

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2020

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.13385 of 2020
and
WMP. No.16519 of 2020

The State Bank of India,
Rep. By the Chief Manager,
Mr.D.Parthasarathy,
S/o.A.Doraisamy,
ARM. Branch,
No.44, Eldoms Road,
Teynampet, Chennai-18.

... Petitioner

Vs.

1. The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai-4.
2. The District Registrar,
Veppamaram Street,
Velapadi,
Vellore Taluk and District.
3. The Joint sub-Registrar-I,
Veppamaram Street,
Velapadi,
Vellore Taluk and District.
4. The Joint Commissioner,
Commercial Tax Department,
No.55, Commercial Tax Buildings,
Bharathi Salai, Vellore.
5. The Assistant Commissioner,
Income Tax Department,
No.2, Barracks Cross Lane,
Officer's Line, Vellore-632 001.

6. M.Jayasudha

7. M/s.Nashika Industries Pvt. Ltd.,
Rep. By its Managing Partner,
Mr.Kishore N.Patel,
No.129, Tenkasi Road,
Ilanji, Tamil Nadu.

8. M/s.Om Timber and Marble,
Rep. By its Managing Partner,
Mr.Kishore N.Patel,
No.129, Tenkasi Road,
Ilanji, Tamil Nadu.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the entire records of 3rd respondent dated 20.03.2020, made in Refusal check slip No.2/2020 and to quash the same as illegal and further direct the 3rd respondent to register the sale certificate presented for registration by the petitioner bank to 3rd respondent in favour of the 6th respondent, bearing Temporary Registration No.TP/89780882/2020.

For Petitioner : Mr.M.Suresh

For Respondents: Mr. T.M.Pappiah - R1 to R3
Special Government Pleader
(Registration)
Mr.Rafiq Ahmed - R4 & R5
Standing Counsel

O R D E R

This writ petition has been filed challenging the refusal check slip issued by the third respondent dated 20.03.2020 and for a consequential direction to the third respondent to register the sale certificate presented for registration by the petitioner and to release the same.

2. The case of the petitioner is that the 7th respondent had borrowed loan from the petitioner's bank by mortgaging his immovable properties. The loan amount was not repaid and hence, an application was filed by the petitioner bank in OA.No.434/2014 before the Debt Recovery Tribunal-II, Chennai for recovery of money from the 7th respondent. The application was allowed by the Tribunal. Thereafter, the property was brought for sale through public auction and the 6th respondent was the successful bidder in the sale that was held on 05.11.2019. The

6th respondent has also paid the entire amount and a sale certificate was issued in favour of the 6th respondent dated 03.03.2020.

3. The sale certificate issued by the petitioner bank to the 6th respondent was presented for registration before the third respondent on 20.03.2020. The 3rd respondent refused to register the sale certificate on the ground that there is an attachment order on the property that was passed by the Commercial Tax Department. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard Mr.M.Suresh, learned counsel for the petitioner, Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents 1 to 3 and Mr.Rafiq Ahmed, learned counsel appearing on behalf of the 4th respondent.

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

6. The issue involved in the present writ petition is squarely covered by the earlier order passed by this Court in Assistant Commissioner(CT) Anna Salai-III Assessment Circle Vs. Indian Overseas Bank and others, reported in 2016 (6) CTC 769.

7. This Court held that the secured creditor will have a priority to realize the debt over all the other Government dues and unsecured creditors. Therefore, the petitioner bank will have a priority when it comes to realizing the debt as secured creditor.

8. This judgment was subsequently relied upon by this Court in W.P.(MD).Nos.2331 and 2332 of 2010 and an order was passed on 17.09.2009. This Court directed the concerned Registration Department to give priority to the rights of the secured creditor.

9. In view of the above settled position of law, this Court has no hesitation to interfere with the refusal check slip issued by the third respondent and accordingly, the same is quashed. There shall be a direction to the third respondent to register the sale certificate that was presented for registration by the petitioner bank, if it is otherwise in order and subject to the necessary stamp duty and registration fee being paid.

10. In the result, this Writ Petition is allowed with the above directions. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai-4.
2. The District Registrar,
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Velapadi,
Vellore Taluk and District.
3. The Joint sub-Registrar-I,
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+1cc to Mr.M.Suresh, Advocate Sr.32565
+1cc to the Government Pleader Sr.32634

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sr[co]
srg 30/11/2020