the property, even the stamp duty is to be ignored.

Section 35 of the Indian Stamp Act requires stamping of document and otherwise, it would not be admissible in evidence. When the document is not admissible in evidence, it cannot be used for purposes, unless it is stamped.

58. This Court in the above judgments has held that the registration is purely optional in respect of a Certificate of Sale issued by a Civil or Revenue Officer. The only legal implication is, if the Certificate of Sale is not registered, it is not admissible in evidence under Section 35 of the Indian Stamp Act and Section 49 of the Registration Act, in view of the law laid down by the Hon'ble Supreme Court in *Raghunath v. Kedar Nath*, 1969 (1) SCC 497. In view of the above dictum and also considering the provisions of the Sections Article 18 of the Stamp Act which makes the compulsory duty on the sale certification and Section 29(f) of the Stamp Act makes it clear that the duty shall be paid by the purchaser. This Court is of the view that that party seeks to use the sale certificate for any purpose when such sale certificate is produced before any authorities mentioned under Sections 33 and 35 of Indian Stamp Act is certainly amenable for impounding. This is because the definition of word “Instrument” as defined under Section 2(14) of the Indian Stamp Act, which reads as follows:

<https://www.mhc.tn.gov.in/judis> “Instrument includes

(a) every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;”

59. As the sale certificate is a document merely recording the fact that the transfer has already taken place. Such sale certificate also come within the ambit of Instrument as defined under Section 2(14) of the Indian Stamp Act. Therefore, such sale certificate which is not stamped properly and produced before the authorities to claim right in the immovable proerties, such certificate is amenable for impounding under Section 35 of the Indian Stamp Act. However, it is made clear that if the party choses not to register the document and chose to file the document through authorised officer under Section 89(4) of the Registration Act, this Court is of the view that no stamp duty is required. Mere filing of copy of sale certificate, this Court is of the view that it will only dispense with the payment of stamp duty. However, when the sale certificate is used to establish the right in the immovable property, it is not admissible as per Section 35 of the Indian Stamp Act and Section 49 of the Registration Act as the Stamp Act being a fiscal legislation makes it mandatory slap on the sale certificate when it is used for any purpose.

60. Therefore, this Court is of the view that mere filing of the sale <https://www.mhc.tn.gov.in/judis> certificate by the authorised officer alone for the purpose of entry under Section 89(4) of the Registration Act, stamp duty is not required. However, if the party presents for registration of the document, the stamp duty is required. Section 89(4) of the Registration Act mandates the Revenue Officer to foward the copy of the certificate to the registering officer within the local limits of whose jurisdiction. Similarly, Section 89(2) mandates the Court granting certificate shall send a copy to the registering officer within the local limits of whose jurisdiction. The above provisions makes it very clear that only when the sale certificate forwarded by the authorised officer or the Court to the registering officer shall be entered in Book No.1. When party seeks to use sale certificate for any other purpose, it requires stamp duty. If not duly stamped, it is amenable for impounding by the authorities concerned.

61. The registration of the sale certificate by the parties is dealt under Article 18 of the Stamp Act which reads as follows:

“18. Certificate of Sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer—

(a) where the purchase-money does not exceed Rs. 10; One rupee

(b) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25;

<https://www.mhc.tn.gov.in/judis> Two rupees

(c) in any other case.

The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase money only.

62. Since, the authorised officer discharges his statutory duty and make a compulsorily sale, he is held to be a Revenue Officer, as already discussed in para 40. Article 18 of Stamp Act makes it clear that for sale certificate duty shall be same as a conveyance for consideration equal to the amount of purchase money only. The Legislatures were conscious of the fact that since the sale was conducted in public auction and sale consideration were fixed in a public auction, thought it fit to levy the duty only on the purchase money not beyond that. Article 23 of the Indian Stamp Act deals with Conveyance.

63. As per Article 23 of the Indian Stamp Act, five rupees for every Rs.100/- of the market value of the property which is the subject matter of conveyance. The word "Conveyance" is defined under Section 2(10) of the Stamp Act, which reads as follows:

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

64. The above provision makes it clear that only when the property is <https://www.mhc.tn.gov.in/judis> 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 <https://www.mhc.tn.gov.in/judis> 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.

66. The contention of the learned Additional Advocate General that the authorised officer steps into the shoes of the mortgagee and the sale made by him comes within the ambit of the conveyance cannot be construed. This is a compulsory sale made under the statute. The statute directs the authorised officer for recovery of money by sale of the property of default borrowers. Such case, it cannot be said that such sale comes within the ambit of transfer by inter vivos. Similarly, the learned Additional Advocate General relying on <https://www.mhc.tn.gov.in/judis> the provision of Section 13(6) of the SARAESI Act contended that the right, title and interest in purchaser are thus transferred as if the transfer has been made by the owner of the asset himself. This Court is of the view that Section 13(6) of the SARFAESI Act cannot be interpreted to mean that it is only a transfer by inter vivos. Only in order to create marketable title, legal fiction is made as if the transfer is made by owner of the property. Therefore, when the very transfer itself is made under statute and it is a compulsory sale, it cannot be said that such transfer is by the act of parties.

