IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.05.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.15762 of 2016

M/s.Lebara Hotels Pvt Ltd.,
formerly M/s.LBR Leisure and Hospitality
Services Private Limited
Old No.228, New No.302, F.M.House,
Anna Salai, Teynampet,
Chennai - 600 006
rep by its Authorised
Signatory B.Karnakara ...Petitioner

Vs.

1.The District Registrar,
(AIG Cadre) - Chennai Central,
Bharathi Salai,
Chennai - 600 018.

2.The District Revenue Officer - Stamps,
Chennai - 600 002.

3.The Joint Sub Registrar,
Chennai Central,
Bharathi Salai,
Chennai - 600 018.

4.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

5.M/s.Siva Industries and Holdings Limited,
5th Floor, Block - 1,
Beliciaa Towers,
Door No.71/C, MRC Nagar,
Main Road, Raja Annamalaipuram,
Chenni - 600 028. ... Respondents

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 3rd respondent in Letter No.55 of 2016 dated 28.03.2016 and the consequential order bearing No.55/2016 dated 30.03.2016 and quash the same and consequently direct the official respondents, particularly the respondent No.3 to forthwith unconditionally register and return to the petitioner the Sale Certificate in No.P.97/2015 kept pending by the 3rd respondent.

For Petitioner : Mr.A.R.L. Sundaresan Senior Counsel
for Mr.S.Aravindan
for M/s.Fox Mandal and Associates

For Respondents: Mr.R.Govindasamy,
Special Government Pleader (R1 to R4)

O R D E R

By consent, the Writ Petition has been taken up for final disposal.

2.It is stated by the petitioner that the property known as Sterling Towers comprised in Old Survey No.3028, R.S.No.23, Collector Certificate No.5768, Block-2, bearing Old Door No.242 and 243 and present Door No.327, Mount Road (Anna Salai), Chennai originally belonged to the 4th respondent and the 5th respondent's name was originally M/s.Sterling Infotech Limited and subsequently, changed to its present name as M/s.Siva Industries and Holdings Limited, having Registered Office at Old No.19, New No.32, Cathedral Garden Road, Nungambakkam, Chennai - 600 034. The petitioner would further state that at the time of construction of Sterling Towers, the 5th respondent had entered into two agreements with M/s.Arihant Foundation and Housing Limited on 21.10.1999, one agreement for purchase of undivided share and another for construction of a building with basement plus 13 floors. Necessary statutory clearance has also been obtained and the 5th respondent has also entered into a Sale Deed in respect of the undivided share of the land and presented the same for registration along with No Objection Certificate of the Income Tax Department.

3.The first respondent has issued a show cause notice dated 30.04.2003 to the 5th respondent stating among other things that the sale deed has been registered without the value of the building and asked them to show cause as to why action under Section 64 of the Act should not be taken. The 5th respondent sent a reply dated 30.05.2003, however an order has been passed directing the 5th respondent to pay a sum of Rs.2,10,20,635/- and challenging the same, the 5th respondent filed W.P.No.24015 of 2003. Pendency of the writ petition, the said property was attached by M/s.Axis Bank Limited under the provisions of SARFAESI Act. Thereafter, negotiation took place, wherein decision has been taken to sell the property. By way of subsequent development, the 5th respondent represented before this Court that at the time of hearing in W.P.No.24015 of 2003 deficit stamp duty has been paid as sought for by the first respondent and on such payment, the sale deed dated 28.03.2001 in Document No.271 of 2002 can be released and accordingly, this Court had passed an order dated 26.08.2015, directing the respondents 1 and 2 to release the document on payment of deficit stamp duty and it was made clear that the said order has been passed without prejudice to any incidental proceedings. Accordingly, the payments have been made and the second respondent has also made an endorsement on 21.09.2015 on the sale deed bearing document No.271 of 2002. Subsequently, in terms of the negotiation, sale certificate was issued in favour of the petitioner by way of private sale with the consent of the borrower permissible under the SARFAESI Act and Rules framed thereunder and accordingly, sale certificate dated 30.09.2015 was issued by the Axis Bank in favour of the petitioner.

