IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P. No. 32755 of 2024
and W.M.P. Nos.35594, 35596 and 35599 of 2024

Chettinad Academy of Research and Education,
Represented by its Authorized Signatory,
Mr.Sivaramakrishnan Hariharan,
No.603, 5th Floor, Chettinad Towers,
Anna Salai, Chennai 600 006 … Petitioner

V.s

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

2. The District Registrar Office,
JCK Nagar, Paranur,
Chengalpattu,
Chengalpattu District 603 002.

3. The Sub Registrar,
Sub Registrar Office,
No.8/45, Kammala Street,
Thirukazhukundram.
Chengalpattu District 603 109.

4. The Indian Bank,
Stressed Assets Management Branch,
No.5, Ethiraj Salai,
Wellington Estate, 2nd Floor,
Chennai 600 008 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus to call for records of the impugned communication issued by the 3rd respondent dated 16.09.2024 to the petitioner, quash the same as illegal in the eyes of law and consequently direct the respondents 1 to 3 to enter the petitioner's sale certificate dated 3.8.2004 issued by the 4th respondent in Book No.1u/s 89(4) of the Registration Act 1908 and thereby not to insist upon the levy of stamp duty and registration charges while making the entries in Book I of the Sale Certificate dated 3.8.2024 issued by the 4th respondent.

For Petitioner	:	Mr.Sricharan Rangarajan, Senior counsel for Mr.Vaibhav R.Venkatesh
For Respondents 1 to 3	:	Mr.P.S.Raman, Advocate General assisted by Mr.B.Vijay, Additional Government Pleader

ORDER

The ingenuity and adeptness with which the State is able to devise methods to overcome orders passed by Courts, which also includes orders of the highest Court of this country, is reflected in the Government Order which has given rise to the present writ petition.

2. It is the case of the petitioner that they were the successful bidder in an e-auction held pursuant to the sale notice issued by the Authorized Officer of the 4th respondent Bank dated 09.07.2024. Consequent to the said notice, the Authorized Officer, upon receipt of the entire sale consideration, had issued a sale certificate in favour of the petitioner on 03.08.2024. The sale included both movable as well as immovable properties. The petitioner has however restricted this writ petition to the entry of sale certificate in respect of the immoveable property as prescribed under Section 89(4) of the Registration Act, 1908 (hereinafter referred to as "the Act"). By the impugned

communication, the 3rd respondent informed the petitioner that he had sought a clarification from the 1st respondent as to whether the Sale Certificate can be registered without receiving any stamp duty or whether the stamp duty of 7% and registration fees of 4% should be collected for registering the same. The 3rd respondent informed the petitioner that, till such time as the clarification is received from the 1st respondent, he could not proceed with the registration.

3. The issue as to whether a sale certificate attracts stamp duty and registration fee has been the subject matter of many writ proceedings and the issue discussed several times by this Court as well as the Apex Court. Despite such judicial pronouncements, the State, with a view to overcoming these decisions, have been issuing its own circulars and orders. The latest in this series is G.O.(Ms).No.28 Commercial Taxes and Registration[J2] Department dated 23.03.2023 whereunder by exercising the power under Section 78 of the Registration Act and on the recommendation of the 1st respondent

herein, the State has introduced an amendment in the Table of Fees, wherein after Article 4, the following Article has been inserted:-

"4A

Filing a Sale Certificate under sub-section (2) or sub-section (4) of Section 89 of the Act	*Rupees eleven for every rupees hundred or part thereof on the market value of the property."*

It is on account of this amendment that the 3rd respondent had informed that the registration cannot be proceeded with.

4. Before proceeding to discuss the issue on hand it would be useful if we analyse the arrangement of the various provisions of the Registration Act which deals with presentment/filing and registration of document. The presentment / filing of the Sale Certificate issued by a Civil Court or a Revenue Officer to the purchaser of immovable property, sold in a public auction is covered by the provisions of Section 89 of the Act which comes under the heading "Miscellaneous"

in Part XV, whereas the Registration of the documents is covered under Part III from Sections 17 to 22 under the heading "Registrable Documents" Part IV, relating to the "Time of Presentation" covered under Sections 23 to 31, while Part VI deals with Presenting Documents For Registration, which is covered under Sections 32 to 35 and Part X is about the effects of registration and non-registration, covering Sections 47 to 50. Part XI deals with the Duties and Powers of Registering Officers and Sections 51 to 70 fall under this part. Section 52 deals with the Duties of registering officers when a document is presented for registration. Therefore, from the very nature in which the various provisions have been arranged in this Act, it is clearly evident that the legislature intended to separate regular registrations from that of sale certificates issued by the Civil Court and Revenue Officers. The procedure is described as "filing of the copies."

