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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 07.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.14068 of 2021

and

W.M.P.No.14946 of 2021

M/s.Bank of Baroda, Adyar Branch,
Rep.by its Chief Manager
Yedugundula Srinivasa Rao
No.77, I Main Road, Gandhi Nagar,
Adyar, Chennai 600 020.

... Petitioner

-Vs-

The Sub Registrar
Kunrathur, Chennai 600 069.

... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the refusal order bearing Refusal Number RFL/ Kunrathur/ 15/ 2021 dated 25.6.2021 issued by the respondent and quash the same as null void and non- est in the eye of law and further direct the respondent to register the sale certificate dated 25.06.2021 executed in favour of Mr.S.Ganesan S/o. Mr.Subramaniam.

For Petitioner : Mr.R.Sreedhar

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

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records pertaining to the refusal order bearing Refusal Number RFL/ Kunrathur/ 15/ 2021 dated 25.6.2021 issued by the respondent and quash the same as null void and non- est in the eye of law and further direct the respondent to register the sale certificate dated 25.06.2021 executed in favour of Mr.S.Ganesan S/o. Mr.Subramaniam.

2. The petitioner Bank had submitted a Sale Certificate for registration to the respondent ie., the Sale Certificate dated 25.06.2021 executed in favour of one Ganesan, issued by the



petitioner. The said sale certificate having been considered, was refused to be registered and in this regard an order has been passed by the respondent Sub Registrar on 25.06.2021, wherein the respondent has stated that, the Tribunal under the Chit Funds Act had already subjected the property in question through the Sale Certificate and has passed an order prohibiting or restraining until further orders from transferring or charging the property specified in the schedule. In view of the said order passed by the Chit Tribunal, which has been made in the year 2020 itself, the Registrar has taken a stand that the sale certificate in question cannot be registered.

3. Challenging the said order dated 25.06.2021 passed by the respondent, the petitioner has moved this writ petition with the aforesaid prayer.

4. Mr.Sreedhar, learned counsel appearing for the petitioner would submit that, the issue as to whether the order passed by way of attachment by any authorities including the Court like Chit Tribunal can be an impediment for the registering authorities to register the Sale Certificate issued by the Banking authorities under the provisions of the SARFAESI Act has been settled in a number of cases. In this context, the learned counsel is able to cite a judgment of this Court dated 10.07.2020 in W.P.No.9037 of 2020, where almost similar circumstances had been confronted by the learned Judge and it has been held that the issue raised therein was no more res integra and accordingly reiterating the legal position already settled, the learned Judge issued a direction to register the sale certificate in the said case.

5. Citing the said judgment, the learned counsel for the petitioner would seek the indulgence of this Court and submits that, since not only the issue raised herein is similar, but also the order passed by the respondent is also similar on the same set of facts and therefore the legal position as envisaged in the said decision cited supra can be made applicable to the facts of the present case also and the impugned order can be interfered with and suitable consequential direction can be given to the respondent to register the sale certificate, he contended.

6. On the other hand, Mr.K.M.D.Muhilan, learned Government Advocate appearing for the respondent would submit that, insofar as the legal position as has been projected by the learned counsel, there can be no much controversy.

7. However, in the case in hand, since a prohibitory order has been passed by the Chit Tribunal under the Chit Funds Act, where a specific restraint was imposed until further orders from



transferring or charging the property specified in the schedule and for the very same property sale certificate has now been issued by the petitioner bank, when the sale certificate was presented for registration by the petitioner, the respondent has taken a stand by citing the above prohibitory order.

8. In this context, pursuant to the settled legal position if this Court is ultimately convinced that the sale certificate in question can be registered by the respondent, the registering authority would abide by whatever order to be passed by this Court, and accordingly they would execute the same.

9. I have considered the aforesaid case as projected by the petitioner as well as the submissions made by the learned Government Advocate appearing for the respondent referred to above.

10. As has been rightly pointed out by the learned counsel for the petitioner, which is not controverted by the learned Government Counsel, that the legal position in this regard is well settled.

11. In order to appreciate the said legal position, the aforesaid judgment of this Court dated 10.07.2020 in W.P.No.9037 of 2020 can be usefully pressed into service. The relevant portion of the order reads thus,

" 4.This Sale Certificate was engrossed on a stamp paper and tendered for registration before the respondent on 01.11.2019. The grievance of the petitioner is that the respondent declined to register the Sale Certificate on the ground that there is an attachment of the property by virtue of an attachment order passed by the Civil Court and it has been recorded in the books of the respondent and it is reflected in the encumbrance certificate. Aggrieved by the same, the present writ petition has been filed before this Court seeking for appropriate directions.

