

Smt. Shanty Devil. Singh And' Anr vs Tax Recovery Officer And Ors on 23 April, 1990

Equivalent citations: 1991 AIR 1880, 1990 SCR (2) 627, AIR 1991 SUPREME COURT 1880, 1990 (3) SCC 605, 1991 AIR SCW 2074, (1990) 51 TAXMAN 4, (1990) 2 COM LJ 132, (1990) 3 JT 135 (SC), 1990 SCC(TAX) 356, 1990 (3) JT 135, (1990) 41 DLT 268, (1990) 18 DRJ 345, (1990) 183 ITR 481, (1990) 2 LANDLR 447, (1990) 2 RRR 281, (1991) 1 CIVLJ 95, (1990) 84 CURTAXREP 27

Author: A.M. Ahmadi

Bench: A.M. Ahmadi

PETITIONER:

SMT. SHANTY DEVIL. SINGH AND' ANR.

Vs.

RESPONDENT:

TAX RECOVERY OFFICER AND ORS.

DATE OF JUDGMENT 23/04/1990

BENCH:

RANGNATHAN, S.

BENCH:

RANGNATHAN, S.

AHMADI, A.M. (J)

CITATION:

1991 AIR 1880

1990 SCR (2) 627

1990 SCC (3) 605

JT 1990 Supl. (3) 135

1990 SCALE (1) 65

ACT:

Indian Stamp Act, 1899: Sections 3 and 29(f) and Schedule 1, Article 18--Tax Recovery Sale--Certificate of Sale--Whether purchaser of property liable to pay stamp duty.

Registration Act, 1908 : Sections 17(2)(xii) and 89(4)--Tax Recovery Sale--Purchaser of Property--Whether required to get certificate of sale registered--Term "Revenue Officer"--Whether includes Tax Recovery Officer.

Income Tax Act, 1961/Income Tax (Certificate Proceedings) Rules, 1962: Rule 21--Tax Recovery Sale--Purchaser of Property--Whether required to get certificate of sale registered.

HEADNOTE:

The appellants purchased properties in auction sales conducted by the Tax Recovery Officer for recovery of income tax and were issued sale certificates. Copies of certificates were also sent to the SubRegistrar, as required under Rule 21 of the Income Tax (Certificate) Proceedings Rules---ITCP Rules. The appellants approached the SubRegistrar for getting the properties registered in their names but the Sub-Registrar and the Collector of Stamps refused to do so unless stamp duty was paid on the certificate of sale. At the appellants' request, the Tax Recovery Officer also addressed the two officers for getting the entries made in the Register on the basis of the copy of sale certificate. He also informed the Collector of Stamps that according to the legal advice given to him no stamp duty was payable on the certificate of sale. However, no action was taken by either of the officers. The appellants' request to Delhi Administration and Municipal Corporation to effect mutation entries in the Corporation Register, was also not acceded to on account of the appellants' failure to pay the transfer fees, leviable as additional stamp duty under the Delhi Municipal Act. Therefore, the appellants filed writ petitions before the High Court praying for directions to the respondents to register the certificate of sale and mutate the property in the name of the appellants. The High Court dismissed the petitions holding that, in the absence of specific contract to the contrary, the liability to pay the stamp duty was that of the purchaser.

628

Allowing the appeals by the purchasers, partly, this Court, HELD: 1. Under section 89(4), every Revenue Officer, granting a certificate of sale of immovable property or public auction should 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 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, makes a like provision requiring the concerned T.R.O. to send a copy of the certificate of sale to the registering officer concerned. [632E-G]

There is no need to read the term 'revenue officer' in any restricted sense. It is wide and comprehensive enough to include the T.R.O. who effects a compulsory sale for the recovery of an income-tax demand. 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 and file the copy of the certificate of sale received by him from the T.R.O. in his Book No. 1. [633A-B]

2. Section 17(2)(xii) of the Registration Act, 1908 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, the certificate issued by the T.R.O. is also covered by this provision. It is, therefore, 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 provision in this regard. [636F-H]

3.1 The Certificate of sale itself not being a compulsorily registerable document: vide section 17(2)(xii), the transfer of title in favour of the purchaser 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. 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. [635A-C]

629

3.2 Therefore, in the instant case, all that the Sub-Registrar is 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. [635C]

4.1 Under Sections 3, 29(f) and Article 18 of Schedule I of the Stamp Act, 1899 the liability to pay stamp duty is of the purchaser to the contrary can be spelt out. [635D]

In the instant case, the auction notice did not promise any exemption from stamp duty. The Tax Recovery Inspectors' Manual which states that both the certificate and copies are liable to stamp duty, also renders it unlikely that any promise was given by T.R.O. at the time of sale that no stamp duty will be payable. However, the T.R.O.'s letter to the Collector of stamps referring to the legal advice given to him strikes a somewhat inconsistent note. However, the issue of stamp duty is felt to be adjudicated upon in the normal course, as and when found necessary. [635E-G]

4.2 The payability of municipal transfer fee depends upon the payability of stamp duty. It will be open to the appellants to contest this levy in other appropriate proceedings. [637B]

5. The Sub-Registrar is directed to file the copy of the certificate of sale received by him from the T.R.O. in his Book No. 1 as required by section 89(4) of the Registration Act read with Rule 21 of the IncomeTax (Certificate Proceed-

ings) Rules, 1962. [637D]

Fatteh Singh v. Daropadi, [1908] Punj. Rec. Case No. 142; Sirajun-nissa v. Jan Muhammad, 2 All. W.N. 51; Masarat-un-nissa v. Adit Ram, [1883] I.L.R. 5 All. 568 (F.B.) and Premier Vegetable P. Ltd. v. State, AIR 1986 M.P. 258. referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1936 & 1937 of 1990.

