IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.40763 of 2016
and W.M.P.No.34824 of 2016

M/s.KTV Oil Mills Private Limited,
rep. by its Director
K.T.V.Narayanan ... Petitioner

vs.

1.The Chief Controlling Revenue
Authority cum Inspector
General of Registration,
100, Santhome High Road,
Chennai-21.

2.The District Registrar,
Chennai North,
1, Murthygal Lane, Chennai-1.

3.The Sub Registrar,
Office of Sub Registrar,
No.21/8, Market Lane,
Thiruvottiyur, Chennai-19.

4.The Deputy Registrar (Stamps),
O/o.The Collectorate, 5th Floor,
Rajaji Salai, Chennai-2. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus to call for the records in letter No.181/2016 dated 20.7.2016 issued by the third respondent and quash the same and consequently, directing the respondents herein to calculate / Apply stamp duty at 5% of sale value instead of 7% value fixed under Article 18 of Stamp Act for registration of sale certificate as held by this Court in W.P.No.28343 of 2015 dated 29.2.2016, W.P.No.29541 of 2016 and W.P.No.29542 of 2016 both order dated 24.8.2016 with respect to document No.1867/2016 dated 14.3.2016 on the file of the SRO, Thiruvottiyur, Chennai-19 / third respondent herein.

For Petitioner :Mr.M.Arvind Subramaniam
For Respondents :Mr.A.Kumar,
Spl. Govt. Pleader

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition, challenging the letter No.181/2016 dated 20.7.2016 issued by the third respondent and consequently, to direct the respondents herein to calculate / apply stamp duty at 5% instead of 7% value fixed under Article 18 of Stamp Act for registration of sale certificate as held by this Court in W.P.No.28343 of 2015 dated 29.2.2016, W.P.No.29541 of 2016 and W.P.No.29542 of 2016 both order dated 24.8.2016 in registering the document No.1867/2016 dated 14.3.2016 on the file of the SRO, Thiruvottiyur, Chennai-19 / third respondent herein.

3. It is the case of the petitioner that the State Bank of India, through its Stressed Assets Management Branch, Egmore, Chennai, had conducted an e-auction on 18.11.2015 for the land and building (including plant and machinery) of one Indhumathi Refineries Pvt. Ltd. under SARFAESI Act. In the said auction, the petitioner is the highest and successful bidder for several items of property and the sale was confirmed in their favour. The actual valuation of the entire property was valued at Rs.65,00,00,000/- and since there were no bitters, the value was reduced to Rs.41,05,00,000/- as on 18.11.2015. Pursuant to the above sale confirmation, the State Bank of India, had received a sum of Rs.22,83,06,177/- from the petitioner and issued the sale certificate dated 25.2.2016 in their favour. Thereafter, the petitioner presented the same for registration before the third respondent, but, he insisted him to pay stamp duty @ 7% for every 100 rupees for the entire extent of land including the land acquired by the National High way i.e., 121334 sq.ft. instead of 120481 sq.ft., which was purchased by them under SARFAESI Act, thereby, they had paid @ Rs.2,700/- per sq.ft. as fixed by the fourth respondent under protest and registered sale certificate dated 14.3.2016 as document No.1867/2016 on the file of the third respondent. Subsequently, the petitioner came know that it is enough if stamp duty @ 5% is paid for registration of sale certificate issued by the authorized officer of the auctioning bank. Further, as per the decision of this Court made in W.P.No.28343 of 2015 dated 29.2.2016, only 5% on the sale value has to be collected and not 7% towards stamp duty. Hence, the petitioner by a representation, after highlighting the decision of this Court, had requested the respondents to return

the excess amount. But, the third respondent made a reply dated 20.7.2016 stating that the stamp duty collected @ 7% is correct according to Indian Stamp Act, 1899 and there is no necessity to refund the stamp duty collected from the petitioner. Challenging the same, the petitioner has come up with the present writ petition.

4. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner made a detailed argument based on the decision of this Court dated 29.2.2016 made in W.P.No.28343 of 2015, wherein, this Court has held that insofar as the sale certificate issued by the Bank is concerned, stamp duty has to be calculated under Article 18 of the Stamp Act, i.e., only at 5% and the question of calculating surcharge at 2% does not arise.

5. I have also heard the learned Special Government Pleader, who has taken notice on behalf of the respondents.

6. Keeping the submissions made on either side, I have carefully gone through the materials available on record.

7. The relevant portion of the order dated 29.2.2016 passed by this Court in W.P.No.28343 of 2015 is usefully extracted hereunder:-

> " In the decision reported in AIR 2010 Ker 124 [Madhavan Vs. Sub-Registrar], it has been held by the High Court of Kerala as follows:-
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> > " 6. Now, adverting to the provisions of the SARFAESI Act and the provisions of the Enforcement Rules, it can be seen that when a measure is taken as per that Act, particularly under Section 13, such measure and the procedure there for, are regulated by those statutory provisions and when such a measure results in the completion of a sale, Rule 9(6) of the Enforcement Rules prescribes issuance of certificate of sale. The provisions of the SARFAESI Act provide a statutory procedure against a measure taken under that Act. All these provisions have been made, also by excluding the jurisdiction of the civil Court to touch such matters. The provisions of the SARFAESI Act, going by Section 35 thereto, overrides the provisions of the other laws. In that context, the secured creditor is entitled to take recourse to the SARFAESI

Act and ultimately issue a certificate of sale in terms of the statutory provisions. Therefore, it is essentially a certificate of sale in lieu of certificate of sale that may issue from a civil Court or a revenue Court in exercise of statutory powers to sell."

From the dictum laid down in the above said decisions, it is clear that the Sale Certificate issued by the Recovery Officer under the SARFAESI Act do not amount to transfer of property. It is only a document issued by the duly authorized statutory authority evidencing the factum of a statutory sale. It is the certification of the lawful transfer of or the authority to transfer the interest in the property, movable or immovable, that is subjected to such statutory proceedings. Hence, I am of the opinion that so far as the sale certificate issued by the Bank is concerned, no doubt it is liable for stamp duty; but, it has to be calculated under Article 18 of Stamp Act ie., only at 5% and the question of calculating surcharge at 2% does not arise.

9. For the foregoing reasons, this Court is of the opinion that the impugned notice dated 24.07.2015 issued by the 2nd respondent is liable to be quashed and the same is quashed accordingly. The 2nd respondent is directed to register and return the Sale Certificate dated 06.05.2015 issued by the State Bank of India in favour of the petitioner."

8.Following the same, the impugned order of the third respondent dated 20.7.2016 is set aide and the writ petition is allowed. The petitioner is directed to give a fresh representation to the third respondent along with a copy of this order within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the third respondent is directed to consider the same and pass appropriate orders / take appropriate action, in the light of the decision of this Court dated 29.2.2016 made in W.P.No.28343 of 2015, within a period of six weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sbi
To

1.The Chief Controlling Revenue
Authority cum Inspector
General of Registration,
100, Santhome High Road,
Chennai-21.

2.The District Registrar,
Chennai North,
1, Murthygal Lane, Chennai-1.

3.The Sub Registrar,
Office of Sub Registrar,
No.21/8, Market Lane,
Thiruvottiyur, Chennai-19.

4.The Deputy Registrar (Stamps),
O/o.The Collectorate, 5th Floor,
Rajaji Salai, Chennai-2.

+1cc to the Government Pleader Sr.67493
+1cc to Mr.Aravind Subramaniam, Advocate Sr.67382

W.P.No.40763 of 2016

nr[co]
srg 07/12/2016