



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

W.P.(MD) No.7900 of 2021

Union Bank of India,
Aruppukottai Branch,
Aruppukottai, Virudhunagar District,
Rep. through it's
The Authorized Officer/Branch Manager.

...Petitioner

Vs.

- 1.The Principal Secretary to Government,
Registration Department,
Fort St. George, Chennai.
- 2.The Inspector General of Registration,
Office of the Inspector General of Registration,
No.100, Santhome, Chennai - 28.
- 3.The Deputy Inspector General of Registration,
Integrated Complex,
Rajakambeeram, Y.Othakadai,
Madurai - 625 023.
- 4.The District Registrar,
Registration Department,
District Registration Office,
No.58/1, Cutchery Road,
Virudhunagar - 626 001.
- 5.The Sub Registrar,
Registration Department,
Pandalkudi, Virudhunagar District.
- 6.The Assistant Commissioner,
Commercial Tax Department,
(Debt Orders),
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 5th respondent in his proceedings No.28/2021, dated 24.02.2021 and quash



the same as illegal and consequently, direct the 5th respondent to register the sale Certificate issued by the petitioner bank, dated 26.08.2020, within a time frame fixed by this Court.

For Petitioner : Mr.VS.Karthi

For Respondents : Mr.K.Sathiya Singh for R1 to R5
Additional Government Pleader

Mrs.J.Padmavathi Devi for R6
Special Government Pleader

O R D E R

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

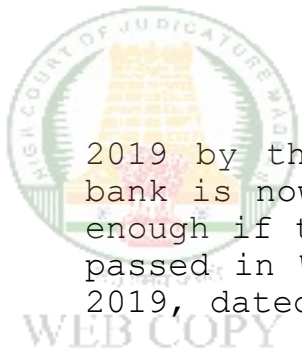
2.This writ petition has been filed challenging the impugned letter issued by the 5th respondent, dated 24.02.2021, wherein, the Sale Certificate that was presented for registration, was refused to be registered on the ground that there is an order of attachment passed by the Commercial Tax Department and also by a Civil Court.

3.The petitioner bank extended loan facilities in favour of one Shanmuga Raj and the borrower executed a mortgage deed by deposit of title deeds in favour of the petitioner bank on 01.08.2007 and the same was also registered as Document No.1855 of 2007. Subsequently, the borrower committed default in repayment of the loan and hence, proceedings were initiated by the petitioner bank under the SARFAESI Act.

4.The property that was mortgaged, was brought for auction and the same was confirmed in favour of the highest bidder, namely, Mr.S.Rajaram. The Sale Certificate was also issued in his favour on 26.08.2020. When this document was presented for registration before the 5th respondent, the 5th respondent, through the impugned letter, dated 24.02.2021, refused to register the document on the ground that there is an attachment order passed by the Civil Court and also an attachment order by the Commercial Tax Department. Aggrieved by the same, the present writ petition has been filed before this Court.

5.Heard Mr.V.S.Karthi, learned counsel for the petitioner, Mr.K.Sathiya Singh, learned Additional Government Pleader for the respondents 1 to 5 and Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondent No.6.

6.In the present case, the mortgage was created in favour of the bank through a registered document, dated 01.08.2007. The attachment that has been referred to in the impugned letter issued by the 5th respondent pertains to the attachment that took place subsequently, in the year 2012 by the Civil Court and in the year



2019 by the 6th respondent. The effect of such attachment on the bank is now well settled through a catena of judgments. It will be enough if this Court takes into consideration two of those judgments passed in W.P.No.9037 of 2020, dated 10.07.2020 and W.P.No.17260 of 2019, dated 18.08.2020.

7.The relevant portions in the Judgment dated 10.07.2020 passed in W.P.(MD).No.9037 of 2020 are extracted hereunder:

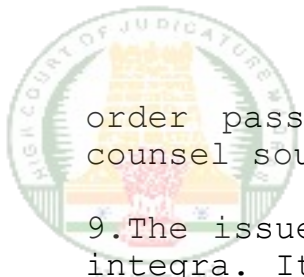
"5.The learned counsel for the petitioner submitted that the property was mortgaged in favour of the Bank by a registered mortgage deed dated 20.03.2014, in Document No.2500/2014. The learned counsel further submitted that the alleged attachment of the property had taken place much after the property 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



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."

