IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.6657 of 2018
and
WMP.No.8252 of 2018

Tripower Enterprises(Private) Limited,
Represented by its Director, V.Subramanian,
No.2/569, “Sandy Nook”,
Singaravelan First Main Road,
China Neelangarai, Chennai 600 115

... Petitioner

Vs

1. The Sub Registrar,
   Alandur,
   Chennai 600 061

2. The Authorised Officer,
   State Bank of India,
   Stressed Assets Management Branch,
   112, Raja Plaza, Avinashi Road,
   Coimbatore 641 037

... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in notification No.253/2017 dated 06.03.2018 and quash the same as illegal, incompetent and without jurisdiction and further direct the first respondent to file the sale certificate dated 29.04.2017, sent by the second respondent under Section 89(4) of the Registration Act, 1908.

For Petitioner : Mr.V.Raghavachari

For Respondents
For R1 : Mr.A.Selvendran, Special Government Pleader

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in notification No.253/2017 dated 06.03.2018 and quash the same as illegal, incompetent and without jurisdiction and further direct the first respondent to file the sale certificate dated 29.04.2017, sent by the second respondent under Section 89(4) of the Registration Act, 1908.

2. Heard, Mr.V.Raghavachari, the learned counsel appearing for the petitioner, and Mr.A.Selvendran, Special Government Pleader appearing for the first respondent.

3. The case of the petitioner is that the second respondent Bank sold the schedule mentioned property and the petitioner is the highest bidder in the e-auction sale conducted. The sale certificate was issued under Rule 9(6) of SARFAESI Act on 29.04.2017. Thereafter, the second respondent requested the first respondent i.e. Sub Registrar, Alandur to file the sale certificate under Section 89(4) of the Registration Act, 1908. However, the first respondent issued the impugned notification.

4. It is seen that the sale certificate was issued under Rule 9(6) of SARFAESI Act on 29.04.2017 and thereafter the second respondent requested the first respondent for making entries in Book-I under Section 89(4) of the Registration Act, 1908. However, the first respondent issued the impugned notification.

5. In this regard, Mr.V.Raghavachari, the learned counsel for the petitioner submitted that the Sale Certificate was presented before the first respondent only for the purpose of filing it in Book No-I as per Section 89 of the Registration Act, 1908. Therefore, it does not require any stamp duty and registration fees. The requirements for the payment of stamp duty under Article 18 of the Stamp Act and the payment of the Registration fees would arise only if presented the original Sale Certificate for registration under Article 23 of the Registration Act, 1908. In support of his contention he relied upon the judgment of this Court, in W.P.No.34249 of 2018, dated 08.11.2021, wherein it is held as follows:-

> 6. In support of his contention, he relied upon the Judgment reported in 2007(5) SCC 745 the Hon'ble Supreme Court of India held that "when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued

evidencing such sale and title, no further deed of transfer from the Court is contemplated or required and that Sale certificate issued by the Court or an Officer authorized by the Court, does not require registration. 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 registration under the Act."

7. He also relied upon the Judgment reported in 2018(3) TNCJ 541 MB N.Naresh Kumar -vs- The Inspector General of Registration, Chennai 28 and another, the Hon'ble Division Bench of this Court held as follows:

> "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.
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> 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."

8. The Hon'ble Division Bench of this Court concluded that as long as the sale certificate remains as it is, it is not compulsorily registrable. If the documents uses for any other purpose, it requires stamp duty. The Section 89(4) contemplates only filing of the sale certificates and therefore, the question of stamp duty does not arise. In this regard, it is also relevant to rely upon the orders passed in S.L.P.Nos.29752-29754 of 2019 dated 05.01.2021 Esjaypee Impex Pvt. Ltd., -vs- Asst. General Manager and Authorized Officer, Canara Bank, the Hon'ble Supreme Court of India held as follows:

> "14. We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the Authorized Officer of the Bank under the SARFAESI Act to hand over the duly validated Sale Certificate to the Auction Purchaser with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the Registration Act."

9. The provision under Section 89(4) is clear that "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 his Book No. 1. State Amendments Andhra Pradesh: For sub-section (5) of section 89 substitute as under: "(5) An officer empowered to grant a certificate of sale of immovable property under the Andhra Pradesh Co-operative Societies Act, 1964 or the rules made thereunder shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such registering officer shall file the copy in his Book No. 1."

10. Therefore, the sale certificate do not operate as a conveyance of the property. It is also relevant to extract the Rule 200(1) of the Civil Rules of Practice and Circular Orders:

> "200(1). Section 89(2) of the Indian Registration Act, 1908 (Central Act XVI of 1908) provides that the every Court granting a certificate under Rule 94 of Order XXI of the Code, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate and such officer shall file the copy in his Book No.1. The law, therefore now provides, through the direct action of the Civil Court and of the Registering Officer for the registration of a copy of the certificate of sale. It is no longer necessary to register the certificate itself. Such certificates do not operate as a conveyance of the property to which they relate."

6. He also relied upon the judgment of the Hon'ble Supreme Court of India passed in Miscellaneous Application Diary No.19262 of 2021 in SLP(C) 29752 of 2019, thereby clarified as follows:

> The direction has already been passed on 05.01.2021 for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act. We may note

that the effect of filing of the copies under the said Section 89 has the same effect as registration and obviates the requirement of any further action.

7. As such when the purchaser goes for the registration of the original sale certificate issued by the Court Officer, Article 18 of the Indian Stamp Act would be attracted and stamp duty is to be paid as per Article 23 of the Registration Act treating it as conveyance namely auction purchase value of the property. But when a copy of the sale certificate presented before the first respondent, not for the purpose of registration but only for purpose of filing it by the first respondent in his office as contemplated under Section 89(4) of the Registration Act, 1908. Therefore, the first respondent cannot refuse to file a copy of the sale certificate by demanding payment of stamp duty and registration fees to file the same in Book No.1, as contemplated under Section 89(4) of the Registration Act, 1908.

8. In view of the above, the first respondent is directed to enter the sale certificate dated 29.04.2017 issued by the second respondent in Book No-I as contemplated under Section 89 of the Registration Act, 1908 without insisting any stamp duty within a period of two weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Registrar,
   Alandur,
   Chennai 600 061

2. The Authorised Officer,
   State Bank of India,
   Stressed Assets Management Branch,
   112, Raja Plaza, Avinashi Road,
   Coimbatore 641 037

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.59883

+1cc to the Government Pleader, S.R.No.60276

WP.No.6657 of 2018

NRL(CO)
SU(08/12/2021)