IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.NO.2132 OF 2010

M/s.Cenney Hotels Pvt. Ltd.,
Through its Managing Director,
S.Venkatesh ..Appellant/Petitioner

Vs.

1.State of Tamil Nadu,
rep. by I.G. of Registration,
Santhome, Chennai-600 004.

2.The District Registrar,
Office of the Registrar,
Salem.

3.The Sub Registrar,
Sooramangalam Sub Registrar Office,
Sooramangalam,
Salem District. ..Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent praying to set aside the order passed by the Writ Court in W.P.No.12934 of 2009, dated 09.06.2010.

W.P.No.12934 of 2009:
Writ Petition filed under Article 226 of the Constitution of India call for the records relating to the order of 1st respondent dt 26.12.2008 in Letter No. 53977/C2/2008 and quash the same and direct the 3rd respondent to release the sale certificate dt 24.12.2007 vide Doc. P. No 142/2007 after scanning and entering in Book refunding the sum of Rs.1,64, 895.00 wrongfully collected by him.

For Appellant : Mr.V.Bhiman
For M/s.Sampathkumar & Associates

For Respondents: Mr.V.Viswanathan
Additional Government Pleader

J U D G M E N T

M.GOVINDARAJ, J.

The short issue involved in this writ appeal is as to whether the Sale Certificate issued by the Authorized Officer of the Bank is an instrument liable for stamp duty under the Indian Stamp Act, 1899.

2. The short facts of the case is that the appellant has purchased the property in the auction held by the Authorized Officer of the Indian Overseas Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act).

3. Originally, in order to secure the debt due by the Jawahar Mills Limited, the auction was conducted. One Mr.V.S.Murugan submitted a tender for purchasing the property at the rate of Rs.7,00,70,007/- and deposited a sum of Rs.70,00,007/-. His tender was accepted. But the bidder failed to deposit the balance amount of Rs.6,30,63,000/- within the time stipulated. Hence, the Authorized Officer, by letter dated 23.08.2005, cancelled the acceptance of the tender. Challenging the same, the said V.S.Murugan, filed a Writ Petition in W.P.No.37139 of 2005 before this Court.

4. At the time of hearing, the appellant offered to pay the balance amount of Rs.6,30,63,000/- along with interest, at the rate of 19.5% per annum, from 13.05.2005 till the date of final payment. Accepting the said proposal, this Court directed the bidder to deposit the said balance amount with interest and further directed the Authorized Officer to issue the Sale Certificate in favour of the original tenderer V.S.Murugan or his nominee.

5. The present appellant is the nominee of the said V.S.Murugan and he deposited a sum of Rs.1,64,79,393/- to the Authorized Officer, towards the value of the property described in Schedule B of the Sale Certificate. The Authorized Officer issued the Sale Certificate and put the appellant in possession of the property.

6. It is to be noted that the Authorised Officer, instead of forwarding a copy of the Sale Certificate to the appellant, had forwarded the same to the third respondent, Sub Registrar, for entering in Book No.1 at his office. The third respondent, after making an entry in Book No.1, called upon the appellant to pay a sum of Rs.1,64,895/- and the same was paid by the appellant also. Later, the appellant said to have realized that the Sale Certificate is not an instrument and it does not

require registration and sought for refund of the money paid. But the third respondent impounded the Sale Certificate and forwarded the same along with his report to the second respondent, who in turn, issued a show cause notice dated 28.11.2008, calling upon the appellant to explain as to why a sum of Rs.13,18,351/- towards stamp duty and penalty of Rs.649/-, totalling to a sum of Rs.13,19,000/-, should not be collected from him. Against which, the appellant submitted his objections on 17.12.2008, followed by a representation to the first respondent/Appellate Authority on 01.11.2008. The first respondent, by his order dated 26.12.2008, rejected the appellant's representation holding that the Sale Certificate was not issued by a Civil / Revenue Court or Collector or Revenue Officer and hence, it cannot be classified as one coming under Article 8, Schedule-I of the Stamp Act and it is chargeable with 8% of the stamp duty on the market value of the property under Article 23 in Schedule - I of the Stamp Act.

