BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.12550 of 2024
and
WMP(MD)Nos.11204, 11205 & 11206 of 2024

M/s.Indian Chillies Products Company
Private Limited,
Rep.by its Director Mr.J.Sundar,
33, M.C Chidambara Nadar Street,
Virudhunagar. ... Petitioner

Vs.

1.State of Tamil Nadu,
Rep.by Secretary to Government,
Commercial Taxes and Registration
Department,
Secretariat, Chennai – 600 009.

2.The Sub Registrar, Joint – I,
Sub Registrar's office,
Integrted Complex,
Vandikkaran Street,
Ramanathapuram District – 623 501. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the impugned Government Order in G.O(Ms) No.28, Commercial Taxes and Registration (J2) Department dated 23.03.2023 and quash the same and to consequently to direct the second respondent to accept the Sale Certificate dated 22.05.2024 issued under SARFAESI Act, 2002 in favour of the petitioner and sent by the Authorised Officer, Credit Recovery and Management Department, City Union Bank Limited, Kumbakonam and to file the same in Book No.I or get it scanned as per the provisions of Section 89(4) of the Registration Act, 1908 without insisting on any registration fees from the petitioner.

For Petitioner	:	Mr.K.Ravi, Senior Counsel for Mr.Rugan and Arya
For Respondents	:	Mr.Veera Kathiravan, Additional Advocate General assisted by Ms.D.Farjana Ghoushia, Special Government Pleader for R1&R2

ORDER

Heard both sides.

2.The petitioner is the auction-purchaser of the petition mentioned property in SARFAESI proceedings. The Authorised Officer, City Union Bank issued sale certificate dated 22.05.2024. He parallelly sent a copy of the sale certificate to the second respondent with a request to file the same in Book No.I as per Section 89(4) of the Registration Act, 1908. The second respondent refused to comply with the request on the ground that filing fees was not paid as per G.O(Ms) No.28, Commercial Taxes and Registration (J2)

Department dated 23.03.2023. The second respondent informed the bank that as per the instruction of the Inspector General of Registration, filing fees computed @ 11% of the market value must be remitted. This writ petition has been filed questioning the stand of the respondents.

3.The validity of the aforesaid G.O is the subject matter of WP(MD)No. 8431 of 2023. Since the Hon'ble Division Bench is seized of the matter, I refrain from examining the validity of the G.O.

4.In response to the contentions advanced by the learned Senior Counsel appearing for the petitioner, the learned Additional Advocate General submitted that this writ petition should be dismissed in view of the Full Bench decision reported in ***2019 SCC OnLine Mad 9085 (Dr.R.Thiagarajan v. Inspector General of Registration).*** It was held therein that the sale certificate issued by an Authorised Officer of a bank cannot be equated to the sale certificate issued by a civil or revenue officer within the meaning of Section 17(2)(xii) of the Registration Act. He also pointed out that the recent decision of the Hon'ble Division Bench rendered in WA No.1115 of 2017 on 30.04.2024 is on the same lines. Dealing with the petitioner's contention that the issue stood concluded in ***(2021) 11 SCC 537 (Esjaypee Impex Private Limited v. Assistant General Manager and Authorised Officer,***

Canara Bank), the learned Additional Advocate General argued that the contentions now raised by the State were not dealt with. Regarding the petitioner's reliance on Tripower Enterprises (Private) Limited (2022 SCC OnLine Mad 8782), his simple point was that it is per incuriam for having omitted to take note of the Full Bench judgment in Dr.R.Thiagarajan's case. He sought to distinguish every case law relied on by the learned Senior Counsel appearing for the petitioner. He pressed for dismissal of this writ petition.

5.I carefully considered the rival contentions and went through the materials on record. One basic point must be clarified at the outset. This is the distinction between "filing" and "registration". If the petitioner wants to register the sale certificate, then, he must pay stamp duty as well as registration charges. If he would be satisfied with "filing" alone, then, he has to pay the filing charges only. Of course, the impugned G.O has enhanced the filing fee to 11% of the market value of the property. But then, its operation has been stayed in WMP(MD)No.7754 of 2023 in WP(MD)No.8431 of 2023. Once an order has been stayed, it goes into sleep mode. It is in hibernation. The order would not be operative so long as the stay remains (vide (1992) 3 SCC 1). I, therefore, must proceed in the matter as if the G.O was never issued.

