

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P. No.16510 of 2016

A.Manikaraj

... Petitioner

vs.

1. Secretary to Government of Tamil Nadu,
Department of Registration,
Fort St. George, Chennai-600 009.

2. The Sub Registrar,
Sub Registrar's Office,
Tiruvallur District.

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus, directing the 2nd respondent to delete the entries of attachment in the encumbrance certificate made in respect of the property situated at plot no.G-16, SIDCO Industrial Estate, Kakkalur, Tiruvallur-602003 forming part of Putlur Village, comprised in S.F.No.96 (part), S.F.No.99 (part), S.F.No.100 (part) and S.F.No.101 (part) measuring an extent of 1.567 acres.

For Petitioner : Mr.V.Karthik,
Senior counsel
Assisted by Mr.J.Hariharan,
for M/s.K.V.Law Firm

For Respondents: Mr.P.Sanjai Gandhi
Additional Government Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2. Mr.V.Karthick, learned Senior Counsel assisted by Mr.J.Hariharan, learned counsel appearing for the petitioner has drawn attention of this Court to the affidavit filed in support of this petition and would submit that the petitioner had purchased a property situated at Door No.G-16, SIDCO Industrial

Estate, Kakkalur, Tiruvallur-602003, which was originally allotted by SIDCO to one M/s.Asveens forging Private Limited in the year 2005, which was offered as collateral security for an equitable mortgage in favour of State Bank of India, Commercial Branch, Guindy on 19.10.2005. The learned Senior Counsel appearing for the petitioner would further submit that in view of the default, the State Bank of India initiated action under SARFAESI Act and the property was brought to public auction. The petitioner became a successful bidder for an amount of Rs.4.03 crores and after paying the sale consideration in time, sale certificate was also issued by the Bank on 17.03.2016, in favour of the petitioner and now the property has been duly registered in the name of the petitioner, vide Document No.3886 of 2016 dated 13.04.2016 on the file of 2nd respondent, which is kept pending. The learned Senior Counsel appearing for the petitioner would further submit that the petitioner had applied for an encumbrance certificate for the said property and to his shock and surprise, 37 entries of attachment is found in the year 2011 subsequent to the Bank mortgage. The petitioner immediately enquired with the Bank and they have stated that the orders of attachment made would have no binding, as the property was first mortgaged with the bank and all subsequent mortgages had no legal effect. The petitioner immediately approached the second respondent to cancel the entries of attachment made in the encumbrance certificate, but the registrar has refused to cancel the entries made in the encumbrance certificate and therefore, came forward with this writ petition.

3. The learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the Judgment of the Kerala High Court in WP (C) No.33319 of 2014 dated 11.12.2014 and would submit that in similar facts and circumstances, Kerala High Court has granted liberty to the petitioner therein to approach the Civil Court, which passed the order of attachment with further direction to the Civil Court to lift/raise the attachment in O.S.No.381 of 2004, within a period of six weeks from the date of receipt of a copy of the said judgment.

4. Heard, Mr.Sanjai Gandhi, learned Additional Government Pleader for the respondents.

5. This Court, in the light of the submission made by the learned Senior Counsel appearing for the petitioner, permits the petitioner to approach the Civil Court for raising the orders of attachment with necessary application, in terms encumbrance certificate dated 17.02.2016 and the concerned Civil Court on receipt of the said application, shall entertain the same, if the papers are otherwise in order and pass orders in accordance with law, after putting notice to the concerned parties, as expeditiously as possible, not later than eight weeks from the

date of receipt of a copy of this order.

6. This Writ Petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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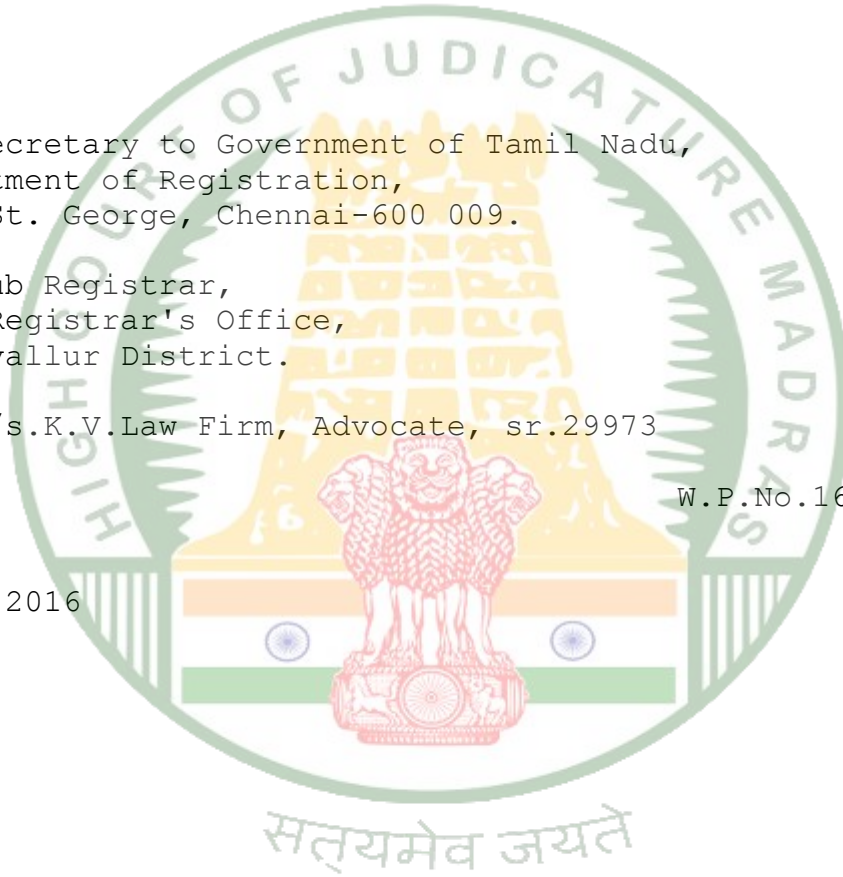
To

1. The Secretary to Government of Tamil Nadu,
Department of Registration,
Fort St. George, Chennai-600 009.
2. The Sub Registrar,
Sub Registrar's Office,
Tiruvallur District.

1 cc to M/s.K.V.Law Firm, Advocate, sr.29973

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