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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.33316 of 2014

K.Ramesh Babu

... Petitioner

-Vs-

1. The Sub Registrar,
Selayur,
No.36, Bharatha Madha Street,
Selayur,
Tambaram (Near Poondy Bazzar),
Chennai - 600 073.

2. The Authorised Officer,
ING Vysya Bank Ltd,
Consumer Finance Department,
13/4 Karpagambal Road, 1st Floor,
Mylapore, Chennai 600 004.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the first respondent to register the Sale Certificate dated 13.10.2014 executed by the second respondent in favour of the petitioner upon payment of appropriate registration charges, as requested by the second respondent in its letter dated 12.11.2014.

For Petitioner : No Appearance

For R1 : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This Writ Petition has been filed for the issuance of Writ of Mandamus, directing the first respondent to register the Sale Certificate dated 13.10.2014 executed by the second respondent in favour of the petitioner upon payment of appropriate registration charges, as requested by the second respondent in its letter dated 12.11.2014.

2. There is No Appearance for the petitioner. Heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the first respondent.



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3. The second respondent is the Authorized Officer of ING Vysya Bank Limited, appointed under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. He has a power and jurisdiction to enforce any security interest created in favour of the Bank. The Bank made available credit facilities to one S.Thyagarajan. The said borrower executed necessary documents and secured the due repayment of the said loan by deposit of title deeds pertaining to the property situated at Flat No.A, Ground Floor, Plot No.2, P.G.Builders, Veerabadran Nagar, Mambakkam Main Road, Vengai Vasal Village, Chennai to an extent of plinth area of 710 sq.ft and 536 sq ft of undivided share in land out of 2695 sq.ft in Survey No.6/3C under Patta No.2223.

4. The said borrower defaulted in the due and loan become "non performing asset" with effect from 31.10.2006. Therefore, the second respondent initiated proceedings under the SARFAESI Act, 2002. On 22.02.2008, the second respondent issued a possession notice and published in the daily newspaper on 26.02.2008. Thereafter, the second respondent filed direction petition before the Chief Judicial Magistrate, Chengalpattu and taken possession.

5. In the meanwhile, the borrower sold out the subject property in favour of one Raj Krishnan by the registered sale deed, dated 16.05.2008, registered vide Document No.4065 of 2008. The said Raj Krishnan had filed an application before the Debts Recovery Tribunal III, Chennai, in S.A.No.215 of 2013 and the same was dismissed. Thereafter, the second respondent issued notice of sale for the subject property on 08.08.2014, by inviting tenders and by public auction, scheduled to be held on 18.09.2014. The notice was also caused to the borrower and also subsequent purchaser i.e.Raj Krishnan.

6. In the auction, the petitioner was a successful bidder for the same at Rs.15,65,000/- (Rupees Fifteen Lakhs Sixty Five Thousand only) and the sale was confirmed in his favour. On 13.10.2014, the second respondent issued a sale certificate in favour of the petitioner on stamp paper of appropriate value. On 13.10.2014, the second respondent presented the said sale certificate before the first respondent for registration. It was returned for the reason that the Inspector General of Registration had issued circulars to avoid frauds in the registration and he was bound by the same.

7. In this regard it is relevant to extract the judgment of this Court, in W.P.No.34249 of 2018, dated 08.11.2021, wherein held as follows:-

6. In support of his contention, he relied upon the Judgment reported in 2007(5) SCC 745 the Hon'ble Supreme Court of India held that "when an



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auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the Court is contemplated or required and that Sale certificate issued by the Court or an Officer authorized by the Court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under the Act."

7. He also relied upon the Judgment reported in 2018(3) TNCJ 541 MB N.Naresh Kumar -vs- The Inspector General of Registration, Chennai 28 and another, the Hon'ble Division Bench of this Court held as follows:

"15. Therefore, the refusal by the Sub Registrar to file sale certificate issued by the Recovery Officer by making necessary entries in the Book in accordance with sub-section (4) of Section 89 of the Registration Act is not justified. The copy of the sale certificate thus filed in Book No.1 which contains all the relevant details and all that is the Sub Registrar is required to do is to file a copy of the certificate in Book No.1 and nothing more.

16. In B.Arvind Kumar Vs. Government of India and others reported in JT 2007 (8) SC 602, it is held that a property sold in public auction pursuant to an order of the Court and once the sale is confirmed it becomes absolute and the title vests with the auction purchaser. The subsequent sale certificate issued to the purchaser is the evidence of such title which does not require registration under Section 17(2) (xii) of the Registration Act. In the case on hand also the property was purchased in public auction on 16.05.2008 and the sale certificate was issued on 31.08.2008. Therefore, the appellant/purchaser automatically becomes title holder of the property by virtue of the sale certificate. The payment of stamp duty on the sale certificate is not warranted as it is only a sale certificate issued which has to be filed or scanned in Book



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situate, and such officer shall file the copy in his Book No. 1. State Amendments Andhra Pradesh: For sub-section (5) of section 89 substitute as under: "(5) An officer empowered to grant a certificate of sale of immovable property under the Andhra Pradesh Co-operative Societies Act, 1964 or the rules made thereunder shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such registering officer shall file the copy in his Book No. 1."

10. Therefore, the sale certificate do not operate as a conveyance of the property. It is also relevant to extract the Rule 200(1) of the Civil Rules of Practice and Circular Orders:

"200(1). Section 89(2) of the Indian Registration Act, 1908 (Central Act XVI of 1908) provides that the every Court granting a certificate under Rule 94 of Order XXI of the Code, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate and such officer shall file the copy in his Book No.1. The law, therefore now provides, through the direct action of the Civil Court and of the Registering Officer for the registration of a copy of the certificate of sale. It is no longer necessary to register the certificate itself. Such certificates do not operate as a conveyance of the property to which they relate."

8. In view of the above, the first respondent is directed to register the sale certificate, dated 13.10.2014 executed by the second respondent in favour of the petitioner upon payment of appropriate registration charges and release the same.

9. With the above direction, this writ petition stands allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

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To

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- 1.The Sub Registrar,
Selayur,
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Tambaram (Near Poondy Bazzar),
Chennai - 600 073.
- 2.The Authorised Officer,
ING Vysya Bank Ltd,
Consumer Finance Department,
13/4 Karpagambal Road, 1st Floor,
Mylapore, Chennai 600 004.

+1cc to Government Pleader SR. No.64887

W.P.No.33316 of 2014

PL (CO)
PR (27/12/2021)