(2016) 10 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 27704 of 2016 and W.M.P. No. 23862 and 23863 of 2016

Polyhose India Private Limited APPELLANT

Vs

The Inspector General of Registration RESPONDENT

Date of Decision : 17-10-2016

Acts Referred:
Stamp Act, 1899 — Section 18, Section 23, Section 47A

Citation : (2017) 173 AIC 443 : (2017) 2 CTC 305 : (2017) 1 MLJ 488

Hon'ble Judges : Mr. B. Rajendran, J.

Bench : Single Bench

Advocate : Mr. Zaffarullah Khan, Advocate, for the Petitioner; Mr. A.N. Thambidurai, Spl. G.P, for the Respondents

Final Decision : Allowed

Judgement

Mr. B. Rajendran, J. - The petitioner would state that in pursuant to an E-Auction sale notice issued under the provision of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) for selling the properties, which were mortgaged to the Syndicate Bank, the petitioner has participated in the auction and was declared as a successful bidder in respect of property, which was brought for sale. The bid made by the petitioner for a sum of Rs. 84,00,00,000/- was accepted and on payment of entire sale consideration, the Syndicate Bank had issued a sale certificate confirming the sale on 12.03.2014. The petitioner has presented the said sale certificate dated 12.03.2014 for registration before the fifth respondent, who advised him to pay 8% stamp charges (7% + 1%) i.e., Rs. 6,72,00,000/- and it was remitted under protest and the sale certificate was registered as Doc. No. 3902 of 2014. The petitioner after registration of the sale certificate, approached the fifth respondent for return of the registered document and he was informed that he has to pay 7% stamp duty on the guideline value/market value and not for the bid amount mentioned in the sale certificate. The petitioner was also further informed by the fifth respondent that to ascertain the market value of the property and survey of the property, the fifth respondent would be sending their officials. After survey of the property, the third respondent has issued the impugned order dated 16.06.2016, raising a demand for a sum of Rs. 3,92,71,614/- being the deficit stamp duty payable.

2. It is the specific stand of the petitioner that the stamp duty payable is only 5% as per Article 18 r/w Article 23 of the Indian Stamps Act, 1899 and the stamp charges levied is only on the sale price mentioned in the sale certificate and the surcharge of 2% cannot be charged. It is also the stand of the petitioner that the further stamp duty payable is only based on the amount mentioned in the sale certificate and not on the guideline/market value. The petitioner, aggrieved by the impugned order dated 16.06.2016, raising a demand for a sum of Rs. 3,92,71,614/-, being the deficit stamp duty payable, has came forward to file this writ petition.

3. Mr. Zaffarullah Khan, learned counsel appearing for the petitioner has drawn the attention of this Court to Articles 18 and 23 of the Indian Stamps Act, 1899 and would submit that the demand made by the third respondent, is perverse and unsustainable in law for the reason that the stand of the petitioner is supported by the judgments reported in 2014 (2) MLJ 678 [Y.K. Mohan Rao and Others v. Chief Revenue Controlling Authority], 2015 (1) CTC 526 [The Inspector General of Registration, Chennai v. K.K. Thirumurugan] and 2016-2-L.W. 273 [P. Pandian v. The Inspector General of Registration, Chennai] and in the light of the ratio laid down in the said judgments, the registered sale certificate is to be returned to the petitioner and prays for appropriate orders.

4. Per contra, Mr. A.N. Thambidurai, learned Special Government Pleader appearing for the respondents would submit that Article 18 of the Indian Stamps Act, 1899 has no application to the case of the petitioner for the reason that it is not the sale certificate issued by a Civil or Revenue Officer or Collector or other Revenue Officer and the sale certificate is liable to be charged under Article 23 of the Indian Stamps Act, as a sale and prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. In 2008 (1) CTC 660 : AIR 2008 Mad. 108 [K. Chidambara Manickam v. Shakeena and other], it has been held that 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 and therefore, the Recovery Officer under the 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 Stamps Act, 1899 and therefore, the certificate of sale issued by him will squarely fall within the said provision. In 2012 (2) CTC 759 [Dr. Meera Thinakaran v. The State of Tamil Nadu, Rep. By Secretary, Department of Revenue, Fort St. George, Chennai-9 and two others], by following the above

cited decision, this Court has held that the registration of the sale certificate is purely optional and the only legal implication is that the certificate of sale is not registered, it is not admissible in evidence under Section 35 of the Indian Stamp Act and Section 49 of the Registration Act and therefore, the sale certificate is presented for registration. In the above cited judgment, the decision rendered by the Hon''ble Supreme Court of India reported in 1969 (1) SCC 497 [Raghunath v. Kedar Nath] has also been taken into consideration to arrive at such a finding.

7. In 2012 (1) CTC 315 [Kumararaja Paper Mills (P) Ltd., v. T.N. Principal Revenue Control Officer-cum-The Inspector General of Registration, Chennai] a question arose as to whether registration is required in respect of the sale certificate issued by the State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT) in respect of plant and machinery and this Court, taking into consideration number of judgments which include K. Chidambara Manickam case (cited supra), held that the sale certificate issued by the Revenue Officer in respect of the property conveyed by them for the purpose of deriving income, it needs no compulsory registration and the sale certificate issued by Authorised officer of the Government Corporation, such as SIPCOT is concerned, the same cannot be equated with sale certificate issued by the Revenue Officers. In the above cited decision, the applicability of Section 47-A(1) of the Indian Stamps Act, 1899 also came up for consideration.

8. A similar view has been taken in the judgments reported in (2014) 2 MLJ 678 [Y.K. Mohan Rao and Others v. Chief Revenue Controlling Authority], 2016-2-L.W. 273 [P. Pandian v. The Inspector General of Registration, Chennai), in 2015 (1) CTC 526 [The Inspector General of Registration, Chennai v. K.K. Thirumurugan] and in 2010-2-L.W. 113 [In Re The Official Liquidator, High Court Madras v. Ramasubramanian] wherein, the applicability of Section 47-A(1) of the Indian Stamps Act, 1899, in respect of the sale certificate came up for consideration and this Court following the judgment of the Hon''ble Supreme Court of India reported in 2009 (7) SCC 438 [V.N. Devadoss v. Chief Revenue Control Officer-cum-Inspector and others] held that Section 47-A of the said Act cannot be applicable to a public auction for sale of properties under the provisions of the SARFAESI Act.

9. In the considered opinion of this Court, the ratio laid down in the above cited decision is fully applicable to the facts of this case for the reason that the sale was made by the Syndicate Bank in terms of the provisions of the SARFAESI Act and the sale certificate was issued and it was also presented for registration and registered as document No. 3902 of 2014 and after registration, it is not open to the fifth respondent to say that the petitioner is liable to pay 7% stamp duty on the guideline/market value and he cannot make a reference under Section 47-A of the Indian Stamps Act, 1899.

10. In the result, the impugned order of the third respondent dated 16.06.2016, is set aside and the writ petition is allowed and the fifth respondent is directed to return the registered sale certificate bearing document No. 3902 of 2014, along

with the excess stamp duty of 2% collected over and above the eligible stamp duty of 5% and the fifth respondent is directed to complete the said exercise, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

