IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No. 16776 of 2020

and WMP. No.20788 of 2020

M/s.Rainbow Foundations Ltd.,
Rep. By its Joint Managing director,
Mr.Gajraj Jain,
No.4, Thanikachalam Road,
T.Nagar, Chennai. … Petitioner

Vs.

1. The Inspector General of Registration,
Santhome High Road,
Raja Annamalai Puram, Chennai-28.

2. The District Registrar,
Chennai Central,
Mno.184, Bharathi Salai,
Royapettah, Chennai-14.

3. The Sub Registrar,
No.62, Perambur Barracks Road,
Purasawakkam, Chennai. … Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the respondents 1 to 3 herein to raise the orderof income tax attachment in the encumbrance certificate pertaining to Item No.8 of 2014 dated 07th and 19th February 2014, item No.19/2014 dated 11th August 2014, Item No.25/2015 dated 18th and 19th November 2015 and item No.26/2015 dated 18th November 2015 in respect of property situated at Old Door No.58 then Nos.74 and 75 present Door No.177 and 179, Purasawalkam High Road, Chennai, R.S.No.121/1 of Block No.5, Purasawalkam Division, Purasawalkam - Perambur Taluk of an extent of 3 grounds 231 sq. ft. or thereabouts within the Registration Sub District of Purasawalkam and Registration District of Chennai West.

For Petitioner : Mr.R.Thiagarajan

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

O R D E R

This Writ Petition has been filed for the issue of a Writ Mandamus directing the respondents to delete/raise the income tax attachment orders passed with respect to the subject property.

2. Heard Mr.R.Thiagarajan, learned counsel for the petitioner and Mr.T.M.Pappiah, Special Government Pleader appearing on behalf of respondents.

3. It is seen from the records that this Court, while passing orders in W.P.No.11989 of 2016 etc., dated 06.06.2019 has already held that the communication of the Joint Commissioner of Income Tax with regard to attachment of the subject property stands quashed. This Court further directed the respondents to entertain the sale certificate presented for registration. For proper appreciation, the relevant portions in the order is extracted hereunder:

> '' 11. The question that has to be now decided in all the three Writ Petitions is as to whether the Income Tax Authorities can deny the auction purchaser's right to register the sale certificate on the ground of the attachment of the property.
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> 12. The learned counsel for the auction purchaser contended that M/s. Rainbow Foundation Limited was the successful bider in the public auction and the sale certificate was issued under SARFAESI proceedings and the Stamp Duty under Article 18 r/w 23 of the Indian Stamp Act, 1899, was also paid on the sale price fixed in the Sale Certificate. Hence, the Registering Authority cannot have any right to deny the title of the auction purchaser on the pretext that the properties were already attached by the Income Tax Authorities and that the Income Tax Department will have title over the property.
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> 13. In the present case, on 10.06.2016, in the interest of Justice, in the said Writ Appeal, a Division Bench of this Court had afforded an opportunity to the borrowers to implead themselves as parties and gave one more chance to deposit the entire amount before Registration. Though the order was passed on 10.06.2016, till such time the Writ Petition(s) was taken up, the borrowers had not taken any steps to deposit the entire amount.
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> 14. A secured creditor has secured free hand to resort to a Sale without the intervention of the Court or Tribunal. Section 13(8) of the SARFAESI Act clearly stipulates that the borrower can have full right to redeem the property by tendering all the dues

to the secured creditor at any time before the date fixed for sale or transfer. Even at the last moment, if the borrower is tendering the amount, the sale can be stopped. In the case on hand, the borrower and the guarantor failed to comply with the provisions of Section 13(8) of the SARFAESI Act. At this juncture, it is useful to extract Section 13(8) of the SARFAESI Act as hereunder :

13. Enforcement of security interest:-

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secure asset.?

A reading of the above clause (8) makes it clear that if the dues of the secured creditor together with costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor and no further step shall be taken.