8.The relevant portions in the Judgment, dated 18.08.2020, passed in W.P.(MD).No.17620 of 2019 are extracted hereunder:-

"4)The issue involved in the present writ petition, is directly covered by the earlier order passed by this Court dated 03.08.2020 in WP.No.1680 of 2020. The relevant portion of the order is extracted hereunder:-

'12 It is now a well settled principle of law that the Bank has a priority over all the debts and the Government dues. The Hon'ble Full Bench of this Court in the case of The Assistant Commissioner [CT] Vs. Indian Overseas Bank reported in 2016 [6] CTC 769 has held that on a conjoint reading of Section 26[E] of the SARFAESI Act and Section 31[b] of the Recovery of Debt Due to Bank and Financial Institutions Act, 1993, it is the secured creditor who has a priority to realise the debt over all the other Government dues and unsecured creditors. Thus, the first respondent Bank will have a priority when it comes to realising the debt of a secured creditor.'

(5)It is clear from the above order that a secured creditor like the petitioner Bank will have the priority over the assets. This issue has also been settled by a Full Bench judgment of this Court in B.Suresh Chand V. State of Tamil Nadu and Others reported in 2006 [4] CTC 805. (6)In view of the above settled position of law, the reason for refusing to register the document by the 1st respondent is not sustainable and the same requires interference of this Court. (7)Accordingly, the impugned Rejection Letter of the 1st respondent dated 11.04.2019 is quashed.

(8)The learned Special Government Pleader appearing for the 1st respondent submitted that an appeal has been filed before the Hon'ble Apex Court against the judgment of the Full Bench and the same is pending. He further submitted that there is an order of status quo passed by the Hon'ble Supreme Court of India.

(9)This was also considered in an earlier order passed by this Court in WP.No.26749 of 2018 dated 22.01.2019 and paragraph No.6 of the said order is extracted hereunder:-

'6. The said Full Bench Court decision was taken up on Special Leave Petition before this Court wherein it was ordered that status quo to be



maintained by the parties. In the absence of any order of stay, the registration of the Sales Certificate cannot be refused. It is also stated that WP Nos.9750, 11199, 17829 of 2011 and 5382 of 2015 are pending, which are filed by the Government, where the question of the priority over the property was to be decided and the same is pending. As on date, the decision of the Full Bench is very clear that the priority right over the secured debt finds favour only with the Bank having the benefit of the mortgage properties. Therefore, the Registering Authority cannot refuse to register the sale certificate, if it is presented in the manner known to law and the same is otherwise in order. It is also stated that the sale proceeds is not appropriated and the same is with the Bank."

(10) It is, therefore clear that even on an earlier occasion, the filing of the appeal before the Hon'ble Supreme Court of India was brought to the notice of the learned Single Judge and since there was no order of stay, this Court has consistently passed orders to the effect that there is no bar for the concerned Sub Registrar to receive the document and register the same. This Court, therefore, does not want to take a different view in this writ petition."

9. It is clear from the above judgments that any order of attachment passed by a civil Court will not bind the bank, since the bank was not a party in the said proceedings and also the order of attachment was passed much after the property was already mortgaged in favour of the bank. Insofar as the attachment made by the Commercial Tax Department is concerned, it has been held by the Full Bench of this Court that the Bank has a priority over the debt and therefore, the claim of the 6th respondent cannot be considered *de hors* the interest of the bank.

10. In view of the above, this Court has absolutely no hesitation to interfere with the impugned letter issued by the 5th respondent, dated 24.02.2021 and the same is hereby quashed. There shall be a direction to the 5th respondent to entertain the Sale Certificate, dated 26.08.2020 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.

11. This Writ petition is allowed with the above directions. No costs.

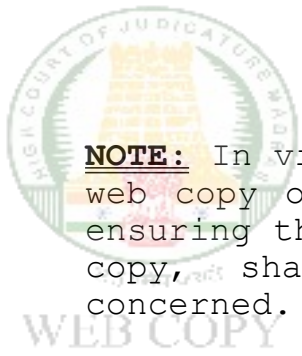
Sd/-

Assistant Registrar (AD II)

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/ /2020

Sub Assistant Registrar()



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,
Registration Department,
Pandalkudi, Virudhunagar District.

+1.C.C. To Mr.VS.Karthi SR. 16107/2021

+1.C.C. To Additional Government Pleader SR.16235/2021

W.P.(MD) No.7900 of 2021
16.04.2021

TM
RM 19/05/2021 (6P-4C)