

Court No. - 6

Case :- WRIT - C No. - 36746 of 2023

Petitioner :- M/S Eva Agro Feeds Private Limited

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Avneesh Tripathi

Counsel for Respondent :- CSC

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Avneesh Tripathi, learned counsel for the petitioner and Mr. Ravindra Kumar Tripathi, learned Standing Counsel for the State-respondents.

2. This writ petition has been filed by the petitioner with a prayer to call for the record from the respondent no.3 in impugned letter dated 06.10.2023 bearing No.S.M.N-Mzp-2023 to quash the same and direct the respondent no.3 to enter the sale certificate dated 15.09.2021 in Book No.1 read with Section 89(4) of the Registration Act 1908 without insisting any further fee.

3. Brief facts of the case are that; one HUVE Pharma Sea (Pune) Pvt. Ltd. filed an application under Section 9 of the Code against M/s Amrit Fees Ltd., i.e. corporate debtor before the Company Law Tribunal, on which the Tribunal passed an order dated 19.02.2021 for the liquidation of the corporate debtor and one Sunil Mohan Acharya was appointed as the liquidator. The petitioner company was incorporated on 09.07.2021 under the provisions of Companies Act, 2013, therefore, he submits its bids dated 16.07.2021 in the auction in respect of the assets of the corporate debtor (in liquidation). The petitioner company was participated in the auction and was finally declared as the highest bidder. While the liquidation was accepted to the parties as per the order dated 12.08.2021, one of the financial creditor, i.e. Punjab National Bank filed

an appeal before the National Company Law Appellate Tribunal (in short "NCLAT"), under Section 61 of the Code against the order dated 12.08.2021 passed by the Tribunal. The same was allowed in favour of the creditor bank on 30.11.2021. The aforesaid order was assailed by the petitioner before the Hon'ble Apex Court by filing Civil Appeal No.7906 of 2021 (EVA Agro Feeds Private Limited vs. Punjab National Bank), which was finally allowed in favour of the petitioner vide order dated 06.09.2023. The sale certificate has already been issued in favour of the petitioner on 15.09.2021, thus the aforesaid sale deed was finally affirmed vide order dated 06.09.2023 passed by the Apex Court.

4. Thereafter, the official liquidator wrote a letter dated 03.10.2023 to respondent no.3, i.e. Sub Registrar, Tehsil Chunar, District-Mirzapur with a request to the concerned officer intimating that the sale certificate was issued in terms of the order passed by the Tribunal dated 12.08.2021 and a specific request was made to accept the filing of the said sale certificate dated 15.09.2021 in Book No.1 under Section 89(4) of the Indian Registration Act, 1908. The officials of the petitioner company approached the office of the respondent no.3 and requested that the process of mutation may be completed in favour of the petitioner company on the basis of sale certificate dated 15.09.2021. The respondent no.3 advised petitioner that in order to get mutation done, he would be under obligation for paying the necessary stamp duty under the Indian Stamp Act. The petitioner tried to explain the respondent no.4 that in terms of the settled proposition of law, any such sale certificate issued under the proceedings initiated by a court, are liable for the benefit of Section 89(4) of the Indian Registration Act. When the respondent no.4 was not convinced by the explanation as given by the petitioner company, they approached the respondent no.2; District Magistrate, Mirzapur, apprising about the factual situation. The District Magistrate marked the

aforesaid representation to the respondent no.4 and directed to submit a report in respect thereof.

5. Subsequently, the respondent no.4 vide order dated 06.10.2023 communicated that the mutation in favour of the petitioner company is possible only after deposition of the requisite stamp fee. Firstly, on the basis of the order passed by the Co-ordinate Bench of this Court in the case of ***Vishwanath Agrawal vs. State of U.P. & others***¹ and secondly, there was a circular issued by the Inspector General Registration/Commissioner Stamp U.P., Allahabad dated 01.10.2002, which required the petitioner to deposit stamp fee in mutation proceeding in his favour. The respondent no.4 has declined to file a copy of the sale certificate in Book No.1 as per Section 89(4) of the Registration Act, 1908 on the ground that the sale certificate can be filed only after payment of stamp duty and registration charges. Hence the present petition has been filed.

