



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 09.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.23945 of 2018

Union Bank of India
Rep. by Chief Manager Regional Office
649/650 Oppanakara Street Coimbatore-641 001.

... Petitioner

-Vs-

1 Sub-Registrar
Kotagiri, Nilgiris District.

2 B.Jagadeesan
Sreekal Tea Industry No.3/320 Bettatty
Village Aravenue Post Kotagiri Nilgirs.

3 O.Varadaiya
Sathyamurthy Colony Thirumangalam
Anna Nagar, Chennai.

.. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the 1st respondent herein the cancel the registration of Sale Certificate dated 19.09.2008 (Document Number 779 of 2009).

For Petitioner : Ms.Aishwarya S.Nathan
for M/s.Srinath Sridevan

For Respondents: Mr.Richardson Wilson
Government Counsel - for R1
Mr.J.Franklin - for R2

O R D E R

The prayer sought for herein is for a Writ of Mandamus to direct the 1st respondent herein to cancel the registration of Sale Certificate dated 19.09.2008 (Document Number 779 of 2009).

2. It is the case of the petitioner that, the petitioner is a Nationalised Bank from whom the second respondent borrowed a loan, against which he has given his properties as prime



collateral.

3. At one point of time, the loan has become Non Performing Asset (NPA) and therefore, proceedings under the SARFAESI Act has been initiated by the petitioner bank against the second respondent.

4. Ultimately, the property of the second respondent was brought for auction sale, wherein the third respondent has taken the property in auction and had paid the purchase consideration and deposited the same with the petitioner Bank.

5. However, in the meanwhile, challenging the sale notice, the second respondent filed S.A.No.60 of 2009 before the Debts Recovery Tribunal, Coimbatore and also the consequential action of sale certificate. The said S.A.No.60 of 2009 was dismissed by the Debts Recovery Tribunal on 21.07.2009. Therefore, the sale certificate already issued in this regard to and in favour of the third respondent was duly registered with the first respondent as Document No.779 of 2009.

6. Subsequently, the second respondent, as against the order passed by the Debts Recovery Tribunal, preferred an appeal to the Debts Recovery Appellate Tribunal (In short 'D.R.A.T.'), Chennai in R.A.(S.A.) No.37 of 2012, which came to be allowed by an order dated 03.02.2014, setting aside the order passed by the Debts Recovery Tribunal.

7. Thereafter, according to the petitioner, the entire due payable by the second respondent borrower has been completely settled in favour of the petitioner bank and in the meanwhile, in view of the sale having been set aside by the orders of the D.R.A.T., the sale price paid by the third respondent also through a demand draft dated 14.03.2014 has been settled in favour of the third respondent. Therefore, according to the petitioner insofar as the property belonging to the second respondent is concerned, there is no charge and the said property is free from charge from the petitioner's side and therefore the said sale certificate issued and registered as Document No.771 of 2009 at the first respondent office has to be cancelled. Therefore, in order to cancel the same, the petitioner made a request on 26.08.2014 by way of cancellation of sale certificate and thereby requested the first respondent to cancel the registration of sale certificate already made in the year 2009.

8. However, the first respondent has not accepted the said plea of the petitioner Bank to cancel the sale certificate registered already in the year 2009 and therefore, the petitioner has approached this Court by filing the present writ



petition.

9. Heard Ms.Aishwarya S.Nathan, learned counsel for the petitioner, who, after having reiterated the aforesaid facts would submit that, once the sale has been set aside by the D.R.A.T., ie., Court of Law, pursuant to which the sale certificate already issued by the petitioner in favour of the third respondent ie., auction purchaser has become inoperative and therefore the said sale certificate issued already with the first respondent registrar office has to be cancelled and therefore in order to cancel the same, when a request was made to the first respondent by the petitioner Bank, the same was not accepted or considered and therefore, in order to give a direction to the first respondent / registering authority to cancel the sale certificate issued in the year 2009, a suitable direction by way of Mandamus can be issued.

