

Court No. - 39

Case :- WRIT - C No. - 6757 of 2024

Petitioner :- M/s SRSD Buildcoventure Lll

Respondent :- State Of Up And 4 Others

Counsel for Petitioner :- Avneesh Tripathi

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - C No. - 44628 of 2023

Petitioner :- M/S Spipick Foods L.L.P

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rahul Chaudhary

Counsel for Respondent :- C.S.C.

and

Case :- WRIT - C No. - 8911 of 2024

Petitioner :- Sprl Industries Pvt Ltd And Another

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Sushil Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Shri Avneesh Tripathi, Shri Rahul Chaudhary and Shri Sushil Kumar Mishra for the petitioners and Shri Nimai Das, learned Additional Chief Standing Counsel for the State-respondents.

2. These petitions have been filed primarily seeking direction upon the authorities under the Registration Act, 1908 (hereinafter referred to as the Act) to file the individual Sale Certificate issued to the petitioners, in Book I under Section 89(4) of the Act. The

Sale Certificate have been issued in favour of the petitioners by different authorities, here described as "Revenue Officers". Thus Sale Certificates has been issued in favour of M/s S.R.S.D. Buildcon Venture L.L.P. by the Recovery Officer-II, DRT-II, Delhi dated 28.11.2023. Similar Sale Certificate has been issued by the Recovery Officer, Debt Recovery Tribunal, Allahabad, on 24.4.2023 in the case of M/s Spipick Foods L.L.P. Also, Sale Certificate dated 30.11.2018 has been issued by Bank of Baroda, Naini Branch, District Prayagraj under SARFAESI Act in the case of SPRL Industries Pvt. Ltd.

3. At the outset, learned counsel for the petitioners have relied on the decision of the Supreme Court in **The Inspector General of Registration & Anr. vs G. Madhurambal & Anr., 2022 SCC OnLine SC 2079**. That decision reads as below:

*Learned counsel for the petitioner(s) has made a valiant endeavor to persuade us to interfere with the impugned judgement(s) but not successfully. It is logically so as this issue has been repeatedly settled and if one may say, a consistent view followed for the last 150 years. We may refer to the judgments by the Madras High Court in the Board of Revenue No. 2 of 1875 (In Re: Case Referred) dated 19.10.1875 opining that a certificate of sale cannot be regarded as a conveyance subject to stamp duty, by the Allahabad High Court in **Adit Ram v. Masarat-un-Nissa** opining that a sale certificate is not an instrument of the kind mentioned in clause (b) Section 17 of Act III of 1877 and is not compulsorily registrable and this Court's view in **Esjaypee Impex Pvt. Ltd. v. Asst. General Manager and Authorised Officer, Canara Bank** opining 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 Purchase with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the Registration Act and order of this Court in M.A. No. 19262/2021 in SLP(C) No.29752/2019 dated 29.10.2021 opining that once a direction is issued for the duly validated certificate to be issued 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, it has the same effect as registration and obviates the requirement of any further action.*

It is time that the authorities stop filing unnecessary special leave petitions

only with the / objective of attaining some kind of a final dismissal from this Court every time. Costs this time has been spared but will not be spared the next time.

The needful be done in terms of the impugned judgment(s) within 15 days from today.

The special leave petitions are dismissed.

Pending applications stand disposed of."

4. Thus, the petitioners would submit, the Sale Certificate issued in their favour is not a compulsorily registerable document in terms of Section 17 of the Act. The Sale Certificate is not a conveyance defined under the Indian Stamp Act, 1899 (hereinafter referred to as the 'Stamp Act'). The procedure under Section 89(4) of the Act is not a procedure for registration of the Sale Certificate. Therefore, the obligation cast on the authorities under the Act to file the Sale Certificate issued by the 'Revenue Officer' in Book I cannot be avoided or delayed or denied for reason of stamp duty being chargeable on that Sale Certificate, if any. In any case, no stamp duty has yet been ascertained/levied in any of these cases. Only a show cause notice appears to have been issued in one case.