5.The learned counsel for the petitioner submitted that the property was mortgaged in favour of the Bank by a registered mortgage deed dated 20.03.2014, in Document No.2500/2014. The learned counsel further submitted that the alleged attachment of the property had taken place much after the property was mortgaged, only in the year 2018. The learned counsel submitted that the attachment of the property after the property has already been mortgaged in favour of the Bank, will not in any way bind the Bank and that is not a



ground for rejecting the registration of the Sale Certificate.

6.The learned counsel for the petitioner in order to substantiate his submissions relied upon the order passed by this Court in WP(MD). No.4007/2019, dated 28.02.2019 and the relevant portions of the order is extracted hereunder:

5.The issue on hand is no longer res integra. As rightly pointed out by the learned counsel appearing for the petitioner, in a catena of decisions this Court has held that there can be no bar for registering the sale certificate in the case of attachment order passed by the Civil Court. One such order is enclosed at Page No.25 of the typed set of papers vide order dated 24.02.2015 in W.P.No.31061 of 2012. It was held that the Bank being a secured creditor is entitled to exercise their power under the SARFAESI Act and execute the sale certificate in favour of the purchaser and that the registration cannot be refused by registering authority on the ground that an order of attachment has been obtained in respect of the property in question.

7.The learned counsel further submitted that the issue that is involved in the present writ petition is directly covered by the judgment of this Court in the case of S.Praveen Bohra vs. Joint Registrar (In the cadre of District Registrar) Office of the Registration of Coimbatore, No.102, State Bank Road, Coimbatore reported in 2016 3 LW 513.

8.Mr.T.M.Pappiah, Special Government Pleader appearing on behalf of the respondent submitted that the respondent is barred from entertaining the Sale Certificate for registration since admittedly there is an attachment order passed by a Competent Civil Court and the same is reflected in the Encumbrance Certificate. The learned counsel submitted that in the light of the order of attachment, if any registration is made, it may be construed as a violation of the order passed by a Competent Civil Court. Therefore, the learned counsel sought for the dismissal of the writ petition.



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9. The issue involved in the present writ petition is no longer integra. It has been consistently held by this Court that the order of attachment is not a ground to refuse registration of a Sale Certificate. In fact this position of law has been holding the field from the year 2013 onwards and this Court in the case reported in [2013 1 CTC P 609] has also taken the very same view. The latest judgment of this Court in the case of Pegasus Assets Reconstruction Pvt. Ltd. vs. Inspector of General Registration, Government of Tamil Nadu is reported in [2019 4 CTC P 851]. Therefore, this Court need not undertake the exercise and it is enough if the settled law is once again reiterated.

10. In view of the above, there shall be a direction to the respondent to register the Sale Certificate dated 01.11.2019 forthwith, if all the other requirements are satisfied. In the result, this writ petition is allowed. No costs."

12. In the said judgment, the learned Judge, having considered the earlier decisions of this Court, has held in unequivocal terms that, the issue raised therein was no longer res integra. The learned Judge has further held that, consistently it has been held by this Court that the order of attachment is not a ground to refuse the registration of sale certificate. The learned Judge has further stated that, the Court need not once again undertake an exercise and it is enough if the settled law is once again reiterated.

13. Here in the case in hand, even though the learned Government Advocate submits that, there has been a prohibitory order or restraint order passed by the Chit Tribunal, the effect of the same can be compared with the one of an attachment order by a Civil Court or any Competent Court, and therefore the legal position in various judgments as has been made in the aforesaid judgment certainly would be made applicable to the facts of the present case also and therefore, this Court has no hesitation to hold that the reason now cited by the respondent through the impugned order to refuse the registration of the sale certificate in question cannot be sustained. Therefore, in that view of the matter, this Court is inclined to pass the following order.

- That the impugned order is quashed and the matter is remitted back to the respondent with a direction to take up the sale certificate in question presented by the petitioner and do the needful to register the same if it is otherwise in order.



● The needful as indicated above shall be undertaken within a period of four weeks from the dated of receipt of a copy of this order.

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14. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KST

To

The Sub Registrar
Kunrathur, Chennai 600 069.

+2cc to Mr.R.Sudhakar, Advocate, S.R.No.31664

W.P.No.14068 of 2021

PCH(CO)
HS(29/07/2021)