



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.12.2021

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.26278 of 2021

Selvaprakasam

... Petitioner

Vs

The Sub Registrar,
Office of Sub Registrar,
Dharapuram,
Tiruppur District.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of order in No.550/2021 dated 29.11.2021 passed by the respondent herein and quash the same and consequently direct the respondent to register the document of sale deed dated 20.10.2021 presented by the petitioner herein.

For Petitioner : Mr.N.Ponraj

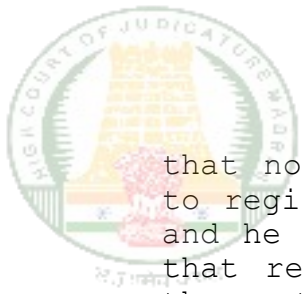
For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records of order in No.550/2021 dated 29.11.2021 passed by the respondent herein and quash the same and consequently direct the respondent to register the document of sale deed dated 20.10.2021 presented by the petitioner herein.

2. The petitioner and his brother purchased the property comprised in New S.F.No.634/2 (Old S.F.No.65), ad-measuring an extent of 7.47 acres and presented the sale deed dated 20.10.2021 for registration before the respondent herein. However, it was refused to be registered for non-production of original parental deed. The original document registered, vide Document No.22 of 1953, has been mortgaged with Dharapuram Co-operative Urban Bank Limited and the same has been registered as Document No.4007 of 2003. For want of money, the petitioner and his family members could not redeem the said property and the original document is lying with the Mortgagee.

3. However, the learned counsel for the petitioner pleaded



that non-production of the original document will not be a bar to register the sale deed, which was presented for registration and he also submitted a representation before the respondent in that regard. Since the said representation was not considered, the petitioner filed a Writ Petition before this Court in W.P.No.23253 of 2021 and this Court by order dated 28.10.2021, directed the respondent to consider the representation of the petitioner and pass orders. Thereafter, the petitioner was called for enquiry on 11.11.2021 by the respondent and the petitioner attended the enquiry. Though the petitioner produced the order of this Court, the respondent, without considering the same, passed the impugned order dated 29.11.2021. If the petitioner redeems the property, the Registrar would receive the document presented by the petitioner for registration. The learned counsel for the petitioner relied upon a judgment of a Hon'ble Division Bench of this Court in W.P.No.674 of 2020, and the Hon'ble Division Bench of this Court held that insisting on "no objection" from the mortgagee before registration, is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of the mortgagor. The purchaser has right to redeem the property by paying the mortgage money. Therefore, in the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. Except as provided in the Registration Act and any other statute, the Registrar has no power to refuse to register a document.

4. Admittedly, the original parent deed had been deposited by the Mortgagee under the mortgage deed document No.4007 of 2003. Therefore, it is not possible for the petitioner to get the original parent deed without redemption of the mortgage. As held by the Hon'ble Division Bench of this Court, when the property is purchased with existing mortgage, the transferee steps into the shoes of the mortgagor. At the same time, the mortgagee can take appropriate steps as against the property, which is purchased by the transferee. Therefore, the respondent has no power to refuse to register the document.

5. In view of the above discussion, the impugned order dated 29.11.2021 is hereby quashed. The petitioner is directed to re-present the sale deed for registration and on receipt of the same, the respondent is directed to register and release the same forthwith, if it is otherwise in order. It is made clear that the mortgagee can very well proceed against the subject property, if the mortgage is not redeemed.



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6. In the result, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Sub Registrar,
Office of Sub Registrar,
Dharapuram,
Tiruppur District.

+1 cc to Mr.N.Ponraj, Advocate Sr.NO. 65393
+1 cc to Government Pleader Sr.NO. 6114

W.P.No.26278 of 2021

CP(CO)
A.SK(08.02.2022)