5. On the other hand, learned Additional Chief Standing Counsel would submit, by virtue of Section 17 read with Article 18 of Schedule I-B of the Stamp Act, a Sale Certificate is liable to suffer levy of stamp duty. Unless that duty is paid at the time of its execution by virtue of Section 35 of the Stamp Act, the same cannot be acted upon. Therefore, the obligation cast under Section 89(4) of the Act cannot be performed by the authorities under Act, in absence of stamp duty paid. At the same time, he has heavily relied on an earlier decision of the Supreme Court in **Smt. Shanty Devi L. Singh & Anr. vs Tax Recovery Officer & Ors., AIR 1991 SC 1880** to submit that there is no exemption from payment of stamp duty on sale certificate.

6. Having heard learned counsel for the parties and having perused the record, the objection being raised by the State is superficial in the context of the ratio of the decision in **Smt. Shanty Devi L. Singh (supra)**. For ready reference, the facts considered by the Supreme Court in that decision were noted as below:

"1. After hearing counsel for all parties, we grant special leave in these two petitions and proceed to dispose of the appeals finally by this common order as the point involved is a common one. We are dealing with the matter at some length as it raises certain important aspects of the Stamp Act, 1899 and the Registration Act, 1908 which are likely to come up for consideration frequently.

2. Smt Shanti Devi, the petitioner in SLP No. 15093 of 1989, was the highest bidder at an auction sale of house property bearing No. A-205, Defence Colony, New Delhi conducted on February 29, 1988 by the Tax Recovery Officer (TRO) for realising the income tax dues of its owner. Her bid was accepted and the sale confirmed on April 13, 1988. On April 14, 1988 a certificate of sale was issued by the TRO to the petitioner. Under the relevant rules, a copy of the certificate of sale should have been endorsed to the Sub-Registrar but it was actually sent to the Sub-Registrar on May 12, 1988. The petitioner in SLP No. 138 of 1990 purchased property bearing Nos. 112-113, Gautam Nagar, Delhi at an auction conducted by the income tax department. A certificate of sale in their favour was issued on May 23, 1988. A copy of the sale certificate was forwarded by the TRO to the Sub-Registrar.

3. The purchasers thereafter attempted to get the property registered by the Sub-Registrar in their names. The Sub-Registrar and the Collector of Stamps did not accede to this request apparently on the ground that this could not be done unless stamp duty was paid on the certificate of sale. On the petitioner's request, the TRO also addressed a couple of letters to the Sub-Registrar and Collector which may be referred to here. With his letter dated May 12, 1988 to the former, the TRO enclosed an extract from the Tax Recovery Inspectors Manual issued by the income tax department which reads as follows:

"After confirmation of sale of immovable property a certificate in Form ITCP-20 will be issued. The original of this sale certificate is liable for stamp duty and a further duty of Rs 4.50 is also chargeable on the copy of the sale certificate to be forwarded to the Sub-Registrar. These charges (which may vary from State to State) are to be borne by the auction purchaser. The original sale certificate thus issued will be the title for the property and it has the same value as a sale deed and it does not require registration by the purchaser. Thus the auction purchaser is saved expenses of registration etc. This office itself will send a copy of the sale certificate for registration to the concerned Sub-Registrar for making necessary entries in his registers."

The Collector of Stamps was addressed directly by the TRO on September 29, 1988 in relation to the Gautam Nagar property. In that letter the TRO stated

that he had received legal advice that no stamp duty was payable on the certificate of sale. The attention of the Collector was drawn to the fact that a copy of the sale certificate had been sent to the Sub-Registrar as required under Rule 21 of the Income Tax (Certificate Proceedings) Rules — ITCP rules — which runs as follows:

“21. Every Tax Recovery Officer granting a certificate of sale to the purchaser of immovable property sold under the second schedule shall send a copy of such certificate to the Registering Officer concerned under the Indian Registration Act, 1908 (18 of 1908) within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate.”

The Collector was requested to inform the Sub-Registrar accordingly to make necessary entries in the registers regarding the auction sale of the above immovable property on the basis of the copy of sale certificate sent to him.”

