IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.24774 of 2016

Ms.Lissy Lakshmi ... Petitioner

-vs-

Joint Sub Registrar-II,
Thousand Lights,
No.182, Barathi Salai,
Royapettah, Chennai -14 ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondent to release and handover the Deed of Release dated 15.02.2016 registered as pending document P.No.50 of 2016, after making necessary endorsements as may be required to the petitioner.

For Petitioner : Mr.V.Kuberan
for M/s.Rank Associates

For Respondent : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

The Writ Petition is filed seeking a direction to the respondent to release and handover the Release Deed dated 15.02.2016 though registered, but shown as pending Document P.No.50 of 2016.

2. The property situated in R.S.No.795, measuring an extent of 3762 sq.ft. together with building thereon, bearing Door No.18, 5th Cross Street, Lake Area, Nungambakkam, Chennai 600 034 was originally purchased by the petitioner and her husband by way of Certificate of Sale issued by the Tax Recovery Officer-X(i/c), Media Range, Chennai - 34. Pursuant to the said Certificate of Sale, the petitioner and her husband became the lawful owners of the said property and they have been in possession and enjoyment of the same for more than a decade.

3. While so, the husband of the petitioner had executed a Release Deed dated 15.02.2016 in favour of the petitioner releasing his right over the said property. The said Release Deed was duly stamped and presented for registration with the respondent. However, the respondent registered the document, but refused to release the same. When enquired, it was informed by the respondent that the Certificate of Sale of immovable property under which the Tax Recovery Officer-X, Income Tax Department, Media Range had sold the property, was not registered and hence, the subsequent transfers claiming any right under the sale can be done only after collecting the requisite Stamp Duty payable for the said unregistered document along with applicable fine. Accordingly, the Release Deed is kept as pending Document No.P 50 of 2016. The respondent had also sent a letter dated 03.03.2016 under Reference No.2289/A1/2016, demanding a sum of Rs.16,08,000/- together with Rs.2,01,000/- towards Stamp Duty payable on the said Sale Certificate. The said demand was made 10 years after the execution of the Sale Certificate. The said letter dated 03.03.2016 was followed by another notice dated 10.05.2016 under Reference No.5415/A1/2016, calling upon the petitioner to pay the above said Stamp Duty within 30 days and had further threatened to pass final orders on the basis of the information available with the Joint Sub Registrar. The petitioner had also sent objections dated 20.05.2016 explaining the facts and legal position that the Certificate of Sale issued by the Revenue Officer, does not require registration under Section 17(2)(xii) of the Registration Act, 1908.

4. It is well settled by the Hon'ble Supreme Court as well as this Court that a Certificate of Sale issued under the Income Tax Act, does not require registration.

5. According to the learned counsel for the petitioner, the Sub Registrar does not have powers to conduct roving enquiry into the earlier transactions, while registering the document presented before him. However, the Registration Department had also gone ahead through its District Registrar and confirmed the demand made by the Sub Registrar, by passing an order dated 27.06.2016 under Reference No.5415/A1/2016, once again demanding the Stamp Duty and fine / penalty. Hence, the above Writ Petition has been filed.

6. The Writ Petition was resisted by the respondent inter alia contending that the property now sought to be released is only purchased in a public auction held on 17.03.2015 by virtue of Sale Certificate issued by the Tax Recovery Officer, Media Range, Chennai 600 034. The copy of the said Sale Certificate

is not registered. The sale of the said property is also not reflected in the Encumbrance Certificate. Therefore, the petitioner had failed to present the Sale Certificate for registration under Section 234 of the Registration Act. As the Sale Certificate issued by the Tax Recovery Officer is referred as the source of title which is not filed in the records of the respondent, the respondent had kept the document pending under P.No.50 of 2016. Though it is provided under Section 17(2)(xii) of the Registration Act that the Sale Certificate granted to the purchaser of any property sold by public auction by a Civil or Revenue Office is not compulsorily registrable, as per Article 18 under Schedule 1 of the Indian Stamp Act, 1899, where the purchase money exceeds Rs.50/-, the Stamp Duty is payable as a conveyance for a market value equal to the amount of the purchase money only. Hence, the Stamp Duty is not exempted under the Stamp Act.

