IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.22010 of 2014
Date of Decision:- 30.3.2016

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M/s Friends Traders

.....Petitioner

Vs.

State of Punjab and others

..... Respondents

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CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Naresh Prabhakar, Advocate, for the petitioner.
Mr.Suresh Singla, Addl. A.G. Punjab.

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RAKESH KUMAR JAIN, J.

The land and building of rice sheller of M/s Sai Ram Rice & General Mills, measuring 37 kanals 4 Marlas comprising in Khata No.30/30, 700/760, Khasra No.55//23/2 (6-0), 24 (8-0), 25 (7-4), 74//3 (8-0), 4 (8-0), situated in revenue estate of Village Talwan, Tehsil Phillaur, District Jalandhar, were sold by way of auction by the authorized officer of the State Bank of Patiala, exercising the power under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for Short 'the 2002 Act'] read with Rule 12 of the Security Interest (Enforcement) Rules, 2002 [for short 'the 2002 Rules'] to the petitioner in terms of Order dated 26.3.2014 passed by the Debts Recovery Tribunal-II, Chandigarh in SA No.131 of 2014 for a sum of ₹2,18,50,000/-. The sale certificate under Rule 9(6) of the 2002 Rules was issued to the petitioner on 10.7.2014. The petitioner served a notice through his Advocate to the respondents to enter mutation of the sale certificate. Respondent No.3 replied to the legal notice of the petitioner on 14.8.2014 informing him that the sale certificate requires registration as per the Punjab Government Instructions issued by the Stamp and Registration Branch vide Memo No.24/151/2012-S.T.-1/8905-26 dated 24.7.2014. According to the said instructions dated 24.7.2014, the Revenue Rehabilitation and Disaster Management Department (Stamp and Registration Branch) directed all the Deputy Commissioners of State of Punjab (Registrar) that the sale certificate issued in the auction of the immoveable property on the orders of the Debts Recovery Tribunal falls within the ambit of compulsory registrable document as per Section 17(4) of the Indian Registration Act, 1908 [for short 'the Act'], the sale certificate issued by the Civil/Revenue Court may be registered and pasted in Bahi No.1 but stamp duty is required to be affixed as per the Act. The petitioner sent another notice, after the reply dated 14.8.2014, making a reference to a decision of the Supreme Court in the case of ***"Smt. Shanti Devi L. Singh*** *Vs.* ***Tax Recovery Officer and others" AIR 1991 Supreme Court 1880*** and prayed the respondents to enter the sale certificate, issued to the petitioner, in Book No.1 and to sanction the mutation. Since the respondents did not reply thereafter, the petitioner filed the present petition.

In the reply filed by the respondents, it is averred that after the instructions issued vide Memo No. 24/151/2012-S.T.-1/8905-26 dated 24.7.2014 another instruction was issued substituting it vide Memo No. 24/151/2012-S.T.-1/8927-9215 dated 24.7.2014 directing that Section 89(4) of the Act be read instead of Section 17(4) of the Act, according to which whether the sale certificate, issued by the Civil/Revenue Court, is registered or pasted in Bahi No.1, Stamp Duty is required to be affixed.

Learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of ***"B. Arvind Kumar*** *Vs.* ***Government of India and others"*** *2007(5) SCC 745*, in which it has been observed that once a property is sold by public auction, in terms of an order of the Court, bid is accepted and sale is confirmed by the Court in favour of the purchaser, the sale becomes absolute and the title vests with the purchaser. The sale certificate is issued to the purchaser only when the sale becomes absolute, the sale certificate is merely an evidence of such sale and title and no further deed of transfer from Court is contemplated or required. It is further held that insofar as the sale certificate is concerned, as per Section 17(2)(xii) of the Act, the sale certificate 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 Section 17(1)(b) and (c) of the Act. He has further relied upon a decision of the Supreme Court in the case of ***Smt. Shanti Devi L. Singh (Supra)***, in which recovery was effected by the Tax Recovery Officer under the Income Tax Act and it was held that the term "Revenue Officer" in term of Section 89(4) of the Act it is wide and comprehensive enough to include the Tax Recovery Officer, who effects a compulsory sale for the recovery of an income tax demand and as such the copy of certificate of sale received has to be pasted in Book No.1 and no more.

On the other hand, learned counsel for the respondents has relied upon a Division Bench judgment of the Madras High Court in the case of ***"M/s P.M. Associates, Udhagamandalam*** *Vs.* ***IFCI Limited Chennai 34 and others"*** *2014(10) RCR (Civil) 1861.* In this case, the sale certificate was issued under Rule 9(6) of the 2002 Rules. The Division Bench after taking into consideration various judgments held that the sale certificate was issued by the authorized officer, who was neither civil or revenue officer, therefore, the registration of sale certificate was not exempted under Section 17(2)(xii) of the Act and thus it requires registration.

I have heard learned counsel for the parties and perused the record.

Undoubtedly, the petitioner is an auction purchaser of the immoveable property sold by the authorized officer of the State Bank of Patiala, who has sold the property in question in terms of the order passed by the Debts Recovery Tribunal in exercise of his power under Section 13 of the Act and Rule 12 of the 2002 Rules and issued the sale certificate in terms of Rule 9(6) of the 2002 Rules.

In the case of ***B. Arvind Kumar (Supra),*** relied upon by the petitioner, the property was sold in auction by the official receiver of an insolvent declared as such in an insolvency suit by the Civil Court. It was held that a certificate of sale granted to any purchaser or any property sold by public auction by a civil or revenue officer does not fall under the category of non-testamentary documents and hence does not require registration. It was further held that when such a sale certificate is issued, the sale become absolute and title vests in the purchaser for which no further deed or transfer from the Court is contemplated or required. In the case of ***Smt. Shanti Devi L. Singh (Supra),*** the auction was of the immoveable property, which was effected by the Tax Recovery Officer of Income Tax Department for the recovery of income tax demands. It was held by the Supreme Court that the sale certificate granted to the purchaser of the immoveable property sold by Tax Recovery Officer would not require registration.

On the other hand, the respondents have relied upon a Division Bench Judgment of the Madras High Court in the case of ***M/s P.M. Associates, Udhagamandalam (Supra),*** in which the Acts and the Rules were involved as the immoveable property was sold by way of public auction by the authorized person of the Bank, pursuant to an order passed by the Debts Recovery Tribunal and after considering the aforesaid decision of the Supreme Court, it is held that the authorized officer would not be a civil or revenue officer and thus the sale certificate issued by him would require registration.

In the presence of a direct judgment of the Division Bench of the Madras High Court in this regard, which is applicable to the facts and circumstances of the present case, no interference is called for in the present writ petition and hence, the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

30.03.2016
Vivek