

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.11.2016
CORAM:
THE HONOURABLE MR. JUSTICE B.RAJENDRAN
W.P.No.31082 of 2016 & W.M.P.No.26948 of 2016

State Bank of India,
Stressed Assets Management Branch,
Raja Plaza, First Floor,
No.1112, Avinashi Road,
Coimbatore - 641 037
Rep. by its Asst. General Manager .. Petitioner

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.
2. The District Registrar (Administration),
South Chennai, Saidapet,
Chennai - 600 015.
3. The Sub Registrar,
Officer of the Sub Registrar,
Alandur, Nanganallur,
Chennai - 600 061. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to directing the respondents herein to take necessary action and steps for cancellation, annulment of the fraudulent documents as held by the second respondent in proceeding No.8743/AA3/2015 dated 01.06.2016 and removal of the same from the entries in the index on the file of the third respondent in terms of the proceedings.

For Petitioner : M/s.Ramalingam and Associates

For Respondents: Mr.A.N.Thambidurai
Spl. Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Advocate for the respondents, who accepts notice on behalf of the respondents and with the consent on either side, the writ petition is taken up for final disposal.

2. This Writ Petition has been filed to direct the respondents to take necessary action and steps for cancellation, annulment of the fraudulent documents as held by the second respondent in proceeding No.8743/AA3/2015 dated 01.06.2016 and removal of the same from the entries in the index on the file of the third respondent in terms of the proceedings.

3. The case of the petitioner is that one M/s.Rukmini Mill Limited had availed credit facilities from the petitioner Bank at Madurai for its business purpose in the year 1980 and the said facilities have been periodically renewed/reviewed and enjoyed by the borrower company by executing necessary loan and security. One M/s.Associated Trading Corporation Private Limited had mortgaged an immovable property owned by them being vacant land measuring to an extent of Acre 10.07 cents comprised in Paimash Nos.240, 241, 242, 718, 719, 720, 721, 722, 737, 8454 and 855 of Adamabakkam Village. The mortgage was created by deposit of original Title Deeds with the petitioner Bank on 12.04.1984. Ever since the property continues to be secured asset in the hand of the petitioner bank.

3. It is further submitted by the learned counsel for the petitioner that due to default in payment of the loan amount, the mortgaged properties became a non-performing asset on 01.06.1992 and proceedings under SARFAESI Act were initiated against the borrower/mortgager/Guarantor. As per the order of the District Court, Chengalpet, physical possession of the said properties was taken under section 14 of the SARFAESI Act on 15.11.2011. Subsequently, the petitioner bank came to know from the encumbrance certificate that various third parties have encroached upon the portion of the property mortgaged to the Bank by virtue of the fabricated documents. Therefore, the third parties filed a suit in O.S.No.403 of 2012 against the said M/s.Associated Trading Corporation Private Limited and the petitioner on the file of the District Munsif, Alandur. In the said suit, the petitioner bank filed an application seeking rejection of plaint and the said application was allowed and the plaint filed in the said suit was rejected by an order dated 08.07.2013. While so, one Mr.S.Thyagarajan Chettiar, claiming to be the Director of M/s.Associated Trading Corporation Ltd.,

had also filed a suit in O.S.No.363 of 2014 on the file of the District Munsif Alandur seeking declaration as against the petitioner bank and borrower company that they do not have any right to proceed against the suit property either by bringing it for auction or selling it or otherwise. In that suit initially exparte interim injunction was granted but the same was set aside by this Court by an order dated 12.08.2013 in CRP (PD) No.1836 of 2014 and in the said Civil Revision Petition, it has also been held that the suit is not tenable in law in view of the specific bar under the SARFAESI Act.

4. It is further contended by the learned counsel for the petitioner that as the proceeding under the SARFAESI Act became unfruitful, the petitioner gave a representation to the respondents and sought for cancelling the fraudulent documents and to restore the rights of the bank so that the action under the SARFAESI Act could be proceeded to recover the legitimate dues of the bank from the sale proceeds. Since there was no progress even after the representation given by the petitioner bank, the petitioner bank filed a Writ petition in W.P.No.8980 of 2016 to direct the respondents to conduct enquiry and cancel the documents namely settlement deeds, agreements of sale and other encumbrances created by the third parties in terms of the Circular No.67 dated 03.11.2011. In the said Writ Petition, this Court, by an order dated 27.03.2013, directed the respondents to consider the representation of the petitioner bank and pass appropriate order within a period of eight weeks from the date of receipt of a copy of the said order. Though, the second respondent conducted a detailed enquiry on the representation of the petitioner and passed a detailed order upholding the contentions of the petitioner bank and declared the documents registered on the file of third respondent as fraudulent documents, he has failed to cancel the said documents and record annulment in the index to the register so that the said documents do not reflect in the Encumbrance Certificate. The petitioner bank in exercise of their right under the provisions of the SARFAESI Act, have also issued an Auction Sale Notice on 25.07.2016 for sale of the mortgaged asset and so many people are showing interest in participating in the auction. But on coming to know about the encumbrances, the prospective purchasers are not coming forward for the purchase of the said properties. Hence, the petitioner has come forward with the present Writ Petition.