6. Learned counsel for the petitioner before proceeding with the merits of the case, has placed reliance upon Section 17(2)(xii) and Section 89(4) of the Registration Act, which reads as under:-

"17. Documents of which registration is compulsory.—(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer. [Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed.—(4) Every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1."

1 2004 (56) ALR 264

7. From reading the aforesaid Section 17(2)(xii), the legislative intent is clear that the word "Civil or Revenue-Officer" would also include a sale as held by the official liquidator pursuant to the direction of any court and would fall within ambit of Section 89(2) of the Registration Act.

8. While dealing with the aforesaid issue, learned counsel for the petitioner has relied upon the judgement of the Apex Court in the case of ***Adit Ram vs. Masarat-un-Nissa*** submits that as per the opinion of the Apex Court, 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 also the Apex Court's view in ***Esjaypee Impex Pvt. Ltd. v. Asst. General Manager and Authorised Officer, Canara Bank***² 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 Authorized 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 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.

9. Placing reliance upon the judgment of Madras High Court in the case of ***Sangeetha and another vs. The Sub Registrar, Pollachi, Coimbatore and others***³ learned counsel for the petitioner submits that the provisions relating to this issue under Section 17(2)(xii) would show that a certificate of sale issued by a Civil or a Revenue Officer in evidence of a sale conducted by way of public auction is not compulsorily registrable

2 (2021) 11 SCC 537

3 (2022) ibclaw.in 268 HC

and Section 89(4) imposes an obligation on the Revenue Officer, who conducts an auction sale to forward the certificate to the Registering Authority to enable him to file the same in Book-I maintained by him. The said sale certificate should be entered in Book I as per Section 89(4) of the Registration Act.

10. In the present case, the sale certificate as issued to the petitioner should be entered into Book I as per Section 89(4) of the Registration Act without any further requirements.

11. 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 issued by a court or an officer authorized 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-section (b) and (c) of section 17(1) of the said Act. Therefore, once 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. There is no further requirement of any registration, thus no stamp duty is to be paid for the same. In support of his contention, he has relied upon the judgment of the Apex Court in the case of *B. Arvind Kumar vs. Government of India & Ors.*⁴.

12. Thus, the certificate of sale issued in a Court sale or by a revenue officer does not need registration. The same has been held by the Apex

4 (2007) 5 SCC 745

Court in the case of *Smt. Shanti Devi L. Singh vs. Tax Recovery Officer and others*⁵.

13. In the proceedings under SARFAESI Act, the Court has gone to the extent of saying that a sale certificate is not an instrument of the kind mentioned in clause (b) of Section 17 of the Registration Act; the authorized officer of the bank under SARFAESI Act should hand over the duly validated sale certificate to the auction purchaser with a copy forwarded to the registering authority to be filed in Book no.1 as per section 89 of the Registration Act. Once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authority to be filed in Book No.1 as per Section 89 of the Registration Act, it has the same effect as registration and obviates the requirement of any further action. In support of his contention, he has relied upon the judgment of Hon'ble Telangana High Court in the case of *M/S. Anirudh Agro Farms Pvt. Ltd. vs. The State Of Telangana decided on 04.04.2023 passed in Writ Appeal No.414 of 2023*.

14. Thus, in the present case, where the official liquidator has forwarded the sale certificate to the first respondent for the purpose of filing a copy of the same in book no.1 as per Section 89 (4) of the Registration Act, 1908, such would be taken as sale certificate issued by a revenue officer and would fall within ambit of Section 89(2) of the Registration Act. Thus, the act of the respondent no.4 declining to file a copy of the same in Book No.1 as per Section 89(4) of the Registration Act, 1908 is against the settled proposition of law and provisions of the Registration Act.

