

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.16005/2020

P.Rajah

.. Petitioner

Versus

1.The Inspector General of Registration
Registration Head Office No.100,
Santhome High Road, Chennai 04.

2.The Sub Registrar
Sub Registrar Office
Sowcarpet, Chennai 600 001.

3.The Phonenix ARC Private Limited
7th Floor, Dani Corporate Park
158, GST Road, Kalina Santa Cruz
[East], Mumbai 400 098.

4.R.Mahesh

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 and 2 to consider petitioner's representation dated 18.11.2019, seeking to conduct enquiry, to cancel the Sale Certificate dated 28.07.2011, registered as Document No.963/2011 at Sub Registrar Office, Sowcarpet, Chennai 600 001 in accordance to law within a time frame fixed by this Court.

For Petitioner : Mr.V.R.Kamalanathan

For RR1&2 : Mr.T.M.Pappiah, Spl.GP[Regn]

ORDER

[Order of the Court was made by M.SATHYANARAYANAN]

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2) Mr. T.M. Pappiah, learned Special Government Pleader [Registration] accepts notice on behalf of respondents 1 and 2.

(3) The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that his father Thiru. Panneerselvam and his mother, Radha had jointly purchased the immovable property situate at Door No.16, Old Door No.24/78, Piddariyar Koil Street, First Land, Chennai-1, comprised in Old S.No.7700, Re-Survey No.2252/3, admeasuring to an extent of 828 sq.ft., by means of a registered Sale Deed bearing Doc.No.1243/2004 dated 09.12.2004, registered on the file of the office of the Sub Registrar, Sowcarpet and from the date of purchase, they were in joint possession and enjoyment of the same. The petitioner would further aver that his father, viz., Thiru. Panneerselvam, had availed loan from the Standard Chartered Bank, Chennai-1 for a sum of Rs.13,00,500/- in the year 2004 and for the due repayment of the loan, also created security in respect of the said immovable property and however, the joint owner, viz., the mother of the petitioner, did not execute any documents in favour of the said Bank.

(4) The Standard Chartered Bank, in turn, had assigned the debts in favour of the 3rd respondent herein and the 3rd respondent, by invoking the provisions of the SARFAESI Act, had auctioned the property and the 4th respondent became the successful bidder and the 3rd respondent also issued a Sale Certificate dated 28.07.2011 in favour of the 4th respondent and the same came to be registered as Doc.No.963 of 2011 on the file of the office of the 2nd respondent.

(5) It is also averred by the petitioner that his father challenged the sale proceedings by filing necessary application under Section 17[1] of the SARFAESI Act and the same came to be dismissed by the Debts Recovery Tribunal-I, Chennai and challenging the same, he filed an appeal in M.A. [S.A.] No.4 of 2013 before the Debts Recovery Appellate Tribunal, Chennai, Chennai and it was entertained and conditional interim order was passed and it was also complied with and the 3rd respondent also filed a petition for withdrawal of the same and it was also ordered.

(6) The petitioner would further aver that the auction purchaser also took a stand that in the sale, the joint owner, viz., the mother of the petitioner, did not join the sale and in the interregnum, his father also died. Therefore, the petitioner has also submitted a representation to the respondents as well as to the auction purchaser as to the said infirmity and prays for cancellation of the Sale Certificate bearing Doc.No.963 of

2011 dated 28.07.2011 and despite receipt and acknowledgment, nothing had taken place for the past one year and therefore, is constrained to approach this Court by filing this writ petition.

(7) Heard the submissions of the learned counsel for the petitioner, who has drawn the attention of this Court to Section 68 of the Registration Act, 1908 and would submit that in terms of sub-section 2 of Section 68, the 1st respondent may conduct due and proper enquiry and pass appropriate orders.

(8) Mr. T. M. Pappiah, learned Special Government Pleader [Registration] would submit that it is a well settled position of law that the Registering Authority has no power to adjudicate or arriving at a decision as to whether the vendor has title or not and ultimately, it is for the concerned party to work out his remedy before the competent Common Law Forum and however, on instructions, would submit that in the light of the said provisions, the representation submitted by the petitioner would be given disposal in accordance with law at an early date.

(9) This Court has considered the rival submissions and also perused the materials placed before it.

(10) It is relevant to extract Section 68 of the Registration Act, 1908:-

''68. Power of Registrar to superintend and control Sub-Registrars.-

(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.''

(11) Though the petitioner prays for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in his representation or in this writ petition, directs the 2nd respondent to act in accordance with Sub-section [2] of Section 68 of the Registration Act, 1908, and consider the representation submitted by the petitioner by also putting the 4th respondent on notice and

thereafter, pass appropriate orders in accordance with law as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the 4th respondent.

(12)The writ petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Inspector General of Registration
Registration Head Office No.100,
Santhome High Road, Chennai 04.
- 2.The Sub Registrar
Sub Registrar Office
Sowcarpet, Chennai 600 001.
- 3.The Phonenix ARC Private Limited
7th Floor, Dani Corporate Park
158, GST Road, Kalina Santa Cruz
[East], Mumbai 400 098.

+1cc to Mr.V.R.Kamalanathan, Advocate SR.36566
+1cc to the Government Pleader SR.36759

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SS(CO)
CB(11/12/2020)

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