15. The learned counsel for the petitioner/auction purchaser placed reliance on the decision of the Hon'ble Supreme Court reported in 2018 (5) SCC 491 [Dwarika Prasad vs. State of Uttar Pradesh], wherein, it has been held in paragraph 9 as follows:

''In the present case, the appellant failed to comply with the provisions of Section 13(8). The statute mandates that it is only where the dues of the secured creditor are tendered together with costs, charges and expenses before the date fixed for sale or transfer that the secured asset is not to be sold or transferred. The appellant was aware of the proceedings initiated by the Bank for asserting its right to recover its dues by selling the property. The appellant moved the DRT in Securitization Application No. 176 of 2015. During the pendency of those proceedings, orders were passed by the Tribunal on 01.02.2016 and 03.02.2016. The appellant moved the Allahabad High Court which by its order dated 09.03.2016 restrained the Bank and the auction~purchaser from executing the sale deed until 15.03.2016. The stay was extended till 28.03.2016 by which date the appellant was to deposit an amount of Rs.7,00,000/~ The balance was required to be deposited by 30.04.2016. While the appellant deposited an amount of Rs.7,00,000 with the bank, he failed to deposit the balance in accordance with the provisions of Section 13(8). Even after the writ proceedings before the High Court were withdrawn, the appellant did not deposit the balance due together with the costs, charges and expenses. The sale was confirmed, a sale certificate was issued and a registered sale deed was executed on 12.04.2016. The appellant failed to ensure compliance with Section 13 (8). The right to redemption stands extinguished on the execution of the registered sale deed. This is also the view which has been expressed in the Judgment in Mathew Varghese (Mathew Varghese Vs. M.Amritha Kumar (2014 (5) SCC 610 : 2014 (3) SCC (Civ) 254).

16. In this case, the borrower had not taken any efforts to settle the dues to the State Bank. Despite impleading themselves after the remand, the borrowers failed to save the secured asset as provided under Section 13(8) of the SARFAESI Act. The sale was confirmed, sale certificate was issued and also registered. What remains to be done is the release of the document alone. As the right of redemption is already lost, the borrower has extinguished all his remedies. Applying the above principles even in the case on hand and the borrower having allowed the right of redemption to be extinguished, and he cannot have any right over the suit property.

17. In the above circumstances, these writ petitioners are entitled to succeed. Accordingly, all these writ petitions are allowed. Consequently, the communication of the Joint Commissioner of Income Tax, dated 28.03.2016 is quashed and the second respondent is directed to receive the Sale Certificate dated 23.03.2016, which was already produced before him, register the same and then return it to the petitioner in W.P.No.11989 of 2016. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Connected W.M.P.No.10722 of 2016 is closed.''

4. Pursuant to the above order, the sale certificate that was presented for registration, has also been registered in Document No.3700 of 2019 by the third respondent. The only difficulty that has been expressed by the petitioner is that the earlier entries that were made in the encumbrance certificate with regard to the attachment orders passed by the Income Tax Department, continues to be reflected in the encumbrance certificate and as a result of the same, the petitioner is finding it very difficult to develop the property and to execute necessary documents.

5. In the considered view of this Court, the order passed by this Court in W.P.No.11989 of 2016, will have the legal effect of reversing the attachment orders passed by the Income Tax Department. The title over the subject property also stands confirmed in favour of the petitioner since the sale certificate has also been registered by the third respondent. The continuation of the entries in the encumbrance certificate is non est in the eye of law, in view of the subsequent developments that took place in this case. The respondents are not vested with any specific power under the Registration Act to remove any entries made in the encumbrance certificate. This position has been reiterated by this Court on several occasions. It will be relevant to take note of the order passed by this Court in this regard in W.P.No.13176 of 2020 dated 23.09.2020.

6. In view of the above, there is absolutely no legal bar for the petitioner to deal with the subject property and the entry found in the encumbrance certificate with regard to the previous attachment orders passed by the Income Tax Department and which has been quashed by this Court, will have absolutely no impact on the right and title of the petitioner over the subject property. It will be enough if this clarity is given in this Writ Petition. Therefore, what is important is to look at the legal impact of the orders passed by this Court in W.P.No.11989 of 2016 and not the earlier entries that are found in the encumbrance certificate, which has subsequently become non est by virtue of the orders passed by this Court.

7. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
Santhome High Road,
Raja Annamalai Puram, Chennai-28.

2. The District Registrar,
Chennai Central,
Mno.184, Bharathi Salai,
Royapettah, Chennai-14.

3. The Sub Registrar,
No.62, Perambur Barracks Road,
Purasawakkam, Chennai.

+2cc to M/S R.Thiagarajan, Advocate Sr.38295

+1cc to Spl Government Pleader Sr.38672

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RP(CO)
RVR 19/12/2020

30.11.2020