

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **08.02.2023**

CORAM

THE HONOURABLE MR. JUSTICE SATHISHKUMAR

W.P.No.2758 of 2023

The Federal Bank Ltd.,
Rep. by its Senior Manager,
LCRD, Coimbatore Division,
No.21 Variety Hall Road,
Coimbatore-641001

... Petitioner

Vs.

1 The Sub Registrar,
Office of Sub Registrar, Pollachi,
No.104, Taluk Office Campus,
Coimbatore Road, Pollachi-642001.

2 Office of The Principal Commissioner of
GST and Central Excise, Headquarters,
Preventive Unit 6/7A, T.D. Street,
Race Course Road, Coimbatore-641018.

3 Jayaprakash

... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari Mandamus, calling for the records of the 1st respondent and to quash the Reply Letter No.Na.Ka No.538/2022 dated 17.10.2022 of the 1st respondent with a consequential relief of directing the 1st respondent to register the Sale Certificate dated 09.09.2022 issued by the petitioner Bank in favour of the 3rd respondent Auction Purchaser.

For Petitioner : Mr.A.V.Radhakrishnan

For Respondent No.1 : Mr.YogeshKannadasan,
Special Govt. Pleader

ORDER

The challenge in this writ petition is an order dated 17.10.2022 passed by the first petitioner rejecting the request of the petitioner for registration of the Sale Certificate.

2. The petitioner Bank is a secured creditor of the property which was mortgaged in their favour on 19.10.2017. The deed of mortgage was registered as Doc.No.8509 of 2017 before the first respondent. As the mortgagor failed to repay the outstanding amount, the loan account was classified as N.P.A. and action was initiated under the SARFAESI Act. Consequently, the property was sold through a public auction, and a sale certificate was also issued on 09.09.2022. When the sale certificate was presented for registration, the impugned order was passed rejecting the request of the petitioner for registration of Sale Certificate on the sole ground that property was provisionally attached under Sec.83 of the G.S.T.Act on 18.12.2021.

3. Mr. Yogesh Kannadasan, Special Government Pleader takes notice

for the first respondent and submits that as per Rule 55-A of the Tamil Nadu Registration Rules, if any property is attached or mortgaged or lease agreement is entered into, the sale deed cannot be registered. Thus, as per Rule 55-A of TamilNadu Registration Rules, a document cannot be presented for registration unless the attachment is raised.

4. Learned counsel appearing for the petitioner would mainly contend that even applying Rule 55-A of the Registration Rules, the so-called provisional attachment has lapsed by operation of law itself. Therefore, according to the counsel for the petitioner, Sec.83 of the G.S.T.Act makes it very clear that any provisional attachment passed under Sec.83 (1) of the Act will continue only for a period of one year and not thereafter. Despite this being brought to the notice of the first respondent, the impugned order came to be passed.

5. Heard the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the respondents and perused the materials available on record.

6. This Court has encountered with several Writ Petitions challenging the orders of the Registering authority refusing to register the

documents or transaction permitted under law. Though the rule 55(A) has not been directly challenged this Court is of the view that when a subordinate Legislation is ex facie found to be in conflict with the provision of the Parent Act and Transfer of Property act as well as constitutional rights, the subordinate legislation will have to yield to substantive law governing the field and constitution as pointed out by the Supreme Court in **Government of Andhra Pradesh vs Lakshmi Devi 2008 SCC 720** wherein it is held as follows:

“34. In India the grundnorm is the Indian Constitution, and the hierarchy is as follows:

(i) The Constitution of India;

(ii) Statutory law, which may be either law made by Parliament or by the State Legislature;

(iii) Delegated legislation, which may be in the form of rules made under the statute, regulations made under the statute, etc.;

(iv) Purely executive orders not made under any statute

35. If a law (norm) in a higher layer in the above hierarchy clashes with a law in a lower layer, the former will prevail. Hence a constitutional provision will prevail over all other laws, whether in a statute or in delegated legislation or in an executive order. The Constitution is the highest law of the land, and no law which is in conflict with it can survive. Since the law made by the legislature is in the second layer of the hierarchy, obviously it will be invalid if it is in conflict with a provision in the Constitution (except the directive principles which, by Article 37, have been expressly made non-enforceable)."