15. On the cumulative strength of the aforesaid submissions, learned counsel for the petitioner submits that the letter dated 06.10.2023 is liable to be quashed and direct the respondent no.3 to file the sale certificate dated 15.09.2021 in Book No.1 readwith Section 89(4) of the Registration Act, 1908.

⁵ (1990) 3 SCC 605

16. Learned Standing Counsel could not dispute the aforesaid submissions made by the learned counsel for the petitioner.

17. This Court finds that as long as the sale certificate remains as it is, it is not compulsorily registrable. If the documents are used for any other purpose, it requires stamp duty. The Section 89(4) of the Registration Act contemplates only filing of the sale certificates and, therefore, the question of stamp duty does not arise. In this regard, the Apex Court in the case of *Esjaypee Impex Pvt. Ltd. (supra)* has held as follows :-

"14. We are 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 Authorized 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."

18. Section-17 of the Act specifies the documents which are compulsorily registrable. Sub-section (2) of Section-17 excludes certain documents from registration. It is relevant to note that Section 17(2)(xii) of the Act exempts the certificate of sale granted to the purchaser of any property sold by public auction by a civil or Revenue Officer, from registration. Hence it is clear that the sale certificate in question is not compulsorily registrable document. The petitioner need not be present personally for getting the sale certificate filed in Book No.I under Section-89(4) of the Act. As aforementioned, what is required to be done is only to send copy of the sale certificate by the Revenue Officer to the Sub-Registrar Officer for getting it filed in Book No.I maintained by Sub-Registrar. Such a procedure be done in the matter in hand.

19. The provisions under Section 89(4) of the Registration Act, 1908 is clear that "Every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in

the certificate is situate, and such officer shall file the copy in his Book No. 1.

20. The procedure for registration is different from procedure for filing of documents under Section-89(4) of the Act. For the purpose of registration, the original of the document is presented for registration and the same is to be registered, whereas the copy of the sale certificate is filed under Section-89(4) of the Act. The original of the sale certificate need not be sent by the Revenue Officer to the Sub-Registrar for getting it filed under Section-89(4) of the Act. The executants of the document, which is required to be registered shall be present for registration and he shall have to undergo certain procedures for getting the deed registered as contemplated under the provisions of the Registration Act and the rules framed thereunder. Whereas under Section-89(4) of the Act, only a copy which has to be filed need to be transmitted to the concerned Sub-Registrar for filing. The procedure of presentation in person is dispensed with regard to the sale certificate under Section-89(4) of the Act because sale certificate is issued by the public authority discharging his official duties. When document is registered, the entirety of the document shall be copied out into the relevant book and the original document would be returned to the person who presents the document with necessary endorsement. Such requirement is dispensed in case of copy of sale certificate, which is simply filed.

21. The certificate of sale itself being not compulsorily registrable document as is clear from Section 17(2)(xii) of the Act, the transfer of title in his favour is not vitiated by non-registration of the certificate. The copy of the certificate filed in Book No.I contains all the relevant details. The index has to be maintained under Section-55 of the Act. It would be open to inspection for all persons. Looking into the relevant provisions of the Act, it would be sufficient to say for the purpose of this case that the

Sub-Registrar is required to file copy of the sale certificate in Book No.I and no more.

22. On getting the sale certificate, the Sub-Registrar shall file the same in Book No.I maintained by him as per law. It is needless to observe that if the petitioner wants to get the sale certificate registered, it is open for him to do so thereafter by submitting necessary stamp duty and the registration charges.

23. In view of the above discussion, the Impugned letter dated 06.10.2023 bearing No.S.M.N.-Mzp-2023 is **set aside**. The respondent no.3 is directed to enter the sale certificate dated 15.09.2021 in Book No.1 register as contemplated under Section 89(4) of the Registration Act at the earliest, without insisting for any further fee.

24. Accordingly, this writ petition is **allowed**. No order as to costs.

(Manju Rani Chauhan, J.)

Order Date :- 29.11.2023

Jitendra/-