7. A reading of Section 17(2) (xii) of the Registration Act, 1908 makes it clear that the Certificate of Sale issued in a Court Sale or by a Revenue Officer does not need registration. Therefore, it is not obligatory on the purchaser of the property in a tax recovery sale to get the Certificate of Sale registered in order to perfect his title.

8. A similar issue has been dealt with by the Hon'ble Supreme Court in Shanti Devi L. Singh v. Tax Recovery Officer and Others reported in (1990) 3 SCC 605 and it is relevant to extract the paragraphs 8,9,10 and 11:

> "8. On the other hand, the process of filing that is contemplated under the Act is somewhat different though the Act does interchange the two expressions in some places. For instance, Section 51(2) itself refers to all documents or memoranda registered under Section 89 being entered or filed in Book No. 1. But there appear to be vital differences between the two processes:
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> (i) It is the original of a document that is registered whereas only copies or memoranda are filed;
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> (ii) The executant of a document which is required to be registered, has to present it for registration and go through the attendant and subsequent processes described above. A copy to be filed under Section 89 or memoranda that are filed under Sections 64 to 66 is simply transmitted to the concerned Sub-Registrar for being filed. Apparently, the procedure of presentation is dispensed with in regard to the latter because they are issued by public authorities discharging their official duties.

(iii) Additional particulars relevant to a document admitted to registration need to be got endorsed thereon from time to time as contemplated in Sections 58 and 59 but this rule does not apply to a copy or memorandum filed under the Act.

(iv) When a document is registered, the entirety of the document has to be copied out into the relevant book and the original document returned to the person who presents the document with necessary endorsements. This requirement is absent in the case of a copy or memorandum which is just filed.

(v) Where a document is registered, a certificate of registration has to be issued which will be admissible to prove the due registration of the document.

9. There are thus some differences between the two procedures and this aspect has been touched upon in some very early decisions under the Registration Act, 1877 : vide, Fatteh Singh v. Daropadi [1908 Punj Rec Case No. 142 : 1908 PWR 186] , Siraj-un-nissa v. Jan Muhammad [2 All WN 51] , Masarat-un-nissa v. Adit Ram [(1883) ILR 5 All 568 (FB) : 1883 AWN 159] . Reference may also be made to Premier Vegetable P. Ltd. v. State of M.P. [AIR 1986 MP 258] We need not, however, consider for the purposes of this case whether filing and registration mean one and the same thing for all purposes and what the legal effect of these differences is. For, though the processes are different, the purchaser at a court or revenue sale is under no disadvantage because of the lack of registration. The certificate of sale itself not being a compulsory registrable document : vide Section 17(2)(xii), the transfer of title in his favour is not vitiated by the non-registration of the certificate. The copy of the certificate filed in Book No. 1 contains all the relevant details. These details are reflected in the indices maintained under Section 55 which are open to inspection to all persons. [We may point out here that Section 55(2) only refers to memoranda filed but it seems clear, particularly in the light of various State amendments, that the index to Book No. 1 should also contain the details of copies of document filed by him]. These requirements are sufficient to ensure that any person intending to purchase or deal with the property is put on notice about the principal contents of the certificate of sale provided he inspects the relevant book and/or

index. It is sufficient to say, for the purposes of this case, that all that the Sub-Registrar required to do is to file the copy of the certificate in Book No. 1 and no more. He does not have to copy out the certificate or make any other entries in Book No. 1.   10. We now come to the last question and that is whether the certificate of sale is liable to stamp duty and, if so, what the consequences are. The High Court has referred to Section 3, Section 29(f) and Article 18 of Schedule I to the Stamp Act. This provision applies in the absence of a contract to the contrary. Prima facie, therefore, the view taken by the High Court — and there are other decisions also to the same effect — is correct unless a contract to the contrary can be spelt out. The auction notice did not promise any exemption from stamp duty. The extract quoted earlier from the Departmental Manual (viz. that both the certificate and copy are liable to stamp duty) also renders it unlikely that any promise was given by the TRO at the time of sale that no stamp duty will be payable. However the TRO's letter to the Collector referring to the legal advice obtained by him strikes a somewhat inconsistent note. Even if there had been any such mention by the TRO or the auctioneer, the question would arise whether it can be construed as contract to the contrary binding on the Union for the purposes of Section 29(f) of the Stamp Act. Sri Mehta requests that we may not now go into these questions but leave the issue to be decided as and when the petitioners seek to have the certificate of registration registered or introduced in evidence before any court or authority entitled to take evidence which is at present a remote contingency.

