

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.12289 of 2020 & W.M.P.No.15086 of 2020

- 1 R.Madhupriya
W/o. M.M.Sankar, R1 Euphoria No.3 Elcot
Avenue Shollinganalur Chennai - 600119
- 2 Yelamarthi Ashwin
S/o. Yelamarthi Satya Anana No.3 perumal
Koil 1st Street Kotturpuram Chennai -
600085.Petitioners

-Vs-

- 1 The Inspector General of Registration
O/o. The Inspector General of Registration
No.100 Santhome High Road
R.A.Puram Chennai - 600028
- 2 The Sub Registrar
o/o. The Sub Registrar Kundrathur - 600069
- 3 Mr.S.J.Senthil Kumar
S/o. S.K.jitjendran No.10 Sri Rangapalayam
East Street Vidhyalaya Road Salem - 636007. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus direct the 2nd respondent to remove the entry from the records of the second respondent pertaining to letter dated 05.09.2019 of the Inspector of Police CCB- 1 Tea 12 in encumbrance certificate /registration department records and consequently to register the sale deed in favor of the 1st petitioner Husband Mr .M.M.Sanker or any other nominees herein of the property situated at plot No.6 and 7A and 7B Door No.7 Chitirai Street India cements home Town Noombal 600077 measuring an extent of land 5928.5 sq.ft. with Building 4252 sq ft which forms part of subject matter of the mortgage deed and General power of Attorney dated 12.6.2018, vide document No.8141 of 2018 and No.8142 of 2018 and by considering the representation dated 10.07.2020.

For Petitioner : Mr.Thanu Madan N.S.
For Respondents : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

On consent given by either side, the main writ petition itself has been taken up for final hearing.

2. This Writ Petition has been filed for the issue of a Writ of Mandamus directing the second respondent to delete the entry made in the Encumbrance Certificate and consequently register the document submitted by the petitioners.

3. The case of the petitioners is that they had advanced loan to one Senthil Kumar and he had executed a mortgage deed in favour of the second petitioner and also a Power of Attorney in favour of the first petitioner on 12.06.2018. The further case of the petitioners is that the original title deeds were also handed over to them by the said Senthil Kumar. The borrower is said to have defaulted in the repayment of principal and interest and therefore the petitioners want to enforce the mortgage deed and also the Power of Attorney executed in favour of the first petitioner. When a Sale Deed was submitted for registration before the second respondent, the same was refused to be registered on the ground that a letter has been given by the Central Crime Branch to the effect that there is an investigation pending and therefore none of the properties that are situated at Survey Nos.80/5, 127/2, 127/14A1 and 127/14A2 should be permitted to be registered through any document. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard Mr.Thanu Madan, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader for the respondents.

5. The issue that has been raised in the present writ petition was already considered by this Court in W.P.No.1680 of 2020 by an order dated 03.08.2020. The relevant portions in the order is extracted hereunder.

"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.

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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.

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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."

6. In the above order, this Court has categorically held against the refusal of registration of documents merely based on letters issued by the Police unless a proper order of attachment is obtained from the competent authority under the relevant enactment. In view of the same, the second respondent cannot prevent the petitioners from submitting documents for registration merely based on the letter issued by the police. In fact, such a letter should not be recorded in an Encumbrance Certificate since it is beyond the jurisdiction of the Police to

restrain the owners of the property from dealing with the same. Therefore the second respondent shall also delete the entry made in the Encumbrance Certificate.

7. In the result, this Writ Petition is allowed and there shall be a direction to the second respondent to entertain the documents presented by the petitioners and register the same, if it is otherwise in order. It goes without saying that the petitioners shall pay the appropriate stamp duty and registration fee.

8. The Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Inspector General of Registration
O/o. The Inspector General of Registration
No.100 Santhome High Road
R.A.Puram Chennai - 600028

2 The Sub Registrar
o/o. The Sub Registrar Kundrathur - 600069

+3 cc to Mr.Thanu Madhan N.S.,Advocate Sr.No. 29413

+1 cc to the Government Pleader in Sr.29707

W.P.No.12289 of 2020
& WMP No.15086 of 2020

NR(CO)
RV(24/9/2020)

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