6.The statutory provisions relevant to the case on hand are Section Section 17(2)(xii) & Section 89(4) of the Registration Act. Section 17(2)(xii) is as follows :

"*17.Documents of which registration is compulsory.—*

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

...

(2)Nothing in clauses (b) and (c) of sub-section (1) applies to

.....

(xii) *any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.*"

Section 89 of the Act reads as follows :

"89.Copies of certain orders, certificates and instruments to be sent to registering officers and filed 1[or scanned].- (1) Every Officer granting a loan under the Land Improvement Loans Act, 1883 (XIX of 1883), shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No.1 2[or get it scanned].

(2) Every Court granting a certificate of sale of immovable property under the code of Civil Procedure, 1908 (V of 1908), 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 2[or get it scanned].

[(2-A): Every court passing an order for effecting or raising an attachment of immovable property under the Code of Civil Procedure, 1908 (Central Act V of 1908) shall send a copy of such order together with the memorandum giving the details of properties to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the said, immovable property is situated and such registering officer shall file the copy of such order in his Book No.1 for get it scanned]].

(2-B) The State Governmeattachment effecting or raising an property under the Tamil Nadu Protection of interest of propeitors (in Financial Establishments) Act, 1997 (Tam Nadu Act 44 of 1997) shall send a copy of such order together with the memorandum giving the full details of the property to the registering officer within the local limits of whose jurisdiction the whole or any part of the said immovable property is situate and such registering officer shall file the copy of such order in Book No.1 1[or get it scanned]. Immovable (3) Every officer granting a loan under the Agriculturists Loans Act, 1884 (XII of 1884), shall send a copy of any instrument whereby immovable property is mortgaged for the purpose of securing the repayment of the loan, and if any such property is mortgaged for the same purpose, in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering Officer shall file the copy or copies, as the case may be, in his Book No.1 [or get it scanned].

(4) 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 property comprised in the certificate is situate, and such officer shall file the copy in his Book No.1 [or get it scanned].

(5) Every officer granting certificate of sale of immovable property under the Madras Co-operative Land Mortgage Banks Act, 1934, or the rules made under the Madras Co-operative Societies Act, 1932 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 limitovable property comprised in such certificate is situate and such registering officer shall file the copy in his Book No.1 [or get it scanned].
(6) Every Officer in charge of collection of the loans mentioned in sub-section (1), or sub-section (3) shall send to the registering officer to whom a copy of the order under sub-section (1) or a copy of instrument or order under sub- section (3) has been sent an intimation of the discharge of such loans. Such intimation shall be in such form as may

be prescribed and the registering officer shall file the intimation in his Book No.1 [or get it scanned].

(7) Every Officer granting any deed or other document purporting to be or to evidence, the grant or a assignment by the Government of land or of any interest in land shall send a copy of such deed or other document to the registering officer within the local limits of whose jurisdiction the whole or any part of the land comprised in such deed or document is situate, and such registering officer shall file the copy in his Book No.1 [or get it scanned]."

The interplay of the aforesaid provisions was fully considered in Dr.R.Thiagarajan case and it was held therein that the Authorised Officer of a bank cannot be equated to a civil or revenue officer. But a learned Judge of this Court (His Lordship Mr.Justice R.Subramanian) in ***Bell Tower Enterprises LLP v. State of Tamil Nadu (2022 SCC OnLine Mad 8784)*** dealt with every contentions now raised by the learned Additional Advocate General and held categorically that the sale certificate issued by an Authorised Officer of a bank under SARFAESI Act would fall within the purview of Section 17(2)(xii) r/w. Section 89(4) of the Act. The Hon'ble Judge was of the view that the decision of the Full Bench as well as the other decisions relied on by the State pale into insignificance in view of the decision of the Hon'ble Supreme Court in ***Esjaypee Impex Private Limited v. Assistant General Manager and Authorised Officer, Canara Bank (2021) 11 SCC 537.***

7.The operative portion of Esjaypee Impex Pvt Limited as follows :

> "16.We are of 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 authorised 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."

8.I respectfully agree with the view taken by my esteemed and learned Brother in ***Bell Tower Enterprises LLP*** case. I am, however, tempted to add one more reason. The respondents' primary objection is that the authorised officer of a bank is after all an agent of a private entity and cannot claim the status of a civil or revenue officer.

