

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.9802 of 2020

Tamilnad Mercantile Bank Limited,
Kancheepuram Town Branch,
Door No.40-A, Vanigar Street,
Kancheepuram Town,
Rep. by its Authorised Officer.

..Petitioner

-Vs-

The Sub Registrar,
Joint No.4,
Kancheepuram.

..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to communication dated 12.02.2020 issued by the Sub-Registrar, Joint No.4, Kancheepuram, and quash the same as illegal and arbitrary and consequently direct the Sub-Registrar, Joint No.4, Kancheepuram, to register the sale certificate dated 12.02.2020 issued by the petitioner in favour of Mrs.P.Parameshwari Auction purchaser.

For Petitioner : Mr.S.Sethuraman

For Respondent : Mr.T.M.Pappiah

Special Government Pleader

ORDER

By consent given by both sides, this writ petition is taken up for final hearing at the admission stage itself.

2.This petition has been filed by the Bank for the issue of a writ of mandamus directing the respondent to register the Sale Certificate dated 12.02.2020 and to hand over the document.

3.The case of the petitioner is that certain amounts were borrowed from the Bank and the account was declared as NPA and proceedings were initiated under the SARFAESI Act. The property was brought for sale on 29.01.2020 through auction and one Mrs.P.Parameshwari, was declared as the successful bidder. The purchaser of the property paid the entire sale consideration and a Sale Certificate was also issued in her favour by the Bank on 12.02.2020.

4.This Sale Certificate was engrossed on a stamp paper and tendered for registration before the respondent on 12.02.2020. The grievance of the petitioner is that the respondent declined to register the Sale Certificate on the ground that there is an attachment of the property by virtue of an attachment order passed by the Sub-Court, Kancheepuram, and it has been recorded in the books of the respondent and it is reflected in the encumbrance certificate. Aggrieved by the same, the present writ petition has been filed before this Court seeking for appropriate directions.

5.The learned counsel for the petitioner submitted that the property was mortgaged in favour of the Bank by a registered mortgage deed dated 08.10.2015. The learned counsel further submitted that the alleged attachment of the property had taken place much after the property was mortgaged, only in the year 2018. The learned counsel submitted that the attachment of the property after the property has already been mortgaged in favour of the Bank, will not in any way bind the Bank and that is not a ground for rejecting the registration of the Sale Certificate.

6.The learned counsel for the petitioner in order to substantiate his submissions relied upon the order passed by this Court in WP(MD).No.4007/2019, dated 28.02.2019 and the relevant portions of the order is extracted hereunder:

5.The issue on hand is no longer res-integra. As rightly pointed out by the learned counsel appearing for the petitioner, in a catena of decisions this Court has held that there can be no bar for registering the sale certificate in the case of attachment order passed by the Civil Court. One such order is enclosed at Page No.25 of the typed set of papers vide order dated 24.02.2015 in W.P.No.31061 of 2012. It was held that the Bank being a secured creditor is entitled to exercise their power under the SARFAESI Act and execute the sale certificate in favour of the purchaser and that the registration cannot be refused by registering authority on the ground that an order of attachment has been obtained in respect of the property in question.

7.The learned counsel further submitted that the issue that is involved in the present writ petition is directly covered by the judgment of this Court in the case of S.Praveen Bohra vs. Joint-I Sub-Registrar (In the cadre of District Registrat) Office of the Registration of Coimbatore, No.102, State Bank Road, Coimbatore - 641 018 reported in 2016 3 LW 513.

8.Mr.T.M.Pappiah, Special Government Pleader appearing on behalf of the respondent submitted that the respondent is barred from entertaining the Sale Certificate for registration since admittedly there is an attachment order passed by a Competent Civil Court and the same is reflected in the Encumbrance Certificate. The learned counsel submitted that in the light of the order of attachment, if any registration is made, it may be construed as a violation of the order passed by a Competent Civil Court. Therefore, the learned counsel sought for the dismissal of the writ petition.

9.The issue involved in the present writ petition is no longer res-integra. It has been consistently held by this Court that the order of attachment is not a ground to refuse registration of a Sale Certificate. In fact this position of law has been holding the field from the year 2013 onwards and this Court in the case reported in [2013 1 CTC P 609] has also taken the very same view. The latest judgment of this Court in the case of Pegasus Assets Reconstruction Pvt. Ltd. vs. Inspector of General Registration, Government of Tamil Nadu is reported in [2019 4 CTC P 851]. Therefore, this Court need not undertake the same exercise all over again and it is enough if the settled law is once again reiterated.

10.In view of the above, there shall be a direction to the respondent to register the Sale Certificate dated 12.02.2020 forthwith, if all the other requirements are satisfied.

In the result, this writ petition is allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Sub Registrar,
Joint No.4,
Kancheepuram.

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W.P.No.9802 of 2020

RJI (CO)
SP(16/09/2020)