

W.P.No.34249 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.34249 of 2018
and W.M.P.No.39796 of 2018

Tripower Enterprises (Private) Limited,
Represented by its Chief Executive
Officer No.2/569, "Sandy Nook",
Singaravelan First Main Street,
China Neelangarai,
Chennai 600 115.

... Petitioner

Vs

1.The Sub Registrar,
Neelangarai,
Chennai - 600 008.

2.The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
Chennai.

... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on

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the file of the 1st respondent in notification No.142/2018, dated 07.08.2018 and quash the same as illegal, incompetent and without jurisdiction and further direct the 1st respondent to file the sale certificate dated 21.08.2017, sent by the 2nd respondent under Section 89(4) of the Registration Act, 1908.

For Petitioner : Mr.V.Raghavachari
for M/s.P.Krishnan
For Respondent 1 : Mr.Yogesh Kannadasan,
Government Advocate
For Respondent 2 : Mr.S.Sethuraman

ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in notification No.142/2018, dated 07.08.2018 and quash the same as illegal, incompetent and without jurisdiction and further direct the 1st respondent to file the sale certificate dated 21.08.2017, sent by the 2nd respondent under Section 89(4) of the Registration Act, 1908.

2. In pursuance of the sale notice under SARFAESI Act, the second respondent sold the subject property to the petitioner, as the petitioner being the highest bidder. The said sale was confirmed and the sale certificate was issued on 21.08.2017 in favour of the petitioner. The second respondent requested the first respondent to file the sale certificate under Section 89(4) of the Registration Act, 1908 in Book No.I.

3. However, the first respondent rejected the request made by the second respondent and passed the impugned order dated 07.08.2018, thereby directing to pay the stamp duty of Rs.25,56,050/- and a sum of Rs.14,60,600/- as registration fees.

4. Mr.V.Raghavachari for Mr.P.Krishnan, learned counsel for the petitioner would submit that the sale certificate was presented before the first respondent only for the purpose of filing it in his office records as contemplated under Section 89(4) of the Registration Act, 1908. It does not require the payment of stamp duty and the registration fees on the auction purchase value of the property subject matter of the sale certificate.

5. The requirement for the payment of stamp duty under Article 18 of the Stamp Act and the payment of registration fees would arise only if presented the original sale certificate for registration under Section 23 or 25 of the Registration Act.

6. In support of his contention, he relied upon the Judgment reported in 2007(5) SCC 745 the Hon'ble Supreme Court of India held that *"when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the Court is contemplated or required and that Sale certificate issued by the Court or an Officer authorized by the Court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under the Act."*

7. He also relied upon the Judgment reported in **2018(3) TNCJ 541**

MB N.Naresh Kumar -vs- The Inspector General of Registration, Chennai

28 and another, the Hon'ble Division Bench of this Court held as follows:

"15. Therefore, the refusal by the Sub Registrar to file sale certificate issued by the Recovery Officer by making necessary entries in the Book in accordance with sub-section (4) of Section 89 of the Registration Act is not justified. The copy of the sale certificate thus filed in Book No.1 which contains all the relevant details and all that is the Sub Registrar is required to do is to file a copy of the certificate in Book No.1 and nothing more.

16. In B.Arvind Kumar Vs. Government of India and others reported in JT 2007 (8) SC 602, it is held that a property sold in public auction pursuant to an order of the Court and once the sale is confirmed it becomes absolute and the title vests with the auction purchaser. The subsequent sale certificate issued to the purchaser is the evidence of such title which does not require registration under Section 17(2) (xii) of

the Registration Act. In the case on hand also the property was purchased in public auction on 16.05.2008 and the sale certificate was issued on 31.08.2008. Therefore, the appellant/purchaser automatically becomes title holder of the property by virtue of the sale certificate. The payment of stamp duty on the sale certificate is not warranted as it is only a sale certificate issued which has to be filed or scanned in Book No.1 as per Section 89(4) of the Registration Act.

17.The payment of stamp duty perhaps may arise only when the appellant wants to deal with the property by selling it. As long as the sale certificate remains as it is, it is not compulsorily registrable. If the appellant uses the document for any other purpose, then the requirement of stamp duty etc., would arise. Hence, the plea of the appellant is well within the statutory powers. Section 89(4) contemplates only filing of the sale certificates and therefore, the question of delay or laches on the part of the appellant does not arise. The dismissal of the writ petition on the ground of delay and payment of stamp duty

therefor does not arise and therefore, cannot be sustained. Accordingly, the order passed in the writ petition is set aside and the appeal is allowed. No costs."

8. The Hon'ble Division Bench of this Court concluded that as long as the sale certificate remains as it is, it is not compulsorily registrable. If the documents uses for any other purpose, it requires stamp duty. The Section 89(4) contemplates only filing of the sale certificates and therefore, the question of stamp duty does not arise. In this regard, it is also relevant to rely upon the orders passed in ***S.L.P.Nos.29752-29754 of 2019 dated 05.01.2021 Esjaypee Impex Pvt. Ltd., -vs- Asst. General Manager and Authorized Officer, Canara Bank***, the Hon'ble Supreme Court of India held as follows:

"14. We are 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 Authorized 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."

