

SALE CERTIFICATE ISSUED BY AN AUTHORISED OFFICER PURSUANT TO CONFIRMATION OF AN AUCTION SALE IS NOT COMPULSORILY REGISTRABLE

INTRODUCTION:

*The Apex Court in a recent decision in **The State of Punjab and Anr. Vs M/s Ferrous Alloy Forgings Pvt. Ltd. and Others**¹, held that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale was merely evidence of such title and did not require registration under Section 17(1) of the Registration Act, 1908.*

FACTS:

A company by the name M/s Punjab United Forge Limited was ordered to be wound up by the Company Judge of the Punjab and Haryana High Court under the provisions of the Companies Act, 1956 and permission was granted to the Industrial Finance Corporation of India ("IFCI") to sell the properties mortgaged with it and also the properties hypothecated with Andhra Bank.

Consequently, the IFCI invited tenders to auction various immovable and movable assets of M/s Punjab United Forge Limited.

M/s Ferrous Alloy Forging Pvt. Ltd., a sister concern of the Respondent No.1 offered the highest bid and as a result the auction sale was confirmed, first by the official liquidator and later by the High Court in favour of M/s Ferrous Alloy Forging Pvt. Ltd..

The Respondent No. 1 thereafter moved an application before the Company Judge of the Punjab and Haryana High Court requesting for execution of a conveyance deed in its favour on the ground that the entire sale consideration was paid by it and that the Board of Directors

and the Chairman were the same for the Respondent No. 1 and its sister concern.

The request was declined by the Company Judge of the Punjab and Haryana High Court. In view of this, the Respondent No. 1 preferred an appeal before a Division Bench of the Punjab and Haryana High Court which came to be allowed vide an order dated 22nd October, 1997.

The Respondent No.1 thereafter filed an application under Order XXI Rule 94 of the Code of Civil Procedure, 1908 ("CPC") praying for the issuance of a sale certificate in its favour as it was the successful auction purchaser for both the movable and immovable properties of M/s Punjab United Forge Limited.

The application came to be disposed of by the Company Judge of the Punjab and Haryana High Court vide an order dated 13th April, 1999, wherein it was inter alia held that the Respondent No. 1 was liable to pay stamp duty on the immovable properties which had been put to auction which would include land, building and permanently affixed machinery thereto. It was further directed that although the immovable properties which were put to auction

¹ Civil Appeal No. 12527 of 2024

were to be included in the certificate of transfer, their value was to be excluded for the purpose of computation of stamp duty.

When the matter was taken up by the Registrar of the Punjab and Haryana High Court, the Registrar took the view that stamp duty had to be paid on Rs. 2.25 Crores, which was the valuation of the immovable properties as offered in the tender. The Respondent No. 1 was, accordingly, directed to pay stamp duty on Rs. 2.25 Crores on the sale certificate issued in its favour.

The directions issued by the Registrar were challenged by the Respondent No. 1 by way of a Writ Petition for being in derogation of Section 17(2)(xii) of the Registration Act read with Order XXI Rule 94 of CPC.

The Writ Petition was allowed by way of the impugned order wherein the High Court took the view that there was no occasion for fixation of stamp duty at the time of issuance of the sale certificate and the Registry of the High Court was only required to issue the sale certificate and send a copy of the same to the Sub-Registrar in accordance with the mandate contained in Section 89(4) of the Registration Act. The Punjab and Haryana High Court further observed that whether the certificate was to be stamped or not would be the responsibility of the successful auction purchaser. In view of its observation, the Punjab and Haryana High Court directed that the original sale certificate be handed over to the Respondent No. 1 and a copy of the same be sent to the Sub-Registrar under Section 89(4) of the Registration Act, 1908. It further directed that the stamp duty deposited by the Respondent No. 1 be refunded within a period of one month.

² AIR 1991 SC 401

Being aggrieved by the order of the Division Bench of the Punjab and Haryana High Court, the Petitioners preferred an appeal before the Apex Court.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Apex Court was as follows:

- (i) Whether it was mandatory for the successful auction purchaser to deposit the stamp duty for the sale certificate to be issued to it in view of the provisions of the Stamp Act, 1899 and the Registration Act, 1908.

JUDGMENT:

The Apex Court relied upon the judgement in ***Municipal Corporation of Delhi v. Pramod Kumar Gupta***² wherein it was inter alia observed that title to a property put on auction sale passes under the law when the sale is held and that the transfer becomes final when an order under Rule 92 of Order XXI is made. The issuance of a sale certificate under Rule 94 was only a formal declaration of the effect of such confirmation.

Likewise, in ***Smt. Shanti Devi L. Singh v. Tax Recovery Officer and Others***³ it was observed that since the certificate of sale was not compulsorily registrable in lieu of Section 17(2)(xii) of the Registration Act, 1908, the transfer of title in favour of the auction purchaser would not be vitiated on account of non-registration of the sale certificate.

³ AIR 1991 SC 1880

On similar lines, the Apex Court also relied upon the judgement in **B. Arvind Kumar v. Govt. Of India and Others**⁴.

The Apex Court observed that that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale was merely evidence of such title and did not require registration under Section 17(1) of the Registration Act, 1908.

The Apex Court further observed that it was not the issuance of the sale certificate which transferred the title in favour of the auction purchaser. The title was transferred to the auction purchaser upon successful completion of the sale and its confirmation by the competent authority after all the objections against the sale had been disposed of.

The Apex Court further observed that a sale certificate issued by an authorised officer was

not compulsorily registrable. Mere filing under Section 89(4) of the Registration Act, 1908 itself was sufficient when a copy of the sale certificate was forwarded by an authorised officer to the registering authority. It was observed that a perusal of Articles 18 and 23 respectively of the first schedule to the relevant Stamp Act made it clear that when an auction purchaser presented the original sale certificate for registration, it would attract stamp duty in accordance with the said Articles. As long as the sale certificate remained as it is, it was not compulsorily registrable. It was only when the auction purchaser used the certificate for some other purpose that the requirement of payment of stamp duty, etc. would arise.

In view of the aforesaid, the Apex Court dismissed the Appeal.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

⁴ (2007) 5 SCC 745