

(2016) 02 MAD CK 0120

MADRAS HIGH COURT

Case No: W.P. No. 28343 of 2015 and M.P. No. 1 of 2015

P. Pandian

APPELLANT

Vs

The Inspector General
of Registration,
Santhome High Road
and Others

RESPONDENT

Date of Decision: Feb. 29, 2016

Acts Referred:

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, Section 2(h), Section 35
- Tamil Nadu District Municipalities Act, 1920 - Section 116A, Section 3
- Transfer of P

Citation: (2016) 02 MAD CK 0120

Hon'ble Judges: R. Subbiah, J.

Bench: Single Bench

Advocate: K. Rajasekaran, for the Appellant; P. Rajalakshmi, GA, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Subbiah, J.

1. This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorarified Mandamus, to call for the records relating to the Impugned Notice dated 24.07.2015 issued by the 2nd respondent and to quash the same and consequently to direct the 2nd respondent to register and return the Sale Certificate issued by the State Bank of India, dated 06.05.2015.

2. The case of the petitioner is that the State Bank of India, Coimbatore, had issued a sale notice dated 10.02.2015 under Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act (in short SARFAESI Act), for selling the properties in auction which were charged to them by their borrowers. In the auction, the petitioner participated and tendered a sum of Rs. 6,55,00,000/-, after complying with the payment of Earnest Money Deposit. The petitioner was declared as the successful bidder. The petitioner paid the balance sale consideration of Rs. 6,48,45,000/- after deducting 1% TDS. On receipt of the complete sale consideration, the State Bank of India issued a Sale Certificate under Rule 9(6) of SARFAESI Act, after confirming the sale, in favour of the petitioner. The said Sale Certificate was presented by the petitioner for registration and he paid the Stamp Duty of Rs. 32,75,000/-. The petitioner calculated the stamp charges as per Article 18 of the Indian Stamp Act. But, the 2nd respondent is demanding a sum of Rs. 13,10,000/- as additional Stamp Charges. It is the case of the petitioner that the said property was purchased by the petitioner in a public auction for a sum of Rs. 6,55,00,000/- and the Sale Certificate is to be registered by paying a Stamp Duty at the rate of Rs. 5/- for every Rs. 100/- and therefore, the amount of Rs. 32,75,00,000/- is the correct stamp charges and the petitioner need not pay the differential amount of Rs. 13,10,000/- as demanded by the 2nd respondent. The Sale Certificate issued under SARFAESI proceedings will have the stamp duty payable under Article 18 r/w Article 23 of the Stamp Act, on the sale price fixed in the Sale Certificate. Hence, the petitioner has come forward with the present petition for the relief as stated supra.

3. The 2nd respondent filed a counter, inter alia, stating that the Sale Certificate dated 06.05.2015 issued by the State Bank of India, Coimbatore, in favour of the petitioner, was presented before the 2nd respondent for registration on 24.07.2015 and as the said document was not duly stamped to its face value, it was kept pending under Rule 28(ii) of the Registration Rules and the same was intimated to the petitioner. Article 18 of the Indian Stamp Act has no application to the subject Sale Certificate, since it relates to the Sale Certificate granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or any other Revenue Officer. The Bank Officials are not Revenue Officers as envisaged under Article 18 of the Indian Stamp Act. One of the foremost object of the SARFAESI Act is to take possession of the Securities and sell them. Section 2(h) of the SARFAESI Act empowers the Bank to take possession of the property and sell the same. Such being the statutory position, the subject Sale Certificate is nothing but a sale as defined under Section 54 of the Transfer of Property Act. The recitals in the sale certificate itself would make it explicit that the petitioner herein has been put in possession of the property for the price paid by him. The Certificate of Sale does not require registration. But, if it is presented for registration, it has to be duly stamped under Article 23 of the Indian Stamp Act, 1899. The 1st respondent has in unequivocal terms concluded in his Proc.No.25052/C2/2011, dated 14.09.2011 and 52070/C2/2011, dated 27.10.2011 that such certificate of sale should be classified as Sale under Article 23 of the Indian Stamp Act, 1899 and Stamp duty at 5% + 2% surcharge on the Market Value has to be levied. The 2nd respondent has acted only on the said instructions of the 1st respondent. Further, if any one wants to register any sale

certificate issued by a Bank, necessary stamp duty has to be paid at the rate of 7% as per Article 23 of the Indian Stamp Act. Hence, the impugned notice was issued by the 2nd respondent to the petitioner to pay the additional stamp duty. Thus, the 2nd respondent sought for dismissal of the writ petition.