From the Judgment and Order dated 26.7.1989 of the Delhi High Court in C.W.P. No. 852 of 1989 and 2852 of 1988. S.K.Mehta, Aman Vachhar and Atul Nanda for the Appellants. S.C. Manohanda, Manoj Arora, V.K. Sharma and R.K. Maheshwari for the Respondents.

The Judgment of the Court was delivered by RANGANATHAN, J. 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. 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 29.2.88 by the Tax Recovery Officer (T.R.O.) for realising the income tax dues of its owner. Her bid was accepted and the sale confirmed on 13.4.1988. On 14.4.1988 a certificate of sale was issued by the T.R.O. 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 12.5.1988. The petitioner in SLP No. 138 of 1990 purchased property bearing No. 112-113, Gautam Nagar, Delhi at an auction conducted by the Income-tax department. A certificate of sale in their favour was issued on 23.5.1988. A copy of the sale certificate was forwarded by the T.R.O. to the Sub-Registrar. 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 T.R.O. also addressed a couple of letters to the Sub-Registrar and Collector which may be referred to here. With his letter dated 12.5.1988 to the former, the T.R.O. 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."

(underlining ours) The Collector of Stamps was addressed directly by the T.R.O. on 29.9.1988 in relation to the Gautam Nagar property. In that letter the T.R.O. 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. Apparently, no further action was taken by the Sub- Registrar or Collector in the matter and, hence, each of the petitioners applied to the Delhi High Court under Article 226 of the Constitution. The T.R.O., the Collector, the Sub-Registrar, Delhi Administration and the Municipal Corporation of Delhi were impleaded as respondents. The petitioner prayed for a writ of mandamus or any appropriate writ or order or direction to the respondents to register the certificate of sale and mutate the property in the name of the petitioner. The Delhi Administration and the Municipal Corporation were added as parties since they did not respond to the petitioner's request to effect mutation entries in the Corporation register, presumably on account of the petitioner's failure to pay the "transfer fees" leviable as additional stamp duty under the Delhi Municipal Act. The writ petition was dismissed at the stage of admission by the Delhi High Court. The learned Judges passed a short order to the following effect:

"Under S. 29(f), read with Schedule I (Article 18) and S. 3 of the Stamp Act, the liability to pay the Stamp Duty is of the purchaser, unless there is a specific contract to the contrary in this regard. In this case the auction notice is silent as to who is to pay the Stamp Duty. In other words, it does not create liability for the Government to pay the Stamp Duty. Hence the general provisions of law which are quoted above would be applicable. Dismissed."

Each of the petitioners has thereupon, preferred this special leave petition before this Court.

On the above facts, three different and separate questions arise for consideration: (1) What is the action to be taken by the SubRegistrar when the copy of a certificate of sale is forwarded to him by the T.R.O.? (2) Is the vendee in a sale by the T.R.O. entitled to ask the T.R.O. 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 T.R.O.? (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?

The first of the above questions is directly answered by S. 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 S. 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 S. 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; 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 T.R.O. to send a copy of the certificate of sale to the registering officer concerned. A doubt may arise whether the expression 'revenue officer' in S. 84 (4) of the Registration Act includes a T.R.O.; and, if not, whether, without an appropriate amendment of S. 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 T.R.O. 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 T.R.O. 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 S. 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 T.R.O. in his Book No. 1. 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 S. 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 (Ss. 32 to 35). The document has to be presented for registration by a person competent to do so. The persons 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 Ss. 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 year-wise 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, S. 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 s. 89 or memoranda that are filed under Ss. 64 to 66 is simply transmitted to the con-

cerned 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 Ss. 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; *Siraj-un-nissa v. Jan Muhammad*, 2 *All. W.N.* 51; *Masarat-un-nissa v. Adit Ram*, [1883] *I.L.R.* 5 *All.* 568 (F.B.). Reference may also be made to *Premier Vegetable P. Ltd. v. State*, AIR 1986 M.P. 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 compulsorily registrable document: vide s. 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 s. 55 which are open to inspection to all persons. (We may point out here that S. 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.

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 s. 3, s. 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 T.R.O.'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 a contract to the contrary binding on the Union for the purposes of s. 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 s. 31, it is open to the executants of any document, at any stage but within the time limit set out in s. 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 (Ss. 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 s. 32 has run out. The other provision that may become applicable is s.

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 (s. 38). This contingency has also not happened. The third contingency, also provided for in s. 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, s. 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 s. 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.

For the above reasons, we are of opinion that these appeals have to be allowed in part. The Sub-Registrar is directed to file the copy of the certificate of sale received by him from the T.R.O. in his Book No. 1 as required by S. 89(4) of the Act read with rule 21 of the Income-tax (Certificate Proceedings) Rules, 1962. The petitioners are entitled to ask for nothing more. We express no opinion on the question as to whether any stamp duty or municipal transfer fees are payable in respect of the original certificate of sale. The appeals are accordingly disposed of. There will be no order as to costs.

N.P.V.
partly.

Appeals allowed