

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HON'BLE Mr. JUSTICE N.ANAND VENKATESH

Writ Petition No.13513 of 2020

D.Yuvaraj

... Petitioner

Vs

- 1 The Inspector General of Registration,
O/o. The Inspector General of Registration,
No. 100 Santhome High Road, R.A.Puram, Chennai - 28
- 2 The District Registrar,
O/o. The District Registrar, Kancheepuram
- 3 The Sub Registrar, O/o. The Sub Registrar, Thiruvallur
Thiruvallur ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus to call for the records of the 3rd respondent in Ref Na.Ka.No.14/2019, dated 17.08.2020, quash the same and consequently direct the 3rd respondent to register the sale deed dated 19.07.2017 submitted by the petitioner within a stipulated time fixed by this Court.

For Petitioner : Mr. K.Balaji
For Respondents : Mr. T.M.Pappiah, Spl.G.P.

ORDER

By consent of the learned counsel for both sides, the writ petition itself is taken up for final hearing.

2. This writ petition has been filed by the petitioner challenging the notice issued by the third respondent dated 17.08.2020 and for a consequential direction to the third respondent to register the sale deed submitted by the petitioner on 19.07.2017.

3. The case of the petitioner is that he is the absolute owner of the subject property; that the property was mortgaged in favour of the State Bank of Trivancore, through a registered mortgage deed, dated 02.04.2014; that the loan and mortgage executed in favour of the Bank were discharged; and that the petitioner subsequently executed a sale deed, dated 19.07.2017 and presented the same for registration before the third respondent. The grievance of the petitioner

is that the third respondent did not register the sale deed on the ground that a complaint has been received from the Police Authority (Crime Branch), through the letter dated 13.07.2017 instructing the third respondent not to register any document with respect to the subject property. This was informed to the petitioner through the impugned notice dated 17.08.2020. Aggrieved by the same, the present writ petition has been filed by the petitioner.

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

5. The issue involved in the present writ petition has been dealt with in detail in the earlier order of this Court in Writ Petition No.1680 of 2020, dated 03.08.2020. The relevant portions in the said 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. Subsequently, the above order was followed in Writ Petition No.9218 of 2020, dated 03.08.2020. Several orders have also been passed by following the above said orders.

7. In view of the above, the issue involved in the present writ petition is squarely covered by the earlier orders passed by this Court. Therefore, this Court has no hesitation to interfere with the impugned notice issued by the third respondent dated 17.08.2020 and accordingly, the same is quashed. The third respondent is directed to proceed further to register the sale deed, dated 19.07.2017, if it is otherwise in order and subject to the condition that the necessary stamp duty and registration fee is paid by the petitioner. The document shall be released after the sale deed is registered.

8. This writ petition is allowed with the abovesaid directions. No costs.

Sd/-
सत्यमेव जयते
Assistant Registrar(CS II)

//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, Chenani - 28
- 2 The District Registrar,
O/o. The District Registrar, Kancheepuram

3 The Sub Registrar, O/o. The Sub Registrar, Thiruvallur
Thiruvallur

+1 cc to Government Pleader, sr.33066

+1 cc to Mr.K.Balaji, Advocate, sr.32923.

Ss(co)

krd 2/11

W.P.No.13513 of 2020



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