IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.08.2020

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.9218/2020

R.G.N.Velayudham ..Petitioner

Versus

1.The Superintendent of Police
Economic Offences Wing
SIDCO, Old Corporate Building,
1st Floor, Thiru Vi Ka Industrial Estate
Guindy, Chennai 600 032.

2.The Deputy Superintendent of Police
Economic Offences Wing II,
Near State Bank Quarters, Erode.

3.Inspector of Police
Economic Offences Wing II,
Police Quarters, State Bank of India Road
Erode.

4.The Sub Registrar,
Office of Sub Registrar,
Chennimalai. ..Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 4th respondent herein to remove the encumbrance in respect of the petitioners property in Old Survey NO.110, New Survey No.312/1 and 312/2 in Attavanaipidariyur Village, Perunthurai Taluk, Erode, which was made at the instance of the

3rd respondent without following Sec.3 of the Criminal Law Amendment Ordinance, 1944.

For Petitioner	:	Mr.A.Tamilvanan
For Respondents	:	Mr.K.Parameshwaran Government Advocate for RR1 to 3 Mr.T.M.Pappiah Spl.Govt. Pleader for R4

ORDER

(1) The present writ petition has been filed for a direction to the 4th respondent to remove the entry in the Encumbrance Certificate, which according to the petitioner, is illegal and done without any authority of law.

(2) The case of the petitioner is that he purchased the property in the year 2012 by means of a registered Sale Deed dated 05.03.2012. The petitioner is in possession and enjoyment of the property. When the petitioner applied for an Encumbrance Certificate in the year 2018, he found that there was an entry made in the Encumbrance Certificate to the effect that there is a criminal case pending investigation in Crime No.7 of 2011. The petitioner made a representation to the 4th respondent requesting for the removal of the entry. The 4th respondent did not act upon the representation and the present writ petition has been filed before this Court seeking for an appropriate direction.

(3) The 3rd respondent has filed a counter affidavit in this case. The relevant portions in the counter affidavit is extracted hereunder:

> ''10.It is humbly submitted that during investigation so far everything has been done only in accordance with law and the interest of the depositors to ensure that their amounts deposited would be safe guarded by means of available remedy and as such, the property of the petitioner was brought into this case. It is further submitted that it is a settled law that once no sufficient money was recovered or seized from the accused who collected money through deposits or in any means the persons cheated no other option to take steps for collection of the amounts only from the assets of the accused by way of attachment. In this case the accused No.3 A.P.Easwara Moorthy along with accused nos.1 and 2, having run an office at Erode and collected a sum of

> Rs.30,99,220.50p. as deposits from several innocent people and not only cheated them but in order to defraud their valuable claims, disposed of his only property namely the subject property by creating a sale deed in favour of the writ petitioner. The offence committed in this case is in the year 2011 whereas the sale was executed in the name of the petitioner on 03.03.2012. In fact, the petitioner prior to the purchase ought to have verified about the bonafidy of the vendor namely the accused No.3 A.P.Easwaramoorthy. It is humbly submitted under such circumstances with good faith and to safe guard the interest of the depositors such a step of making an encumbrance over the property was taken.''

(4)The learned counsel for the petitioner submitted that the 4th respondent ought not to have made an entry in the Encumbrance Certificate merely based upon a letter given by the 3rd respondent. The learned counsel submitted that the relevant Enactment itself provides for a procedure for attachment and the 3rd respondent, without following this procedure, cannot straight away issue a letter and attach all the properties by means of an entry made in the Encumbrance Certificate. The learned counsel submitted that the entry made in the Encumbrance Certificate goes against the right of the petitioner to enjoy his property and the same is in violation of Article 300A of the Constitution of India.

(5)Mr.K.Parameshwaran, learned Government Advocate appearing on behalf of respondents 1 to 3 submitted that the vendor of the petitioner, along with two other accused persons had collected huge deposits from general public and did not repay the same to them and the sale that was made to the petitioner was done with an intention to defraud the depositors. The learned Government Advocate submitted that if third party rights are created over the property, the police will never be able to secure the amounts and the depositors will be left high and dry. The learned counsel, therefore, sought for dismissal of the writ petition.

(6)Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the 4th respondent submitted that the entry was made in the Encumbrance Certificate based on the letter issued by the 3rd respondent and the 4th respondent does not have the power to remove the entry.

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

(8) The petitioner has purchased the property in the year 2012 and according to the petitioner, he is a bonafide purchaser for value from one Easwaramoorthy. It is seen that Easwaramoorthy along with two others, were involved in running a chit business and they had collected huge amounts from the general public. If the 3rd respondent was sure about the fact that the sale in favour of the petitioner was done with an intention to defraud the innocent depositors, the Investigation Officer could have resorted to the procedure under the relevant Enactment to attach the property by way of an order passed by the competent authority.

(9) Article 300A of the Constitution of India guarantees that no person can be deprived of his property save by the authority of law. A right which was a Fundamental Right, has now become a Constitutional Right.

(10) In view of the above guarantee given to every owner of a property by the Constitution, the right to deal with the property cannot be deprived unless otherwise by the authority of law. An Investigation Officer cannot merely write a letter to the Sub Registrar and create an entry in the Encumbrance Certificate. The Code of Criminal Procedure does not provide for such a right to the Investigation Officer and even the power of attachment of property under Section 102 of the Code of Criminal Procedure is limited only to movable property. The law on the issue has been settled by the Hon'ble Supreme Court of India in the recent judgment reported in 2019 [4] MLJ [Crl.] 456 [Nevada Properties Private Limited V. State of Maharashtra and Others].

(11) In view of the above, it is clear that the 3rd respondent is not vested with the power to give a letter to the Sub Registrar and create an encumbrance over the property. In this case, the First Information Report was registered in the year 2011 and the Investigation Officer could have easily adopted the procedure given in the relevant Enactment and got the property attached, if he was able to prima facie establish that the sale itself was done to defraud the depositors. Unfortunately, the 3rd respondent has not resorted to this procedure till date. Even now, it is not too late and the 3rd respondent can always proceed further and act in accordance with law.

(12) In view of the above discussions, this Court has no hesitation to grant the relief sought for by the petitioner and consequently, there shall be a direction to the 4th respondent

to remove the entry in the Encumbrance Certificate insofar as the subject property is concerned.

(13) The writ petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

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4. The Sub Registrar,
Office of Sub Registrar, Chennimalai.

+1cc to the Government Pleader, S.R.No.26349

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PVS(CO)
KKV/24/08/2020