5. The issue as to whether an Authorized Officer constituted under the SARFAESI Act would partake the character of a Revenue

Officer as contemplated under Section 89(4) fell for consideration before a Full Bench of this Court in the judgment ***Dr.R.Thiagarajan Vs Inspector General of Registration*** reported in ***(2019) 6 Mad LJ 257.*** The Full Bench answered the reference by stating that the sale certificate issued by an Authorized Officer of the bank cannot be equated with the sale certificate issued by the Revenue Officer within the meaning of Section 17(2)(xii) of the Act. However, this judgment of the Full Bench stands impliedly overruled in view of the judgment of the Hon'ble Supreme Court reported in ***(1990) 3 SCC 605 [Shanti Devi L. Singh Vs Tax Recovery Officer and Others]*** wherein the Hon'ble Supreme Court had observed that the expression "Revenue Officer" cannot be given a restricted meaning. A single Judge of this Court, in the judgment reported in ***2022 SCC online Mad 8784 [Bell Tower Enterprises LLP, Rep. by its Managing Partner, P.Anand Vs State of Tamil Nadu, Rep by its Secretary to Government and Others],*** had held that the sale certificate issued by the Authorized Officer of the Bank under the SARFAESI Act would fall within the purview of Section 17(2)(xii) of the Act. The learned Judge was of the view that the Full Bench and the other judgments taking a contrary stand would pale into insignificance in view of the later judgment of the Hon'ble Supreme Court reported in ***(2021) 11 SCC 537*, *[Esjaypee Impex Pvt. Ltd. v. Assistant General Manager and Authorized Officer, Canara Bank].***

6. Another learned single judge of this Court in the case of ***M/s.Indian Chillies Products Company Private Limited Vs State of Tamil Nadu and another in W.P(MD) No.12550 of 2024 dated 23.07.2024*** had further gone on to state that the authorized Officer is a creation of the statute and exercises the jurisdiction originally possessed by the civil courts. Rule 2(a) of The Security Interest (Enforcement) Rules, 2002 defines an "authorized officer" as follows:-

> *"authorized officer" means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors of Board of Trustees of*

the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the [Act]"

The scheme of bringing the property for sale under SARFAESI Act is very akin to the procedure contemplated under the Code of Civil Procedure and the authorized Officer discharges the same function as a Civil Court. Therefore, considering the fact that the Authorized Officer is a statutory authority, he would also fall within the definition of a Revenue Officer as contemplated under Section 89(4) of the Act.

7. Once the issue of the Authorised officer being treated as a Revenue officer for the purposes of Section 89 is decided, the next point to be considered is when the sale certificate is forwarded by the Authorized Officer of a Bank to the Registering Authority as contemplated under Section 89(4) of the Registration Act, is it

incumbent upon the Registering Authority to register the same.

8. In the Judgement reported in ***2022 SCC Online SC 2079 [Inspector General of Registration and another Vs. G Madhurambal and another]***, the Hon'ble Supreme Court has held that once a valid certificate is issued to the auction purchaser and copies are forwarded to the registering authorities, the same shall be filed in Book No.1 as per Section 89 of the Act. The learned Judges further held that it has the same effect as registration and obviates the requirement of any further action. This judgment of the Hon'ble Supreme Court has been relied upon in another judgment of the Hon'ble Supreme Court reported in ***2023 SCC Online 1706 [Haldiram Incorporation Pvt.Ltd Vs. Amrit Hatcheries Pvt. Ltd and Others].*** The court was considering the validity of the auction sale and the sale certificate issued under the provisions of the SARFAESI Act as the NCLT found the issue of sale certificate and handing over of the property to be illegal and went on to hold that the subject property

continued to be assets of the corporate debtor. The learned Judge relied upon the judgments in ***Esjaypee Impex Limited and G.Madhurambal*** cited supra and observed that the sale certificate entered in Book-I, in terms of Section 89(4) did not suffer from any defect or default. Various other High Courts have also followed the dicta laid down in the said judgment.

9. In the judgment of a Division Bench of the ***Andhra Pradesh High Court reported in 2024 SCC Online AP 777 [Pavan Chandra Chit Fund Pvt. Ltd Rep by Managing Director, P.Chandra Sekhara Rao Vs.Union of India [Finance Department], Department of Economic Affairs, Represented by its Secretary and Others,*** the Bench was dealing with a Writ Petition seeking a direction to the Bank to forward copies of the sale certificate issued in favour of the petitioner to the registration authorities for filing the same under Section 89 of the Act. The Bench had allowed the writ petition directing the Bank to forward the sale certificate for registration.

