IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.1680 of 2020 and
W.M.P.No.1958 of 2020

S.Sivakumar ... Petitioner

Vs.

1.The Authorised Officer,
Indian Bank,
Virupakshipuram Branch,
Vellore District.

2.The District Registrar,
Office of the District Registrar,
Villupuram, Villupuram District.

3.The Sub Registrar,
Anniyur Sub-Registrar Office,
Anniyur,
Villupuram District.

4.The Deputy Superintendent of Police,
Economic Offences Wing -II,
Vellore, Vellore District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus, calling for the entire records in pursuant to the order of the refusal in RFL/Anniyur/4/2019 dated 24.12.2019 on the file of the third respondent and delete the entries and quash the same and consequently direct the third respondent to register the sale certificate dated 17.12.2019 issued by the first respondent Bank within stipulated period and pass orders.

For Petitioner : Mr.M.Sathish Kumar

For Respondents : Mrs.S.R.Sumathy for R1
Mr.T.M.Pappiah
Special Government Pleader
for R2 and R3
Mr.Annai Ezhil,
Government Advocate for R4

O R D E R

This writ petition has been filed challenging the refusal slip issued by the third respondent on 24.12.2020 and for a consequential direction to the third respondent to register the Sale Certificate dated 17.12.2019 that was issued by the first respondent Bank in favour of the petitioner.

2.The case of the petitioner is that one M/s Royal Agro Dairy Limited availed of credit facilities to the tune of Rs.74,20,000/- from the first respondent Bank and it mortgaged the property as a security. This loan was paid on 05.04.2017. The borrowers defaulted in the repayment of the loan, as a result of which the loan account was classified as Non-Performing Asset on 31.03.2018. The first respondent Bank initiated proceedings under the SARFAESI ACT and ultimately, the property was sold in favour of the petitioner and it was confirmed and a Sale Certificate was also issued to the petitioner on 17.12.2019.

3.When the above Sale Certificate was presented for registration before the third respondent, the third respondent refused to register the document on the ground that there is an entry in the Encumbrance Certificate to the effect that the fourth respondent has sent a letter intimating the Sub-Registrar, not to register any documents belonging to M/s Royal Agro Dairy Limited, since an investigation is pending in Crime No.2 of 2018. Aggrieved by the refusal slip issued by the third respondent, the present writ petition has been filed before this Court.

4.The first respondent has filed a detailed counter in this case. The relevant portions in the counter affidavit is extracted hereunder:

> "3.I humbly submit that the facts involved in this writ petition are narrated as follows:
>
> M/s Royal Agro Daily Limited represented by its Managing Director, Thiyagarajan along with other Directors availed credit facilities of Rs.74,20,000/- under IND/SME/Secured Loan Account No.6518258337. It offered the property measuring 72165 sq.ft situated at Mazhavanthangal Village, Anniyur Sub Registration District Gingee Taluk, Villupuram District comprised in the Survey Nos.125/2, 125/10, 133/1B, 133/3, 133/5 and 133/6.
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> 5.I humbly submit that the property in above Survey Nos, at Mazhavanthangal Village, Anniyur Sub-Registration District, Gingee Taluk, Villupuram

District was mortgaged by the parties to the borrowing and Equitable Mortgage was createad in favour of Bank and MOD was also registered in favour of Respondent Bank. Thus, security interest was created in favour of respondent.

6.I humbly submit that the operation of the Loan Account was irregular and it was classified as Non-Performing Asset on 31.03.2018. The parties to the borrowing failed to discharge the loan despite of issuance of several notices, letters. Despite that they failed to regularize the Loan Account. Hence, Respondent Bank invoked the provisions of SARFAESI ACT and cause Demand Notice on 20.06.2018 under Section 13(2) of the SARFAESI ACT. Calling upon the parties to the borrowing to make payment of Rs.76,10,324/-. But they failed to make payment. Hence, Possession Notice was caused under Section 13 (4) of the SARFAESI ACT. Possession of the property was taken on 14.09.2018. Despite Possession Notice, parties to the borrowing failed to make payment. Hence, Sale Notice was issued on 14.11.2018 and on 19.02.2019. But there was no bidders to participate in those auction sales.