11. There are two provisions in the Stamp Act which provide for the adjudication of stamp duty. Under Section 31, it is open to the executants of any document, at any stage but within the time limit set out in Section 32, to produce a document before the Collector of Stamps and require him to adjudicate on the question whether the document should bear any stamp duty. The Collector thereupon may adjudicate the stamp duty himself or refer the matter to the Chief Controlling Revenue Authority of the State. In turn, it is open to the Chief Controlling Revenue Authority to refer the matter to the High Court for an authoritative decision (Sections 32 and 56). This procedure could have been followed by the petitioners if they wished to

seek an answer to the question whether the certificate of sale is liable to stamp duty but they have not done it and the time limit under Section 32 has run out. The other provision that may become applicable is Section 33. Under this section, if any document (and this includes a certificate of sale) is presented to the Registrar for registration and the Registrar is of opinion that it is a document which should bear stamp duty but that it has not been stamped, it is his duty to impound the document and send it on to the Collector of Stamps for necessary adjudication (Section 38). This contingency has also not happened. The third contingency, also provided for in Section 33 is when a party wishes to rely upon the certificate of sale as a piece of evidence before a court or an authority entitled to take evidence. Such court or authority will also have to impound the document and shall not admit the same in evidence unless the stamp duty chargeable and the stipulated penalty are paid. This situation has not arisen so far but may arise at some time in future. It is unnecessary to anticipate the same and decide the issue. We shall therefore leave the issue of stamp duty to be adjudicated upon in the normal course, as and when found necessary, and express no views thereon at this stage."

9. Following the decision of the Hon'ble Supreme Court cited supra, this Court in 2010-2 LW 113, has held as follows:

"34. A perusal of section 18 shows that it covers even instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest and leases of immovable property for any term not exceeding one year, and leases exempted under Section 17. Merely because the registration of these documents have been made optional, it does not follow as a corollary that all these documents are exempt even from payment of stamp duty. Take for instance, a receipt or promissory note, which do not require registration. Despite the fact that they do not require registration, they are nevertheless chargeable with duty under the Stamp Act. Similarly, the lease of an immovable property for a term not exceeding one year does not require registration. But it does not mean that no stamp duty is payable on such a document. Therefore, it is totally incorrect to say that if a document does not require registration compulsorily, then no stamp duty is also required to be paid. The provisions of the Stamp Act and the provisions of the Registration Act, operate on parallel lines. Neither pf them contain a non abstante clause, so as to exclude the operation of the other. Therefore, the option given under the Registration Act to the makers of certain documents, to register them or not, is not to be construed as an exemption from payment of stamp duty.

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55. As stated earlier, there is not even a non abstante clause in Section 17(2) of the Registration Act. Therefore, Section 17(2) cannot be taken to exclude the operation of the provisions of the Stamp Act and the Transfer of Property Act, in so far as certificates of sale are concerned. On the other hand, it was by the Transfer of Property (Amendment) Supplementary Act, 1929 (Act 21 of 1929), that both Section 4 of the Transfer of Property Act and Section 49 of the Registration Act were amended.

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59. Therefore, the only conclusion that one can draw by a combined reading of the provisions of the Transfer of Property Act, 1882, the Indian Stamp Act, 1899 and the Registration Act, 1908 is that by whatever name the instrument is called (whether certificate of sale or Sale Deed), the instrument is chargeable with stamp duty, under Article 18 read with Article 23 of Schedule I to the Stamp Act. While the Official Liquidator can leave the choice to the auction purchaser to choose the title to or the nomenclature of the document, neither he nor the purchaser has any choice with regard to the liability to pay stamp duty.

10. Thus, after through scrutiny and comparison of the Transfer of Property Act 1882, the Indian Stamp Act, 1899 and the Registration Act, 1908, this Court held that Stamp Duty is payable on the Sale Certificate, even though the Registration is exempted.

