IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.27704 of 2016

and

W.M.P.No.23862 & 23863 of 2016

Polyhose India Private Limited,
Represented by its Managing Director,
Nos.186 & 187, Poonamallee High Road,
Kilpauk, Chennai - 600 010. .. Petitioner

- Vs -

1. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai.

2. The Deputy Inspector General of Registration,
   First Line Beach Road,
   Rajaji Salai, Chennai.

3. The Special Tahsildar,
   Collector of Stamps,
   Collector's Office,
   5th Floor, Singaravelar Maligai,
   32, Rajaji Salai, Chennai - 1.

4. The District Registrar - Chengleput,
   No.17, Rajaji Street,
   HO. Opposite Kavitha Studio,
   Kancheepuram.

5. The Sub Registrar - Thiruporur,
   23, South Mada Street,
   Thiruporur - 603 110,
   Kanchipuram District. .. Respondents

Prayer:- Writ petition filed under Section 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records of the 3rd respondent in Lr.No.75/16 dated 16.06.2016 and quash the same.

For Petitioner : Mr.Zaffarullah Khan

For Respondents : Mr.A.N.Thambidurai, Spl.G.P.

- - - - -

O R D E R

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 Syndicate Bank, the petitioner has participated in the auction and 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.84,00,00,000/- was accepted and on payment of entire sale consideration, the Syndicate Bank had issued a sale certificate confirming the sale on 12.03.2014. The petitioner has presented the said sale certificate dated 12.03.2014 for registration before the fifth respondent, who advised him to pay 8% stamp charges (7% + 1%) i.e., Rs.6,72,00,000/- and it was remitted under protest and the sale certificate was registered as Doc.No.3902 of 2014. The petitioner after registration of the sale certificate, approached the fifth respondent for return of the registered document and he was informed that he has to pay 7% stamp duty on the guideline value/market value and not for the bid amount mentioned in the sale certificate. The petitioner was also further informed by the fifth respondent that to ascertain the market value of the property and survey of the property, the fifth respondent would be sending their officials. After survey of the property, the third respondent has issued the impugned order dated 16.06.2016, raising a demand for a sum of Rs.3,92,71,614/- being the deficit stamp duty payable.

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 impugned order dated 16.06.2016, raising a demand for a sum of Rs.3,92,71,614/-, being the deficit stamp duty payable, has came forward to file this writ petition.

3. Mr.Zaffarullah Khan, 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 third 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.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 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 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 arose as to 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. 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 Syndicate Bank 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.3902 of 2014 and after registration, it is not open to the fifth 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, the impugned order of the third respondent dated 16.06.2016, is set aside and the writ petition is allowed and the fifth respondent is directed to return the registered sale certificate bearing document No.3902 of 2014, along with the excess stamp duty of 2% collected over and above the eligible stamp duty of 5% and the fifth 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 petitions are closed.

kk

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

1. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai.

2. The Deputy Inspector General of Registration,
   First Line Beach Road,
   Rajaji Salai, Chennai.

3. The Special Tahsildar,
   Collector of Stamps,
   Collector's Office,
   5th Floor, Singaravelar Maligai,
   32, Rajaji Salai, Chennai - 1.

4. The District Registrar - Chengleput,
No.17, Rajaji Street,
HO. Opposite Kavitha Studio,
Kancheepuram.

5. The Sub Registrar - Thiruporur,
23, South Mada Street,
Thiruporur - 603 110,
Kanchipuram District.

+1 CC Mr.Zaffarullah Khan Advocate SR.No.58366

+1 CC Government Pleader SR.No.58552

W.P.No.27704 of 2016 and

W.M.P.No.23862 & 23863 of 2016

RV [CO]

MSI 03/01/2017