67. It is also relevant to note that in a Division Bench of the Calcutta High Court in the case of BallyFabs International Limited v State of West Bengal reported in 2022 SCC Online Cal 863, while answering a reference held that Section 47-A does not apply and observed as follows:

“Rule 8 can be pressed in action for sale of the immovable secured assets after exhausting the provision contained under Section 13(4) of the SARFAESI Act, 2002. Sub-Rule 5 of Rule 8 postulates that before effecting the sale of the immovable property referred to in Rule 9 (1) the authorized officer after obtaining the valuation of the property from the approved valuer and in consultation with the secured creditor may fix the reserve price and sell the property either by obtaining a quotation from a person dealing with the similar secured assets or otherwise interested in buying such assets or by inviting the tenders from the public or by holding public auction or by private treaty. The authorized officer if embarks to sell this immovable property by inviting tenders from the public or by holding public auction and not by a private treaty or by obtaining quotation from the persons dealing with the similar secured assets or otherwise interested therein such exercise would certainly come within the purview of <https://www.mhc.tn.gov.in/judis> the open market sale. The object of such rule is to secure the best price by selling the property in the open market to reduce the burden of the debt and it is inconceivable that such secured creditor would sell the property at the lower price than what it would fetch or would have fetched in the open market. The authorized officer is the statutory authority having no personal interest in the secured assets and in fact deals with the public money. Raising any suspicion would impinge upon the freedom and the competence as envisioned in the aforesaid provision. However, the checks and balances can be made in this regard in not bringing all the course of action as indicated in Rule 8 (5) of the said rules but if the sale is effected by public auction and by inviting a public bid it excludes the operation of Section 47A of the Stamp Act and

be regarded as the sale effected in the open market.”

68. The Division Bench of this Court in the case of the Inspector General of Registration vs. M/s.Sulochana Mills, made in W.A.No.1115 of 2017 dated 30.04.2024 also had held that stamp has to be paid only on the value mentioned in the sale certificate not on the market value or the guideline value of the property. Further, held that the stamp duty levied on a sale certificate shall be 5% of stamp duty under Article 18(c) read with Article 23 of the Schedule-I of Stamp Act, 2% transfer duty under the Tamil Nadu Duty on Transfers of Property(Municipal Areas) Act, 2009 and Rules and 1% of registration charges, totally $5\%+2\%+1\%=8\%$.

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 Municipalities <https://www.mhc.tn.gov.in/judis> 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:

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 <https://www.mhc.tn.gov.in/judis> 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 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.”

71. It is relevant to note that Section 116-A was repealed in 2009 and was re-enacted as the Tamil Nadu Duty on Transfers of Property (In Municipal Areas) Act, 2009. Section 3 of this Act reads as follows:

“Levy Of Duty On Transfers Of Property:-

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

□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 <https://www.mhc.tn.gov.in/judis> municipal area; and □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 should be levied |
|-------------------------------------|--|
| (i) Sale of immovable property. | The market value of property as set forth in the instrument, and where the market value is not finally determined by the authority under Section 47-A of the Stamp Act, the market value as determined by the authority. |
| (ii) Exchange of immovable property | The market value of property of the parties to the instrument, and where the market value is not finally determined by the authority under Section 47-A of the Stamp Act, the market value as determined by the authority. |

iii) Gift of immovable property

market value as determined authority
The market value property as set instrument, and where the market finally determined authority under 47-A of the Stamp Act, 1899. The market value as determined

<https://www.mhc.tn.gov.in/judis>

authority.

(iv) Mortgage with possession of immovable property.

The amount secured by mortgage, as set in the instrument.

(v) Lease in perpetuity of immovable property

An amount equal to one-sixth of the whole or value of the property would be paid or in respect of the years of the lease set forth in the instrument.

72. From a bare reading of the aforesaid provision the following aspects are clear:

a. A surcharge becomes payable on the duty imposed by the Indian Stamp Act, 1899.

b. on every instrument of the description specified on the 5 kinds of instruments specified, c. which relates to immovable property situated within the limits of the municipal area d. The five kinds of instruments specified are: sale, exchange, gift, mortgage and lease. All five transactions are covered by the provisions of the Transfer of Property Act. A sale certificate under the SARFAESI Act is not a conveyance as it is not an inter vivos transfer of property. Similarly, transfer duty is payable on the market value as per Section 3 of the Tamil Nadu Duty on Transfers of Property (In Municipal Areas) Act, 2009. Whereas, stamp on the sale certificate is payable as per Article 18 of the Stamp Act only on the market value of the purchase money only. Hence, this Court is of the view that sale certificate cannot be equated to the reference to the market value of the property.

