

(2013) 11 P&H CK 0259

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11055 of 2001 (O and M)

M/s. Ferrous Alloy Forgings Pvt. Ltd.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0259

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Augustine George Masih, J

Bench : Division Bench

Advocate : Arun Jain and Mr. Amit Jain, for the Appellant; J.S. Puri, Additional Advocate General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The sole question of law which arises for consideration in the present writ petition filed under Article 226 of the Constitution of India is as to whether a sale certificate issued in pursuance to a Court auction is required to be stamped. M/s. Punjab United Forge Limited was ordered to be wound up by the learned Company Judge of this Court under the provisions of the Companies Act, 1956. The assets of the Company are stated to have been mortgaged only with the Industrial Finance Corporation of India (IFCI) and in terms of orders dated 29.4.1994, permission was granted by the Court to IFCI to sell the mortgaged properties as also the hypothecated properties with the Andhra Bank. Tenders were consequently invited both for fixed and movable assets. M/s. Ferrous Forgings Limited, a sister concern of the petitioner, was one such tenderer and since its bid at Rs. 2.25 crores for the immovable properties including plant and machinery and Rs. 32 lacs for hypothecated goods was the highest, the secured creditors and Official Liquidator had no objection to confirm the sale. The sale was then confirmed by the Court on 10.10.1996. The petitioner, however, moved an application requesting for execution of conveyance deed in its favour on account of it having paid the entire consideration, the Board of Directors and Chairman being same for both the Companies. However, this

request was declined by the learned Company Judge vide an order dated 30.5.1997, but the appeal filed against the same was allowed by the Division Bench on 22.10.1997.

2. The controversy regarding issuance of sale certificate, however, did not rest with that as the petitioner filed CA-554-1998 under Order XXI, Rule 94 of the Code of Civil Procedure, 1980 (hereinafter referred to as "the said Code") seeking issuance of the sale certificate in its favour as auction purchaser in relation to both movable and immovable properties in terms of the order of the Division Bench dated 22.10.1997. This application was disposed of on 13.4.1999. The said order notes that the draft sale certificate had been prepared. It further notes that during the proceedings some controversy was raised regarding the payment of stamp duty in relation to value of immovable property. The learned Company Judge clarified that the stamp duty would obviously be payable on immovable property which had been put to auction in view of the directions of the Division Bench. The immovable property was to include land and building and even such machinery as was permanently attached thereto. The valuation of the movable property, put to auction, was directed to be excluded from such liability, though would be included in the certificate of transfer and the petitioner was asked to file a complete affidavit to this effect and pay stamp duty.

3. The petitioner submitted an additional affidavit setting out the assets purchased by the petitioner-Company of which the immovable property was worth Rs. 54.67 lacs. It was also pointed out that there was no machinery permanently fixed with the land and the entire plant and machinery was movable. The matter was placed before the Registrar, who vide order dated 13.1.2000 noted that the undisputed fact was that the offer for purchase of immovable property was for a sum of Rs. 2.25 crores while that of moveable assets was Rs. 32 lacs which offer was confirmed vide order dated 10.10.1996 and, thus, those are the valuations which must be presumed for immovable and movable assets, respectively. The valuation report of the Valuer, on the basis of which the affidavit was filed assessing immovable property at Rs. 54.67 lacs, did not contain the value of the plant and machinery which were permanently fixed thereto. On the other hand, the valuation report submitted by the Official Liquidator sought to assess the property at Rs. 4,32,50,000/-. The Registrar opined that the stamp duty would have to be paid on the valuation of immovable property at Rs. 2.25 crores and directed the petitioner to deposit the full stamp papers of that value so that sale certificate may be issued according to the order of the Court.

4. The present writ petition under Article 226 of the Constitution of India has been filed seeking quashing of the directions requiring the petitioner-Company to pay a stamp duty on valuation of immovable property of Rs. 2.25 crores to the State Government being in derogation of the provisions of Section 17(2)(xii) of the Indian Registration Act 1908 (hereinafter referred to as "the Registration Act") read with Order XXI, Rule 94 of the said Code.

