IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.5226 of 2017
and WMP.Nos.5552 & 5553 of 2017

Catholic Syrian Bank,
T.Nagar Branch,
No.33, Dr.C.N.Deivanayagam Complex,
Venkatanarayana Road,
T.Nagar,
Chennai 600 017
Rep. by its Chief Manager ... Petitioner

Vs

1.The Inspector General of Registration,
Santhome High Road,
Chennai 600 028

2.The District Registrar,
O/o. The District Registrar,
South Madras,
Chennai-15

3.The Sub Registrar,
Sub Registrar Office Neelankarai,
1/17, 1st Floor, Kajera Garden 2nd Street,
East Coast Road,
Neelankarai,
Chennai 600 115 ... 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 relating to the impugned order in Na.Ka.No.016355/E1/2016 dated 26.11.2016 issued by the second respondent and quash the same and consequently direct the third respondent to release the documents registered as document Nos.6020 & 6021 of 2016 with necessary notation.

For Petitioner : Mr.K.Rajasekaran

For Respondents : Mr.Richardson Wilson,
Government Advocate

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in Na.Ka.No.016355/E1/2016 dated 26.11.2016 issued by the second respondent and quash the same and consequently direct the third respondent to release the documents registered as document Nos.6020 & 6021 of 2016 with necessary notation.

2. The brief facts of the case is that the petitioner Bank is a Scheduled Bank and is entitled to carry out all businesses which a Banking Company may engage in as referred to in Section 6 sub-clause (1) of the Banking Regulation Act, 1949 and holds a valid licence duly issued by the Reserve Bank of India. In view of the default committed by the borrower, the petitioner had filed an application in OA.No.710 of 2000 re-numbered as OA.No.1843 of 2001 before the Debt Recovery Tribunal, Chennai and the same was allowed and directed for issuance of recovery certificate for a sum of Rs.1,09,19,871.71/-. Thereafter as per the provision, the property was brought for auction. The petitioner has purchased the same from Debt Recovery Officer through E-auction conducted by the Debt Recovery Officer on 16.03.2016. The petitioner was declared successful bidder and auction was confirmed by the Debt Recovery Officer. In pursuant to the auction sale, the petitioner was issued sale certificate No.9 of 2016 dated 21.04.2016. The petitioner had presented the original sale certificate before the third respondent for registration. The petitioner had paid stamp duty based on the sale consideration mentioned in the sale certificate. However, the third respondent after inspecting the properties, clarified that the petitioner Bank has to pay stamp duty based on the guideline value. The third respondent also said that after collection of deficit stamp duty, the registered document would be released to the petitioner.

3. The learned counsel for the petitioner would submit that the petitioner is liable to pay stamp duty only on the sale value of the sale certificate dated 21.04.2016 and not on the guideline value of the property. The auction conducted by the Recovery Officer of the Debt Recovery Tribunal pursuant to Section 29 of the Debt Recovery Act, which provides for procedures as contemplated in schedule II and III of the Income Tax Act, 1961 and its procedures in the matter of attachment and sale of immovable properties. It shows that under Order XXI Rule 92 of CPC, the sale become absolute at the moment of sale is confirmed by the Court. Similarly, the sale made by the Recovery Officer under the Income Tax Act becomes absolute when the sale is confirmed under the clause 63 of schedule II of the Income Tax Act. Therefore, there is no difference between the court

sale and Debt Recovery Tribunal sale. The sale certificate is only a document evidencing the conveyance which had already taken place issued under Order XXI Rule 94 of CPC by civil court. Therefore, Section 47(A) of the Stamp Act has no application in the case on hand. When the petitioner approached the third respondent to release the document, the impugned order in this writ petition dated 26.11.2016 was served, thereby the second respondent directed the third respondent that as per circular issued by the first respondent dated 27.01.2014, the value for the property comprised in survey No.736/P situated at Sholinganallur Village to be fixed at Rs.3,000/- per sq.ft. Accordingly, the third respondent refused to release the document which was presented for registration and insisted to pay deficit stamp duty without initiation of proceedings under Section 47 (A) of the said Act. He further submitted that the sale certificate issued by the Recovery Officer of the Debt Recovery Tribunal does not attract the provision under Section 47(A) of the Indian Stamp Act. In support of his contention, he relied upon the judgment in the case of Dr.Meera Thinakaran Vs. The State of Tamilnadu rep. by Secretary reported in (2012) 2 CTC 759, wherein this Court held that the question of Recovery Officer appointed under the Recovery of Debts due to Banks and Financial Institutions Act cannot be construed as a Revenue Officer as contemplated under Article 18 of the Indian Stamps Act needs to be considered and the Recovery Officer under Recovery of Debts due to Banks and Financial Institutions Act will fall within the meaning of a Revenue Officer as enumerated under Article 18 of the Indian Stamp Act. Thus, the sale certificate issued by him squarely fall within the said provision.

4. He also relied upon the judgment of this Court in the case of Dr.R.Thiagarajan Vs. Inspector General of Registration and Others reported in (2019) 4 CTC 839, wherein the Hon'ble Full Bench of this Court held that on a perusal of Article 18 of the Indian Stamp Act, it could be seen that in the case of the sale made by and public auction by a Civil or Revenue Court or Collector or other Revenue Officer, the stamp duty would be payable on the consideration of the auction raised and not on the market value of the property. If the sale is not made by a Civil or Revenue Court or Collector or other Revenue Officer, the purchaser is liable to pay the stamp duty on the market value of the property as per Article 23 of the Stamp Act.

5. Admittedly, the petitioner had purchased the subject property in the auction. Accordingly, the petitioner was issued sale certificate No.10 of 2016 dated 21.04.2016. The said sale certificate was presented for registration and the petitioner had paid stamp duty based on the sale consideration mentioned in the sale certificate. Therefore, the impugned instruction given by the second respondent insofar as fixing market value of the

property comprised in S.No.736/P at Rs.3,000/- per sq.ft. is not applicable to this case document which was presented for registration i.e. the sale certificate issued by the Recovery Officer.

6. In view of the above, the impugned order dated 26.11.2016 is set aside insofar as the sale certificate presented by the petitioner for registration with regards to part and parcel of 4 plots admeasuring 4992 sq.ft. each and the property admeasuring 89 cents comprised in survey No.736 Part situated at Sholinganallur Village, Saidapet Taluk, Chengalpet District, and this writ petition is allowed. Therefore, the third respondent is directed to, without insisting any insufficient stamp duty from the petitioner, release the document of sale certificate registered vide document Nos.6020 of 2016 and 6021 of 2016 forthwith to the petitioner. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector General of Registration,
Santhome High Road,
Chennai 600 028

2.The District Registrar,
O/o. The District Registrar,
South Madras,
Chennai-15

3.The Sub Registrar,
Sub Registrar Office Neelankarai,
1/17, 1st Floor, Kajera Garden 2nd Street,
East Coast Road,
Neelankarai,
Chennai 600 115

+1CC to Mr.M.R.Gokul Krishnan, Advocate, Sr.No.55756
+1CC to the Government Pleader, Sr.No.56698

WP.No.5226 of 2017

PMK(CO)
SB(17/11/2021)