



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)Nos.5508 of 2022 and 20439 of 2021

and W.M.P. (MD) .No.17083 of 2021

WEB COPY

W.P. (MD) .No.5508 of 2022

T.Prem

.. Petitioner

Vs

1.The Managing Director,
Canara Bank,
Head Office No.112,
J.C.Road,
Bangalore - 560 002.
Karnataka State.

2.The Divisional Manager,
Canara Bank, Perumalpuram,
Tirunelveli District.

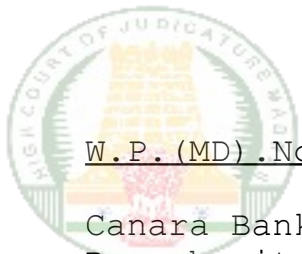
3.The Branch Manager,
Canara Bank, Neyoor Branch,
Mulagumoodu Post,
Kanniyakumari District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to execute the sale deed with regard to 13 Acres 75 Cents of lands comprised in Re-Survey No. 66/1, 66/2A and 66/2B of Akkanayakkanpatti Village (12 Acre) and in Re-Survey No.757/A, 759/A and 760/B of Sivalaperi Village (1 acre 75 cents), which was purchased by the petitioner in public auction held on 27.07.2021, based on the notification of the respondent dated 07.07.2021 and as per the Sale Certificate issued by your office within 15 days failing which to refund a sum of Rs.80,00,000/- paid by the petitioner along with 14 Percentage interest per annum by considering the representation of the petitioner, dated 14.02.2022, within time frame that may be fixed by this Court.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.C.Deepak
Standing Counsel



W.P.(MD).No.20439 of 2021

Canara Bank,
Rep. by its Chief Manager/Authorized Officer,
Neyyoor Branch, Colachal Road,
Lakshmipuram, Neyyoor,
Tirunelveli.

.. Petitioner

Vs

1.The Sub-Registrar, Gangaikondan,
61, Perumal Sannathi Street,
Gangaikondan,
Tirunelveli District - 627 352.

2.Prem

3.Vincent Raj

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent passed in proceedings No.RFL/Gangaikondan/33/2021, dated 03.09.2021 and quash the same and consequently, direct the 1st respondent to register the sale deed, dated 01.09.2021, in favour of 2nd respondent, within the time fixed by this Court.

For Petitioner : Mr.C.Deepak

For Respondents : Mr.S.Shanmugavel for R1
Additional Government Pleader

Mr.S.C.Herold Singh for R2

COMMON ORDER

These writ petitions revolving upon the same subject matter and both the petitioners are aggrieved by the impugned refusal check slip issued by the first respondent rejecting the Sale Certificate presented by the petitioner in W.P.(MD).No.20439 of 2021 for registration. Since the issues involved in both the writ petitions are one and the same, they are disposed of by this common order.

2.The petitioner in W.P.(MD).No.5508 of 2022 is the purchaser under the Sale Certificate. He has filed the writ petition seeking for a Mandamus to direct the respondents to execute the Sale Certificate and in case the Bank refuses to execute the Sale Certificate, consequently, direct the Canara Bank to refund the money paid by the petitioner along with interest, which he has paid for the purchase of the property.



3.The petitioners in both the writ petitions have raised various contentions. But, both of them contend that the refusal check slip issued by the Sub Registrar is arbitrary and bad in law. According to them, the Court attachment reflected in the impugned order will not have any bearing as it is subsequent to the mortgage created by the borrower in favour of the Bank. The petitioner Bank in W.P.(MD).No.20439 of 2021 has challenged the impugned refusal check slip on the ground of violation of principles of natural justice. According to them, the contentions raised by the petitioner Bank have not been considered in the impugned order. It is their case that by a non speaking order, the Sale Certificate presented by the Bank has been refused to be registered under the impugned refusal check slip. It is also the contention of the Bank that the first respondent has violated their own Circular which permits registration of a Sale Certificate despite the fact that subsequent to the mortgage there is a Court attachment.

4.As seen from the impugned order, the contentions raised by the petitioners in both the writ petitions have not been considered, by a non speaking order, the first respondent has refused to register the Sale Certificate presented by the Bank for registration only on the ground that there is a Court attachment over the subject property. The contention of the petitioner Bank that the Court attachment will not bind the mortgage created in favour of the Bank, has not been considered. A categorical stand has been taken by the Bank that the Court attachment is subsequent to the creation of the mortgage in favour of the bank.

5.The learned counsel for the petitioner also drew the attention of this Court to the relevant documents filed along with this writ petition in support of the contentions raised by the Bank. The grievance of the petitioner in W.P.(MD).No.5508 of 2022 is that despite the payment of entire sale consideration to the petitioner, he has been unable to get the Sale Certificate registered with the registration department. According to him, in case the registration department refuses to register the document, a direction may be issued by this Court to the Bank to refund the money, which has already been paid by the petitioner, together with interest.

6.Therefore, in order to put a quietus to the matter and in view of the fact that the impugned order has been passed without granting any opportunity of hearing to the respective parties and in view of the fact that it is a non speaking order, this Court is of the considered view that the impugned order, which is the subject matter of W.P.(MD).No.20439 of 2021 has to be quashed and the matter has to be remanded back to the first respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner in W.P.(MD).No.20439 of 2021 and the petitioner in W.P.(MD).No.5508 of 2022, including granting them the right of personal hearing.



7. Accordingly, the impugned order, dated 03.09.2021, passed by the first respondent in W.P.(MD).No.20439 of 2021, is hereby quashed and the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner in W.P.(MD).Nos.20439 of 2021 and the petitioner in W.P.(MD).No.5508 of 2022 and pass final orders, within a period of eight weeks from the date of receipt of a copy of this order. The respective parties are permitted to file documents in support of their contentions and are also permitted to cite authorities/circulars issued by the Inspector General of Registration before the first respondent and the first respondent shall consider the same on merits and in accordance with law.

8. In case, the first respondent decides to reject the petitioner's request for registration of Sale Certificate, the petitioner in W.P.(MD).No.5508 of 2022 is permitted to give a representation to the Canara bank, requesting for refund of the invested money together with interest, within a period of two weeks from the date of the final order, to be passed by the first respondent and on receipt of the said representation, the Canara Bank shall decide the same on merits and in accordance with law, after affording a fair hearing to the petitioner and other necessary parties, including granting the right of personal hearing to them, within a period of four weeks, thereafter.

9. With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

TM

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, Gangaikondan,
61, Perumal Sannathi Street,
Gangaikondan,
Tirunelveli District - 627 352.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-18913[F]
dated 18/04/2022)

+2 CC to M/s.C. DEEPAK, Advocate (SR-19049 & 19050[F]
dated 18/04/2022)

W.P. (MD)Nos.5508 of 2022 and 20439 of 2021
13.04.2022

VR (CO)

TR(05.05.2022) 5P 5C