10. Similarly, the Delhi High Court in the case reported in ***2024 SCC Online Del 132 [Aruna Kasera Vs Govt.NCT of Delhi and Others]*** observed that, in the light of the ***Esjaypee Impex Private Limited and Madhurambal***'s cases cited supra, the sale certificate issued under the SARFAESI Act has to be filed by the Registrar.

11. A similar view has been taken by the Himachal Pradesh High Court in the case reported in ***2024 SCC Online HP 2652 [Pawan Kumar Vs. State of Himachal Pradesh and Others]*** where the learned Judge allowed the writ petition seeking registration of a sale certificate. The Kerala High Court in the judgment reported in ***2021 SCC Online Ker 4160 [K.V.Krishnan Vs. State of Kerala, Represented by Secretary, Registration Department and Others]*** also directed the Sub Registrar to enter the details of the sale certificate in Book No.1. ***Esjaypee Impex Private Limited and Madhurambal***'s

cases have also been followed by this Court in the case reported in ***2022 SCC Online Mad 8785 [L.Sangeetha Vs. Sub Registrar, Pollachi and another],*** where the learned Judge has directed the Authorities to refund the excess fee and stamp duty collected.

12. In an earlier judgment of the Allahabad High Court reported in ***(1883) ILR 5All568 [Adit Ram Vs Masarat-un-Nissa],*** the Full Bench was called upon to answer a reference as to whether a certificate of sale granted under Section 316 of the Code of Civil Procedure, 1882 (corresponding to Section 65 of the present code) requires registration as provided under Section 17 of the Registration Act. The Bench opined that the term " **Registration**" as it is used in Act III of 1877 does not apply to the procedure provided for sale certificates though the procedure partakes the character and purpose of registration. The Bench further held that the documents, the registration of which is compulsory under Section 17 of the Registration Act, are instruments to be brought into existence by the act of private parties themselves, the

publication and preservation of which can only be secured by means of their registration, whereas a sale certificate is not such an instrument inter se parties but an act of the Court granting it. The Hon'ble Chief Justice, who was one of the members of the Full Bench, had observed in paragraph Nos. 3 and 7 as follows:

> *"3. It thus appears that sale-certificates are by the Registration Act subjected to a procedure which is tantamount to, if it was not intended as a substitute for, registration, that is, such registration as is referred to by section 17 of the Registration Act, and that such procedure is compulsory and not discretionary, but it is quite a different question whether sale-certificates have any place among the documents and instruments, the registration of which is compulsory under that section. I am quite clear that they are not among such documents and instruments."*

The other learned Judges, while concurring with the answer recorded by the Hon'ble Chief Justice, answered the reference as follows:

"7. Having given the matter our best consideration, we have come to the conclusion that under the present law a sale-certificate is not an Instrument of the kind mentioned in cl.(b) of s. 17 of Act III of 1877, and is not compulsorily registerable. It is true it is not in terms exempted like a certificate under the Land Improvement Act 1871, which would have been the simplest thing to do; but looking to the language of s. 89, paragraph 2, and the mention made thereof in ss. 32, 34 and 51, we think that such registration, as is required by law, is to be effected by the Court granting it. Seeing that all the authentication of, and publicity to, a document relating to the transfer or mortgage of immoveable property, aimed at by the Registration Act, is secured through the medium of the Civil Court, it is difficult to understand the object of, or necessity for, registration of the same instrument a second time. Of course an auction-purchaser, who desires to make himself secure from the operation of s. 50 of the Registration Act, and to guard against the Court's neglecting its duty, may register his sale-certificate and so protect himself from being superseded by subsequent registered documents in respect of the same property. Our answer to the

> *reference must therefore he that indicated in the preceding observations, namely, that a sale-certificate granted under s. 316 of the Civil Procedure Code is not compulsorily registerable."*

Therefore, from the above discussions, it is clear that the certificate issued under Section 89(4) is a mere record being entered in the register maintained by the Registering authority. Further, the Civil Court and the Revenue Officer are bound to forward the Sale Certificates to the Registering authorities under Section 89(4) of the Act and the same is liable to be registered by the registering authority.

13. It appears that in order to overcome the judgment of the Hon'ble Supreme Court, which observed that no registering Officer can refuse to register a sale certificate issued by a Civil Court or a Revenue Officer, the State has come up with the present amendment. The amendment is purported to have been issued under the provisions of Section 78 of the Registration Act. Section 78 of the Registration Act gives power to the States for fixing the table of fees for the following:

"78. Fees to be fixed by State Government.

