IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16145 OF 2023

Hella Infra Market Pvt. Ltd. … Petitioner

Versus

1. State of Maharashtra, through Principal Secretary, Revenue & Forest Department.
2. Joint District Registrar Class-I and Collector of Stamps, Palghar.
3. Sub-Registrar of Assurances, Wada
4. State Bank of India, Stressed Assets Management Branch-I, Mumbai.
5. Deputy Commissioner of State Tax (E002)
6. Shree Vaishnav Alloys Pvt. Ltd. …Respondents

Mr. Sanjiv Sawant, Mr. Abhishek Matkar a/w. Mr. Malhar Bageshwar for the petitioner.
Mrs. S.D. Vyas, Addl. G.P. a/w. Mr. Sachin H. Kankal, AGP for the State.
Mr. Suhas S. Deokar i/b. SSP Legal for respondent no. 4.
Mr. H.S. Kode for respondent no. 6.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DATED: 14 February, 2024

Oral Judgment : (Per G.S. Kulkarni, J.)

1. Rule. Returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India is filed praying for the following substantive relief:

> "(a) This Hon'ble Court be pleased to pass an order thereby directing the respondent no. 3, viz. the Sub-Registrar of Assurances, Wada, Dist.

> Palghar to forthwith register the Deed of Confirmation dated 29 November, 2023 executed between State Bank of India Stressed Assets Management Branch, Mumbai and the petitioner herein in respect of the property being Factory Land and Building at Gat No. 8 and 78 situated at Village Kharivali, Tal. Wada,Dist. Palghar admeasuring 46,320 sq. mtrs., as the petitioner has been issued a Sale Certificate under SARFAESI Act dated 23 December, 2022 and the registration thereof is required under Section 17 of the Registration Act, 1908."

3. The petitioner had submitted its bid in an E-Auction conducted by the State Bank of India (for short "**SBI")** as held under the public notice dated 27 November, 2022 under the SARFAESI Act. The petitioner was the highest bidder and accordingly, the petitioner was sold the property in question, namely, lands bearing Gat No. 8 and Gat No. 78 along with building thereon situated at Village Kharivali Tarfe Paulbar, Tal. Wada, Dist. Palghar totally admeasuring about 46,320 sq. mtrs. On 23 December, 2022, a Sale Certificate was issued in the name of the petitioner under rule 9(6) of the Security Interest (Enforcement) Rules, 2002, on payment of Rs.2,88,00,000/- being the entire sale price of the said property under the auction. It is stated that the petitioner was also put in possession of the said property.

4. On 24 February, 2023 the petitioner received a letter from respondent no. 2 informing that the Sub-Registrar of Assurances, Wada, District Thane, by his letter dated 16 February, 2023 had forwarded the sale certificate to the office of respondent no. 2-Joint District Registrar and Collector of Stamps, to ascertain the stamp duty payable thereon. The petitioner had undertaken appropriate compliances for adjudication of the stamp duty.

5. On 5 October, 2023, respondent no. 2 passed a speaking order cum demand notice directing the petitioner to make payment of Rs.55,83,800/- towards stamp duty and Rs.2,23,400/- and penalty on account of delay in payment of stamp duty. On 31 October, 2023, such amount as adjudicated along with penalty was deposited by the petitioner.

6. Thereafter, on 29 November, 2023, the petitioner approached respondent no. 3 for registration of the Sale Certificate dated 22 December, 2022 and Deed of Confirmation in respect of the said Sale Certificate. It is on such occasion for the first time, the petitioner was informed that the registration cannot proceed under the online system, as there was a charge of the Sales Tax Department over the said property. It was also informed to the petitioner that the Sales Tax Department had registered a mutation entry of its charge in the records of the Sub-Registrar in the year 2023.

7. Being confronted with such situation for such confirmation, when the petitioner resorted to a search of the revenue records and upon examining the 7/12 extract of the property, it was revealed to the petitioner that there was mutation entry no. 751 in the Other Rights Column, which mentioned that there was a charge of the Deputy Commissioner of State Tax E002 GST Office, Palghar of one Vaishnav Alloys Pvt. Ltd., the original owners for a sum of Rs.6,48,12,732/-. It is for such reason, the registration of the Sale Certificate was denied to the petitioner. In the above circumstances, the petitioner has approached this Court praying for the reliefs as noted by us hereinabove.

8. Learned counsel for the petitioner would submit that during the pendency of the petitioner, there were certain developments inasmuch as the dues of the Sales Tax Department are stated to have been cleared by respondent no. 6, who is represented by Mr. Kode, being the original owners of the property. In consequence thereto, the mutation entry no. 751 itself stands deleted, which indicated the charge of the Sales Tax Department. As the mutation entry in regard to the charge of the Sales Tax Department has now been deleted, it is urged on behalf of the petitioner that there is no impediment/hurdle for the Sub-Registrar of Assurances to register the Sale Certificate in question.

9. As the only embargo which was informed to the petitioner on 29 November, 2023 has now been removed and it no more exists, Ms. Vyas, learned Addl. G.P. and Mr. Kankal, learned AGP on behalf of respondent no. 1 to 3 in not disputing such position, have fairly stated that there would not be any embargo for registration of the Sale Certificate and the Deed of Confirmation.

10. Mr. Kode, learned counsel for respondent no. 6, however, would oppose the prayers as made by the petitioner. He would submit that as the amounts are paid by his client so as to satisfy the sales tax dues, the petitioner ought not to be granted the benefit of such payment so as to enable him to get the said Sales Certificate being registered. Mr. Kode, however, has fairly stated that the Sales Certificate has not been set aside or stayed in any proceedings. He would also submit that his client has already moved DRT in appropriate proceedings to challenge the Sales Certificate, as according to him, it is the case of his client that the property has been sold at a disproportionally lower price as compared to the market value of the property.

11. Having heard the learned counsel for the parties and having perused the record, in our opinion, the contentions as urged on behalf of respondent no. 6 cannot fall for adjudication in the present Writ Petition, as the challenge of respondent no. 6 to the Sales Certificate or any steps taken by State Bank of India to sell the secured assets, is subject matter of consideration in the proceedings pending before the DRT. In any event, today there is no stay to give effect to the Sales Certificate also the Sales Certificate today is valid and subsisting. If that be so, then certainly, the benefit of Sales Certificate needs to enure to the petitioner by availing its registration. Also as now the sales tax due have also been paid, the only impediment which was informed to the petitioner in not registering the Sales Certificate stands removed.

12. In light of the above discussion, the petition needs to succeed insofar the only prayer as pressed in the present petition is concerned. It is accordingly allowed in terms of prayer clause (a). Necessary steps in that regard be taken within a period of two weeks from today.

13. Insofar the contentions of learned counsel for respondent no. 6 are concerned, they are kept open to be asserted in the appropriate proceedings including the pending proceedings. All contentions in that regard of the petitioner and other respondents are also expressly kept open.

14. Needless to observe that DRT would consider the case of the parties before it, on its own merits, and shall decide the proceedings independently without being influenced by any observations as made in this order, for the reason that, as to what has been adjudicated in the present proceedings is only an issue in regard to the registration of the documents.

15. Disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**