

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 4.8.2021.

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.12633 of 2021

K.Rajendran

...Petitioner

vs.

1.The District Collector,
Salem, Salem District.

2.The Sub Registrar,
Aiyothiyapattinam Sub Registrar Office,
Salem 636 114.
Salem District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the second respondent to remove the encumbrance in pursuant to sale agreement dated 18.9.2007 in document No.2749/2007 in respect of S.No.149/1B3, 51/1B5 and 151/1B7 at Pallipatti Village, Salem Taluk and District.

For Petitioner : Mr.M.Elango

For Respondents : Mr.K.M.D.Muhilan, Government Advocate

ORDER

The writ petitioner had purchased the land to an extent of 87.5 on 23.2.2021 from one Krishnan. The sale deed had been registered as document No.916 in the office of the Sub Registrar of Ayothiyapatnam, Salem. The petitioner has, then, found that there was an agreement of sale which had also been registered in the office of the said Sub Registrar as document No.2749/2007. Claiming that the said entry should be deleted, the present writ petition has been filed in the nature of a writ of mandamus.

2. The learned counsel for the petitioner relied on a judgment of a learned Single Judge dated 9.12.2020 in W.P.No.17773 of 2020 wherein, in the very same circumstances, the learned Single Judge had observed and held as under:-

"10. The above discussion by this Court makes it therefore very clear that the entry made in the Encumbrance Certificate with regard to the agreement of sale dated 23.5.2008, has become non-est in the eye of law. Such entry that remains in

the encumbrance certificate cannot be put against the petitioner who has purchased the property in an auction sale conducted by the Asset Reconstruction Company under the SARFAESI Act. This is the legal position insofar as the right of the petitioner over the subject property is concerned.

11. Apart from the above clarification given by this Court, it is left open to the petitioner to present this order for registration before the respondent and the respondent can also register this order by virtue of which the earlier entry made at the time of registration of the agreement of sale automatically gets reversed. The petitioner is directed to submit a representation alongwith a certified copy of this order before the respondent. The respondent, on receipt of the same, shall register this order subject to the payment of the necessary stamp duty and registration fees."

3. In the instant case also, the petitioner herein gave a representation to the second respondent, but, no action has been taken on such representation.

4. It is to be noted that the learned Single Judge, in the case cited supra had relied on the decision of a Division Bench in .Ramayee v. The Sub Registrar, Registration Department and others (2020-5-LW 385), wherein it had been held that registration of an agreement of sale will not be a bar to further registration of sale of the very same property.

5. In the light of the above ratio, it is left open to the petitioner to present this order for registration before the respondent and the respondent can also register this order by virtue of which the earlier entry made at the time of registration of the agreement of sale automatically gets reversed. The petitioner is directed to submit a fresh representation alongwith a certified copy of this order before the respondent. The respondent, on receipt of the same, shall register this order subject to the payment of the necessary stamp duty and registration fees.

6. The writ petition is disposed of. No further orders will be required. No costs.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

ssk

To

1.The District Collector,
Salem, Salem District.

2.The Sub Registrar,
Aiyothiyapattinam Sub Registrar Office,
Salem 636 114, Salem District.

+1cc to Mr.M.Elango, Advocate SR.No.38656

+1cc to the Government Pleader SR.No.38851

W.P.No.12633 of 2021

PCH(CO)
RVM(27/08/2021)