(a) for the registration of documents;
(b) for searching the registers;
(c) for making or granting copies of reasons, entries or documents, before on or after registration;
and of extra or additional fees payable—
(d) for every registration under section 30;
(e) for the issue of commissions;
(f) for filing translations;
(g) for attending at private residences;
(h) for the safe custody and return of document; and
(i) for such other matters as appear to the Government necessary to effect the purposes of this Act.

14. An argument has been advanced by the learned Advocate General that the present amendment falls within Section 78(i). As discussed earlier, the Scheme of the Act is different for registering documents *inter se* private parties and sale certificate issued by Civil Courts and Revenue Officers. The Registration Act under Section 89(4)

does not contemplate the same procedure as in the case of Registration of documents. It only contemplates that the copy of the certificate is to be forwarded to the Registering authorities, who upon receipt of the same, has to make an entry in Book I. Further, under Section 17(2)(xii) of the Registration Act, a Certificate of sale granted to the purchaser of any property sold in public auction is not compulsorily registrable. Therefore a distinction is drawn between a regular sale deed and a sale certificate issued pursuant to a public auction.

15. Therefore, while introducing the amendment and exercising the powers under section 78(i) of the Act, it is clear that when fixing the 'fee for other matters' such a fixation should be intended to give effect to the purpose of the Act. The Rule making power is a delegated legislation and therefore it cannot travel beyond the scope of the parent legislation. In the judgment of the Hon'ble Supreme Court reported as ***Global Energy Ltd and Another Vs. Central Electricity Regulatory***

Commission in (2009) 15 SCC 570, the Hon'ble Supreme Court had observed as follows in paragraph 25:

> ***"25.*** *It is now a well-settled principle of law that the rule-making power "for carrying out the purpose of the Act" is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act.*

16. Section 89(4), as already stated, only contemplates forwarding of a copy of the certificate of sale by the Civil Court or Revenue Officer to the Registering authority and on receipt of the

same, the Registering authority should enter the same in Book No.I. The procedures starting from the receipt of the document till its registration, as provided in Part III of the Act starting from Section 17 is not contemplated in respect of a sale certificate being forwarded to the registering authority under Section 89(4). Therefore, the question of whether the Government has the right to fix a fee for simply filing a document is a matter which requires the consideration of the Bench before which the matter is now pending.

17. Another fact which has to be noted is that for registration of certificate of sale consequent to impugned G.O.(Ms).No.28 Commercial Taxes and Registration[J2] Department dated 23.03.2023, the stamp duty and registration fee stands at 11% whereas for registering the Sale Deed under Section 17, the stamp duty in Chennai is 7% and 4% in the case of rural areas whereas the registration charges is 1%.

18. The Judgment in the case of Indian Chillies Products Limited has been confirmed by the Hon'ble Division Bench in its judgment in ***W.A(Md) No.1604 of 2024 dated 24.09.2024 [State of Tamil Nadu, rep by Secretary to Government and Another Vs M/s.Indian Chillies Products Company].*** The learned Advocate General had referred to the judgment of another Division Bench of this Court in **W.A.No.3066 of 2024 dated 21.10.2024** wherein the orders of the learned Single Judge directing the Registration had been stayed. He would submit that in the light of these orders, this Court cannot proceed with the hearing of the above writ petition.

19. However, considering the fact that the other Division Benches as in the case of

(i)W.A.(MD) No.1503 of 2022 dated 20.12.2022 [The Sub Registrar, Mahrnonbuchavadi Registrar Office, Thanjavur District Vs- T.Praveena and another

(ii) W.A.No.940 of 2024 [The Inspector General of Registration and another Vs. Kovai Medical Center and Hospital Limited and another]

(iii) M/s.Indian Chillies Products Company Private Limited Vs State of Tamil Nadu and another in W.P(MD) No.12550 of 2024 dated 23.07.2024,

have consistently held that sale certificate has to be registered without insisting on stamp duty, this Court is not inclined to accept the arguments of the learned Advocate General. Following the above referred judgments, the Writ Petition is allowed and the respondents are directed to register the Sale Deed without insisting upon the stamp duty within a period of 2 weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.11.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,

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

2. The District Registrar Office,
   JCK Nagar, Paranur,
   Chengalpattu,
   Chengalpattu District 603 002.

3. The Sub Registrar,
   Sub Registrar Office,
   No.8/45, Kammala Street,
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