THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.No.3412 of 2023

Dr.M.N.Sadasivam ... Appellant

Vs.

1.The Inspector General of Registration,
100, Santhome High Road,
Mylapore, Chennai – 600 004.

2.The Sub-Registrar,
Anna Nagar,
Chennai – 600 040.

3.Asset Reconstruction Company (India) Limited,
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai – 400 028.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 08.09.2023 made in W.P.No.25363 of 2023 and allow this writ appeal.

For Appellant	:	Mr.A.S.Balaji
For Respondents 1 & 2	:	Mr.Ramanlal, Additional Advocate General Assisted by Mr.L.S.M.Hasan Fizal, Additional Government Pleader
For 3rd respondent	:	Mr.Abitha Banu

****

J U D G M E N T

*(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)*

The petitioner is aggrieved by the dismissal of his writ petition in W.P.No.25363 of 2023 seeking a Writ of Mandamus directing the 2nd respondent to file the sale certificate under Section 89(4) of the Registration Act.

2. The petitioner claimed that he had taken part in the public auction (e-auction) of the properties that was held pursuant to the public notice dated 27.12.2022. He being the successful bidder, the authorized officer issued sale certificate in his favour on 20.02.2023. The sale certificate reveals that there are other encumbrances and the sale itself is subject to those encumbrances. Upon presentation of the said sale certificate, the Registering Officer did not register the same, hence, the petitioner sought for a Mandamus as above.

3. The learned Single Judge dismissed the writ petition on a conclusion that the Registrar has power to refuse to file the sale certificate, since there was violation of Section 22-B of the Registration Act. The learned Judge also referred to Rule 9(6) and 9(10) of the Security Interest (Enforcement) Rules, 2002 framed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. We have heard Mr.A.S.Balaji, learned counsel appearing for the appellant and Mr.Ramanlal, learned Additional Advocate General appearing for the respondents.

5. Mr.A.S.Balaji, learned counsel appearing for the appellant would vehemently contend that the learned Judge mistook the scope of Section 89(4) of the Registration Act and construed it as a registration. Therefore, he invoked Section 22-B of the Registration Act and held that the Registrar has power to refuse to file the instrument under Section 89(4) of the Registration Act. According to him, the reference made by the writ Court to the provisions of Rule 9(6) and 9(10) of the Security Interest (Enforcement) Rules, 2002 is also beyond the scope of the very writ petition.

6. Contending contra Mr.Ramanlal, learned Additional Advocate General would submit that Section 22-B of the Registration Act could be invoked in a case of filing under Section 89(4) of the Registration Act also. He would also further submit that sub-Rule (10) of Rule 9 of the Security Interest (Enforcement) Rules, 2002, which reads as follows:-

> *(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.*

mandates the Registrar to specifically mention regarding the encumbrances and in the absence of any mentioning, the Registrar will be justified in refusing to file the sale certificate under Section 89(4) of the Registration Act.

7. We have considered the rival submissions.

8. Section 89(4) of the Registration Act imposes an obligation on the Registrar to file a sale certificate when it is sent to him by the Authorized Officer or the Revenue Officer or produced before him. It has been the consistent view of this Court as well as the Hon'ble Supreme Court that such sale certificate does not amount to conveyance and it is not a compulsorily registrable instrument under the Registration Act. Recently in ***Inspector General of Registration and another Vs. G.Madhurambal and another*** reported in ***2022 SCC OnLine SC 2079,*** the Hon'ble Supreme Court has held as follows:-

> ***1.*** *Learned counsel for the petitioner(s) has made a valiant endeavour to persuade us to interfere with the impugned judgment(s) but not successfully. It is logically*

*so as this issue has been repeatedly settled and if one may say, a consistent view followed for the last 150 years. We may refer to the judgments by the Madras High Court in the Board of Revenue No. 2 of 1875 (In Re : Case Referred) dated 19.10.1875 opining that a certificate of sale cannot be regarded as a conveyance subject to stamp duty, by the Allahabad High Court in **Adit Ram v. Masarat-un-Nissa** reported in **1883 SCC OnLine All 116** opining that a sale certificate is not an instrument of the kind mentioned in clause (b) of Section 17 of Act III of 1877 and is not compulsorily registrable and this Court's view in **Esjaypee Impex Pvt. Ltd. v. Asst. General Manager and Authorised Officer, Canara Bank** reported in **(2021) 11 SCC 537** opining 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 Authorised Officer of the Bank under the SARFAESI Act to hand over the duly validated Sale Certificate to the Auction Purchase with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the Registration Act and order of this Court in M.A. No. 19262/2021 in SLP(C) No. 29752/2019 dated 29.10.2021 opining that once a direction is issued 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, it has the same effect as registration and obviates the requirement of any further action.*