7. On submissions that were advanced, the Supreme Court formulated three questions for consideration. Those read as below:

“(1) What is the action to be taken by the Sub-Registrar when the copy of a certificate of sale is forwarded to him by the TRO? (2) Is the vendee in a sale by the TRO entitled to ask the TRO (sic Sub-Registrar) to make entries regarding the transfer in his records on the basis of the copy of the certificate of sale sent to him by the TRO? (3) What is the procedure to be followed by the Sub-Registrar when the original certificate of sale is produced before him by the vendee?”

8. Taking up the first issue which is the issue common to this case, the Supreme Court reasoned as below:

“The first of the above questions is directly answered by Section 89 of the Indian Registration Act, 1908. This section provides for the procedure to be followed in certain situations; in particular, in cases where sales are effected either by courts under the Code of Civil Procedure or by revenue officers in pursuance of a revenue recovery certificate. Under Section 89(2), every court granting a certificate of sale of immovable property under the Code of Civil Procedure, 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. Sub-section (4) of Section 89 makes a similar provision in respect of immovable properties sold by public auction by a revenue officer who issues a certificate of sale in pursuance of the auction. The sub-sections further provide that when the copy of the certificate of sale is so received, such “registering officer shall file the copy or copies, as the case may be, in his Book No. 1”. So far as sales for recovery of income tax are concerned, Rule 21 of the ITCP Rules, quoted earlier, makes a like provision requiring the concerned TRO to send a copy of the certificate of sale to the registering officer concerned. A doubt may arise whether the expression ‘revenue officer’ in Section 84(4) of

the Registration Act includes a TRO; and, if not, whether, without an appropriate amendment of Section 89(2) or (4) of the Registration Act, the mere framing of a rule by the Central Board of Direct Taxes under the Income Tax Act, 1961 will be sufficient to oblige the registration officer to file a copy of the certificate of sale sent to him by the TRO in his Book No. 1. In our opinion, there is no need to read the term 'revenue officer' in any restricted sense and that it is wide and comprehensive enough to include the TRO who effects a compulsory sale for the recovery of an income tax demand. We are therefore clear that, in the present case, the registration officer has to act in terms of Section 89(4) of the Indian Registration Act read with Rule 21 of the ITCP rules. This is to file the copy of the certificate of sale received by him from the TRO in his Book No. 1."

9. Then, also relevant to the present discussion, the Supreme Court dealt with the second question framed by it, pertaining to the consequence of filing of the Sale Certificate in Book I. In that regard, it observed as below:

"This takes us to the second question as to whether filing of a copy of the certificate in Book No. 1 within the meaning of Section 89 is tantamount to the registration of the document under the Registration Act or it is a totally different concept. The registration of a document under the Act is conditional on the fulfilment of several requirements (Sections 32 to 35). The document has to be presented for registration by a person competent to do so. The person executing the document should appear before the Sub-Registrar and admit or deny execution of the document. The Sub-Registrar may conduct an enquiry, where needed, to satisfy himself as to the proper execution of the document. He will decide to admit the document to registration only if he is satisfied on this. What he has to do once he admits a document to registration is laid down in Sections 51 to 67. First, he is bound to endorse full particulars and details of the registration on the document presented to him and also obtain the signature of every person presenting the document. He should then, without delay copy the entire document in the appropriate book maintained for the purpose (which, in respect of non-testamentary instruments relating to immovable property, is Book No. 1). The entries in each book have to be consecutively numbered yearwise and corresponding entries should be contemporaneously made in current indices to be maintained in every office. The officer should affix his signatures to the endorsements made in his presence and then endorse a certificate on the document that it is registered together with the registration particulars which shall be signed, sealed and dated by him. The document is then returned to the person presenting it for registration. The books and indices are available for public inspection and certified copies thereof are to be given to parties applying for them. This, in brief, is the process of registration.

