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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

WRIT PETITION NO.27871 OF 2019

Susila

...Petitioner

Versus

1.The Sub Registrar,
Sub Registrar's Office,
Mylam,Tindivanam Taluk,
Villupuram District.

2.S.Vinayagamoorthy

[2nd respondent was impleaded as per order
of this court dated 19.07.2021 made
in W.M.P.No.29738 of 2019]

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the order of the 1st respondent in Refusal Number: RFL/Mylam/2/2019 dated 04.06.2019 issued to the petitioner and to quash the same as illegal and direct the 1st respondent to register the sale deed dated 04.06.2019 executed in favour of the petitioner without insisting the petitioner to clear the encumbrance relating to the expired sale agreement regarding the property, if it is otherwise in order.

For Petitioner : Mr.J.Antony Jesus

For Respondent(s) : Mr.Yogesh Kannadasan,
Government Advocate for R1
No Appearance for R2

ORDER

[This matter has been heard through video conference]

This writ petition has been filed challenging the Refusal Check Slip No. RFL/Mylam/2/2019 dated 04.06.2019 issued by the 1st respondent refusing to register the sale deed dated



04.06.2019 executed in favour of the petitioner and for a consequential direction for registration of the sale deed.

2. According to the petitioner, he has purchased a land measuring an extent of 17 cents in S.Nos.116/7, 116/8 and 116/4 at Sendur Village, Tindivanam Taluk from one Vinayagamurthy through a sale deed on 04.06.2019 for valuation consideration. But, when the sale deed was presented for registration, the 1st respondent refused to register the same vide impugned order on the ground that there has already been an agreement of sale registered in respect of the very same property with an advise to the petitioner to clear the encumbrance over the property in question. Challenging the same, the petitioner has come up with the present writ petition.

3. The learned counsel for the petitioner submitted that earlier the vendor of the petitioner entered into an agreement with the 2nd respondent, but, however, the 2nd respondent agreement holder did not perform his part of contract and had failed to get the sale deed executed in his favour within the time stipulated under the agreement. As the time fixed under the agreement was the essence of contract, the sale agreement had become time barred. Thereafter, the vendor of the petitioner sold the property to the petitioner on 04.06.2019 for valuation sale consideration. Further, according to the petitioner, existence of sale agreement is not a bar to register the subsequent sale deed in favour of a third party. But, the 1st respondent, without considering the same, refused to register the sale deed presented by the petitioner for registration. Hence, the present writ petition.

4. The learned Government Advocate appearing for the 1st respondent submitted that as already there has been an encumbrance by way of agreement of sale in respect of the property in question, unless the encumbrance is cleared, the petitioner cannot seek to register the sale deed. In the above circumstances, the 1st respondent was right in refusing to register the sale deed based on the circular issued by the Inspector General of Registration in this regard.

5. Today, the agreement holder has been impleaded as 2nd respondent by way of separate order. There is no representation for the 2nd respondent. However, considering the facts of the case and the legal position, this court has proposed to dispose of the writ petition without hearing the 2nd respondent.

6. The issue as to whether the Registrar can refuse to register the sale deed in view of the encumbrance created over the property in question by way of agreement is no more res integra.



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7. A Division Bench of this Court in N. Ramayee v. The Sub-Registrar, Registration Department, Valapady 636 115, Salem District and another [W.P.No.674 of 2020 dated 05.11.2020] has held as follows:-

"37. Accordingly, we answer the reference as follows:

If an agreement for sale is registered in respect of immovable property, the same will not be a bar for the owner of the property to effect subsequent transfers in respect of the same property. The Registrar has no right to refuse to register the document, except the documents relating to immovable properties mentioned in Section 22-A of the Tamil Nadu Act and as contemplated under Rule 162 of the Registration Rules."

... ..

39. We are of the view that except as provided in the Registration Act and any other statute, the Registrar has no power to refuse to register a document. Though the object of the Act is to prevent fraud, such occasion arises only where some private properties are notified under the Tamil Nadu Private Forest Act. In such case, sale of such property without permission of the Collector of the District is void. Only when such notification is available in respect of any property, the Registrar can verify whether the sanction of the Collector is obtained or not. Similarly, whenever properties have been declared as forest land or elephant corridor, etc., and the notification is available with the Registrar, based on the above notification he can exercise power. Except the above, the Registrar has no power to refuse to register the document."

8. In the light of the above said legal position and the facts of the case on hand, this court is of the view that the impugned refusal check slip issued by the 1st respondent is liable to be set aside.

In the result, this writ petition is allowed and the impugned refusal check slip is set aside. The 1st respondent is directed to register the sale deed dated 04.06.2019 executed in favour of the petitioner by one Vinayagamurthy, if the document



is otherwise in order, within a period of six weeks from the date of receipt of a copy of this order. No costs.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Sub Registrar,
Sub Registrar's Office,
Mylam,Tindivanam Taluk,
Villupuram District.

+1cc to the Government Pleader, S.R.No.35008

Writ Petition No.27871 of 2019

NK(CO)
RVM(19/08/2021)