

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.34164 of 2018

M/s. Madhavi Food Products

Represented by its Partner N.Thangaraj,
Periyapoolapatty Village,
Periampatti Post,
Karimangalam Taluk,
Dharmapuri-635205.

...Petitioner

Vs.

1. The Sub Registrar,
Karimangalam,
Dharmapuri District.

2. The Authorised Officer/Assistant General Manager,
Stressed Assets Recovery Branch,
State Bank of India,
32, Monteith Road,
Egmore, Chennai-600008.

3. A.Perichi

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the 1st respondent herein to remove the encumbrance of sale certificate dated 08.02.2017 pertaining to Doc.No.202 of 2017 on the file of the 1st respondent executed by the 2nd respondent herein consequent to the Division Bench Judgment dated 19.03.2018 made in W.P.No.7700 of 2017 on the file of this Hon'ble Court relating to the properties bearing Survey Nos.408/1-A and 409/3A, Perianahalli Village, Palalcode Taluk.

For Petitioner : Mr.G.Jeremiah

For Respondents: Mr.P.P.Purushothaman

Government Advocate for R1

Mr.A.V Arun for R2

No appearance for R3

O R D E R

The petitioner seeks for a mandamus to direct the 1st respondent herein to remove the encumbrance of sale certificate dated 08.02.2017 pertaining to Doc.No.202 of 2017 on the file of the 1st respondent executed by the 2nd respondent herein consequent to the Division Bench Judgment dated 19.03.2018 made in W.P.No.7700 of 2017 on the file of this Hon'ble Court relating to the properties bearing Survey Nos.408/1-A and 409/3A, Perianahalli Village, Palalcode Taluk.

2. The petitioner availed certain loan facility from the second respondent-Bank and offered the subject matter property as security. Consequent upon non repayment amount within the time scheduled, the second respondent-Bank initiated SARFAESI proceedings, which has resulted in bringing the property for E-Auction. The third respondent herein became the successful bidder and purchased the said property on 18.01.2017. A sale certificate was issued in favour of the third respondent, which was registered before the first respondent as Document No.202/2017 dated 08.02.2017. The petitioner challenged the SARFAESI proceedings before the Division Bench of this Court in W.P.No.7700 of 2017 and C.R.P.(PD).No.3239 of 2017, wherein a common order was passed on 19.03.2018 passed by the Division Bench, by declaring the auction dated 18.01.2017 as null and void. Consequently, the second respondent-Bank refunded the sale price along with the interest and other registration and stamp charges incurred to the auction purchaser viz., the third respondent herein. The second respondent-Bank also informed the first respondent through their communication dated 20.06.2018 that since the sale was set aside, the sale certificate executed on 08.02.2017 has to be cancelled. Even after the said letter, since the first respondent has not cancelled the encumbrance created due to such sale certificate, the present writ petition is filed before this Court.

3. Though notice was ordered and served on the third respondent, he has not chosen to appear before this Court either in person or represent through the counsel. His name is printed in the cause list.

4. The learned counsel appearing for the second respondent-Bank submitted that in pursuant to the order passed by the Division Bench, the second respondent-Bank returned the entire sale consideration along with the other incidental charges to the third respondent and also informed the first respondent to cancel the encumbrance. Therefore, he submitted that there cannot be any impediment for the first respondent to cancel the encumbrance.

5. The learned Government Advocate appearing for the first respondent submitted that in view of the letter issued by the second respondent-Bank dated 20.06.2018, the request of the petitioner for cancellation of the encumbrance will be considered and appropriate orders will be passed.

6. Considering the above stated facts and circumstances and in view of the orders passed by the Division Bench of this Court as referred to supra and further in view of the specific communication issued by the second respondent on 20.06.2018, this Court is of the view that there cannot be any impediment for the third respondent to delete the encumbrance already made, based on the sale certificate issued by the second respondent-Bank in favour of the third respondent.

7. Accordingly, this Writ Petition is allowed and the first respondent is directed to consider the request of the petitioner for removal of the encumbrance of sale certificate dated 08.02.2017 pertaining to D.No.202/2017 and pass appropriate orders accordingly in the light of the order already passed by the Division Bench in W.P.No.7700 of 2017 dated 19.03.2018 and in the light of the communication issued by the second respondent-Bank dated 20.06.2018. Such exercise shall be done by the first respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.

sni/vri

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The Sub Registrar,
Karimangalam,
Dharmapuri District.
2. The Authorised Officer/Assistant General Manager,
Stressed Assets Recovery Branch,
State Bank of India,
32, Monteith Road,
Egmore, Chennai-600008.

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+1cc to Mr.G.Jeremiah, Advocate, S.R.No.11057
+1cc to Mr.A.V.Arun, Advocate, S.R.No.10986
+1cc to the Government Pleader, S.R.No.11905

W.P.No.34164 of 2018

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