5. The writ petition has been resisted and a written statement filed by the Joint Registrar (Rules), since the Registrar was impleaded as respondent No. 3. It has been urged that in view of the orders passed by learned Company Judge on 13.4.1999 making the petitioner liable to pay stamp duty on immovable property and that order, not having been assailed in appeal u/s 482 of the Companies Act, 1956 had become final and binding and the issue was no more res integra. The Registrar, thus, passed the order on 13.1.2000 in consonance with the order dated 13.4.1999.

6. As regards legal principles, reliance is sought to be placed on Article 18 read with Article 23 of the Indian Stamp Act, 1899 (hereinafter referred to as "the Stamp Act") which provides for the same duties to be charged in respect of certificate of sale granted to a purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer as was chargeable on a conveyance for a consideration equal to the amount of the purchase money. The submission, thus, is that the sale certificate may or may not be compulsorily registrable but is not exempted from the provisions of the Stamp Act. It is also stated that the requisite duty has already been paid of Rs. 13,50,020/-.

7. We may note that it is in terms of order dated 17.9.2001 that the petitioner was permitted to deposit the full stamp duty without prejudice to its rights as may be finally determined by the Court as per its request.

8. Insofar as the requirement of registration is concerned, there is again no doubt that such a sale certificate is not required to be registered in view of Section 17(2)(xii) of the Registration Act. The said Section falls in Part-3 of the Registration Act dealing with registrable documents. Section 17 refers to documents of which registration is compulsory. Sub-section (2) provides that nothing in clauses (b) and (c) of sub-section (1) would apply to the nature of documents set out thereafter and in Clause (xii) it is specifically stated "any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-officer". Thus, the legal provision itself is absolutely clear. It is also not in dispute that the sale certificate has to be issued under Order XXI, Rule 94 of the said Code.

9. In view of the aforesaid, the controversy revolves around the interplay of the Registration and Stamp Acts, i.e., though a Sale Certificate is undoubtedly not compulsorily registrable, whether it is mandatory for the auction purchaser to deposit the stamp duty for the sale certificate to be issued to it in view of the provisions of the Stamp Act.

10. We now proceed to analyze the judicial view in view of this aspect referred to by learned counsel for the petitioner. In Smt. Shanti Devi L. Singh vs. Tax Recovery Officer and others, AIR 1991 Supreme Court 1880, it was held that since a certificate of sale itself is not a compulsorily registrable document in view of the provisions of Section 17(2)(xii) of the Registration Act, the transfer of title

in favour of purchaser as revenue sale is not vitiated by non-registration of the certificate. The copy of the certificate thus filed in Book-I with the Sub Registrar contains all the relevant details and all that a Sub Registrar is required to do is to file a copy of the certificate in Book-I and no more. He does not have to copy out the certificate or make any other entries in Book-I. However, whether any stamp duty or municipal transfer fee is payable in respect of original certificate of sale was a question left open. The Court while dealing with the plea that even if the certificate of registration is sought to be presented for registration the Sub Registrar has no jurisdiction to refuse registration on the ground that document is insufficiently stamped, observed that such a situation has not arisen as yet and it is unnecessary to anticipate it and decide the point.

