IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.NO.14292 OF 2020

S.Jayasunder

...Petitioner

Vs

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

2. The District Registrar (Administration),
   Chennai North,
   Chennai-1.

...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to consider and pass orders on petitioner's appeal dated 10.12.2016 preferred by the petitioner against the order dated 10.11.2016 in Ref.Lr.No.121/2016 passed by the Sub Registrar (in the cadre of District Registrar) Sowcarpet, Chennai within stipulated time.

For Petitioner	:	Mr.N.Nagu Sah
For Respondents	:	Mr.Yogesh Kannadasan, Special Government Pleader

ORDER

This writ petition is filed for direction directing the second respondent to consider and pass orders on petitioner's appeal dated 10.12.2016 preferred by the petitioner against the order dated 10.11.2016 in Ref.Lr.No.121/2016 passed by the Sub Registrar (in the cadre of District Registrar) Sowcarpet, Chennai within stipulated time.

2. Heard, Mr.N.Nagu Sah, the learned counsel for the petitioner, and Mr.Yogesh Kannadasan, Special Government Pleader appearing for the respondents.

3. The case of the petitioner is that the petitioner purchased the property situated at Door Nos.22 and 23, Old door Nos.24 and 24-A, Nainiappa Naicken Street, Park Town, Chennai-3 comprised in resurvey No.10196, old survey No.758 admeasuring 1199 sq.ft. in a public auction sale held on 01.02.2012 for the valid sale consideration in pursuant to the order dated 21.11.2011 passed in OA.No.154 of 2009 on the file of the Debt Recovery Tribunal-II, Chennai. The said sale was confirmed on 27.02.2012 in favour of the petitioner and he was issued sale certificate dated 27.02.2012. It was forwarded to the Sub Registrar, Sowcarpet, Chennai to make necessary entries in Book-I register maintained by the registering authority as contemplated under Section 89(4) of the Registration Act. However, it was refused to record the same and orally demanded payment of stamp duty. Therefore, the petitioner approached this Court in WP.No.1681 of 2013 and this Court by order dated 23.09.2016 directed the registering authority to pass orders within a period of four weeks on his representation. However, the registering authority i.e. the Sub Registrar, Sowcarpet, Chennai by his communication dated 04.10.2016 called upon the petitioner to remit stamp duty at Rs.9,21,000/- for registration. Accordingly, the petitioner submitted his objections and without considering the objections, the registering authority passed order on 10.11.2016 calling upon the petitioner to pay stamp duty at Rs.9,21,000/-. Aggrieved by the same, the petitioner filed appeal before the second respondent and it is pending without even issuance of any notice.

4. Mr.Yogesh Kannadasan, Special Government Pleader appearing for the respondents relied upon the judgment of the Hon'ble First Bench of this Court in the case of Dr.R.Thiagarajan Vs. The Inspector General of Registration and others in WP.(MD).No.3989 of 2017 dated 05.08.2019, wherein it is held that the sale certificate issued by the authorised officer requires registration as well as stamp duty under Article 18-C r/w Article 23 of Schedule 1 of the Indian Stamp Act. He further submitted that in the event of undervaluation of the property, which is the subject matter of the sale certificate, the registering officer is entitled to proceed in accordance with law under Section 47 of the Indian Stamp Act. Therefore, the petitioner is liable to pay the stamp duty even for registration of sale certificate issued by the authorised officer.

5. Whereas, the learned counsel for the petitioner submitted that 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 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."
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> 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:
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>> "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.
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>> 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."

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 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 that,

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 authority concerned not for the purpose of registration but only for purpose of filing it by the said authority in his office as contemplated under Section 89(4) of the Registration Act, 1908. Therefore, the authority concerned 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, on petitioner's appeal dated 10.12.2016, the second respondent is directed to pass orders to make necessary entries in respect of sale certificate dated 27.02.2012 in Book-I register maintained by the registering authority 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. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

2. The District Registrar (Administration),
Chennai North,
Chennai-1.

+1cc to M/s.N.Nagu Sah, Advocate, S.R.No.7176

+1cc to the Government Pleader, S.R.No.7724

WP.No.14292 of 2020

PMK(CO)
RLP(09/03/2022)