11. In 2009 (5) CTC 15 [M/s. Shree Vijayalakshmi Charitable Trust, Registered Trust, represented by its Trustee A. Senthil Kumar Coimbatore Vs- The Sub Registrar, Raja Street, P.Puliampaty, Mettupalayam Taluk, Erode District], this Court had already held that Sale Certificate sent to the Registration

would not attract stamp duty and it is relevant to extract the paragraphs 18, 19 and 22:

> "18. When such is the position, the sale certificate would have come under Section 17 (2) (xii)of the Registration Act 1908. As long as the sections 17(2) and 89 are there in the Registration Act, the court can only go by the statue and quash the order which are ultravires of the Act. In view of the categorical pronouncement of the judgment of the Supreme Court and also the judgment of this court and also in view of provisions given in the Registration Act, the court holds that court auction sale certificate sent to the Registration for filing in Book-I would not attract stamp duty. The respondent has got no power and jurisdiction to issue the impugned order because of Section 17(2) (xii) and 89 (2) of the Registration Act and cannot demand stamp duty. Hence the impugned order is liable to be set aside.
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> 19. As the copy of the document is sought to be filed under Section 89 of the Act in Book No.1 of the Registrar Office, it is in a way amounting to registering the document which will be reflected in the encumbrance certificate of the property. Though the transaction through sale certificate is a "sale" as per Section 54 of the Transfer of Property Act, the sale certificate is exempted as compulsorily registrable document under Section 17(2) of the Act. It is an instrument of conveyance as defined under Section 2(10) of the Indian Stamp Act 1899, passing of right, title, interest in the immovable property and this court opines that the sale certificate should be treated as normal sale deed which is compulsorily registrable under Section 17(i) of the Act. Merely because the property was purchased in court auction, it does not fail to convey the title of the property i.e. it conveys title to the purchaser as held by the Apex Court in AIR 1991 SC 1880 (Shanthi Devi.L. Vs. Recovery Officer).
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> ...
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> 22. The object of the registration is not only to give notice to the world that the documents have been executed by registering the said documents under Stamp Act, but also one of the important sources of revenue to the State.

Many properties are sold by court auction regularly and because of exemption given under Section 17(2) and 89, heavy loss occurs to the government. If the revenue is lost by Section 17(2) and Section 89 of the Registration Act, suitable steps should be taken in the public interest by the legislature/parliament to plug the loop-hole in the Act by way of suitable amendment. In this case, the value of the property is Rs.1,73,43,642/-. If the said transaction is done in the normal course, it would have earned a revenue of Rs.10,39,122/-, which is being sought to be levied by the respondent. However in view of Section 17(2) (xii) and Section 89 of the Act, the Exchequer looses Rs.10,39,122. This court hopes that this case would be an eye opener and expects legislature/parliament to bring suitable amendments in Sections 17 and 89 of the Registration Act.

12. In 2012 (2) LW 351 [Dr. Meera Thinakaran, -Vs- The State of Tamil Nadu rep. By Secretary & Others], this Court in paragraph 21 has observed as under:

"21.....In view of Section 89(2) of the The Tamil Nadu Registration Manual Act, I am of the view that it would be suffice if the Sale Certificate in question is entered by the third respondent in Book No.1 and he need not register the same. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a Certificate of Sale 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 compulsory registration under sub-sections (b) and (c) of Section 17(1) of the said Act. Thus, the registration is purely optional in respect of a Certificate of Sale issued by a Civil or Revenue Officer. The only legal implication is, if the Certificate of Sale is not registered, it is not admissible in evidence under Section 35 of the Indian Stamp Act and Section 49 of the Registration Act, in view of the law laid down by the Hon'ble Supreme Court in RaghunathVS Kedar Nath, 1969(1) SCC 497. In the instant case, the learned counsel for the petitioner would submit that the petitioner has opted not to get the Sale Certificate registered. Therefore, in this case, question of paying registration charges does not arise at all.

