IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.28204 of 2013

M/s.SKG Merchandise P. Ltd.,
Rep. by its Director Mr.Mahendra Kumar Mohta,
Old No.199, De Mellows Road,
Choolai Chennai - 112.
... Petitioner

Vs

1. The Inspector General of Registration,
   Santhome, Chennai.

2. The Sub Registrar,
   SRO Periamet,
   Periamet, Chennai 3.

3. The Recovery Officer
   Debts Recovery Tribunal - 1,
   6th floor, Spencers Towers,
   No.770-A Anna Salai,
   Chennai - 2.
... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in his Impugned order dated 25.06.2013 in Ref.No.93 of 2013 returning the copy of the Sale Certificate dated 20.03.2013 issued in favour of the petitioner by the third respondent, in DRC No.25 of 2005 by refusing to file it under Section 89(4) of the Registration Act and quash the same and direct the second respondent to file the said copy of the Sale Certificate dated 20.03.2013 in Book No.1 maintained in his office under Section 89(4) of the Registration Act.

For Petitioner	:	Mr.N.Nagu Sah
For Respondents 1 & 2	:	Mr.Richardson Wilson, Government Advocate
		R3 - Tribunal

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in his Impugned order dated 25.06.2013 in Ref.No.93 of 2013 returning the copy of the Sale Certificate dated 20.03.2013 issued in favour of the petitioner by the third respondent, in DRC No.25 of 2005 by refusing to file it under Section 89(4) of the Registration Act and quash the same and direct the second respondent to file the said copy of the Sale Certificate dated 20.03.2013 in Book No.1 maintained in his office under Section 89(4) of the Registration Act.

2. The petitioner and others had jointly purchased the first floor of the flat admeasuring 2904 sq.ft. together with undivided share in the land admeasuring 3422 sq.ft. at Premises No.168 New No.263 situated at Sydenhams Road, Choolai, Chennai 3 comprised in Old Survey No.1159, Re-survey No.1255 C.C.No.768 in a public auction sale held on 07.10.2011 at the instance of the Chief Manager M/s.Vijaya Bank, Asset Recovery Management Branch in respect of the mortgage created in their favour by the borrowers namely M/s.Vee Em Es Timber Traders and Mr.V.M.S.Zafarullah the defendants in O.A.No.36 of 2003and in execution of DRC.No.25 of 2005 on the file of the Debts Recovery Tribunal I, Chennai. The third respondent had confirmed for the sale price of Rs.70,70,000/- by an order dated 23.11.2011.

3. In fact, the third respondent refused to issue the sale certificate and insisted to pay stamp duty. Aggrieved by the same, the petitioner preferred Appeal in Appeal No.10 of 2012 before the DRT-I and the same was allowed and directed the third respondent to issue sale certificate. Thereafter, the petitioners were issued sale certificate dated 20.03.2013 and forwarded the same to the second respondent and instructed to file the sale certificate as contemplated under Section 89(4) of the Registration Act.

4. However, the second respondent returned the same by the impugned order dated 25.06.2013 for the reason that the second respondent to certify the stamp duty collected for the certificate of the sale or the value of the stamp papers on which the original instrument has been engrossed.

5. The learned counsel for the petitioner would submit that the sale certificate was presented before the second respondent only for the purpose of filing it in his office records as contemplated under Section 89(4) of the Registration Act. The law does not require the payment of stamp duty and the registration fees on the auction purpose value of the property

subject matter of the sale certificate.

6. He further submitted that the requirement for the payment of stamp duty under Article 18 of the Stamp duty and the payment of registration fees would arise only if presented the original sale certificate for registration under Section 23 or 25 of the Registration Act.

7. 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.

8. 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.

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."

9. 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 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."

10. 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."

11. 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."

12. 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 second respondent not for the purpose of registration but only for purpose of filing it by the second respondent in his office as contemplated under Section 89(4) of the Registration Act. Therefore, the second 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.

13. In view of the above discussion, the Impugned order dated 25.06.2013 in Ref.No.93 of 2013 returning the copy of the Sale Certificate dated 20.03.2013 issued in favour of the petitioner by the third respondent is set aside. The second respondent is directed to file a copy of the sale certificate dated 20.03.2013 in Book No.1 register as contemplated under Section 89(4) of the Registration Act within a period of two weeks from the date of receipt of a copy of this order.

14. Accordingly, this writ petition is allowed. No order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rna

To

1. The Inspector General of Registration,
   Santhome,
   Chennai.

2. The Sub Registrar,
   SRO Periamet,
   Periamet,
   Chennai 3.

3. The Recovery Officer
Debts Recovery Tribunal - 1,
6th floor, Spencers Towers,
No.770-A Anna Salai,
Chennai - 2.

+1cc to Mr.N.Nagusah, Advocate, S.R.No.54068

+1cc to the Government Pleader, S.R.No.54640

W.P.No.28204 of 2013

PA(CO)
SU(15/11/2021)