

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.6894 of 2015

and

M.P.No.1 of 2015

The Authorised Officer,
State Bank of Hyderabad,
Cherry Road, Salem

... Petitioner

.Vs.

1. I-Joint Sub Registrar,
District Registrar Office East,
Anna Street, Ammapettai,
Salem-3.

2. The Assistant Commissioner,
Land Reforms,
Jeevan Bhavan Building,
Gandhiji Road,
Erode 11

3. The Thashildar,
Salem Taluk,
Salem.

4. N.Palanisamy.

5. Senthilkumar.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in check slip -2, dated 02.11.2012, which was communicated by letter in Na.Ka.No.nil/2015 dated 08.01.2015 and quash the same and consequently direct the first respondent to register the sale certificate dated 12.09.2012 issued in favour of the fifth respondent by the petitioner in respect of the vacant land comprised in S.F.No.197/2B part (Old No.191/2) admeasuring an extent of 4375 Sq.ft & 1287½ Sq.ft situate at Sathya Nagar, Ammapet Village, Salem Taluk within the sub registration district of Joint Sub Registrar I, Salem and Registration District of Salem.

For Petitioner : Mr.M.C.Ganesh

For Respondents : Mr.S.Arumugam,
Government Advocate for R1 to 3
No appearance for R4
Mr.D.Shivakumaran, for R5

O R D E R

This writ petition has been filed challenging the check slip issued by the 1st respondent dated 02.11.2012 and for a consequent direction to the 1st respondent to register the sale certificate dated 12.09.2012 issued in favour of the 5th respondent.

2. The case of the petitioner is that the 4th respondent availed loan from the petitioner-Bank and had created a mortgage by depositing title deeds. The 4th respondent failed to repay back the loan and hence proceedings were initiated under SARFAESI Act for recovery of the loan dues. The property was brought for auction sale and the 5th respondent was declared as the successful bidder and a sale certificate dated 12.09.2012 was issued in his favour on payment of entire sale consideration. The grievance of the petitioner-bank is that the sale certificate, that was issued in favour of the 5th respondent, was presented for registration before the 1st respondent and the 1st respondent refused to register the sale certificate by issuing the impugned Check Slip dated 02.11.2011 which was communicated to the petitioner though a letter dated 08.01.2015. Aggrieved by the same, present writ petition has been filed before this court.

3. Heard Mr.M.C.Ramesh, learned counsel for the petitioner and Mr.S.Arumugam, learned Government Advocate for respondent 1 to 3 and Mr.D.Shivakumaran, learned counsel for the 5th respondent.

4. The 1st respondent has filed a counter affidavit. Relevant portion in the counter affidavit is extracted hereunder:

"4. It is further submitted that the petitioner has clearly acknowledged the action taken by the 1st respondent on their part stating that 1st respondent refused to register the sale certificate on two grounds. The required stamp duty for registering the sale certificate has to be paid and that the Tahsildar, the 3rd respondent herein has also

submitted a letter stating that 4th respondent has filed a suit against the 2nd and 3rd respondent in O.S.No.917 of 2012 on the file of the District Munsif Court, Salem is also pending and the 3rd respondent through proceeding in Vide No.as communication Na.Ka.Nil/2012/A6 dated ...9/2012, further requested the 1st respondent not to register any documents in respect of the survey No.191/2B and the same was sent to the petitioner herein. For these reasons the document was returned by impounding the check slip-2 dated 02.11.2012 which was communicated to the 5th respondent by returning the documents giving the above reasons and also through letter in Na.Ka.Nil/2015 dated 08.01.2015 the reasons for the check slip-2 dated 02.11.2012 stating that the according to the letter sale certificate came for registration doesn't have adequate the proper stamp duty paid which was valued upto 7% and 1% of registration fees. And secondly the according to the notice received with ref.No.2/2012 dated 02.11.2012 stating to the 1st respondent that as per communication Na.Ka.Nil/2012/A6 dated 10/09/2012 that the (I.A.No.1202/2012 and O.S.No.917/2012) are pending for the final disposal to till then no action to be taken for registration by the 1st respondent and the same is against the petitioner herein."

5. There are two reasons, stated in the impugned check slip dated 02.11.2012 and the communication dated 08.01.2015, justifying refusal of registration of the sale certificate that was issued in favour of the 5th respondent. The first reason that has been stated is that the necessary stamp duty at the rate of 7% and registration charges at the rate of 1% was not paid at the time of submission of the document. The learned counsel for the petitioner submitted that the necessary stamp duty and the registration charges will be paid before the first respondent and the said undertaking can be recorded by this court.

6. The main ground of challenge by the learned counsel for the petitioner pertains to the 2nd reason that has been given in the impugned check slip wherein it has been stated that there is a suit pending in O.S.No.917 of 2012 and hence no document will be registered till the disposal of the suit. That apart it has also been stated that the property in question has been declared as an excess land under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and the possession was also taken over.

7. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, stood repealed with effect from 16.06.1999. Pursuant to the same, it is seen that the 4th respondent who had mortgaged the property had sold a part of the property in the year 2008 in favour of one Thyagarajan and the said Thyagarajan sold the property in favour of one Meena through the registered sale deed dated 09.03.2009. This fact was recognized and the Patta was also granted in the name of Meena by the concerned authority through proceedings dated 17.08.2011. It is therefore clear that such patta would not have been granted in favour of Meena, if really the possession was taken over by the concerned authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in the year 2009. In view of the same, the ground raised in the check slip quoting the land ceiling proceedings is unsustainable.

8. The other ground that has been raised pertain to the pendency of the suit. This court has repeatedly held that pendency of the suit or even an order of attachment being passed in the suit will not bind the secured creditor in whose favour mortgage has been created by the borrower. Useful reference can be made to the earlier orders passed by this court in W.P.No.9802 of 2020, dated 29.07.2020 and W.P.No.17901 of 2020, dated 11.12.2020. In view of the same, the pendency of the suit being put against the Bank for refusal to register the sale certificate, is also unsustainable.

9. As the result of the above discussion, this Court has no hesitation to interfere with the impugned check slip dated 02.11.2012 and the communication dated 08.01.2015, insofar as refusing to register the documents on the ground of the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and the pendency of the civil suit, is concerned. To that extent, the same stands quashed. This Court records the undertaking given by the learned counsel for the petitioner to the effect that necessary stamp duty and the registration charges will be paid by the auction purchaser while representing the sale certificate dated 12.09.2012.

10. In the result, this Writ Petition is allowed in the above terms. It is left open to the 5th respondent to represent the sale certificate dated 12.09.2012 for registration before the first respondent and the first respondent shall entertain the document, if the 5th respondent pays necessary stamp duty and registration charges, and documents shall be registered and released to the 5th respondent.

11. Accordingly, this Writ Petition is allowed with the above directions. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

nsa

To

1. I-Joint Sub Registrar,
District Registrar Office East,
Anna Street, Ammapettai,
Salem-3.
2. The Assistant Commissioner,
Land Reforms,
Jeevan Bhavan Building,
Gandhiji Road,
Erode 11
3. The Thashildar,
Salem Taluk, Salem.

+1cc to Government Pleader SR.No.38996

W.P.No.6894 of 2015
and M.P.No.1 of 2015

SJ(CO)
GMY(14/07/2022)