In view of the above judgement this court is inclined to test the validity of Rule 55A of the registration Act which came into force from 05.09.2022.

7. It is relevant to note that the object of the Registration Act is designed to prevent fraud by obtaining a contemporaneous publication and an unimpeachable record of each document [*Rajni Tandon v. Dulal Ranjan Ghosh Dastidar, (2009) 14 SCC 782*]. It is for this reason the

Supreme Court in *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77, has held that the Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein.

8. Prior to the insertion of Rule 55-A the Registrar could refuse to register a document if it fell within any of the categories in Section 22-A& B of the Act or under Section 34 or if the case fell within any of the circumstances set out in Rule 162 of the Registration Rules. However, it has become a practice for Sub-Registrar's to refuse registration of documents citing internal circulars requiring them to produce title deeds to scrutinize title etc. Several writ petitions have come up before this Court challenging such refusals. In one such case, the issue was whether once a sale agreement is registered by the vendor, the subsequent documents in respect of the same immovable property could be refused to be registered by the Registrar. In other words, once an agreement for sale is registered under the Registration Act, whether the vendor is debarred from effecting any agreement or transfer in respect of the same immovable property. As

there were conflicting decisions of single judges the matter was directed to be placed before a Division Bench.

9. The reference was eventually answered by the Division Bench in **Ramayee v Sub-Registrar (2020 6 CTC 697)**, in the following terms:

“As already indicated, the purpose of registration is only to give a public notice. It is for the buyer or subsequent transferee to make reasonable enquiry. Doctrine of caveat emptor will also apply to every transfer. It is for them to verify the title of the property by making reasonable enquiry. At any event, subsequent transfer will always be subject to the rights already created. Therefore, it cannot be said that merely because agreement for sale is registered without obtaining decree of declaration that such agreement is void, subsequent transfer is prohibited and cannot be registered. We hold that as discussed in our judgment, Registrar has no right to refuse to register the subsequent document on the basis that agreement of sale was already registered in respect of same property.”

10. The State of Tamil Nadu went on appeal to the Supreme Court

against the judgment of the Division Bench in Ramayee's case in **SLP (Civil) 4844 of 2021** and the same was dismissed on 05.04.2021 by way of the following order:

“We find no grounds to interfere with the well-reasoned judgment and order of the Division Bench of the High Court. The Special Leave Petition is, accordingly, dismissed. Pending application(s), if any, stands disposed.”

11. After the dismissal of the SLP, the Inspector General of Registration exercised power under Section 69(2) of the Registration Act, which was thereafter notified by the State Government inserting Rule 55-A with effect from 05.09.2022. Rule 55-A reads as follows:

"55A. (i) The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which he executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation:

Provided that in case an encumbrance as to

mortgage, orders on attachment of property, sale agreement or lease agreement exists over the property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed, or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done, as the case may be:

Provided further that in case the previous original deed is not available as the property being an ancestral one, the registering officer shall not register such document, unless the presentant produce any revenue record evidencing the executant's right over the subject property such as patta copy issued by Revenue Department or tax receipt:

Provided also that if the previous original deed is lost, the registering officer shall register such document only on production of non-traceable Certificate issued by the Police department along with the advertisement published in the local Newspaper as to the notice of loss of the previous original deed:

Provided also that production of the previous original deed shall not be necessary where the Government or a Statutory body is the executant of the document or for such class of documents as may be

notified by the Inspector General of Registration, from time to time.