9."A" borrows money from "B" and fails to return the same. "B" goes to court and obtains decree for repayment. To enforce the same, he files execution petition. The property of "A" is brought to sale. "C" purchases the property at an auction conducted by the court. The court issues sale certificate in favour of "C". The court sends the same to the registering authority who files the same in Book I. Substitute "Bank" for "B". The banks used to file suits for recovery. This was found to be time consuming. Hence, DRT Act was enacted. Debts Recovery Tribunals were constituted. Even this mechanism did not meet the expectation of the lending institution. Hence, Securitization Act was enacted in the year 2002. This legislation provides a quicker remedy to proceed against secured assets. The Authorised Officer took the place of court. An authorised officer is a creation of the statute. He exercises the jurisdiction originally possessed by the civil courts. Rule 2(a) of The Security Interest (Enforcement) Rules, 2002 defines an "authorised 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 authorised officer has been conferred with the jurisdiction to bring the secured asset to sale. The procedure is as follows :

> **"8.Sale of immovable secured assets.-** (1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession

notice on the outer door or at such conspicuous place of the property.

(2) [The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspaper] one in vernacular language having sufficient circulation in that locality, by the authorised officer.

[(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.]

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction including through *e*-auction mode; or]

(d) by private treaty.

[Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.]

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

[Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.]

[(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web- site of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled [between the secured creditors and the proposed purchaser in writing].

9. Time of sale, Issue of sale certificate and delivery of possession, etc.-

(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.]

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of [rule 8]:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

[(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;]

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period 21[as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months].

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

[Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen day, from date of finalisation of the sale.]

(8) On such deposit of money for discharge of the encumbrances, the authorised officer [shall] issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make, the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(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.”

The above statutory scheme is very much comparable to what has been set out in the Code of Civil Procedure. The function discharged by the authorised officer is on the same lines as that of the civil court. One may even say that the authorised officer had stepped into the shoes of the civil court. It is not as if the civil/revenue officers are carrying out a function something so sublime which the authorised officer is not fulfilling. Most of the categories set out in Section 89 of the Registration Act deal with recovery of loans. Section 89(5) pertains to an officer granting sale certificate under Madras Cooperative Land Mortgage Banks Act or the Tamil Nadu Cooperative Societies Act.

10.In ***Shanti Deevi L Singh v. Tax Recovery Officer (1990) 3 SCC 605***, the Hon'ble Supreme Court noted that the expression "revenue officer" need not be given a restrictive meaning. This approach of the Hon'ble Supreme Court was specifically noted in Bell Tower Enterprises case.

11.It is not as if the civil/revenue officer issuing sale certificates is concerned only with the recovery of sovereign dues. The civil courts are mostly concerned with the recovery of dues payable to private individuals. An authorised officer on the other hand deals with recovery of dues to secured creditors as defined in the SARFAESI Act, more particularly, banks. There is a maxim "quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud" (when anything is commanded, everything by which it can be accomplished is also commanded). The Madurai Bench of the Madras High Court in S.Kasimayan v. the Inspector of Police (Crl OP(MD)No.2520 of 2009 dated 18.11.2010) observed that a plain reading of Section 19 IPC would indicate and evince that irrespective of the fact as to whether a person is designated as a judge or not, he would be enjoying the status of a judge depending upon the acts he performs. It would be frustrating the statutory object of SARFAESI Act, if the authorised officer can sell the property like an executing court but cannot forward the sale certificate for filing in Book I under Section 89 of the Registration Act, 1908. It would only be an incidental function.

12.In this view of the matter, the authorised officer being a statutory officer who is discharging functions as laid down in SARFAESI Act and the rules framed thereunder can very well be called as revenue officer and brought within the scope of Section 89(4) of the Registration Act, 1908. This writ petition is partly allowed by directing the second respondent to file the sale certificate issued by the authorised officer once it is resubmitted. No costs. Consequently, connected miscellaneous petitions are closed.

23.07.2024

skm

To

1.The Secretary to Government,
Commercial Taxes and Registration
Department, Secretariat, Chennai – 600 009.

2.The Sub Registrar, Joint – I, Sub Registrar's office,
Integrted Complex, Vandikkaran Street,
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