IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.17257 of 2016
and W.M.P.No.14737 of 2016

Manickaraj ... Petitioner

Vs.

1.The Sub Registrar,
Tiruvallur, Tiruvallur District.

2.The Inspector General of Registration,
Santhome, Chennai - 4. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of mandamus to direct the 1st respondent to return the registered Doc.No.3866/2016 being Sale Certificate issued by the State Bank of India dated 17.03.2016 along with refund of excess stamp duty of 2% already paid by the petitioner in Registered Doc.No.3866/2016 on the file of the 1st respondent being Sale Certificate issued by the State Bank of India dated 17.03.2016.

For Petitioner : Mr.A.V.Arun
Asst. by Mr.J.Senthilkumar
and Ms.Meera Gnanasekar

For Respondents: Mr.R.A.S.Senthilvel
Additional Government Pleader

O R D E R

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The petitioner would state that in pursuant to an E-Auction sale notice issued under the provision of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) for selling the properties, which were mortgaged to the State Bank of India, the petitioner has participated in the auction and he was declared as a successful bidder in respect of property, which was brought for sale. The bid made by the petitioner for a sum of Rs.4,03,00,000/- was accepted and on payment of entire sale consideration, the State Bank of India had issued a sale certificate confirming the sale on 17.03.2016. The petitioner has presented the said certificate dated 17.03.2016

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for registration before the first respondent, who advised him to pay 7% stamp charges i.e., Rs.28,21,000/- and the registration fee of 1% i.e., Rs.4,03,000/- respectively and it was remitted and the sale certificate was registered as Doc.No.3866 of 2016. The petitioner after registration of the sale certificate, approached the first respondent for return of the registered document and he was informed that he has to pay 7% stamp duty on guideline value/market value and not for the bid amount mentioned in the sale certificate. The petitioner was also further informed by the first respondent that to ascertain the market value of the property and survey of the property, the first respondent would be sending their officials.

2. It is the specific stand of the petitioner that the stamp duty payable is only 5% as per Article 18 r/w Article 23 of the Indian Stamps Act, 1899 and the stamp charges levied is only on the sale price mentioned in the sale certificate and the surcharge of 2% cannot be charged. It is also the stand of the petitioner that the further stamp duty payable is only based on the amount mentioned in the sale certificate and not on the guideline/market value. The petitioner, aggrieved by the non registration of the registered sale certificate bearing document No.3866 of 2016 and the act of the first respondent in insisting the payment of 7% stamp charges on the guideline/ market value and to make a reference, came forward to file this writ petition.

3. Mr.A.V.Arun, learned counsel appearing for the petitioner has drawn the attention of this Court to Articles 18 and 23 of the Indian Stamps Act, 1899 and would submit that the demand made by the first respondent, is perverse and unsustainable in law for the reason that the stand of the petitioner is supported by the judgments reported in 2014 (2) MLJ 678 [Y.K.Mohan Rao and Others Vs. Chief Revenue Controlling Authority], 2015 (1) CTC 526 [The Inspector General of Registration, Chennai vs. K.K.Thirumurugan] and 2016-2-L.W. 273 [P.Pandian Vs. The Inspector General of Registration, Chennai] and in the light of the ratio laid down in the said judgments, the registered sale certificate is to be returned to the petitioner and prays for appropriate orders.

4. Per contra, Mr.R.A.S.Senthilvel, learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit and would submit that Article 18 of the Indian Stamps Act, 1899 has no application to the case of the petitioner for the reason that it is not the sale certificate issued by a Civil or Revenue Officer or Collector or other Revenue Officer and the sale certificate is liable to be charged under Article 23 of the Indian Stamps Act, as a sale. Therefore, the petitioner is

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liable to pay Rs.8,06,000/- at the rate of 2% of the value in the form of stamp duty and therefore, the demand of Rs.8,06,000/- as stamp duty at the rate of 2% is perfectly in order and prays for dismissal of this writ petition.

