

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION No.14741 of 2023

Between:-

B. Venkata Krishna Rao

.... Petitioner

And

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue(Stamps & Registration Department),
A.P.Secretariat, Velagapudi, Guntur District
& 5 others

.... Respondents

Counsel for the Petitioner : Mr. Dasari Chandra Sekhar

Counsel for the respondents : G.P. for Stamps &
Registration

ORDER:

The present Writ Petition is filed seeking to declare the action of the Registration authorities in insisting for stamp duty, registration fee etc., as per value arrived based upon market value guidelines/registers but not the value mentioned in the sales certificate issued after the public auction conducted under Insolvency and Bankruptcy Code, 2016 and keeping the document P.No.997 of 2023 with the respondent No.5 pending as illegal, etc., and for a consequential direction to the respondent-authorities to receive and release the above said document with the respondent No.5 declaring that the value Y mentioned in sale certificate issued by Krishna Industrial Corporation Limited, after

the E-auction conducted under the provision of Insolvency and Bankruptcy Code, 2016 (Liquidation) for the property mentioned in the sale certificate alone is to be basis for stamp duty and registration fee and set aside the proceedings issued by the Sub-Registrar, Kovvur on 29.05.2023 and pass such other orders.

2. The facts of the case, as per the averments made in the Writ Petition in brief, may be stated thus:

One Krishna Industrial Corporation Limited; has failed to repay its debts and went into liquidation and a liquidator was appointed as per the provisions of the Insolvency and Bankruptcy Code, 2016. Therefore, a public auction notice for sale of lands/sites of the original owner admeasuring Ac.0.91 cents in R.S No.242/1, 242/2; Ac.2.75 cents in R.S No.244/3; Ac.0.86 cents in R.S. No.242/5; Ac.1.72 cents in R.S.No.244/1; Ac.0.19 cents in R.S.No.245/1; Ac.0.66 cents in R.S No.245/3; Ac.2.00 cents in RS. No.245/4; Ac.1.33 cents in RS. No.244/3; Ac 1.38 1/2 cents in RS. No.245/5; Ac. 2.78 cents in RS. No. 244/2; Ac 0.41 cents in RS. No.242/2; AC. 0.50 cents in RS. No.723/1A; Ac.1.22 cents in RS. No.242/6; AC.1.38 1/2 cents in RS. No. 723/3; AC. 0.18 cents in RS No.242/3; AC.0.13 cents in RS No.244/4; AC.0.75 cents in RS No.723/2; AC.0.10 cents in

RS.No.723/5; AC.0.09 cents in RS. No.720/1; Ac.0.08 cents in RS No. 720/2; Ac.0.13 cents in RS.No.243/5; AC. 0.12 cents in RS. No.243/6; Ac. 0.42 1/2 cents in RS No.243/6; Ac.0.025 cents in RS No. 243/7; Ac.0.11 1/2 cents in R.S No.243/8; AC 1.15 cents in R.S No. 723/1; AC. 0.55 1/2 cents in RS. No.243/6; AC 0.025 cents in R.S. No.247/7; AC 0.11 1/2 cents in RS. No.243/8; AC 0.16 cents in RS.No.243/9; AC.8.08 cents in RS No.243/10; 251/1, 723/4; AC.1.09 cents in RS. No.243/2; AC 0.37 cents in RS No.250/2; AC.6.91 cents in RS.No.251/2, 261/2,3 & 4, 723/7 & 8 and AC.5.96 cents in RS No. 243/183, 723/3 total admeasuring 44.65 Acres., by e-auction mode was issued.

3. The petitioner participated in the e-auction, offered Rs.19,65,00,000/- and was declared as successful highest bidder. On payment of the said amount, a Certificate of Sale by the liquidator was issued to the petitioner. After payment of registration fee of Rs.19,65,000/- and stamp duty of Rs.1,27,72,500/- by the petitioner, the said Certificate was submitted to the Office of the Sub-Registrar, Kovvur and on receipt of the same, the Joint Sub-Registrar/5th respondent issued final notice dated 29.05.2023, insisting the petitioner to pay deficit stamp duty amount of Rs.1,80,06,500/- and registration

fee of Rs.27,70,225/- stating that the market value of the property is Rs.47,35,22,500/- instead of Rs.19,65,00,000/-, as also that the petitioner is liable to pay the balance amount for registering the Certificate of Sale, without fail to get the document registered. The petitioner pointed out to the authorities and explained that the value mentioned in Sale Certificate has to be taken into account, as the sale took place in a public auction in terms of the provisions of Insolvency and Bankruptcy Code, 2016, but they informed that as per their instructions, the stamp duty as per their books/market value has to be collected and not as per the Sale Certificate.

Under the said circumstances, the Writ Petition is filed.

4. Heard learned counsel for the petitioner. Also heard learned Government Pleader for Stamps & Registration representing the respondents.