73. It is also relevant to point out the Division Bench of this Court in Sulochana Mill's case has held that 2% transfer duty is payable apart from 1% of registration charges. It is relevant to note that provision under Section 3 of the Levy Of Duty On Transfers Of Property Act), nor the judgment in Meera Thinakaran (Dr.) v. State of Tamil Nadu, (2012) 2 LW 351 : (2012) 2 CTC 759, nor the judgment of the Supreme Court

in Municipal Corpn. of Delhi v. Pramod Kumar Gupta, (1991) 1 SCC 633 was brought to the notice of the Division Bench in Inspector General of Registration vs. M/s.Sulochana Mills, made in W.A.No.1115 of 2017 dated 30.04.2024. The judgment of the Hon'ble Apex Court in Munipal Corporation of Delhi vs. Pramod Kumar Gupta reported in (1991) 1 SCC 633 has considered 147 of the Delhi Municipal Corporation Act, 1957, in pari materia with Section 116-A of the Tamil Nadu District Municipalities Act has held that sale certificate is a document merely stating as a fact that transfer has already taken place cannot be included with this expression of sale of "immovable properties". Such being a position, mere registering sale certificate for the purpose of making it <https://www.mhc.tn.gov.in/judis> as a admissible document as required under law to show the transfer has already taken place, this Court is of the view that the transfer duty of 2% namely surcharge cannot be levied on the sale certificate. Therefore, the levy of transfer duty on the sale certificate cannot be sustained in the eye of law.

Accordingly, the stamp duty leviabale is only 5% on the purchase money apart from 1 % of registration charges.

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 <https://www.mhc.tn.gov.in/judis> Act, such sale certificate is amenable for impounding at the discretion of the authorities.

75. With regard to the writ petition in W.P.No.12097 of 2024, this Court is of the view that the impugned order imposing 10 times penalty suffers from malafides, the impugned order has been passed immediately after the contempt proceedings initiated by the petitioner against the official respondents.

76. Imposing penalty is defined under Section 40(b) of the Indian Stamp Act, which reads as follows:

40(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the five rupees, or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees

77. This Court is of the view that imposing penalty is discretionary. It is relevant to point out that this Court in the case of K.Sankara Narayanan Vs. Central Registrar of Multi State Co-operative Societies and other in Arb.O.P.No.384 of 2018 etc., dated 19.03.2024, has dealt with the word 'discretion', which reads as follows:

<https://www.mhc.tn.gov.in/judis> “34. In WHARTON'S LAW LEXICON - Fifteenth Edition, taking reference from the judgment of the Hon'ble Supreme Court in the case of Aero Traders Pvt. Ltd. v. Ravinder Kumar Suri [AIR 2005 SC 15], the legal meaning of word 'discretion' has been explained as under”-

“The word 'discretion' connotes necessarily an act of a judicial character, as used with reference to discretion exercised judiciously, it implies the absence of a hard and fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination and a knowledge of the facts upon which discretion may properly operate. When it is said that something is to be done according to the rules of reason and justice and not according to the private opinion; according to law and not honour. It only gives certain latitude liberty accorded by statute or rules, to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him.

35. The above would make it clear that the word 'discretion' connotes necessarily an act of a judicial character and discretion should be exercised judiciously.

36. In WHARTON'S LAW LEXICON - Sixteenth Edition, taking reference from the judgment of the Hon'ble Supreme Courts in the cases of Veerayee Ammal v. Seenii Ammal [(2002) 1 SCC 134] and Azar Sultana v. B.Rajamani [(2009) 17 SCC 27, the legal meaning of the word - reasonable- has been explained as under:-

“The word 'reasonable' has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably know or ought to know as to what was reasonable. The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks.

37. Similarly WHARTON'S LAW LEXICON -

SIXTEENTH EDITION, taking reference from the judgment of the Hon'ble Supreme Court in the cases of V.Subramaniam v. Rajesh Raghavendra Rao [(2009) 5 SCC 608]; and Chintamanrao v.

State of M.P. [AIR 1951 SC 118], the legal meaning of the word 'reasonable' has been explained as under:-

<https://www.mhc.tn.gov.in/judis> “The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictate.”