(iii) The registering officer, on being satisfied that the description of the property contained in the document presented for registration conforms with the description of the property found in the previous original deed produced by the presentant as provided under this rule, he shall inscribe the word 'verified' on a conspicuous portion of the first page of such title deed and affix his signature with date and thereafter cause scanning of page containing such inscription as a reference document."

(iv) In case where revenue records are produced under this rule, the same shall be scanned as the main document and where Non-Traceable Certificate and the advertisement published in the local Newspaper are submitted by the presentant, the same shall be scanned as reference documents:

Provided that such verification and scanning of the previous original deed or record in the manner provided under this rule, shall not be construed to be an act of ascertaining the validity of the document presented for registration and also the same shall not absolve or deprive any person from the provisions contained in Parts

XIV and XV of the Registration Act, 1908 (Central Act XVI of 1908).

A corresponding amendment has also been made to Rule 162 of the Registration Rules authorizing the refusal of registration on any of the grounds set out in Rule 55-A.

12. It is now necessary to closely examine Rule 55-A as this is the sheet anchor of the case of the respondents for refusing registration of the document presented by the petitioner. Rule 55-A (i) authorizes the Registrar to refuse registration of the document unless the presentant produces the previous original sale deed by which the executant acquired right over the property, and the Encumbrance certificate pertaining to the said property. It is not difficult to foresee that a literal application of this rule would lead to several absurd results. For example, if a person desires to execute a Will and get it registered, and the property is mortgaged to a Bank it is obvious that he would be unable to present the original document. Similarly, where one sharer deals with his interest in joint family property registration can be easily stalled if the other co-sharer refuses to part with the original parent

deed. In fact, in a recent decision [*Ananthi v District Registrar, W.P 2498 of 2023, order dated 02.02.2023*], this Court was confronted with a case where the Sub-Registrar had relied on Rule 55-A (i) and refused to register a sale deed only on the ground that the original partition deed had not been produced. Quashing the impugned order, this Court observed as follows:

“While framing such Rule, the Government has not taken into consideration of the fact that the partition deeds are entered among the co-owners. Normally, original partition deed will be retained by anyone of the family member. In fact, there may be a situation, wherein, the person who will be in possession of the original partition deed, may not be willing to produce the documents. If such original is not produced as required under this Rule, the other members of the family cannot deal with the property.”

13. It appears that on the very same day ie., 02.02.2023, the Inspector General of Registration issued Circular No 22482/CI/2022, dispensing with the production of the original documents in certain situations indicated in the guidelines. In the considered opinion of this Court, the very fact that several exemptions had to be granted by a circular clearly demonstrates the unworkability of Rule 55-A(i). However, a very

intriguing aspect lies in the amendment to Rule 162 inserting Clause XX which reads as follows:

“Clause XX Rule 55A. – That the presentant of the document fails to produce the original deed or record specified in rule 55A.”

13.a The newly introduced Clause XX is preceded by Clauses I-XIX authorizing the Registrar to refuse registration on the grounds set out therein. More importantly, each of the clauses authorizing the Registrar to refuse registration from Clauses I to XIX specifically refers to a substantive provision of law in the Registration Act or in some other legislation like the Income Tax Act, 1961 as the source of power. Clause XX on the other hand, does not refer to any substantive provision of law. Strangely and most curiously it authorizes the Registrar to refuse registration for non-production of original deed or record as specified in Rule 55-A. Normally, a subordinate legislation like a rule is authorized by a substantive provision of law. However, this is a unique case where a rule is authorized by another rule. This Court is of the considered opinion that in the absence of any substantive provision of law in the parent legislation, Clause XX is clearly

beyond the powers of the Inspector General of Registration. The scheme of Rule 162 particularly Clauses 1 to XIX make it very clear that the grounds for refusal must be traceable to a substantive provision of law in the Registration Act or other legislation.

