



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD) No.7699 of 2021
(Through Video Conference)

Syeda Nasira Mazhar ...Petitioner
Vs.

1)The Sub Registrar,
Sub-Registrar Office Thiruverumbur,
Kailash Nagar, Thiruverumbur, Trichy District.

2)The Sub Registrar,
K.Saathanur,Trichy District. ...Respondents

*** R2 impleaded vide order of this Court dated 23.04.2021**

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent to accept the sale deed dated 03.2021 for registration executed by the petitioner in favour of her purchaser A.Jawahar Nisha and R.Fathima Rishvana in respect of properties in Survey No.160/2, Plot NO.18 K.Saathanur Village, Trichy East Taluk, Trichy District within the period as stipulated by this Court.

For Petitioner :Mr.A.Haja Mohideen
For Respondents :Mr.K.Sathiya Singh,
Additional Government Pleader

O R D E R

The Sub Registrar, K.Saathanur Village, Trichy District is suo moto added as the second respondent in this writ petition. This Writ Petition has been filed for the issue of Writ of Mandamus directing the respondents to entertain the sale deed presented by the petitioner for registration and for releasing the documents after registration.

2. The case of the petitioner is that the subject property was purchased by virtue of a registered sale deed dated 25.04.2018. The petitioner wanted to deal with the property and hence, a Power of Attorney(PoA) was executed on 30.07.2020 and the power agent presented the documents for registration. The same was refused to be registered by the respondents on the ground that there is an attachment order of the Court. Aggrieved by the same, the present Writ Petition has been filed before this Court.



3. The learned Additional Government Pleader appearing on behalf of the respondents submitted that the respondents refused to register the document on the ground that there is an order of attachment passed in O.S.No.193 of 2003 by the Sub Court, Pudukottai. The learned counsel for the petitioner in reply to the said submission, stated that the Encumbrance Certificate for the period from 1994-2020, does not reflect any attachment order in the records. That apart, it was also submitted that the Execution Petition itself came to be closed by the Principal Sub Court, Tiruchirapalli on 14.06.2017.

4. The learned Additional Government Pleader further submitted that it is only the impleaded second respondent, who has the jurisdiction to entertain the document.

5. The issue involved in the present writ petition is squarely covered by some of the earlier judgments of this Court, wherein this Court had held that the order of attachment by itself is not a ground to refuse registration.

6. At this point of time, it will be relevant to rely upon the judgment of this Court in **M/s.Pegasus Assets Reconstruction Private Ltd., vs. the Inspector of General Registration, Government of Tamil Nadu** reported in (2019) 4 CTC 851. The relevant portions in the judgment are extracted hereunder:-

"8. Thus, it is crystal clear that it is well settled principle of law that the order of attachment cannot be a bar to register the document. Therefore, I am of the view that there is no need for this petitioner to file an appeal. I am of the opinion that the sale of the subject property, pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale.

9. Since the issue involved in this case is squarely covered by the above decision of this Court in favour of the petitioner, this Writ Petition is allowed and the 2nd respondent is directed to register the assignment agreement dated 28.02.2007(Pending document No.P59/2007), as it is admitted by the 2nd respondent in the counter affidavit that there is no issue as regards levy of stamp duty or registration fee, as the petitioner has duly paid the same. The 2nd respondent shall comply with the order passed in this writ petition within a period of two weeks from the date of receipt of a copy of this order. No costs."



7. It is clear from the above judgment that the order of attachment will operate as a bar for the transaction only as against the claims enforceable under the said attachment. In other words, it will make the transaction void only as against as the claims enforceable in the given case. Insofar as all the other claims are concerned, the order of attachment will not have any bearing. In view of the same, this Court held that the order of attachment per se will not operate as a bar for registration of a document where the party concerned has nothing to do with the claim or he is not a party to the said proceedings. In the present case, it is found that the execution proceedings itself came to be disposed of in the year 2017 on the ground that, 'no steps were taken'.

8. In view of the above, there will be a direction to the second respondent to entertain the sale deed presented for registration by the petitioner and register the documents, if it is otherwise in order and if the necessary stamp duty and registration charges are paid. The documents shall be released after registration.

9. This Writ Petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

NOTE: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To:

- 1)The Sub Registrar, Sub-Registrar Office Thiruverumbur, Kailash Nagar, Thiruverumbur, Trichy District.
 - 2)The Sub Registrar, K.Saathanur,Trichy District.
- +1 CC to M/s.SPL GP (SR-17531[F] dated 26/04/2021)

Order made in

W.P. (MD) No.7699 of 2021

23.04.2021

RP(17.05.2021) P 4C