9. The provision under Section 89(4) is clear that *"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. State Amendments Andhra Pradesh: For sub-section (5) of section 89 substitute as under: "(5) An officer empowered to grant a certificate of sale of immovable property under the Andhra Pradesh Co-operative Societies Act, 1964 or the rules made thereunder 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 registering officer shall file the copy in his Book No. 1."*

10. Therefore, the sale certificate do not operate as a conveyance of the property. It is also relevant to extract the Rule 200(1) of the Civil Rules of Practice and Circular Orders:

"200(1). Section 89(2) of the Indian Registration Act, 1908 (Central Act XVI of 1908) provides that the every Court granting a certificate under Rule 94 of Order XXI of the Code, 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. The law, therefore now provides, through the direct action of the Civil Court and of the Registering Officer for the registration of a copy of the certificate of sale. It is no longer necessary to register the certificate itself. Such certificates do not operate as a conveyance of the property to which they relate."

11. As such when the purchaser goes for the registration of the original sale certificate issued by the Court Officer, Article 18 of the Indian

Stamp Act would be attracted and stamp duty is to be paid as per Article 23 of the Registration Act treating it as conveyance namely auction purchase value of the property. But when a copy of the sale certificate presented before the first respondent not for the purpose of registration but only for purpose of filing it by the first respondent in his office as contemplated under Section 89(4) of the Registration Act. Therefore, the first respondent cannot refuse to file a copy of the sale certificate by demanding payment of stamp duty and registration fees to file the same in Book No.1, as contemplated under Section 89(4) of the Registration Act, 1908.

12. In view of the above discussion, the impugned order dated 07.08.2018 in Notification No.142/2018 on the file of the first respondent is set aside. The first respondent is directed to file the sale certificate dated 21.08.2017 presented by the second respondent under Section 89(4) of the Registration Act, 1908 within a period of **two weeks** from the date of receipt of a copy of this order. If the sale certificate presented to file is not available with the records of the first respondent, the second respondent is directed to

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present one more copy of the sale certificate issued in favour of the petitioner herein before the first respondent.

13. Accordingly, this writ petition is allowed. No order as to costs.

Consequently, the connected W.M.P.No.39796 of 2018 is closed.

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Index: Yes/No
Speaking Order: Yes/No
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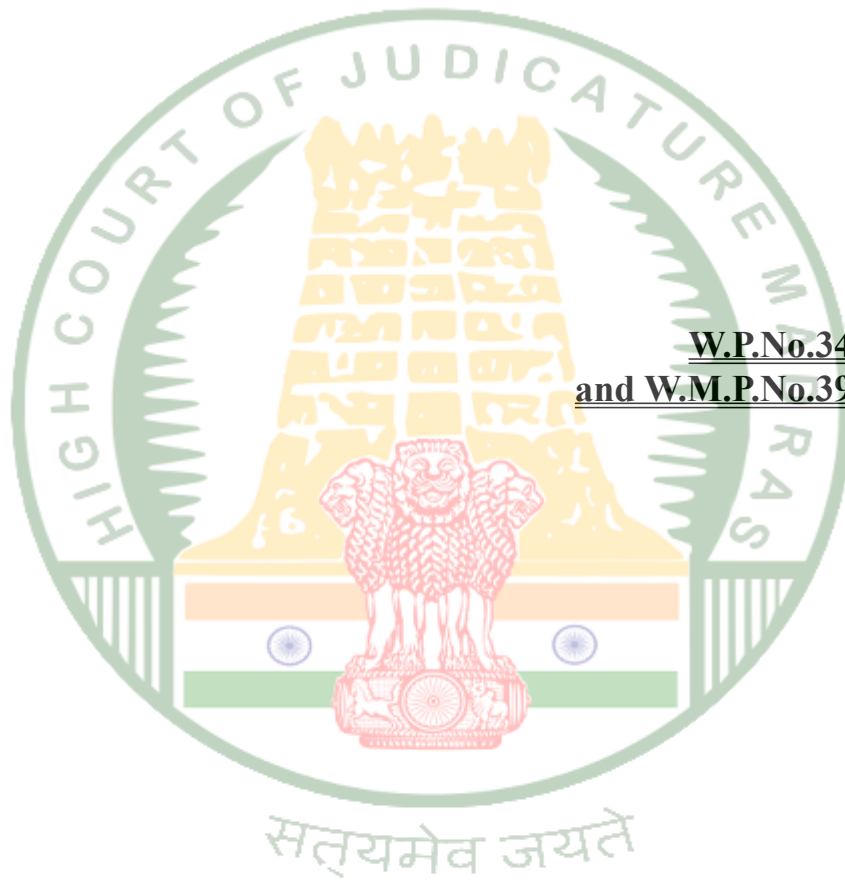
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