11. In *Municipal Corporation of Delhi vs. Pramod Kumar Gupta*, AIR 1991 Supreme Court 401, it has been held that a title to the property put on auction sale passes under law when the sale is held. The owners and certain other interested persons are afforded opportunity under the Code to make a prayer for setting aside the sale on enumerated grounds and, after all such matters are disposed of without disturbing the sale, the sale is confirmed under Rule 92 of Order XXI of the said Code. The stage for issuing a certificate of sale arises only thereafter under Rule 94, Order XXI of the said Code. Thus, it was manifest that the title passes under the auction-sale by force of law and the transfer becomes final when an order under Rule 92 confirming it is made. By the Certificate issued under Rule 94, the Court is formally declaring the effect of the same and is not extinguishing or creating title, the object of issuance of such certificate being to avoid any controversy with respect to identity of the property sold and of the purchaser thereof as also the date when the sale became absolute. The use of past tense in the rules stating that the sale "became" absolute was held to be consistent with this interpretation and the certificate was, thus, held to be not an instrument of sale so as to attract duty u/s 147 of the Delhi Municipal Corporation Act. We may note that u/s 147 of the Delhi Municipal Corporation Act, duty has been provided qua an instrument of sale of immovable property.

12. A reference has also been made to the judgment of the learned single Judge of the Karnataka High Court in *Thomson Plantations (India) Private Limited Vs. The Senior Sub-Registrar and Another*, holding that a Sub Registrar cannot demand purchaser to pay the stamp duty when a copy of the sale certificate has been sent by the Recovery Officer only for the purpose of filing in Book-I, as required u/s 89(4) of the Registration Act. The said provision, for reference, reads as under:-

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed.-

(1) to (3)

(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 immovable property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

13. A reference may also be made to *B. Arvind Kumar Vs. Government of India and Others*, It was held that a property sold by public auction in pursuance to an order of the Court and the bid being accepted and sale confirmed, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to purchaser only when the sale becomes absolute and the sale certificate is, thus, merely the evidence of such title and does not require registration u/s 17(2) (xii) of the Registration Act.

14. We may notice, on the other hand, that the learned counsel for the respondents referred to the judgment of the Supreme Court in *State of Uttaranchal (now known as State of Uttarakhand) and Others Vs. Khurana Brothers*, here it was held that in case of contract of sale for crude resin, the document by which immovable property is transferred is a conveyance u/s 2(10) of the Stamp Act. Such a contract for sale is, thus, chargeable to stamp duty under Article 23.

15. On consideration of the legal proposition emerging aforesaid in the facts of the present case, we are of the view that the occasion for affixation of stamp duty on the sale certificate really does not arise as all that the petitioner was demanding was the issuance of the sale certificate. The Registry of the Court was only required to send the copy of this sale certificate to the Sub Registrar as per the mandate contained in Section 89(4) of the Registration Act and nothing more or nothing less. As to whether the petitioner thereafter gets the sale certificate stamped or not would be responsibility of the petitioner. The document undoubtedly is not compulsorily registrable. If the petitioner seeks to use the document for any purpose and that forum is of the view that it is not stamped which it ought to be, the question of impounding it and referring it to Collector of stamps could arise. This is not the responsibility of the Registry of the Court which was only required to issue a sale certificate and the rest had to be left to the petitioner. In fact, this is in consonance with the view expressed in *Smt. Shanti Devi L. Singh's case (supra)* where second question was left unaddressed because it did not really arise in the case. In fact, it is not for the Sub Registrar even to demand stamp duty when a copy of the sale certificate has been sent to it for purpose of filing in Book-I, as aforesaid.

16. Thus, we are of the view that the Company Court and the Registrar went beyond what was the requirement on the auction being completed and the sale certificate being issued, i.e., to give the original sale certificate to the petitioner and send copy u/s 89(4) of the Registration Act to the Sub Registrar leaving the rest for the best judgment of the petitioner.

17. It is no doubt true that the petitioner did not specifically assail the order of the learned Company Judge passed on 13.4.1999, but looking into the limited

controversy, we have considered it appropriate to analyze the same in the present proceedings.

18. We, thus, direct that the original sale certificate be handed over to the petitioner with a copy sent to the Sub Registrar u/s 89(4) of the Registration Act, if not already sent, leaving the rest for the petitioner. The stamp duty deposited in pursuance to the orders of the Court on 17.9.2001 be, thus, refunded back to the petitioner within one month from the date of the order. The writ petition is accordingly allowed leaving the parties to bear their own costs.