14. Coming to the first proviso to Rule 55-A(i), it states that in case an encumbrance as to mortgage, or an order as to attachment of property or a sale agreement or lease agreement exists over the property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done. It is relevant to state that this proviso has the effect of nullifying several provisions of the Transfer of Property Act. The precise issue was highlighted and pointed out by the Division Bench in Ramayee's case. Dealing with the registration of transactions after a mortgage or a lease the Court observed:

“29. In the light of the above when we deal with the various provisions of the Transfer of Property Act the question arises as to whether the transfer is restricted to one time in respect of the immovable property, unless the previous transfer or any agreement is set aside in the

court of law, and other transfer is permissible? The answer is absolutely “No” for the following reasons:

The property of any kind may be transferred, except as otherwise provided by the transfer of property Act or by any other law for the time being, as provided in Section 6 of the Transfer of property Act.

30. Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force, as per Section 7 of the Transfer of Property Act. The reading of the above section makes it very clear that even a person not entitled transferable property is competent to transfer such property when he was authorised to dispose of such property.

31. Section 41 of the Transfer of Property Act deals with the power of the ostensible owner to effect the transfer of the property with consent, express or implied of the real owner.

32. From the principle underlined in the Section 41 of the Transfer of Property Act is that the ostensible owner of the property, with the consent express or implied and representing himself as owner of the property though he is not having the title, can deal with the property. Similarly, Section 42 of the T.P. Act deals with the transfer by a person having authority to revoke the former transfer. When a person transfers any immovable property reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee subject to any condition attached to the exercise of the power as a revocation of the former transfer to the extent of the power.

33. Similarly section 43 of Transfer of Property Act deals with transfer by unauthorised person who subsequently acquires interest in the property transferred. The above section makes it very clear that even a person who has no title over the property purports to transfer to another by deed and when he subsequently acquires any interest in the property, sufficient to satisfy the transfer, the title would pass to the transferee without any further

act on the part of the transferor, provided the transferee has not rescinded the transfer and opts for such effectuation. The above principle also makes it very clear even a transfer by unauthorised person is not prohibited. Only the validity of the title would be subject to his acquiring subsequent interest in the property.

34. Section 48 of the Transfer of Property Act deals with priority of rights created by transfer, which reads as follows:

“48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.”

35. The above section determines the priority when there are successive transfers, where the person creates transfer at different times right in or over the same immovable property, such rights cannot all exist or be

exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation bind the earlier transferee and be subject to the rights previously created.

36. Reading of the above section makes it clear that there is no bar for successive transfers. However, the rights in later transfer shall always be subject to the rights already created in the earlier transfer.

37. It is also pertinent to note that even if transfer is made during a pending suit, such transfer is not void but is subject to the result of the suit. Section 53 of the Transfer of Property Act, deals with fraudulent transfer. Even such fraudulent transfer is made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Even in such cases the rights of transferee in good faith and for consideration is protected.

38. Section 56 of the Transfer of Property Act deals with marshalling by subsequent purchaser. The above provision also makes it clear that when the owner of two or more properties mortgages them to one person and

then sells one or more of the properties to another person, the buyer is in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties. The above provision also makes it clear that though there were mortgages already created there is no bar for subsequent transfer of the property. But subsequent transfer is subject to the mortgage earlier created.

39. *Section 57 of the Transfer of Property Act deals with the Provision by Court for encumbrances and sale freed there from. The Section also makes it clear that even the properties already encumbered can be brought under court sale and the encumbrance can be freed after issuance of notice to the encumberer.*

40. *It is also relevant to note that even a mortgage is a transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an*

*existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. Therefore, it cannot be said that once the encumbrance is made by creating a mortgage, the mortgagor is totally prohibited from effecting any further transfer. In fact if any such transfer is made, it is always subject to the mortgage alone. If the analogy is drawn from the judgment of the single judge in **W.P. No.33601 of 2019 [Venkattamma v. The Sub-Registrar]** that agreement once registered there cannot be any subsequent settlement deed is accepted, such situation even may lead to the contention that even where a simple mortgage is created, the mortgagor cannot transfer the property for any other purpose even for a lease, even though lease is just transfer of right to enjoy the property. The judgment of the learned single Judge in **W.P. No. 33601 of 2019 [Venkattamma v. The SubRegistrar]** holding that unless there is declaration declaring the agreement for sale is null and void is obtained from civil court no further transfer could be registered, which is, in our view, not according to law. It is also to be noted that in the above case only agreement for sale was registered. It is relevant to extract Section 54 of the Transfer of Property Act.”*

14.a. Dealing with the case of transfers made after the execution of a

sale agreement the Division Bench observed:

“Section 54 of T.P. Act: “Sale” defined.— “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—

3 Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.”

41. The contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does

not, of itself, create any interest or charge on such property. The agreement of sale is merely a document creating right to obtain a document of sale on fulfilment of terms and conditions specified therein and it is only capable of enforcement in the event of breach of contract by the other side. Even to enforce such agreement for specific performance, the agreement holder has to establish not only the contract but other grounds viz., ready and willingness on his part to get a decree of specific performance provided the suit is filed within time.

42. In *Narandas Karsondas v. S.K. Kamtam* [(1977) 3 SCC 247 : AIR 1977 SC 774] the Honourable Supreme Court also considered the nature of the right created on the immoveable property by a contract for sale. It has been stated that contract of sale in view of section 24 of T.P. Act does not of itself create any interest in or charge on the property. The personal obligation created by a contract of sale (as recognised in Section 3 of the Specific Relief Act and section 91 of the Trust Act is described in Section 40 of the T.P. Act) as an obligation arising out of contract. An annexure to the ownership

of the property, but not amounting to interest or easement therein.

43. Section 19(b) of Specific Relief Act also protects the subsequent transferee for value and for consideration in good faith without notice of the original contract. Even if a person has no title to the property has entered into a contract for sale, the transferee can seek for specific performance under section 13 of the Specific Relief Act.

44. From a combined reading of various provisions of the Transfer of Property Act as referred above, we are of the view that there is no bar for creating subsequent transfer of the immovable property. Effect of the subsequent transfer is always subject to the earlier transfer created by the transferor of the immovable property. Therefore, it cannot be said that since the agreement for sale is registered the owner viz., the Vendor has no right to execute any document. In Venkatamma's case [W.P. No. 33601 of 2019] in fact settlement deed has been presented for registration by the Vendor after three years of the so called contract. Merely on the basis of the agreement for sale, the

registrar refused to register the document which is against the very substantive law of the country. If such approach is accepted a situation may arise in every loan transaction if some contract is registered, merely because it shown in the encumbrance as a registered agreement, the owners of the property would be prohibited from dealing with the property as long as the encumbrance finds place in the encumbrance certificate. Such situation in fact would lead to deprive the right of the owner of the property to deal with the property which is a constitutional right.”

15. The effect of the first proviso is clearly an arbitrary exercise of power aimed at setting at naught the above declaration of law by the Division Bench of this Court in *Ramayee's case*. In the considered opinion of this Court, a subordinate legislation issued by the Inspector General of Registration under Section 69 of the Act cannot annul a declaration of law made by the Division Bench. In **Madras Bar Association v Union of India, 2021 SCC Online SC 463**, the Supreme Court quoted Chief Justice John Marshall's classic observation in **Marbury v Madison (28 5 US 137)**: *“It is emphatically the province and duty of the judicial department*

to say what the law is.” The Hon'ble Supreme Court then went on to observe as under:

“41. It is open to the legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the legislature to say that a judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court.”

15.a. Thus, when the legal position has already been declared by the Division Bench of this Court and has been affirmed by the Supreme Court it is not open to the Inspector General of Registration to take a contra view and notify a subordinate legislation the effect of which is to completely render nugatory to the interpretation made by this Court. Ex-facie, the first proviso to Rule 55-A (i) is clearly illegal and is vitiated by a clear abuse of power.

