BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:21.08.2017
CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD) No.3 of 2017 &
C.M.P.(MD).No.66 of 2017

1.The Inspector General of Registration
Santhome High Road,
Chennai-620 028.

2.The Special Deputy Collector (Stamps)
Virudhunagar,
Virudhunagar District.

3.The Sub Registrar,
Sattur Sub Registrar Office,
Sattur,
Virudhunagar District. ... Appellants/Respondents

Vs.

Kanagalakshmi Ganaguru ... Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 08.11.2016 made in W.P.(MD).No.415 of 2014.

Prayer in WP(MD). 415/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notice of the 2nd respondent dated 25.11.2013 made in Tha.Pa.No. S1/1218/2013, and quash the same and direct the respondents herein to release the document presented by the petitioner on 09.04.2010 without insisting for payment of any additional stamp duty or penalty and pass such further or other orders.

For Appellant : Mr.VR.Shanmuganathan
Special Government Pleader

For Respondent : Mr.R.Vijayakumar

JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH,J]

The respondent herein is the auction purchaser in pursuant to the proceedings initiated under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as SARFAESI Act). Hence certificate issued in her favour was sought to be registered. After registration, a notice was issued under Section 47(A) of the Indian Stamp Act, 1899 to show cause as to why the market value fixed shall not be collected. Challenging the same, inter alia contending that auction being conducted publicly under SARFAESI Act, the appellants are bound to accept it, the writ petition was filed. The learned single Judge placing reliance upon the earlier orders passed by this Court pleased to allow the writ petition. Hence, the present appeal.

2. The learned Special Government Pleader appearing for the appellants would submit that the learned Single Judge has not taken into consideration of the fact that the officer who conducted the sale under the SARFAESI Act is not akin to a Collector or Revenue Officer as mentioned in Article 18 of the Indian Stamp Act. In the same way, the proceedings initiated and concluded under SARFAESI Act cannot be equated with the public auction conducted by Civil or Revenue Court. In support of his contention reliance has been placed on the decision rendered by the learned Single Judge in Re, the Official Liquidator, High Court, Madras reported in 2010 (2) CTC 113.

3. The learned counsel appearing for the respondent/writ petitioner would submit that unless there is a reason to believe there is willful under valuation, proceedings under Section 47(A) of the Indian Stamp Act cannot be initiated. It is further submitted that inasmuch as auction was initiated under SARFAESI Act by an Authorised Officer who conducted auction, he should be considered as one coming under the Article 18 of the Indian Stamp Act.

4. The appeal deserves to be allowed on two grounds. Firstly, what is challenged is only a notice issued after a reference made by the Registering Authority under Section 47(A) of the Indian Stamp Act. Under the above said provision once such a reference is made, the Collector shall give notice to the parties giving a reasonable opportunity of being heard. Thereafter on a consideration of representation if any received in pursuant to the notice issued under Section 47(A) of the Act, an order is required to be passed by the Collector on perusal of the relevant records. Therefore, the writ petitioner instead of giving his representation and allowing an order to be passed under Section 47 (A) of the Act and if aggrieved, challenging it before the forum provided under the Statute, ought not to have filed the writ petition. Hence, we are of the view that the writ petition so filed is not maintainable.

5. The decision of the Apex Court relied upon by the learned counsel for the respondent in V.N.Devadoss v. Chief Revenue Control Officer-Cum-Inspector reported in (2009) 7 SCC 438 , does

not apply to the case on hand, in which applicability of Article, which has referred to above has not taken into consideration. Further, factual finding rendered therein was effected on the basis of the value fixed by Assets Sales Committee consisting of members such as representatives of IDBI, debenture-holders, Government of West Bengal and Special Director of BIFR. Therefore, the said judgment is distinguishable.

6. The other judgments relied upon by the learned Single Judge in our considered view cannot be accepted, as the scope and applicability of the Articles 18 and 23 of the Indian Stamp Act unfortunately was not brought before it. After all a judgment cannot be read like a statute and an issue, which has been decided without conscious consideration cannot be binding.

7. Since arguments have been made on the second issue, we also inclined to go into the same. What has to be considered by an authority under Stamp Act is fixation of the value of an instrument on the basis of the market value of the property on the date on which the document was presented. Therefore it cannot be construed that such an authority would be diluted of his power in all the sales conducted publicly. The Registration Act mandates a separate Role being the duties assigned to a Registering Authority among others. Unless a Statute provides for such an exercise, Court cannot issue directions to accept the value fixed in an instrument merely because the sale was effected in pursuance of an open auction. All open auctions would not come under the Civil, Revenue or Article 18 of the Indian Stamps Act. As per the Article 23 of the Indian Stamp Act, conveyance has to be charged based upon the market value of the property concern. Therefore, this provision merely speaks about market value and not the value mentioned in the conveyance. The registering authority and others are empowered with the process for the consideration of the market value of the property, which is the subject matter of the conveyance. Article 18 speaks about certificate of sale. This is an exception to Article 23. As per Article 18, the duty mentioned in the conveyance would be deemed to be the market value. To bring the market value under Article 18, the condition precedent mentioned therein will have to be complied with. In other words, the property must be sold by Public auction only by a civil or Revenue Court, or a collector or other revenue Officer. Therefore, even assuming a property sold by Public auction, such an exercise is to be done by a civil or revenue Court, Collector or Revenue officers as the case may be. Now the question for consideration is as to whether the authorised officer appointed by the bank in a proceedings initiated under SARFAESI Act, by itself could be called as a civil or revenue Court Collector or Revenue Officer. The answer will have to be a firm 'No'. Only an officer of the banks, which lend money to the borrowers, acts as an authorised officer, only for the purpose of bringing the property for sale. In other words such officers merely replace the secured creditors.

Hence at best they can be termed as an agent of secured creditors. In other words the secured creditors cannot be termed as Collector or Revenue Officers. The proceedings initiated by the lender in pursuant to a contract inter se parties, cannot be termed as that of a civil or revenue Court. The SARFARESI Act merely provides for a mechanism. The lender uses the said mechanism to recover the money. Therefore it is only a mode of recovery. Lender can termed itself to a Civil or Revenue Court who's functions are purely judicial. Therefore, looking from any perspective, we do not find any error in the notice issued.

8. In the result, the writ appeal is allowed and consequently, the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

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Virudhunagar District.

+1cc to Special Government Pleader, SR.No. 73861
+1cc to M/S.R.Vijayakumar, Advocate SR.No. 73692

W.A.(MD) No.3 of 2017 &
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jikr
JM/SKN RSK/SAR 1/06.09.2017/4P/6C