4. Heard both sides and perused the materials available on record.

5. It is the submission of the learned counsel for the petitioner that the State Bank of India, Coimbatore, had issued a sale notice dated 10.02.2015 under SARFAESI Act, for selling the properties which were charged to them by their borrowers. In the auction, the petitioner participated and tendered a sum of Rs. 6,55,00,000/-, after complying with the payment of Earnest Money Deposit. The petitioner was declared as the successful bidder. The petitioner paid the balance sale consideration of Rs. 6,48,45,000/- after deducting 1% TDS. On receipt of the complete sale consideration, the State Bank of India issued a Sale Certificate under Rule 9(6) of SARFAESI Act, after confirming the sale, in favour of the petitioner. The said Sale Certificate was presented by the petitioner for registration and he paid the Stamp Duty of Rs. 32,75,000/-, by calculating the stamp charges as per Article 18 of the Indian Stamp Act. According to the petitioner, when Sale Certificate is to be registered, the Stamp Duty shall be calculated at the rate of 5% ie., Rs. 5/- for every Rs. 100/-; that since the purchase was through a public auction, the stamp duty would be under Article 18 of the Stamp Act, at 5% of the sale price mentioned in the Sale Certificate; that the Sale Certificate is only a confirmation of sale in favour of the highest bidder; hence, the question of paying surcharge at 2% does not arise in this case. It is further submitted by the learned counsel for the petitioner that the local bodies are entitled for surcharge only if there is sale or transfer of property. The auction sale and subsequent sale certificate is only the proof of confirmation of the auction and therefore, it is not a sale transaction or transfer of property; therefore, surcharge is not payable for certificate of sale.

6. But, the learned Government Advocate appearing for the respondents submitted that the petitioner is liable to pay 2% surcharge, apart from 5% stamp duty.

7. In view of the submissions made on either side, the following questions fall for consideration-

Whether the petitioner is liable to pay 2% surcharge along with 5% stamp duty?

8. Originally, surcharge was claimed under Section 116A of the Tamil Nadu District Municipalities Act, 1920. In the said Section, specific transactions were mentioned which would attract surcharge. The transaction and the instruments of conveyance mentioned therein are as follows-

- 1) Sale of immovable property,
- 2) Exchange of immovable property

3) Gift of immovable property

4) Mortgage with possession of immovable property

5) Lease in perpetuity of immovable property

Later, Section 116A was repealed by a repealing Act namely Tamil Nadu Duty on Transfer of Property (in Municipal Areas) Act, (Act 32 of 2009). The repealing Act had only extended the Municipal Areas to the Panchayat Areas and thus, the details of Deeds of conveyance which suffer surcharge remains unaffected. Section 3 of the said repealing Act reads as follows:-

"3. Levy of duty on transfers of property

There shall be levied a duty on transfers of property in every municipal areas, _

(a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (hereinafter referred to as the Stamp Act) as in force for the time being in the State of Tamil Nadu, on every instrument of the description specified below, which relates to immovable property situated within the limits of the municipal area; and

(b) at such rate as may be fixed by the Government, not exceeding five per centum, on the amount specified below against such instrument:-

	Description of instrument	Amount on which duty should be levied
(i)	Sale of immovable property	The market value of the property as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.
(ii)	Exchange of immovable property	The market value of the property of the greater value as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.