2. *It is time that the authorities stop filing unnecessary special leave petitions only with the objective of attaining some kind of a final dismissal from this Court every time. Costs this time has been spared but will not be spared the next time.*

3. *The needful be done in terms of the impugned judgment(s) within 15 days from today.*

4. *The special leave petitions are dismissed.*

5. *Pending applications stand disposed of.*

9. We must point out that the special leave petition in ***Inspector General of Registration and another Vs. G.Madhurambal and another*** *(supra)* was filed against the dictum of the Division Bench of this Court, which directed filing of the sale certificate without demanding stamp duty.

The reference by the learned Single Judge to Section 22-B of the Registration Act as rightly pointed out by Mr.A.S.Balaji is out of context.

10. Section 22-B of the Registration Act deals with the power of the Registrar to refuse to register an instrument relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached. It has been held that a certificate of sale is not a transfer of immovable property by act of parties, but, it is a transfer by operation of law. Therefore, the sale certificate will not fall within the scope of Sub-Section (3) of Section 22-B of the Registration Act. Moreover, what is sought to be done is only mere filing of the sale certificate and it is not a registration. Therefore, Section 22-B of the Registration Act will not stand attracted.

11. As regards reference to Rule 9(6) and 9(10) of the Security Interest (Enforcement) Rules, 2002, we find that the contention of the learned Additional Advocate General cannot be accepted. Sub-Rule (6) of Rule 9 imposes an obligation on the authorized officer to issue a certificate of sale in the form given in the Appendix to the Rules.

11.1. Sub-Rule (7) of Rule 9 provides the procedure where a property is sold subject to encumbrances and empowers the authorized officer to collect the monies required to discharge the encumbrances and sell the property free from encumbrances. If the authorized officer chooses to sell the property subject to encumbrances Sub-Rule (7) will not come into play.

11.2. Sub-Rule (9) requires the authorized officer to deliver the property to the purchaser free from encumbrances on deposit of money as specified in sub-Rule (7) above. If the authorized officer does not choose to collect money sufficient to discharge the property Sub-Rule (9) will not come into operation.

11.3. Sub-Rule (10) requires the authorized officer to declare as to whether the property is sold subject to encumbrances or free from encumbrances.

12. In this case on hand, we find that the sale certificate issued specifically states that the sale will be subject to all encumbrances that are subsisting on the date of the sale. Therefore, the purchaser takes the risk to discharge all the encumbrances. Hence, the Registrar has no role to play and the Security Interest (Enforcement) Rules, 2002, referred by the learned Single Judge will not come into play at all.

13. On the filing of the sale certificate, we find that the issue is straight away covered by the pronouncement of the Hon'ble Supreme Court in ***Inspector General of Registration and another Vs. G.Madhurambal and another*** *(supra)* case. Therefore, we are unable to sustain the order of the learned Single Judge. The order of the learned Single Judge is set aside. The writ appeal is **allowed** and the writ petition will also stand allowed. No costs. There will be a direction to the Sub-Registrar, Anna Nagar, Chennai – 600 040, to file the instrument of sale as required under Section 89(4) of the Registration Act.

(R.S.M., J.) **(R.S.V., J.)**
30.07.2024

dsa
Index : No
Internet : Yes
Neutral Citation : No
Speaking order

To:-

1.The Inspector General of Registration,
100, Santhome High Road,
Mylapore, Chennai – 600 004.

2.The Sub-Registrar,
Anna Nagar,
Chennai – 600 040.

3.Asset Reconstruction Company (India) Limited,
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai – 400 028.

<u>R.SUBRAMANIAN, J.</u>
<u>and</u>
<u>R.SAKTHIVEL, J.</u>

dsa

W.A.No.3412 of 2023

30.07.2024