5. Learned counsel submits that the insistence on the part of the registration authorities by way of final notice dated 29.05.2023 through the 5th respondent for payment of stamp duty and registration fee on the subject matter property based on their records, instead of value mentioned in the Sale Certificate is not sustainable in Law. He submits that the issue in this regard is

no longer 'res-integra'. He contends that when a property is purchased in a public auction under the provisions of the Insolvency and Bankruptcy Code, 2016, the stamp duty payable for registration has to be determined by taking the valuation mentioned in the Sale Certificate into account, but not on the basis of the market value/as per the records of the revenue authorities. Referring to decisions in W.P.No.32791 of 2013 & batch dated 24.01.2014 and I.A.No.1 of 2022 in/and W.A.No.17 of 2022 & W.A.No.22 of 2022(State of A.P. v. Marvel Financial Services Limited) dated 18.10.2022, the learned counsel would submit that the matter is squarely covered by the said decisions and the Writ Petition deserves to be allowed as prayed for on the same analogy.

6. In view of the legal position, this Court is inclined to consider the matter on merits.

7. In **Marvel Financial Services Limited**, a Division Bench of this Court was dealing with two State appeals i.e., Writ Appeal No.17 of 2022 preferred against an Order of a learned Single Judge in W.P.No.15400 of 2018 dated 24.01.2020 with a delay of 627 days in filing the appeal. W.A.No.22 of 2022 was preferred against the Order of the learned Single Judge in W.P.No.20142 of

2021 dated 14.09.2021 allowing the said Writ Petition in terms of the order passed in W.P.No.15400 of 2018, wherein, the writ petitioner i.e., Marvel Financial Services Limited, purchased a property in an auction conducted by Tata Capital Financial Services Limited under the provisions of the SARFAESI Act and the Sale Certificate was issued in its favour and when the same was presented for registration, the concerned authorities refused to register it *inter alia* stating that the stamp duty has to be paid on the market value, but not on the value mentioned in the Sale Certificate, since the market value was much higher than the value mentioned in the Sale Certificate. A learned Judge allowed the said Writ Petition relying on the Common Order dated 24.01.2014 passed in W.P.No.17600 of 2011 & 32791 of 2013 (Indian Bank, ARM Branch, Coimbatore v. Sub-Registrar, Nagari Mandal; K.S.Devarajan v. State of A.P.), holding that the valuation mentioned in the Sale Certificate would be the criteria to determine the stamp duty payable for registration and that the writ petitioner is not required to pay the stamp duty on the basis of the market value fixed by the authorities.

8. In the appeals referred to supra, it was argued on behalf of the appellants/State that the value shown in the Sale Certificate is different from the market value and cannot be the criteria to

determine the stamp duty. While making other submissions, it was contended that the orders under appeal are not sustainable. The Hon'ble Division Bench while concurring with the reasoning assigned by the learned Single Judge, was not inclined to interfere with the order passed in W.P.No.15400 of 2018, passed in the light of the opinion expressed in the judgment of **Indian Bank** referred to supra. It is apposite to extract the relevant portion of the order which reads as follows:

"8.....In the matter of **Indian Bank**, the learned Judge discussed the law in extensio to hold that if the sale certificate is issued by the Court or officer authorized by the Court, any further deed of transfer is not required and that while undertaking registration of the document in relation to the property purchased in an open auction conducted by the bank, the valuation mentioned in the sale certificate shall alone be the criteria to determine the stamp duty payable for registration. It was also observed that when auction is conducted in pursuance to the statutory mandate by the Court or State or instrumentality of the State, no intention to manipulate the stamp duty and undervaluing the property can be inferred, more particularly, when the same is confirmed in an open auction. Having relied upon the said order, the learned Single Judge, while deciding W.P.No.15400 of 2018, has rightly opined that when the sale certificate was issued under the authority of Central enactment, i.e., SARFAESI Act, the value set forth in the said document cannot be doubted and it can be taken as market value of the property for the purpose of registration."

9. Further, the Hon'ble Division Bench dealt with provisions of Indian Stamps Act i.e., Section 47-A(6) and Rule 8(5) of the Rules, 2002, extensively and expressed in categorical terms that Rules of 2002 provide for sufficient guidelines for fixing the valuation of the property put for auction sale and therefore the value mentioned in the Sale Certificate issued in favour of the auction purchaser consequent upon auction under the SARFAESI Act, cannot be presumed to have been fixed at a lesser rate by under valuing the sale value of the property. The Hon'ble Division Bench in the ultimate analysis of the matter and also by referring to the orders dated 23.09.2021 passed in SLP(C) No.13911 of 2021(The State of A.P., v. Devi Sea Foods Limited), dismissed the Writ Appeals.

10. In view of the above decision of the Hon'ble Division Bench and as there is no dispute that auction was conducted in terms of the provisions of Insolvency and Bankruptcy Code, the same analogy applies to the property purchased by the petitioner and he is entitled for the reliefs sought for.

11. Accordingly, the Writ Petition is allowed and the impugned notice dated 29.05.2023 is set aside. The Joint Sub-Registrar/5th respondent is directed to register the document i.e.,

P.No.997/2023 presented by the petitioner for registration based on the value mentioned in the Certificate of Sale and release the same, within a period of two (2) weeks from the date of receipt of copy of this Order. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

NINALA JAYASURYA, J

Date: 17.07.2023
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THE HON'BLE SRI JUSTICE NINALA JAYASURYA

W.P.No.14741 of 2023

Date: 17.07.2023

GVK