10. However, on the other hand, Mr.Richardson Wilson, learned counsel appearing for the first respondent Sub Registrar would submit that, insofar as the prayer sought for by the petitioner to cancel the registration of the sale certificate is concerned, such kind of cancellation cannot be done by the registering authorities as the sale certificate will have the validity of a sale deed or an instrument by which the property in question had been conveyed.

11. Though subsequently the sale itself has been set aside by the Court of law by orders issued in this case by the D.R.A.T., at the most the registering authority can enter such orders passed by the Court of law on the basis of the request made in this regard by the petitioner Bank and that can be entered in the Book-2 register stating that, the document ie., the sale certificate registered in the year 2009 has got annulled and such entry to be made in this regard will have a reflection in the Encumbrance Certificate also. By thus, in future if any third party wants to exploit the property in question they will be aware that the sale certificate already registered, got annulled by virtue of the orders passed by the D.R.A.T., and only to that limited extent, the first respondent is empowered and therefore beyond which, cancellation as sought for by the petitioner Bank cannot be undertaken, he submitted.

12. I have considered the submissions made by the learned counsel appearing for the petitioner and the learned Government counsel appearing for the respondents and have perused the materials placed on record.

13. Though the very sale itself has been set aside by the orders of the D.R.A.T., Chennai as stated by the petitioner and



pursuant to which everything has been settled between the parties ie., the petitioner and the second respondent as well as the third respondent and there has been no charge on the property in question belongs to the second respondent by the Bank, if at all the petitioner Bank wants to cancel the sale certificate already issued and registered at the first respondent registrar office, the said action only can be undertaken in the manner as provided under law.

14. In this context, as has been rightly submitted by the learned Government Counsel appearing for the first respondent if at all the sale certificate already registered at the first respondent registrar office is to be cancelled, the actual cancellation has to be made only by the competent court and not by the registering authority, in view of the various provisions of the Registration Act and the rules made therein which are in vogue.

15. However, as per the provisions of the Registration Act and the Rules made therein, as well as the relevant circulars issued in this regard by the Inspector General of Registration, the Court order giving any declaration with regard to any instrument, such kind of Court orders passed can be entered only in Book-2 in the Registrar Office and in this case also, based on the order passed by the D.R.A.T., as claimed by the petitioner, the sale certificate dated 19.09.2008 registered at the first respondent office in the year 2009 is concerned, such kind of entry can be made and it will have the effect of annulment of the sale certificate in question and that will also have a reflection in the Encumbrance Certificate.

16. The said submission made by the learned Government Counsel appearing for the first respondent is to be accepted and therefore, insofar the prayer sought for by the petitioner in this writ petition is concerned, this Court is of the view that, a direction can be given to the first respondent to register the said development by which the D.R.A.T., has set aside the sale and the said development can be registered in the Book-2 register maintained at the first respondent registrar office with an endorsement, beyond which, no further direction can be given to make cancellation of the registration of the sale certificate dated 19.09.2008.

17. It is made clear that, once such an entry is made and registration is made in Book-2 register as claimed by the learned counsel for the first respondent, that will have an effect of annulment of the document in question since that would be reflected in the Encumbrance Certificate in future.



18. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That there shall be a direction to the first respondent to register the order passed by the D.R.A.T., cancelling the very sale effected in this regard, pursuant to which the sale certificate issued by the Bank dated 19.09.2008 and registered as document at the Registrar Office in Document No.779 of 2009 and it can be entered in the Book-2 Register in consonance with the circular issued in this regard by the Inspector General of Registration and the same can be intimated to the petitioner.
- The needful as indicated above shall be undertaken by the first respondent within a period of four weeks from the date of receipt of a copy of this order.

19. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

KST

To

The Sub-Registrar
Kotagiri, Nilgiris District.

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.32523
+1cc to Mr.J.Franklin, Advocate, S.R.No.32950
+1cc to the Government Pleader, S.R.No.32942

W.P.No.23945 of 2018

EV(CO)
CB(23/08/2021)