(iii)	Gift of immovable property	The market value of the property as set forth in the instrument, and in a case where the market value is finally determined by any authority under Section 47-A of the Stamp Act, the market value as so determined by such authority.
(iv)	Mortgage with possession of immovable property	The amount secured by the mortgage, as set forth in the instrument.
(v)	Lease in perpetuity of immovable property	An amount equal to one-sixth of the whole amount or value of the rents which would be paid or delivered in respect of the first fifty years of the lease, as set fourth in the instrument.

Therefore, it is clear that only the above said instruments of conveyance would suffer surcharge. So far as the present case is concerned, what was presented before the 2nd respondent for registration, is only the Sale Certificate issued by the Bank. As contended by the learned counsel for the petitioner, the Sale Certificate issued by the Recovery Officer of the Bank would not amount to transfer of property. In this regard, a reference could be placed in the judgment reported in , AIR 2013 MAD 73 [Dr.Meera Thinakaran Vs. State of Tamil Nadu & two others], wherein it has been held as follows:-

"20. Now, coming to the next contention of the learned counsel that the Recovery Officer appointed under the Recovery of Debts due to Banks and Financial Institutions Act cannot be construed as a Revenue Officer as contemplated in Article 18 of the Indian Stamps Act needs to be considered. A similar question arose before a Division Bench of this Court as to whether the Sale Certificate issued by the Recovery Officer under the SARFAESI Act will fall within the ambit of Article 18 of the Indian Stamps Act. The Division Bench in K.Chidambara Manickam Vs. Shakeena and Ors. reported in , AIR 2008 Madras 108 has clearly held that such a Sale Certificate issued by the Recovery Officer under SARFAESI Act would squarely fall within the ambit of Article 18 of the Indian Stamps Act. In view of the said law laid down by the Division Bench, the argument of the learned Advocate General deserves only to be rejected. Thus, I hold that the Recovery Officer under Recovery of Debts due to Banks and Financial Institutions Act will fall within the meaning of a Revenue Officer as enumerated under Article 18 of the Indian Stamp Act. Thus, a Certificate of Sale issued by him will squarely fall within the said provision."

In the decision reported in , AIR 2010 Ker 124 [Madhavan Vs. Sub- Registrar], it has been held by the High Court of Kerala as follows:-

"6. Now, advertent to the provisions of the SARFAESI Act and the provisions of the Enforcement Rules, it can be seen that when a measure is taken as per that Act, particularly under Section 13, such measure and the procedure there for, are regulated by those statutory provisions and when such a measure results in the completion of a sale, Rule 9(6) of the Enforcement Rules prescribes issuance of certificate of sale. The provisions of the SARFAESI Act provide a statutory procedure against a measure taken under that Act. All these provisions have been made, also by excluding the jurisdiction of the civil Court to touch such matters. The provisions of the SARFAESI Act, going by Section 35 thereto, overrides the provisions of the other laws. In that context, the secured creditor is entitled to take recourse to the SARFAESI Act and ultimately issue a certificate of sale in terms of the statutory provisions. Therefore, it is essentially a certificate of sale in lieu of certificate of sale that may issue from a civil Court or a revenue Court in exercise of statutory powers to sell."

From the dictum laid down in the above said decisions, it is clear that the Sale Certificate issued by the Recovery Officer under the SARFAESI Act do not amount to transfer of property. It is only a document issued by the duly authorized statutory authority evidencing the factum of a statutory sale. It is the certification of the lawful transfer of or the authority to transfer the interest in the property, movable or immovable, that is subjected to such statutory proceedings. Hence, I am of the opinion that so far as the sale certificate issued by the Bank is concerned, stamp duty has to be calculated under Article 18 of Stamp Act i.e., only at 5% and the question of calculating surcharge at 2% does not arise.

9. For the foregoing reasons, this Court is of the opinion that the impugned notice dated 24.07.2015 issued by the 2nd respondent is liable to be quashed and the same is quashed accordingly. The 2nd respondent is directed to register and return the Sale Certificate dated 06.05.2015 issued by the State Bank of India in favour of the petitioner.

In fine, the writ petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.