IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. NO.23512 OF 2021

Suresh Ramakrishnan
... Petitioner

-Vs-

The Sub Registrar,
Sub Registrar Office,
NSK Avenue, Manickam Road,
Kundrathur, Chennai - 600 069.
... Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondent herein to register the sale certificate dated 27.04.2018 issued by M/s.JM Financial Asset Reconstruction Company Ltd., under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of property comprised in Survey No.184/3C ad measuring 163 cents at Kannapalayam Village, Sriperumbudur Taluk, Kancheepuram District.

For Petitioner : Ms.A.S.Neela Narayani

For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The Writ Petition has been filed to direct the respondent herein to register the sale certificate dated 27.04.2018 issued by M/s.JM Financial Asset Reconstruction Company Ltd., under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (herein after called as “SARFAESI Act”) in respect of property comprised in Survey No.184/3C ad measuring 163 cents at Kannapalayam Village, Sriperumbudur Taluk, Kancheepuram District.

2. The case of the petitioner is that the property comprised in survey No.184/3C ad measuring 163 cent situated at Kannapalayam Village, Sriperumbudur Taluk, Kancheepuram District was purchased by the petitioner on auction. The property was originally mortgaged with the State Bank of India and the secured assets were assigned to M/s.JM Financial Assest Reconstruction Company Ltd and the said company had conducted the auction.

3. In the said auction, the petitioner purchased the subject property under the provision of SARFASI Act. The petitioner was issued sale certificate dated 27.04.2018 and the same was presented before the respondent for registration. However it was not registered for the reason that the Income Tax Department has made an attachment in respect of the property. Hence, the petitioner filed this present Writ Petition with the above said prayer.

4. The learned counsel appearing for the petitioner would submit that in the light of Section 26E of the SARFASI Act, debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government of the State Government or local authority. In this regard, he relied upon the Full Bench judgment of this Court report in 2017 (1) MLJ 769 in the case of Assistant Commissioner (CT) Vs. Indian Overseas Bank & anr., which held that as follows :-

> "2. We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-
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> ''31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.
>
> Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets

of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.''

3.There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority....”

4.1. She further submitted that in the above judgment this Court further held that, in respect of the rights of the third party purchaser of the mortgaged property in question, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes “secured debts due and payable to them by sale of assets over which security interest is created”.

5. Per contra, the learned Special Government Pleader on instruction from the respondent submitted that the subject property was covered by the attachment order dated 21.07.2011 issued by the Income Tax Department for the recovery of dues to the tune of Rs.3,69,66,037/-. Further, the said certificate was executed on 27.04.2018 and the same has to be presented within a period of four months as contemplated under Section 23 read with Section 25 of the Registration Act, 1908. Therefore, he prayed for dismissal of this Writ Petition.

6. Heard Ms.A.S.Neela Narayani, learned counsel appearing for the petitioner, Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondent.

7. Admittedly, the petitioner presented the sale certificate for registration and not common deed of conveyance. The said sale certificate was presented to file the same in Book No.1 as contemplated under Section 89(4) of the Registration Act. The said provision does not have any expressed limitation to file the sale certificate in Book No.1 under sub-Section 4 of the Section 89 of the Registration Act. That apart, the petitioner is being a purchaser in the auction sale, his claim over the property takes precedence over all claims of any Government department. Therefore, the respondent ought to have accepted the sale certificate dated 27.04.2018.

8. In view of the above discussions, the petitioner is directed to re-present the sale certificate dated 27.04.2018

before the respondent and on receipt of the same, the respondent is directed to file the same in Book No.1 under Section 89(4) of the Registration Act.

9. With the above directions, the Writ Petition stands disposed of. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rts

To

The Sub Registrar,
Sub Registrar Office,
NSK Avenue, Manickam Road,
Kundrathur, Chennai - 600 069.

+1cc to Ms.A.S.Neela Narayani, Advocate, S.R.No.61717

+1cc to the Government Pleader, S.R.No.62229

W.P. No.23512 of 2021

RSV(CO)
RLP(05/01/2022)