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

6. In 2008 (1) CTC 660 : AIR 2008 Mad.108 [K.Chidambara Manickam Vs. Shakeena and other], it has been held that a sale certificate issued by the Recovery Officer under SARFAESI Act would squarely fall within the ambit of Article 18 of the Indian Stamps Act and therefore, the Recovery Officer under the Recovery of Debts due to Banks and Financial Institutions Act will fall within the meaning of a Revenue Officer as enumerated under Article 18 of the Indian Stamps Act, 1899 and therefore, the certificate of sale issued by him will squarely fall within the said provision. In 2012 (2) CTC 759 [Dr.Meera Thinakaran Vs. The State of Tamil Nadu, Rep. By Secretary, Department of Revenue, Fort St. George, Chennai - 9 and two others], by following the above cited decision, this Court has held that the registration of the sale certificate is purely optional and the only legal implication is that 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 and therefore, the sale certificate is presented for registration. In the above cited judgment, the decision rendered by the Hon'ble Supreme Court of India reported in 1969 (1) SCC 497 [Raghunath Vs. Kedar Nath] has also been taken into consideration to arrive at such a finding.

7. In 2012 (1) CTC 315 [Kumararaja Paper Mills (P) Ltd., Vs. T.N.Principal Revenue Control Officer-cum-The Inspector General of Registration, Chennai] a question was arose whether registration is required in respect of the sale certificate issued by the State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT) in respect of plant and machinery and this Court, taking into consideration number of judgments which include K.Chidambara Manickam case (cited supra), held that the sale certificate issued by the Revenue Officer in respect of the property conveyed by them for the purpose of deriving income, it needs no compulsory registration and the sale certificate issued by Authorized officer of the Government Corporation, such as SIPCOT is concerned, the same cannot be equated with sale certificate issued by the Revenue Officers. In the above cited decision, the applicability of Section 47-A(1) of the Indian Stamps Act, 1899 also came up for consideration.

8. A similar view has been taken in the judgments reported in (2014) 2 MLJ 678 [Y.K.Mohan Rao and Others Vs.

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Chief Revenue Controlling Authority], 2016-2-L.W. 273 [P.Pandian Vs. The Inspector General of Registration, Chennai), in 2015 (1) CTC 526 [The Inspector General of Registration, Chennai vs. K.K.Thirumurugan] and in 2010-2-L.W. 113 [In Re The Official Liquidator, High Court Madras Vs. Ramasubramanian] wherein the applicability of Section 47-A(1) of the Indian Stamps Act, 1899, in respect of the sale certificate came up for consideration and this Court following the judgment of the Hon'ble Supreme Court of India reported in 2009 (7) SCC 438 [V.N.Devadoss V. Chief Revenue Control Officer-cum-Inspector and others] held that Section 47-A of the said Act cannot be applicable to a public auction for sale of properties under the provisions of the SARFAESI Act.

9. In the considered opinion of this Court, the ratio laid down in the above cited decision is fully applicable to the facts of this case for the reason that the sale was made by the State Bank of India in terms of the provisions of the SARFAESI Act and the sale certificate was issued and it was also presented for registration and registered as document No.3866/2016 and after registration, it is not open to the first respondent to say that the petitioner is liable to pay 7% stamp duty on the guideline/market value and he cannot make a reference under Section 47-A of the Indian Stamps Act, 1899.

10. In the result, this writ petition is allowed and the first respondent is directed to return the registered sale certificate bearing document No.3866/2016, along with the excess stamp duty of 2% collected over and above the eligible stamp duty of 5% and the first respondent is directed to complete the said exercise, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsm

To
1.The Sub Registrar,
Tiruvallur, Tiruvallur District.
2.The Inspector General of Registration,
Santhome, Chennai - 4.
1 cc to M/s.Meera Gnanasekar, Advocate, sr.36799
1 cc to Government Pleader, sr.37528

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