13. In 1996 (7) SCC 668 Padanathil Rudmini Amma -Appellant - Vs P.K. Abdulla, the Hon'ble Apex Court, in paragraph 16, held as follows:-

> "16. The distinction between a stranger who purchases at an auction sale and an assignee from a decree-holder purchaser at an auction sale is quite clear. Persons who purchase at a court auction who are strangers to the decree are afforded protection by the court because they are not in any way connected with the decree. Unless they are assured of title; the court auction would not fetch a good price and would be detrimental to the decree-holder. The policy, therefore, is to protect such purchasers. This policy cannot extend to those outsiders who do not purchase at a court auction. When outsiders purchase from a decree-holder who is a an auction purchaser clearly their title is dependant upon the title of decree-holder auction purchaser. It is a defeasible title liable to be defeated if the decree is set aside. A person who takes an assignment of the property from such a purchaser is expected to be aware of the defeasibility of the title of his assignor. He has nor purchased the property through the court at all. There is, there- fore, no question of the court extending any protection to him. The doctrine of a bona fide purchaser for value also cannot extend to such an outsider who derives his title through a decree-holder auction purchaser. He is aware or is expected to be aware of the nature of the title derived by his seller who is a decree-holder auction purchaser."

14. The impugned order is demanding registration and payment of stamp duty on the sale certificate issued by the income tax authorities, Section 47-A of the Indian Stamp Act provides for "instruments of conveyance under-valued how to be dealt with". Even presuming that the sale certificate issued by the income tax authorities is registrable and stamp duty thereon is payable, as per Section 47-A(3) a limitation of five years from the date of registration of any instruments of conveyance is imposed on the Collector to initiate suo-motu action to determine the market value of the property.

15. Therefore, in the case on hand, when the sale certificate was issued in the year 2005, which is not compulsorily registrable as per Section 17(2)(xii) of the Registration Act, the order impugned demanding the payment of stamp duty is unwarranted, which is issued after more than five years beyond the period of limitation and the same is unsustainable in the light of the judgment of the Full Bench of this Court in Karmegam, G. v. The Joint Sub-Registrar, IV, Madurai, 2007 (5) CTC 737. The relevant portion of the said judgment is extracted hereunder:

> 25. Sub-section (3) to Section 47-A provides for a limitation of five years from the date of registration of any instrument of conveyance for the Collector to initiate either suo motu action or otherwise to determine the market value of the property. Earlier, the provision contained a time limit of two years and, by means of a subsequent amendment, the said time limit was enlarged as five years. At the two stages viz., the time of passing the Act and of passing of the Amending Act, the legislature was more conscious about prescribing the time limit for exercise of powers by the Collector and, on both the occasions, the provision i.e., sub-section (1) was left untouched. Hence, it cannot be stated that there was inadvertence on the part of the legislature to provide time limit in sub-section (1). The intention of the legislature was to clothe the Collector with ample powers in two ways viz., firstly, allowing five year period for him to exercise his power to initiate action and, nextly, to determine the market value of the property after holding an enquiry as per the procedures stipulated in sub-section (2).

16. From the above, it is evident that law makes a clear distinction between a stranger, who is a bonafide purchaser and a party to lis purchaser. The strangers to the decree are afforded protection by the Court because they are no way connected to the case. The reason may be that unless such protection is extended to them, the Court or revenue sales would not fetch market value or fair price of property.

17. Thus, in the instance case the sale certificate issued in the auction sale to the petitioner is not compulsorily registrable under the Registration Act and that the title passes on to the auction purchser upon issuance of the sale

certificate. Once the title of the joint owners are confirmed, there is no impediment in releasing the title to the other co-owner. Curiously, the Release Deed presented for Registration is in order and the same is registered. As stated supra, once sale is confirmed and Sale Certificate issued as early as on 04.05.2005, the respondent is wrong in demanding the Stamp duty for the Sale Certificate.

18. For the above reasons, this Court is of the opinion that the impugned order should be set aside and the Writ Petition is to be allowed.

19. Accordingly, the Writ Petition is allowed. The respondent is directed to release and handover the Deed of Release dated 15.02.2016 to the petitioner within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Deputy Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

srn

To

The Joint Sub Registrar-II,
Thousand Lights,
No.182, Barathi Salai,
Royapettah, Chennai -14

+1cc to Mr.Rank Associates, Advocate, S.R.No. 42350
+1cc to the Government Pleader, S.R.No. 43361

W.P.No.24774 of 2016

SVI(CO)
GN(24/05/2019)