On the other hand, the process of filing that is contemplated under the Act is

somewhat different though the Act does interchange the two expressions in some places. For instance, Section 51(2) itself refers to all documents or memoranda registered under Section 89 being entered or filed in Book No. 1. But there appear to be vital differences between the two processes:

(i) It is the original of a document that is registered whereas only copies or memoranda are filed;

(ii) The executant of a document which is required to be registered, has to present it for registration and go through the attendant and subsequent processes described above. A copy to be filed under Section 89 or memoranda that are filed under Sections 64 to 66 is simply transmitted to the concerned Sub-Registrar for being filed. Apparently, the procedure of presentation is dispensed with in regard to the latter because they are issued by public authorities discharging their official duties.

(iii) Additional particulars relevant to a document admitted to registration need to be got endorsed thereon from time to time as contemplated in Sections 58 and 59 but this rule does not apply to a copy or memorandum filed under the Act.

(iv) When a document is registered, the entirety of the document has to be copied out into the relevant book and the original document returned to the person who presents the document with necessary endorsements. This requirement is absent in the case of a copy or memorandum which is just filed.

(v) Where a document is registered, a certificate of registration has to be issued which will be admissible to prove the due registration of the document.

There are thus some differences between the two procedures and this aspect has been touched upon in some very early decisions under the Registration Act, 1877 : vide, *Fatteh Singh v. Daropadi* [1908 Punj Rec Case No. 142 : 1908 PWR 186] , *Siraj-un-nissa v. Jan Muhammad* [2 All WN 51] , *Masarat-un-nissa v. Adit Ram* [(1883) ILR 5 All 568 (FB) : 1883 Awn 159] . Reference may also be made to *Premier Vegetable P. Ltd. v. State of M.P.* [AIR 1986 MP 258] We need not, however, consider for the purposes of this case whether filing and registration mean one and the same thing for all purposes and what the legal effect of these differences is. For, though the processes are different, the purchaser at a court or revenue sale is under no disadvantage because of the lack of registration. The certificate of sale itself not being a compulsory registrable document : vide Section 17(2)(xii), the transfer of title in his favour is not vitiated by the non-registration of the certificate. The copy of the certificate filed in Book No. 1 contains all the relevant details. These details are reflected in the indices maintained under Section 55 which are open to inspection to all persons. [We may point out here that Section 55(2) only refers to memoranda filed but it seems clear, particularly in the light of various State amendments, that the index to Book No. 1 should also contain the details of copies of document filed by him]. These requirements are sufficient to ensure that any person intending to purchase or deal with the property is put on notice about the principal contents of the certificate of sale provided he inspects the relevant book and/or index. It is sufficient to say, for the purposes of this case, that all that the Sub-Registrar required to do is to file the copy of the certificate in Book No. 1 and no more. He does not have to copy out the certificate or make any other entries in Book No. 1."

10. The above discussion offers a complete and if we may add an absolute answer to the issue at hand. The obligation of the authorities under the Act to file a Sale Certificate received by them from the 'Revenue Officer' is not dependent or consequential to the payment of stamp duty, if any. The Supreme Court drew a distinction between the registration and filing under the Act it was specifically held that the filing of a Sale Certificate remains a consequence of its receipt from the 'Revenue Officer'. There is no room to entertain any doubt as to its correctness or completeness of the ratio of the Supreme Court.

11. What does survive for our consideration is the further submission advanced by the learned Additional Chief Standing Counsel on the strength of Section 17 read with Section 35 read with Article 18 of Schedule I-B of the Stamp Act. We find that that argument is a shade of the submission advanced before the Supreme Court as was considered while dealing with the third question formulated by the Supreme Court in **Smt. Shanty Devi L. Singh (supra)**. While the Supreme Court took clear notice of the objection raised by the State on the strength of chargeability of stamp duty on a Sale Certificate, it found the issue to be foreign to the issue of filing of Sale Certificate under the Act. Therefore, while dealing with question no.3 formulated, the Supreme Court observed as below:

"We now come to the last question and that is whether the certificate of sale is liable to stamp duty and, if so, what the consequences are. The High Court has referred to Section 3, Section 29(f) and Article 18 of Schedule I to the Stamp Act. This provision applies in the absence of a contract to the contrary. Prima facie, therefore, the view taken by the High Court — and there are other decisions also to the same effect — is correct unless a contract to the contrary can be spelt out. The auction notice did not promise any exemption from stamp duty. The extract quoted earlier from the Departmental Manual (viz. that both the certificate and copy are liable to stamp duty) also renders it unlikely that any promise was given by the TRO at the time of sale that no stamp duty will be payable. However the TRO's letter to the Collector

referring to the legal advice obtained by him strikes a somewhat inconsistent note. Even if there had been any such mention by the TRO or the auctioneer, the question would arise whether it can be construed as contract to the contrary binding on the Union for the purposes of Section 29(f) of the Stamp Act. Sri Mehta requests that we may not now go into these questions but leave the issue to be decided as and when the petitioners seek to have the certificate of registration registered or introduced in evidence before any court or authority entitled to take evidence which is at present a remote contingency.

There are two provisions in the Stamp Act which provide for the adjudication of stamp duty. Under Section 31, it is open to the executants of any document, at any stage but within the time limit set out in Section 32, to produce a document before the Collector of Stamps and require him to adjudicate on the question whether the document should bear any stamp duty. The Collector thereupon may adjudicate the stamp duty himself or refer the matter to the Chief Controlling Revenue Authority of the State. In turn, it is open to the Chief Controlling Revenue Authority to refer the matter to the High Court for an authoritative decision (Sections 32 and 56). This procedure could have been followed by the petitioners if they wished to seek an answer to the question whether the certificate of sale is liable to stamp duty but they have not done it and the time limit under Section 32 has run out. The other provision that may become applicable is Section 33. Under this section, if any document (and this includes a certificate of sale) is presented to the Registrar for registration and the Registrar is of opinion that it is a document which should bear stamp duty but that it has not been stamped, it is his duty to impound the document and send it on to the Collector of Stamps for necessary adjudication (Section 38). This contingency has also not happened. The third contingency, also provided for in Section 33 is when a party wishes to rely upon the certificate of sale as a piece of evidence before a court or an authority entitled to take evidence. Such court or authority will also have to impound the document and shall not admit the same in evidence unless the stamp duty chargeable and the stipulated penalty are paid. This situation has not arisen so far but may arise at some time in future. It is unnecessary to anticipate the same and decide the issue. We shall therefore leave the issue of stamp duty to be adjudicated upon in the normal course, as and when found necessary, and express no views thereon at this stage."

We should, however, like to deal with a contention raised in the grounds that even if the certificate of registration is sought to be presented for registration by the petitioners, the Sub-Registrar has no jurisdiction to refuse registration on the ground that the document is insufficiently stamped. As already pointed out, Section 17(2)(xii) of the Registration Act makes it clear that the certificate of sale issued in a court sale or by a revenue officer does not need registration. (Though this provision, like Section 89, relates only to a certificate of sale granted to the purchaser of any property sold by public auction by a civil court or revenue officer, for the same reasons as have been set out earlier, we think that the certificate issued by the TRO is also covered

by this provision). It is, therefore, clear that it is not obligatory on the purchaser of property in a tax recovery sale to get the certificate of sale registered in order to perfect his title. However, if he presents the original certificate of sale to the Registration Officer for registration, the Registration Officer will have to comply with the relevant statutory provisions in this regard. However this situation has not arisen as yet and it is unnecessary to anticipate it and decide the point. We therefore do not express any opinion thereon.

This leaves for consideration the question in regard to the municipal transfer fee. No details have been placed before us on this issue. The payability of the municipal transfer fee perhaps depends upon the payability of stamp duty but our attention has not been invited to the relevant statutory provisions or their interpretation. The High Court has given no separate finding on this issue. We also express no opinion particularly since we are not expressing any opinion on the question as to whether stamp duty is payable on the certificate of sale or not. It will be open to the petitioners to contest this levy in other appropriate proceedings."

12. Thus, as in the case of **Smt. Shanty Devi L. Singh (supra)** so in this case, the issue of chargeability of stamp duty has to be left open as the revenue authorities have to be left free to raise that issue and consequentially the petitioners have to be left free to raise all objections thereto in accordance with law. Needless to add, if any stamp duty arises on any of the petitioners with respect to a Sale Certificate issued in their favour, it would remain open to them to avail their statutory remedies against such adjudication as well. Thus, the issue of adjudication of stamp duty is left completely open to the authorities.