4.The petitioner would further state that however, the sale certificate was kept as pending document in No.P.97/2015. The petitioner made a representation as the document was not released and the third respondent has informed that in view of the deficit amounts payable towards document No.271 of 2002, as per the audit objections, which have not been paid, the sale certificate is kept pending for registration and challenging the vires of the said order, the present writ petition has been filed.

5.The learned counsel appearing for the petitioner would submit that admittedly the 5th respondent has paid the deficit stamp duty and the second respondent, who is the authority under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, has also made an endorsement dated 21.09.2015 stating that a sum of Rs.52,19,162/- being the deficit stamp duty and a sum of Rs.57,93,312 being the interest payable has been paid and the endorsement has also been properly stamped and despite that, the petitioner, who is the subsequent purchaser, was issued sale certificate under the provisions of SARFAESI Act and according to the learned counsel for the petitioner the impugned order, is not at all backed by any statutory provisions and prays for appropriate orders.

6.Per contra, Mr.R.Govindasamy, the learned Special Government Pleader appearing for respondents 1 to 4 would vehemently contend that during the course of audit objection it was found that there was revenue loss to the tune of Rs.1,43,00,000/- as deficit stamp duty and Rs.10,99,975/- as the deficit registration fees and once the document is registered and released, the concerned authority may not have any recourse to recover the said amount and unless and until, the petitioner, who is the subsequent purchaser, pays the same, the said document cannot be registered and released and prays for dismissal of the writ petition.

7.This Court has considered the rival submissions and also perused the materials placed before it.

8.As rightly contended by the learned counsel appearing for the petitioner, the sale deed in respect of the 5th respondent was not released on the pretext that there was deficit payment of stamp duty and challenging the legality of the same, W.P.No.24015 of 2003 was filed and the 5th respondent, through his counsel, also undertook to pay the deficit stamp duty as well as the interest and it was accepted by the second respondent and he has also made an endorsement on 21.09.2015 stating among other things that the deficit stamp duty of Rs.52,19,162/- and as well as the interest payable amounting to a sum of Rs.57,93,312/- have been paid and the sale deed after registration was also released. Thereafter, in pursuant to action taken under SARFAESI Act and Rules framed thereunder, the petitioner purchased the property by means of the sale certificate issued by the Axis Bank and when it was presented for registration, it was kept as pending document No.271 of 2002 and has not been registered citing the reason of audit objection and dues to be paid by the petitioner towards deficit stamp duty and interest.

9.In the considered opinion of this Court, the petitioner is not put on any reasons for audit objection and the withholding of the registration and release of the document on account of audit objection. There is no statutory backing for resorting to such an action and that apart as already pointed out the 5th respondent has already paid the stamp duty and interest thereon and the second respondent has also made an endorsement and thereafter, the sale deed in favour of the 5th respondent was released.

10.In the light of the above facts and circumstances, the petitioner is entitled to succeed.

11.In the result, this writ petition is allowed and the proceedings of the 3rd respondent in Letter No.55 of 2016 dated 28.03.2016 and the consequential order bearing No.55/2016 dated 30.03.2016 are quashed and the third respondent is directed to register the sale certificate in No.P.97 of 2015 and release the same to the petitioner forthwith.

12.At this juncture, the learned Special Government Pleader prays for liberty to initiate appropriate proceedings to recover the alleged deficit stamp duty and interest payable thereon. The Court heard the submission of the learned counsel appearing for the petitioner also. If it is permissible under law, it is always open to the official respondents to resort to recovery proceedings in accordance with law to recover the alleged deficit stamp duty and interest to be paid thereon. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

va/vsm

To

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(AIG Cadre) - Chennai Central,
Bharathi Salai,
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+ 1 cc to M/s.Fox Mandal and Associates SR.28907

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NM(CO)
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