16. That apart, the first proviso appears to have been drafted without any application of mind. For instance, the limitation period for redeeming a

mortgage is 30 years. Under the first proviso, if there exists a mortgage over the property no document can be registered until the said limitation period has expired. As pointed out in *Ramayee's* case, this nullifies the substantive provisions of Sections 48 and 56 of the Transfer of Property Act which gives effect to the principle that there is no bar in dealing with a property which is the subject matter of the mortgage. Similarly, it is an elementary principle of law that a purchaser of a mortgaged property takes the property subject to the mortgage. Once a mortgage always a mortgage unless the same is redeemed.

17. The other provision barring registration is execution of the lease and insisting of No Objection Certificate. It is relevant to note that lease is only a transfer of right to enjoy the property in favour of the lessee, the ownership is always vested with the owner. Merely because transfer of right to enjoy such property is created in favour of the tenant or lessee, it cannot be said that owner has no right to deal with the property. There are many cases where property has been sold with existing lease. On such sale, once lessee has also attorned tenancy under the subsequent purchaser, there is no impediment for the owner of the property as the jural relationship of

lessor and lessee continues.

18. Similarly, in paragraphs 40-43 of the judgment in Ramayee's case, this Court has categorically held that the registering authorities cannot bar the transfer of any property citing the registration of a sale or lease agreement. In the case of a sale agreement, it is settled law that an agreement of sale does not create any interest over the property [***Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 56***]. Similarly, an order of attachment does not bar registration. In fact, in ***V.K. Sreedharan v. Chandramaath Balakrishnan, (1990) 3 SCC 291***, the Supreme Court made it clear that an agreement of sale entered before the order of attachment can be taken to its logical conclusion and a sale deed can be executed even after the order of attachment. It was observed as follows:

“In our opinion, the view taken by the High Courts of Madras, Bombay, Calcutta and Travancore-Cochin in the aforesaid cases appears to be reasonable and could be accepted as correct. The agreement for sale indeed creates an obligation attached to the ownership of

property and since the attaching creditor is entitled to attach only the right, title and interest of the judgment-debtor, the attachment cannot be free from the obligations incurred under the contract for sale. Section 64 CPC no doubt was intended to protect the attaching creditor, but if the subsequent conveyance is in pursuance of an agreement for sale which was before the attachment, the contractual obligation arising therefrom must be allowed to prevail over the rights of the attaching creditor. The rights of the attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of the attached property. The attaching creditor cannot ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the judgment-debtor.”

19. The effect of the first proviso, is to virtually nullify the aforesaid statement of law by the Supreme Court which is binding law under Article 141. That apart, even if an order of attachment is made, any sale deed registered thereafter would be automatically void only against all claims enforceable under the attachment under the provisions of Section 64 of the

Code of Civil Procedure. For example, if the attachment is made for recovery of sum of Rupees One lakh and the property value is more than One Crore, it cannot be said that entire property cannot be dealt. Such case sale is void only against claim of Rupees One Lakh and its interest and not in entirety.

20. These issues have been thoroughly deliberated and elaborately discussed in Ramayee's case, which has also been affirmed by the Supreme Court, this Court is of the view that the effect of the first proviso is to set at naught to the above declaration of law by the Supreme Court and the Division Bench and it nullifies the several provisions of the Transfer of Property Act, as stated above. The authorities under the Registration Act have no jurisdiction to make rules which have the direct and immediate effect of restraining transactions which are permitted under the Transfer of Property Act. Such a restriction would be clearly illegal and violative of a citizen's right to deal with his property and would clearly infringe Article 300-A of the Constitution. It does not bear repetition that Article 300-A has now been recognised as a human right [**Vidya Devi v State of Himachal Pradesh, 2020 2 SCC 569**].