7. The said order came to be challenged in the writ petition. The learned Single Judge, after elaborately discussing all the relevant judgments, had come to a conclusion that the purchaser of a property by sale through Civil or Revenue Court has no disadvantage because of lack of registration in view of the fact that under section 17(2)(xii) of the Registration Act, Certificate of sale is not a compulsory registrable document and consequently, the transfer of title in his favour will not be vitiated by non-registration. But so far as the certificate issued by the Authorized Officer is concerned, it cannot be equated with the certificate issued by the Revenue or Civil Court. As contended by the learned counsel for the appellant, the nomenclature given to the document issued by the Authorized Officer may not be relevant for giving exemption from paying the stamp duty, since the sale certificate issued by the Authorised Officer will not be covered by Article 18 of Schedule I of the Stamp Act. and accordingly, dismissed the writ petition.

8. It is to be seen that there is certain differences between transfer of right, title, interest and declaration of the same by the certificate. The title to the property in question has to be conveyed under a document. The document has to be a vehicle for the transfer of the right, title and interest. But, on the other hand, a document merely stating a fact that transfer has already been taken place, cannot be included within its impression. Therefore, the document whichever conveys right, title and interest in a movable or immovable property is compulsorily registrable under Section 17 of the Indian Registration Act.

9. The said issue is no longer res integra and it has been decided by the Full Bench of this Court in DR.R.THIAGARAJAN

VS. INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2019 (4) CTC 839]. According to the judgment of the Full Bench, the unstamped Sale Certificate is a void document and no right would vest upon the auction purchaser of the property. It cannot be equated that the certificate issued by Civil or Revenue Officer in an auction sale, does not get any valid right and an unregistered sale certificate and it is categorically held that the sale certificate issued by the Authorized Officer of the Bank is compulsorily registrable on payment of duty.

10. Paragraphs 22, 23 and 26 of the Full Bench judgment of this Court, referred to above, are extracted hereunder:

> "22. The Sale Certificate issued by the Authorised Officer of the bank cannot be agnated with the Sale Certificate issued by a Civil or Revenue Court. The nomenclature given to the document issued by the Authorized Officer would be irrelevant for exemption from payment of stamp duty and the same will not be covered under Article 18-C Schedule 1 of the Stamp Act. Therefore, the Sale Certificate issued by one who is neither Civil or Revenue Officer would not fall under Section 17(2)(xii) of the Registration Act and the Sale Certificate issued by the Authorized Officer is liable for stamp duty on the market value as per Article 18-C read with Article 23 of Schedule 1 of the Stamp Act.
>
> 23. If proper stamp duty is not paid for the said Sale Certificate and registered as required under law, then it is only a still born child and does not confer any right to the petitioner whatsoever. When the Sale Certificate is not properly stamped and registered, it is a void document and no right would vest upon the petitioner based on the same. As per Section 47-A of the Stamp Act, if the Registering Authority has reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set-forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of the said property and the proper duty payable thereon.
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> 26. To summarize, our answer to the question referred to the Full Bench is as follows:-

We are of the considered view that the Sale Certificate issued by the Authorized Officer of the bank is liable for stamp duty under Article 18-C read with Article 23 of Schedule 1 of the Indian Stamp Act. In the event of under-valuation of the property, which is the subject matter of the Sale Certificate, the Registering Officer is entitled to proceed in accordance with Section 47-A of the Indian Stamp Act. Hence, we agree with the proposition laid down by the Division Bench of this Court in the unreported judgment of this Court dated 21.08.2017 made in W.A.(MD) No.3 of 2017 [cited supra] and, with respect, we are not agreeing with the view taken in the judgment reported in 2015(1) CTC 526 [cited supra]. "

11. In view of the various judgments referred by the learned Single Judge and in view of the judgment of the Full Bench, mentioned above, this Court does not find any infirmity in the order passed by the learned Single Judge. Therefore, in view of the above, the Writ Appeal does not merit consideration and accordingly, dismissed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

SML/TK
To
1.The I.G. of Registration,
State of Tamil Nadu,
Santhome, Chennai-600 004.

2.The District Registrar,
Office of the Registrar,
Salem.

3.The Sub Registrar,
Sooramangalam Sub Registrar Office,
Sooramangalam,
Salem District.

W.A.NO.2132 OF 2010

SJ(CO)
SP(21/11/2019)