7.I humbly submit that the Respondent Bank decided to conduct sale by Private Treaty Mode and Sale Notice was issued on 14.10.2019. Sale Reserve Price was fixed at Rs.58,19,000/-. The sale was scheduled on 31.10.2019. Writ Petitioner namely S.Sivakumar s/o. T.Sankaran, resident of 33/5, 5th West Cross Road near Vishnu Temple, participated in the auction proceedings and paid the entire sale consideration of Rs.58,19,000/- on 16.12.2019. Sale was confirmed on..... Sale Certificate was issued on 17.12.2019.

8.I humbly submit that the Respondent Bank proceeded further and when the Sale Certificate was presented for registration on 17.12.2019, the third respondent refused to register the same stating that there was an entry in E.C., dated 19.11.2019, which is a letter sent by EOW to SRO informing that EOW was in the process of obtaining order from High Court. It has been informed that based on this letter SRO Anniyur has also marked an entry in EC dated 19.11.2019. This Respondent Bank infact informed the SRO that as per Law any letter from Police i.e. EOW cannot be construed as an order to reflect in the E.C. But the third respondent refused to register the Sale Certificate. Inspite of request of the third respondent failed to clarify itself about this with the second respondent. Hence, 17.12.2019, the Sale Certificate could not be registered.

9.In this connection, I humbly submit that this Respondent Bank would like to state that EOW vide their letter C.No.32/18/EOW/IIU/Vellore dated 18.05.2018 requested the Bank to furnish details with regard to the account details of one Mr.Narasimman S/o.Kannan and Mrs.Revathi W/oNarasimman, for investigation purpose. Whereas, this Respondent Bank had sent a reply on 14.05.2018 that Respondent Bank do not have such accounts and Respondent Bank provided the account statements from 2011 to 2018 of M/s Royal Agro and Daily Limited. Thereafter, there was no correspondence or communication from EOW regarding attachment or any order served on the Bank, regarding the properties mortgaged to the Bank till the date of auction.

10.I further state that on 03.12.2019, Respondent Bank requested EOW to withdraw their letter dated 19.11.2019 as M/s Royal Agro and Daily Limited has nothing to do with the alleged offences. Further, Respondent Bank through its letter dated 03.12.2019 requested EOW to remove adverse entry mode in an erroneous manner to facilitate the registration of Sale Certificate in favour of the successful bidder S.Sivakumar,who is the Petitioner herein. Further, on 24.12.2019, when the Respondent Bank presented the Sale Certificate for registration at SRO, Anniyur, it was refused and returned by SRO, Anniyur vide RFL/Anniyur/4/19 dated 04.12.2019."

5.The learned counsel appearing on behalf of the petitioner submitted that the petitioner is a bonafide purchaser who had nothing to do with the alleged crime, which is a subject matter of investigation in Crime No.2 of 2018. It was further submitted that a mere letter issued by the Police, cannot be a ground to refuse registration unless there is an order of the Court or some order of attachment is passed by the Competent Authority under the relevant Enactment.

6.Mrs.S.R.Sumathy, learned counsel appearing on behalf of the first respondent Bank apart from supporting the case of the petitioner submitted that the property in question was mortgaged to the Bank. Therefore the Bank has the first charge over the property and it was further submitted that as a secured creditor, the first respondent Bank will have the prior right to realise the debt over all the other dues and the position of law has been settled in a catena of decisions rendered by this Court. The learned counsel further submitted that the third respondent must be directed to register the Sale Certificate presented by the petitioner.