21. In *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77, which was also a case concerning the provisions of the Registration Act, the Supreme Court held that a subordinate legislation under the said Act which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, was invalid. In this case also, Rule 55-A being a subordinate legislation does not have any statutory guideline (for instance like the transactions mentioned in Section 22-A&B) and is opposed to the enforcement of substantive legal rights under the Transfer of Property Act. The first proviso is, therefore, invalid as it goes beyond the powers conferred on the Inspector General of Registration and is clearly ultra vires and unconstitutional to the Parent Act as well as the substantive provisions of the Transfer of Property Act.

22. Similarly, the second proviso requires the executant to produce a revenue record to show his “right over the subject property” where the property is ancestral in character and there is no original deed available. Even a tax receipt can be produced under this proviso which is opposed to the fundamental principle of law that revenue records are not documents of

title [**State of A.P. v Star Bone Mill and Fertilizer Company, 2013 9 SCC 319**]. Production of revenue documents to verify the source of title only demonstrates complete ignorance of the settled position of law.

23. Similarly, the third proviso also defies logic. If the original is lost, it is not understood as to why a certified copy of that document obtained from the file of the concerned SRO cannot be produced. When the best evidence is not available, the best course is to produce a certified copy which is the next best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication.

24. It is also well settled by the decision of the Supreme Court in ***J.K. Industries Ltd. v. Union of India, (2007) 13 SCC 673*** that a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. Furthermore, Rule 55-A is a delegated legislation which cannot go beyond the scope of the Parent Act viz., the Registration Act as

well the Transfer of Property Act which is the substantive law governing the transfer of immovable properties. Hence, the first proviso is clearly ultra vires and unconstitutional.

25. In the case at hand, provisional attachment was passed by the G.S.T. authorities. The registration of the Sale Certificate was rejected for this reason. It is relevant to note that the petitioner was a prior mortgagee in the year 2017, whereas the provisional attachment was passed by the G.S.T. authorities on 18.12.2021. This order has already lapsed by operation of law. In this regard, it is useful to extract Sec.83 of The Central Goods and Service Tax Act, 2017 which reads as follows:

"83. Provisional attachment to protect revenue in certain cases:

(i) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including

bank account, belonging to the tax able person in such manner as may be prescribed.

(ii) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under subsection (1)."

26. In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso.

27. Sec.83(2) of G.S.T. Rule makes it clear that *every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).* Therefore, provisional attachment made by the second respondent vide order dated 18.12.2021 has ceased to have effect, after expiry of a period of one year. There is no material to show any final order of attachment, or any subsequent order passed by the second respondent pursuant to the aforesaid

order. Therefore, this Court is of the view that the impugned order dated 17.10.2022 is liable to be quashed.

28. In view of the foregoing reasons, the respondent cannot refuse to register the Sale Certificate as sought for by the petitioner. Consequently, the impugned order in Na.Ka.No.538/2022 dated 17.10.2022 is quashed. The first respondent is directed to register the Sale certificate within a period of 15 days from the date of receipt of copy of the order.

29. With the above directions, the writ petition is allowed. No costs.

08.02.2023

Neutral Citation: Yes
Speaking/Non Speaking order
Index: Yes/No
vaan/ggs

To
1 The Sub Registrar,
Office of Sub Registrar, Pollachi,
No.104, Taluk Office Campus,
Coimbatore Road, Pollachi-642001.

- 2 The Principal Commissioner of
GST and Central Excise, Headquarters,
Preventive Unit 6/7A.T.D.Street,
Race Course Road, Coimbatore-641018.
- 3 The Inspector General of Registration, 100, Santhome High Road,
Mullima Nagar, Mandavelipakkam, Chennai – 600 028.

W.P.No.2758 of 2023

N.SATHISHKUMAR,J.

vaan /ggs

W.P.No.2758 of 2023

Dated: 8.2.2023