BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.08.2018
CORAM :
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal(MD) No.483 of 2014

N.Nareshkumar ... Appellant/Petitioner

Vs.

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
Chennai 28.

2.The Sub Registrar,
Sub Registrar Office,
Thiruverumpur,
Trichy 13. ... Respondents/ Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.01.2014 made in W.P.(MD)No.478 of 2014.

Prayer in WA(MD). 478/ 2014 :
Writ petition filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Certiorarified Mandamus,to call for the records pertaining to the order passed by the 1st Respondent in his proceedings in 52996/C2/2013 dated 12.12.2013 and to quash the same and consequently to direct the respondents to register the sale certificate as per clause 18(C) of Schedule 1 of the Indian Stamp Act.

For Appellant : Mr.T.A.Ebenezer
For Respondents : Mr.M.Murugan,
Government Advocate.

JUDGMENT
(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA,J)

Aggrieved by the dismissal of the Writ Petition (MD)No.478 of 2014, dated 09.01.2014, the above writ appeal has been filed.

2.The appellant was the successful bidder in the public auction conducted by the authorised officer of the Repco Home Finance Limited on 16.05.2018 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Rules. The property originally belonging to one T.N.Ravindran was brought to sale for the default committed by him. The Repco Home Finance Limited also issued a sale certificate under the Security Interest (Enforcement) Rules 2002 framed under the SARFAESI Act, 2002 on 31.08.2008.

3.Though the registration of such sale certificate is only optional, the appellant wanted to register the same with the Sub Registrar, Thiruverumpur. The Repco Home Finance Limited wrote a letter on 18.11.2013 to the Sub Registrar, Thiruverumpur to register the sale certificate since they are exempted from appearance under Section 88 of the Indian Registration Act, 1908.

4.A representation was also made by the appellant to the first respondent to execute the registration of sale certificate as per Section 18 (c) of schedule I of the Indian Stamp Act, 1899. The first respondent rejected the said representation by passing the impugned order dated 12.12.2013.

5.The said order stated that the sale certificate should be treated only as a sale deed and hence, it cannot be classified under Article 18(c) of the Indian Stamp Act. Aggrieved by the same, the writ petition was filed by the appellant.

6.The writ petition was dismissed on the ground that the sale certificate was issued in the year 2008 and till 2013, the appellant had not chosen to register the same on the ground that it is not compulsorily registrable. Aggrieved by the said order, the above appeal is preferred by the appellant.

7.The learned counsel for the appellant contended that as per Section 17(2)(xii) of the Registration Act, any sale certificate issued by the Court or the revenue need not be registered. Similarly, the sale certificate issued by the authorised officer of the bank pursuant to the sale held in public auction under the Act need not be registered.

8.The learned counsel also relied on a decision reported in AIR 2008 Madras 108 (K.Chidambara Manickam Vs.Shakeena and others) wherein the Division Bench of this Court held that the sale certificate issued by the authorised officer of the bank in a public auction does not require registration.

9.The impugned order of the first respondent states that the sale certificate is not executed either by Court or by revenue and the same cannot be classified under Article 18 of the Indian Stamp Act and the same has to be considered only as sale deed. In this regard, it is relevant to advert to Section 17 (2) (xii) of the Registration Act. Sub-section (2) provides that nothing in clauses (b) and (c) of sub-section (1) would apply to the nature of documents set out thereafter and in clause (xii) it is specifically stated “any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer”.

10.Now the question is whether the sale certificate issued by the Repco Home Finance Limited is required to be stamped as directed in the impugned order.

11.So far as the requirement of registration is concerned, there is no doubt that the sale certificate is not required to registration in view of Section 17(2)(xii) of the Registration Act.

12.Though Section 17 refers to documents which are compulsorily registrable, sub-section (2) provides that nothing in clauses (b) and (c) of sub-section (1) would apply to the nature of the documents as set out thereafter and in clause (xii) in particular specifically stated that any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer, as any sale certificate issued as per the provisions of the Security Interest (Enforcement) Rules 2002 in public auction, is deemed to be sale by the revenue. Thus the statute makes it very clear that the sale certificate issued need not be registered.

13.Now, the question of applicability of Indian Stamp Act, 1899 arises. Though the sale certificate referred is not compulsorily registrable whether the stamp duty is payable on the same is relevant.

14.So far as the certificate of sale itself is not compulsorily registrable document in view of Section 17(2)(xii) of the Indian Stamp Act, transfer of title in favour of the purchaser is not vitiated by non registration of the certificate. All that is required is to file a copy of the sale certificate as per Section 89 (4) of the Registration Act. Section 89 (4) lists out certain orders and certificates or instruments to be sent to the registering officers to be filed or scanned. Every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate and such officer shall file the copy in Book No.1 or get itself scanned. The copy of the sale certificate thus sent to the Sub Registrar should be entered in Book No.1 by the Registering Officer.

15.Therefore, the refusal by the Sub Registrar to file sale certificate issued by the Recovery Officer by making necessary entries in the Book in accordance with sub-section (4) of Section 89 of the Registration Act is not justified. The copy of the sale certificate thus filed in Book No.1 which contains all the relevant details and all that is the Sub Registrar is required to do is to file a copy of the certificate in Book No.1 and nothing more.

16.In B.Arvind Kumar Vs.Government of India and others reported in JT 2007 (8) SC 602, it is held that a property sold in public auction pursuant to an order of the Court and once the sale is confirmed it becomes absolute and the title vests with the auction purchaser. The subsequent sale certificate issued to the purchaser is the evidence of such title which does not require registration under Section 17(2) (xii) of the Registration Act. In the case on hand also the property was purchased in public auction on 16.05.2008 and the sale certificate was issued on 31.08.2008. Therefore, the appellant/purchaser automatically becomes title holder of the property by virtue of the sale certificate. The payment of stamp duty on the sale certificate is not warranted as it is only a sale certificate issued which has to be filed or scanned in Book No.1 as per Section 89(4) of the Registration Act.

17.The payment of stamp duty perhaps may arise only when the appellant wants to deal with the property by selling it. As long as the sale certificate remains as it is, it is not compulsorily registrable. If the appellant uses the document for any other purpose, then the requirement of stamp duty etc., would arise. Hence, the plea of the appellant is well within the statutory powers. Section 89(4) contemplates only filing of the sale certificates and therefore, the question of delay or laches on the part of the appellant does not arise. The dismissal of the writ petition on the ground of delay and payment of stamp duty therefor does not arise and therefore, cannot be sustained. Accordingly, the order passed in the writ petition is set aside and the appeal is allowed. No costs.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To
1.The Inspector General of Registration,
Office of the Inspector General of Registration,
Chennai 28.

2.The Sub Registrar,
Sub Registrar Office,
Thiruverumpur,
Trichy 13.

+1CC TO MR.T.A.EBENEZER, ADVOCATE IN SR.NO.81540.
+1CC TO SPECIAL GOVERNMENT PLEADER IN SR.NO.81635.

SMS
DS SV SAR-4:19.09.2018: 4P/5C