7.Mr.Annai Ezhil, learned Government Advocate appearing on behalf of the fourth respondent submitted that there is a criminal case that is pending investigation against M/s. Royal Agro Dairy Limited and the persons who were in-charge in running this Company, have cheated a large number of depositors running to several crores of rupees. It was further submitted that the police was able to identify certain properties which have been attached and which are going to be used for the purpose of settling the dues to the innocent depositors. The learned counsel therefore submitted that till the investigation is completed, with regard to the property which is the subject matter in this writ petition, the third respondent should not register any property standing in the name of M/s Royal Agro Dairy Limited.

8.Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of respondents 2 and 3 submitted that in view of the letter submitted by the Investigation Officer, the third respondent has made an entry in the Encumbrance Certificate and now he cannot go against the said entry and entertain any document that pertains to M/s. Royal Agro Dairy Limited and which covers the Survey Numbers mentioned in the Encumbrance Certificate. The learned counsel further submitted that the third respondent will act in accordance with any directions that may be issued by this Court.

9.This Court has carefully considered the submissions made on either side and the materials available on record.

10.A careful reading of the counter affidavit filed by the first respondent shows that the first respondent Bank has provided with the information with regard to the particulars sought from them and the information was given to the Police in the year 2018. The Police have not responded to this letter and even now, the instructions received by the learned Government Advocate does not state anything about the information that was already furnished by the first respondent Bank.

11.The concerned Investigation Officer has merely issued a letter to the third respondent, requesting the third respondent not to register any property standing in the name of M/s Royal Agro Dairy Limited. If the fourth respondent was sure about the fact that the property in question was also one which was purchased out of the criminal proceeds, then steps should have been taken to get the property attached as per the provisions of TANPID ACT. These steps have not been taken till date. The entry in the Encumbrance Certificate is based on only a letter.

12.It is now a well settled principle of law that the Bank has a priority over all the debts and the Government dues. The Hon'ble Full Bench of this Court in the case of The Assistant Commissioner (CT) Vs. Indian Overseas Bank reported in 2016 6 CTC 769 has held that on a conjoint reading of Section 26(E) of the SARFAESI ACT and Section 31(b) of the Recovery of Debt Due to Bank and Financial Institutions Act, 1993, it is the secured creditor who was a priority to realise the debt over all the other Government dues and unsecured creditors. Thus, the first respondent Bank will have a priority when it comes to realising the debt of a secured creditor.

13.In view of the above discussion, the third respondent cannot refuse to register the Sale Certificate merely on the basis of the letter given by the Investigation Officer. The refusal slip issued by the third respondent on 24.03.2019 is hereby quashed. The third respondent is directed to receive the Sale Certificate dated 17.12.2019 from the petitioner and register the same on payment of the necessary stamp duty and registration charges and if the document is otherwise in order. It is made clear that the directions issued to the third respondent, confines only to the Sale Certificate issued in favour of the petitioner. This order should not be construed, as if, all the documents that stands in the name of M/s. Royal Agro Dairy Limited can be registered. As and when any such document is presented, it is the duty of the third respondent to bring it to the notice of the Investigation Officer. This direction is issued since it involves public interest where several depositors are said to have been cheated and they have lost their hard earned money. The Investigation Officer shall take immediate steps to get the property attached by the Competent Authority under the relevant Enactment. The direction issued by this Court in this writ petition will confine itself to the peculiar facts of the present case and it cannot be taken as a precedent for registration of any other document which is the subject matter of the criminal proceedings in Crime No.2 of 2018.

14.This writ petition is allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vkr

To

1.The Authorised Officer,
Indian Bank ,
Virupakshipuram Branch,
Vellore District.

2.The District Registrar,
Office of the District Registrar,
Villupuram, Villupuram District.

3.The Sub Registrar,
Anniyur Sub-Registrar Office,
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4.The Deputy Superintendent of Police,
Economic Offences Wing -II,
Vellore, Vellore District.

+1cc to the Government Pleader SR.26118

W.P.No.1680 of 2020 and
W.M.P.No.1958 of 2020

AJS(CO)
CB(28/09/2020)