13. What we then find strange and wholly unacceptable is that the ratio in law has remained singular from beginning. This aspect was noticed by the Supreme Court in **G. Madhurambal (supra)** wherein Supreme Court observed that the consistent view has remained for last 150 years. Even when the present matters were taken up, we noticed this infraction of rule of consistency to the extent the authorities under the Act have failed to file the Sale Certificate produced by the petitioners in Book I. Consequent to the said interlocutory order, the Inspector General of Registration

issued a Circular letter dated 5.3.2024. It reads as below:

“मा० उच्च न्यायालय, इलाहाबाद में रिट याचिका संख्या-सी-6757/2024 मेसर्स एस०आर०एस०डी बिल्डकॉन वेनचर एल०एल०पी० बनाम उत्तर प्रदेश राज्य व अन्य विचाराधीन है, जिसमें बिक्रय प्रमाण पत्र को फाइल न किये जाने के सम्बन्ध में मा० न्यायालय द्वारा आपत्ति व्यक्त की गयी है और निर्देशित किया गया है कि मा० उच्चतम न्यायालय द्वारा निर्णीत वादों के कम में रजिस्ट्रेशन अधिनियम, 1908 की धारा-89 (4) के प्रावधान के अनुसार उप निबन्धक, राजस्व अधिकारी द्वारा प्रेषित विक्रय प्रमाण पत्र को नियमानुसार फाइल बही संख्या-1 में फाइल करने के लिये बाध्य है।

उक्त के कम में समस्त उप निबन्धकों को निर्देशित किया जाता है कि रजिस्ट्रेशन अधिनियम, 1908 की धारा-89 (4) एवं अनुसूची-1 (ख) के अनुच्छेद-18 के अनुक्रम में अधिकृत न्यायालय, या अधिकारी या संस्था द्वारा कार्यालय में प्रेषित विक्रय प्रमाण पत्रों को फाइल बही संख्या-1 में फाइल करना सुनिश्चित करें।

यह निर्देश मा० उच्च न्यायालय में लम्बित रिट याचिका संख्या-सी-6757/2024 मेसर्स एस०आर०एस०डी बिल्डकॉन वेनचर एल०एल० पी० बनाम उत्तर प्रदेश राज्य व अन्य के अन्तिम निर्णय के अधीन रहेगा।”

14. Despite that Circular issued, it is a fact that the Sale Certificate issued in favour of the petitioners were not filed in Book-1. While we were inclined to impose heavy cost on the erring officers, we have been assured by learned Additional Chief Standing Counsel that appropriate enquiry would be made against the erring officials who may have failed to give effect to the Circular letter dated 5.3.2024 and we have been further assured that no exception would be made in present and in future in giving effect to the law declared by the Supreme Court in **Smt. Shanty Devi L. Singh (supra)**. Thus, we have been assured that in future, all Sale Certificate issued by the 'Revenue Officers' (as considered in **Smt. Shanty Devi L. Singh (supra)**) would be filed in Book I, without delay i.e. within 15 days from the receipt of a Sale Certificate by the concerned registering authority.

15. In view of the facts noted above, we must observe that in case of any non-compliance of the above, the revenue authorities may remain exposed to heavy costs at their own risk in any litigation that may arise, hereafter. To that effect, we further require the Inspector General of Registration to issue necessary administrative

instructions as may not allow any further fruitless litigation to arise, in similar facts.

16. In view of the above, all writ petitions stands **allowed**.

17. The order dated 8.12.2023 passed in Writ - C No. 44628 of 2023 is quashed and a positive direction is issued to the respondent registering authority to register the individual Sale Certificate of the petitioners within a fortnight.

18. Let a copy of this order be supplied to Shri Nimai Das, learned Additional Chief Standing Counsel for onward communication and compliance.

Order Date :- 2.7.2024

Prakhar

(Donadi Ramesh, J.)

(S.D. Singh, J.)