5. The only grievance of the petitioner is that as per the circular No.67, even though the documents are bogus documents, the documents have not been annulled. In fact the suit filed by the third parties has been struck down by this Court in CRP (PD) No.1836 of 214 and in the said revision it has also been held

that the suit is not tenable in law in view of the specific bar under the SARFAESI Act.

6. The learned Special Government Pleader appearing for the respondent submitted that in view of the appeal pending as against the Circular No.67 and as there is an interim order, the documents have not been annulled.

7. In a similar Order passed by me in an earlier occasion in a Writ Petition in W.P.No. 32075 of 2016, I have observed that :

"It is clear that as per Circular 67 of the Inspector General of Registration, enquiry has been conducted and it has been found that the documents are bogus ones. Thereafter, the next process has to be commenced. Admittedly, there is Writ appeal pending challenging Circular-67 and an interim order has been granted in respect of the criminal prosecution alone. In such circumstances, the impugned letter dated 30.01.2013 passed by the first respondent is set aside only to the limited extent of proceeding further with criminal prosecution. With regard to annulment of the documents, the authorities shall issue notice to the parties and then pass appropriate orders as per the procedure under Circular-67 of the Inspector General of Registration."

8. Considering the facts and circumstances and in view of the order passed by me in the Writ Petition in W.P.No.32075 of 2016 on 06.10.2016 and as the annulment of the documents is only a consequential order, this Court directs the second respondent to issue notice to the parties and pass appropriate orders as per the procedure contemplated under Circular-67 of the Inspector General of Registration.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

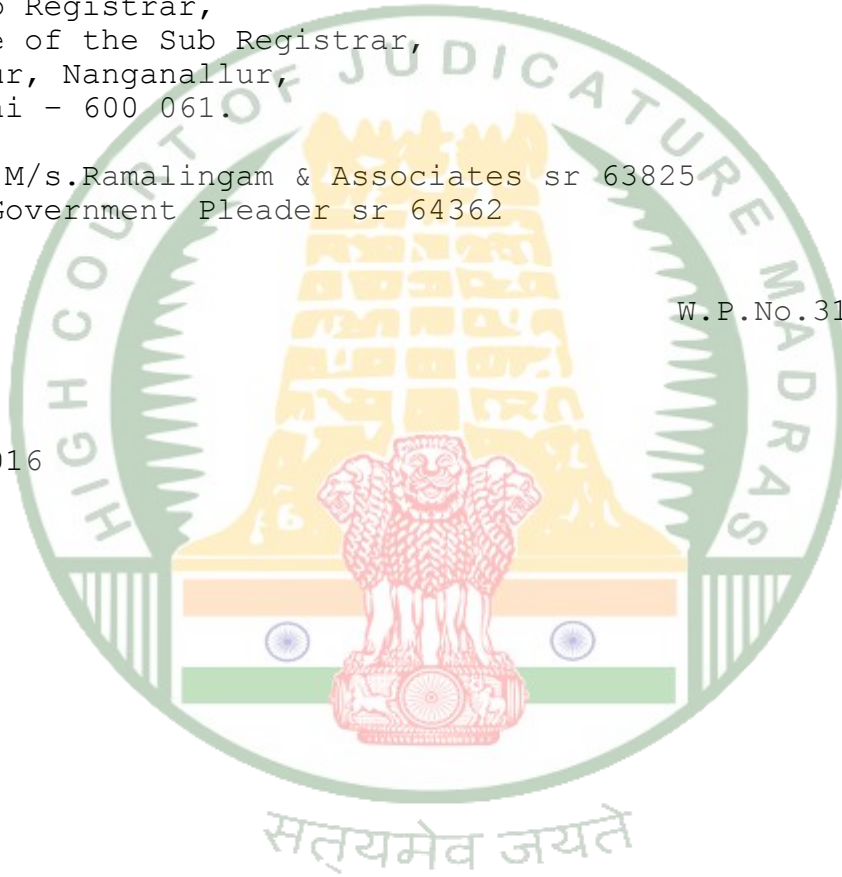
To

1. The Inspector General of Registration,
No.100, Santhome High Road,
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Office of the Sub Registrar,
Alandur, Nanganallur,
Chennai - 600 061.

+2 ccs to M/s.Ramalingam & Associates sr 63825
+1 cc to Government Pleader sr 64362

W.P.No.31082 of 2016

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