IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.02.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.20321 of 2021

S. Shyamala
Represented by the Power Agent,
Karthik Kumar Ayyappan
...Petitioner

- Vs -

1. The Sub-Registrar,
Kumbakonam Road,
Panruti-607 106.

2. The Commercial Tax Officer,
1, PAPJM Building,
Greams Road, Nungambakkam,
Chennai-600 034.
...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus directing the 1st respondent to delete the entries in the encumbrance certificate pertaining to the sale certificate dated 23.11.1999 issued by the Sub-Court, Panruti in view of the sale certificate having declared to be of no consequence in W.P.14698/1998.

For Petitioner : Mr.S.N.Kirubanandam

For Respondents : Mr.Yogesh Kannadasan,
Special Government Pleader

ORDER

The present petition has been filed seeking direction to the 1st respondent to delete the entries in the encumbrance certificate pertaining to the sale certificate dated 23.11.1999.

2. The case of the petitioner is that one T.S.Annamalai Mudaliar had taken loan of Rs.25,000/- from one late Mr.Selvaraj Nadar, who was husband of the petitioner and the said amount was taken by mortgaging certain properties. On account of non payment of the loan amount, the said Annamalai Mudaliar executed a sale deed dated 09.06.1976 in favour of petitioner's husband.

While so, on 10.12.1976, the petitioner's husband took loan of Rs.25,000/- from one Krishnamoorthy Reddiar by mortgaging the properties and thereafter, due to non payment of the amount, said Krishnamoorthy Reddiar filed a mortgage suit against the petitioner's husband in O.S.No.376/1988 and obtained an exparte decree. Some of the properties belong to the petitioner's husband were under under lock and seal as he had not paid the arrears of commercial tax, due to which, the Commercial Tax Department obtained first charge over the property. Thereafter, an order dated 08.10.2003 was passed by this Court in W.P.No.14698 of 1998 dismissing the Writ Petition preferred by one Gopalakrishna Reddiar. However, the said order was not acted upon. Hence, the entries pertaining to the sale certificate in the encumbrance certificate ought to be deleted. However, no order has been passed on the same. Hence, this Writ Petition.

3. The learned counsel for the petitioner submitted that the Commercial Tax Department, created a charge vide order dated 27.07.1988 for non payment of commercial taxes and besides one Gopalakrishna Reddiar also obtained decree against the petitioner's husband. Thereafter, this Court in W.P.No.14698 of 1998 held that the statutory authority have power to create first charge on the Commercial Tax Department and the second charge will be created if at all, in the petition filed by one Gopalakrishna Reddiar. However, all the charges created as against the petitioner's husband were removed. Even then, the respondents have not deleted the entries made in the encumbrance certificate pertaining to the sale certificate dated 23.11.1999 issued by the Sub-Court, Panruti.

4.The learned Special Government Pleader appearing for the respondents submitted that the petitioner's husband had obtained loan of Rs.25,000/- from one Krishnamoorthy Reddiar and refused to repay the loan amount. Subsequently, the Commercial Tax Department created first charge against the petitioner's husband for non payment of the commercial taxes. Also that there is no proof for repayment of the loan amount taken by the petitioner's husband. Further, it is pertinent to note that the respondents herein have no authority to cancel the registration of any registered document. It is not open to assume that the Sub Registrar would be competent to cancel the registration of the documents as sought for by the petitioner. Hence, he prays for dismissal of the Writ Petition.

5. From a perusal of the materials available on records, it is seen that the petitioner has not placed any material before this Court regarding repayment of the entire amount to the Commercial Tax Department as well as in favour of said Krishnamoorthy Reddiar. Since, charge was created by the Commercial Tax Department over the property, deleting the entries made in pursuant to the order of the civil Court is not sustainable.

6. In view of the above, this Court is not inclined to issue any direction to the respondents. Hence, this Writ Petition is dismissed. In the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub-Registrar,
Kumbakonam Road,
Panruti-607 106.

2.The Commercial Tax Officer,
1, PAPJM Building,
Greams Road, Nungambakkam,
Chennai-600 034.

+2ccs to Mr.S.N.Kirubanandam, Advocate SR. No.8887, 8878
+1cc to Government Pleader SR. No.9001

W.P. No.20321 of 2021

SVI (CO)
PR (10/03/2022)