



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

W.P. (MD) No.7897 of 2021

and W.M.P. (MD).No.6028 of 2021

WEB COPY

Canara Bank,
Rep. by its Branch Manager,
SME Branch,
No.37, Abi Complex, 1st Cross,
Vaiyapuri Nagar, Karur Town,
Karur.

...Petitioner

Vs.

1.The Sub-Registrar,
West Karur, Karur District.

2.M.Jayanthi

3.Minor Balachandar

4.Minor Birundha
(Respondents 3 and 4 represented by their
mother and guardian Mrs.Jayanthi)

5.Mrs.Saraswathi

6.Vijaya Karala Perungudi

7.Senthilkumar

8.Sanmugam

9.Sri.S.Mohan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records relating to the impugned order of the 1st respondent, dated 07.08.2020 and quash the same and consequently direct the 1st respondent to register the sale Certificate dated 17.06.2020 in favour of 7th and 9th respondent, within the time fixed by this Court.

For Petitioner : Mr.C.Deepak

For Respondents : Mr.K.Sathiya Singh for R1
Additional Government Pleader



ORDER

On consent given by either side, the main writ petition itself has been taken up for final hearing.

2.This writ petition has been filed challenging the impugned Refusal Check Slip, dated 07.08.2020, issued by the first respondent refusing to register the Sale Certificate presented by the petitioner bank.

3.The petitioner bank extended loan facilities to one Manohar and the borrower executed a mortgage in favour of the bank by depositing the title deeds and this document was also registered in Document No.3948 of 2013. The borrower committed default in repayment of the loan and hence, the petitioner bank took action under the SARFAESI Act, against the borrower.

4.The property that was mortgaged was brought for sale and a Sale Certificate was also executed in favour of the Highest Bidder on 17.06.2020. When the Sale Certificate was presented for registration before the first respondent, the same was returned through a Refusal Check Slip on the ground that there is an order of attachment passed by the Principal Sub Court, Karur in I.A.No.948 of 2015 in O.S.No.505 of 2015. Aggrieved by the same, the present writ petition has been filed before this Court.

5.Heard Mr.C.Deepak, learned counsel for the petitioner and Mr.K.Sathiya Singh, learned Additional Government Pleader for the first respondent.

6.The issue involved in the present case is squarely covered by the earlier orders passed by this Court. It will be relevant to take note of the order passed by this Court in W.P.No.9037 of 2020, dated 10.07.2020. The relevant portions in the order are extracted hereunder:

"5.The learned counsel for the petitioner submitted that the property was mortgaged in favour of the Bank by a registered mortgage deed dated 20.03.2014, in Document No.2500/2014. The learned counsel further submitted that the alleged attachment of the property had taken place much after the property was mortgaged, only in the year 2018. The learned counsel submitted that the attachment of the property after the property has already been mortgaged in favour of the Bank, will not in any way bind the Bank and that is not a ground for rejecting the registration of the Sale Certificate.

6.The learned counsel for the petitioner in order to substantiate his submissions relied upon the order passed by this Court in WP(MD).No.4007/2019, dated 28.02.2019 and the relevant portions of the order is extracted

hereunder:

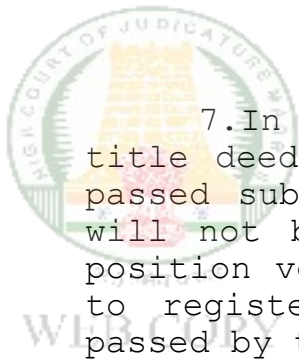


"5.The issue on hand is no longer resintegra. As rightly pointed out by the learned counsel appearing for the petitioner, in a catena of decisions this Court has held that there can be no bar for registering the sale certificate in the case of attachment order passed by the Civil Court. One such order is enclosed at Page No.25 of the typed set of papers vide order dated 24.02.2015 in W.P.No.31061 of 2012. It was held that the Bank being a secured creditor is entitled to exercise their power under the SARFAESI Act and execute the sale certificate in favour of the purchaser and that the registration cannot be refused by registering authority on the ground that an order of attachment has been obtained in respect of the property in question."

7.The learned counsel further submitted that the issue that is involved in the present writ petition is directly covered by the judgment of this Court in the case of S.Praveen Bohra vs. Joint-I Sub-Registrar (In the cadre of District Registrar) Office of the Registration of Coimbatore, No.102, State Bank Road, Coimbatore - 641 018 reported in 2016 3 LW 513.

8.Mr.T.M.Pappiah, Special Government Pleader appearing on behalf of the respondent submitted that the respondent is barred from entertaining the Sale Certificate for registration since admittedly there is an attachment order passed by a Competent Civil Court and the same is reflected in the Encumbrance Certificate. The learned counsel submitted that in the light of the order of attachment, if any registration is made, it may be construed as a violation of the order passed by a Competent Civil Court. Therefore, the learned counsel sought for the dismissal of the writ petition.

9.The issue involved in the present writ petition is no longer res-integra. It has been consistently held by this Court that the order of attachment is not a ground to refuse registration of a Sale Certificate. In fact this position of law has been holding the field from the year 2013 onwards and this Court in the case reported in [2013 1 CTC P 609] has also taken the very same view. The latest judgment of this Court in the case of Pegasus Assets Reconstruction Pvt. Ltd. vs. Inspector of General Registration, Government of Tamil Nadu is reported in [2019 4 CTC P 851]. Therefore, this Court need not undertake the exercise and it is enough if the settled law is once again reiterated."



7.In the present case, the mortgage was created by deposit of title deeds in the year 2013. The order of attachment came to be passed subsequently in the year 2015 and this order of attachment will not bind the bank. The order referred to supra makes this position very clear. Therefore, the first respondent cannot refuse to register the Sale Certificate based on the attachment order passed by the Civil Court in the year 2015.

8.In view of the above discussion, this Court has absolutely no hesitation to interfere with the impugned Refusal Check Slip issued by the first respondent on 07.08.2020 and the same is hereby quashed. There shall be a direction to the first respondent to entertain the Sale Certificate presented for registration and register the same if it is otherwise in order and necessary stamp duty and registration charges are paid. The Sale Certificate shall be released after registration.

9.This Writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// 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.

TM

To

1.The Sub-Registrar,
West Karur,
Karur District.



2.The Branch Manager,
Canara Bank,
SME Branch,
No.37, Abi Complex, 1st Cross,
Vaiyapuri Nagar, Karur Town,
Karur.

WEB COPY

+1 CC to M/s.AGP (SR-16239[F] dated 17/04/2021)

W.P. (MD) No.7897 of 2021

16.04.2021

mmp (03.05.2021) 5p. 4c

=