78. The above provision makes it clear that the penalty of five rupees, or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees can be levied. Imposing penalty is the discretion of the authority, however, the discretion has to be exercised judicially, it should not be based on other consideration. Admittedly, the petitioner has filed several writ petitions challenging the orders of authorities and finally contempt petition is also filed, the petitioner has also presented the document for registration of sale certificate. The impugned order is passed immediately after the filing of the contempt petition. Considering the above facts and circumstances, this Court is of the view that the discretion in imposing 10 times of penalty suffers from malafides. Though this order is revisable, considering the fact that this writ petition is heard along with other writ petitions, in order to give quietus, this Court exercising its power under Article 226 of the Constitution of India is inclined to reduce the penalty from 10% to 1%. Further, with regard to the stamp duty, as already discussed, with regard to registering the sale certificate 5% stamp duty has to be paid on the purchase money apart from 1% registration fees. Accordingly, the impugned order is <https://www.mhc.tn.gov.in/judis> modified to the extent i.e., 1% registration fees, 5% stamp duty and 1% penalty, payable by the petitioner.

79. In respect of W.P.No.10454 of 2024 is concerned, on perusal of the typeset, it would indicate that the attachment made by the Income Tax Department is quashed by the Division Bench of this Court in W.A.No.60 of 2022. Such view of the matter, the impugned order is liable to be set aside.

80. Accordingly, these writ petitions are allowed in terms as follows:

a. that the W.P.No.415 of 2023 and 9886 of 2024 are allowed by quashing the impugned proceedings, since, Section 47-A of the Indian Stamp Act cannot be invoked in registration of sale certificate. The concerned respondents are directed to refund the excess stamp duty and registration, accordingly.

b. W.P.Nos.3696 & 22555 of 2023; 6807, 6808, 6810 of 2024 are allowed directing the respondents to refund the stamp duty and excess registration charges, accordingly, since, a copy of the sale certificate is filed under Section 89(4).

c. W.P.No.23276 of 2023 is allowed quashing the order dated <https://www.mhc.tn.gov.in/judis> 27.06.2023 and the respondents are directed to release the document, stamp duty can be levied only on the purchase money and also refund the excess stamp duty and registration amounting to Rs.9,81,000/- and Rs.14,71,500/- to the petitioner.

d.W.P.No.859, 10285 & 11503 of 2024 are allowed, directing the respondents to refund the excess stamp duty and registration charges, accordingly.

e.W.P.No.9728 of 2024 is allowed, directing the respondents to register and release the pending document in P.Doc.No.987/2019, after payment of 5% stamp duty on the purchase money, as reflected in the sale certificate and registration charges.

f. W.P.No.10454 of 2024 is disposed of quashing the impugned order dated 25.03.2024 and the respondents are directed to enter the sale certificate dated 08.06.2023 after payment of registration charges.

g. W.P.No.12097 of 2024 is disposed of and the impugned order is modified to the extent, i.e., 1% registration fees, 5% stamp duty and 1% penalty is payable by the petitioner and on payment, the respondents are directed to register the sale <https://www.mhc.tn.gov.in/judis> certificate in Doc.No.P25/2023 and release the same.

f.W.P.Nos.12742, 12788, 15704, 16520, 16911 & 17613 of 2024 are allowed, quashing the impugned orders and the respondents are directed to enter the sale certificates under Section 89(4) without insisting stamp duty except registration fees. g.W.P.No.17205 of 2024 stands allowed, since, the petitioner has paid the stamp duty on the purchase value and the registration fees, the respondents are directed to register the sale certificate forthwith.

h. W.P.No.18044 of 2024 is allowed quashing the impugned order dated 01.03.2024 and the respondents are directed to refund the excess stamp duty and registration charges already paid by the writ petitioner, accordingly.

The concerned respondents in all the writ petitions are directed to comply with the above directions within a period of four weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petitions are closed.

dhk

<https://www.mhc.tn.gov.in/judis>

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To,

1. The Inspector General of Registration

Office of the Inspector General of Registration Santhome High Road Chennai – 600 028

2.The Deputy Inspector General of Registration 6/1, GRD Road, Opp. Air Force Admin College Coimbatore District

3.The District Revenue Officer (Stamps) District Revenue Office Collector Campus Gopalapuram, Coimbatore District

4.The District Registrar Coimbatore, Coimbatore District

5.The Sub Registrar Komangalam, Coimbatore District <https://www.mhc.tn.gov.in/judis> N. SATHISH KUMAR, J.

dhk W.P.Nos.415 of 2023, W.P.Nos.3696, 23276 & 22555 of 2023 & W.M.P.Nos.3791, 22815, 22816 & 22817 of 2023 and W.P.Nos.859, 6807, 6808, 6810, 9728, 9886, 10285, 10454, 11503, 12097, 12742, 12788, 15704, 16520, 16911, 17613, 18044 & 17205 of 2024 and W.M.P.Nos.875, 7649, 10894, 10895, 13191, 13192, 13911, 13912, 13913, 13960, 13961, 13962, 17115, 18108, 18110, 18111, 18607, 18608 & 18610 of 2024 23.07.2024 (1/2) <https://www.mhc.tn.gov.in/judis>