

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM : JUSTICE N.SESHASAYEE

W.P.No.14492 of 2020
and WMP.Nos.17974 & 17975 of 2021

1.R.Palani
2.S.Sekar
3.R.Venkatachalapathy ... Petitioners

Vs

1.The Deputy Superintendent of Police
Economic Offences Wing-II
Vellore.

2.The Inspector General of Registration
No.100, Santhome High Road
R.A.Puram, Chennai – 18.

3.The Sub Registrar
Anniyur
Villupuram District.

4.Indian Bank
Virupatchipuram Branch
Vellore, Vellore District.

5.M/s.Royal Agro & Dairy Ltd.,
No.3, Post Office Street
Krishna Nagar
Vellore – 632 001.

6.M.Thiyagarajan

7.S.Sivakumar

... Respondents

[R7 impleaded Vide order dated 08.02.2021

made in WMP.No.21759/2020 in WP.No.14492/2020]

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondent 3 from registering any sale deed in respect of the properties covered under the sale deed Vide document No.1145 of 2013 on the file of the 3rd respondent.

For Petitioners : Mr.J.Bharathiraja

For Respondents : Mr.G.Rajesh

Government Advocate [R1]

Mr.T.M.Pappiah

Special Government Pleader [R2, R3]

Mrs.S.R.Sumathy [R4]

Mr.M.Sathish Kumar [R7]

ORDER

The petitioners herein are some of the depositors in the fifth respondent-financial institution. The fifth respondent could not honour its commitment to repay the deposit amount to the petitioners and other depositors, consequent to which, a complaint came to be lodged before the first respondent, based on which, a case in Crime No.2/2018 was registered. As per the provisions of TNPID Act, there ought to be an

interim attachment to protect the interest of the depositors, which has to be later confirmed by the TNPID Court.

2. In the instance case, the first respondent has not taken steps to attach the properties, but instead, merely addressed a communication to the third respondent not to register any sale deed pertaining to the properties of the fifth respondent.

3. The subject matter in this writ petition is the properties in S.Nos.133/1B, 133/3, 133/5. This was mortgaged by the fifth respondent with the fourth respondent-Bank. As the fifth respondent had defaulted in making payment of loan amount, the fourth respondent invoked the provisions of the SARFAESI Act, and brought the properties to sale by public auction, and in the auction, the seventh respondent has purchased the properties, and a sale certificate was issued, which was since registered by the third respondent.

4. It is in these background, the learned counsel for the petitioners made a statement that it is purely due to the failure of the first respondent to protect the interest of the innocent depositors, the present situation has

arisen. When the properties of the financier should have been attached, he has chosen not to proceed with the attachment of the properties.

5. Mrs.S.R.Sumathy, learned counsel appearing for the fourth respondent made a statement that the fourth respondent was a secured creditor of the properties in question. It is perfectly within the rights of the fourth respondent to bring the properties to auction, and unsecured creditors such as the petitioners do not have any right to attach or obstruct any auction sale of the property in question by the fourth respondent, nor can it challenge the sale certificate issued in favour of the seventh respondent, nor can they challenge the act of registration done by the third respondent.

6. In response, the learned counsel for the petitioners submitted while the properties were purchased in the name of the fifth respondent-company, it was dealt with by its Managing Director in his individual capacity and therefore, the very mortgage itself is very incompetent. He further added that the fifth respondent remained passive, and did not challenge the action of the fourth respondent in bringing the properties to sale.

There is nothing to protect the interest of the petitioners and ultimately

the set of properties which ought to have been available also to the unsecured creditors have gone undefended.

7. Mrs.S.R.Sumathy, learned counsel would now respond and state that if at all the petitioners feel aggrieved by any sale or want to challenge the legal validity of the mortgage created by the fifth respondent in favour of the fourth respondent, then the petitioners, as parties aggrieved ought to move the Debt Recovery Tribunal.

8. Heard Mr.T.M.Pappiah, learned Special Government Pleader for the respondents 2 and 3, and his submission is one of essentially staying neutral, and submitted that no statutory authority can be prevented from discharging his statutory responsibility, nor the registering authority can be required to cancel any registration made, since he becomes *functus officio*, when once the act of registration is completed.

9. Mr.G.Rajesh, learned Government Advocate appearing for the first respondent has also filed his counter.

10. The learned counsel for the petitioners would now submit that the

petitioners are not pressing this writ petition and seek leave of this Court to work out other remedies available to them in law.

11. Leave granted. In view of the submissions made by the learned counsel for the petitioners, this petition is dismissed as withdrawn. No costs. Consequently, connected miscellaneous petitions are closed.

30.03.2021

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

To:

1.The Deputy Superintendent of Police
Economic Offences Wing-II
Vellore.

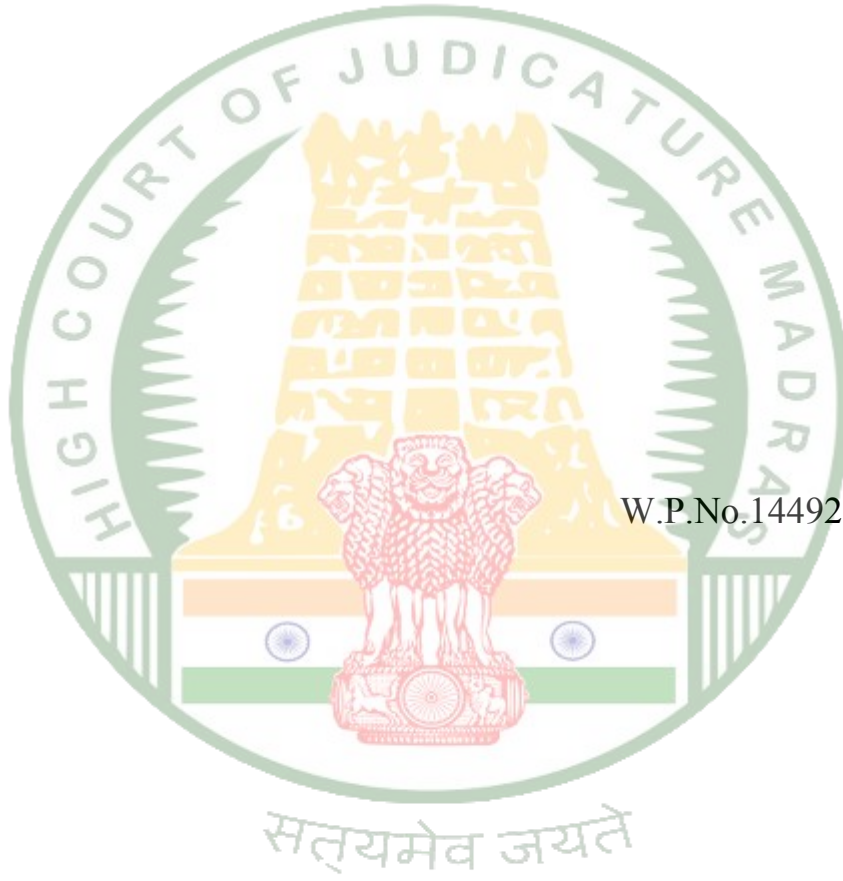
2.The Inspector General of Registration
No.100, Santhome High Road
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Anniyur
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N.SESHASAYEE.J.,

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