IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.15131 OF 2020
AND
WMP.NO.18885 & 18886 OF 2020

Omkara Assets Reconstruction Private Limited Company,
Rep. By Authorized Signatory Sudha Srikanth,
Having Office at No.9, MP Nagar,
First Street, Kongu Nagar Extension,
Tiruppur. … Petitioner

Vs.

The Sub Registrar,
Kangeyam,
Sub Registrar Office,
Kangeyam, Tiruppur District. … Respondent

Prayer:

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in proceedings Na.Ka.No.143/2020 dated 23.07.2020 and another letter No.Na.Ka.No.143/2020 dated 17.09.2020 and quash the same and consequently direct the respondent to register and return the assignment agreement presented by the petitioner company dated 30.03.2020 which is kept as pending Doc. No.P12/2020 forthwith.

For Petitioner : Mr.Venkatesh.S.

For Respondent : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned refusal slip issued by the respondent, dated 17.09.2020 wherein the respondent has refused to register the assignment agreement that was presented for registration by the petitioner.

2. The case of the petitioner is that the subject property which was mortgaged became a subject matter of SARFAESI proceedings under the relevant enactment. The further case of the petitioner is that the petitioner company has entered into an assignment agreement with the State Bank of India wherein the Bank had assigned the right of recovering the loan amount, in favour of the petitioner company. According to the petitioner, the State Bank of India had given loan facilities to a company and the amount was not repaid back and the mortgage was invoked by the concerned Bank under the SARFAESI Act, 2002. The Bank, thereafter, had assigned the right to the petitioner company. This assignment agreement was also registered under Section 26 (c) of the SARFAESI Act.

3. When the above document was presented for registration before the respondent, the respondent had refused to register the document on the ground that the subject property is already under attachment by virtue of the order of attachment passed by the Commercial Tax Officer towards Commercial Tax Dues owed by the borrower company. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard Mr.S.Venkatesan, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf respondent.

5. The issue involved in the present writ petition is covered by the earlier orders passed by the Hon'ble Division Bench of this Court in W.P.(MD) No.12176 of 2018, dated 01.10.2018. The relevant portions of the order is extracted hereunder:

> ''6.The Full Bench of our High Court while framing the following two questions, has also answered the question (b) against the second respondent which are given as under:
>
> a) As to whether the Financial Institution, which is a secured creditor, or the department of the Government concerned, would have the 'Priority of Charge' over the mortgaged property in question, with regard to the tax and other dues.
>
> b) As to the status and the rights of a third party purchaser of the mortgaged property in question.?
>
> 5.The afore said would, thus answered (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.
>
> 6.Insofar as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by

the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes secured debts due and payable to them by sale of assets over which security interest is created.?

7.Moreover, a cursory reading of Section 31B makes it clear that the controversy raised by the second respondent in the counter affidavit filed. That shows that notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority. In the present case, as we highlighted above, the petitioner being a bona fide purchaser has purchased the property brought by the bank in public auction held on 02.05.2017. Moreover, the crucial aspect to be borne by us is the date of attachment of the property in question by the bank on 22.07.2008. When the property in question was already attached by the fourth respondent bank after classifying the account of the original borrower as Non-Performing Asset and subsequently the property was also attached on 22.07.2008, almost six years ago, the property in question has disappeared from the scope of attachment to be made by the second respondent, the reason being that the charge was created only on 22.12.2014. It may be further noted herein that the fourth respondent bank has not sold the property without subjecting the property in public auction.''

6. It is clear from the above Judgment that the Hon'ble Division Bench had placed reliance upon the earlier Full Bench Judgment of this Court and has held that the Bank will have a priority of charge over the mortgaged property with regard to the tax and other dues.

7. In the present case, the petitioner had only entered into an assignment agreement with the Bank and the petitioner was only attempting to step into the shoes of the Bank and recover the amount from the borrower by bringing the property for sale. Therefore, stricto sensu this agreement cannot even be called as a conveyance in the eye of law and it is merely an assignment of right by the Bank in favour of the petitioner. Therefore, by no stretch, the attachment order of the Commercial Tax Department will stand in the way of the petitioner getting the assignment agreement registered in their favour.

8. In view of the above discussion, this Court has no hesitation to interfere with the impugned proceedings of the respondent dated 17.09.2020 and the same is hereby quashed. There shall be a direction to the respondent to register the assignment agreement presented by the petitioner company, if it is otherwise in order and subject to the payment of the necessary Stamp Duty and registration. The document shall be returned back to the petitioner company after registration.

9. This Writ Petition is allowed with the above directions. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Sub Registrar,
Kangeyam, Sub Registrar Office,
Kangeyam, Tiruppur District.

+1cc to the Government Pleader, S.R.No.38860

W.P.No.15131 of 2020
and WMP.No.18885 & 18886 of 2020

SRII(CO)
CS/08/12/2020