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W.P.No.2376 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2376 of 2019
and W.M.P.No.2624 of 2019

Mahesh Kannan Bharathi

... Petitioner

Vs.

1.The Chairman,
Reserve Bank of India,
Central Office Building, P.O. Box – 110 007,
Saheed Bhagat Singh Road,
Mumbai – 400 001.

2.The Manager,
HDFC (LTD) Home Loans,
West Woods,
Y-205, New No.32, Fifth Avenue,
Behind Hotel Saravana Bhavan,
Anna Nagar,
Chennai – 40.

3.The Manager,
Legal Department,
HDFC (LTD) Home Loans,
No.205, Y-Block, Shanthi Colony,
Anna Nagar,
Chennai – 40.

4.Krishnamoorthy Mahesh Kannan

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 2nd and 3rd respondents to consider the petitioner's representation dated 19.09.2018 within a time frame that may be stipulated by this Court and consequently, direct the 2nd and 3rd respondent bank to hand over the original title deeds of the petitioner's house property situated in Door No.15, Fourth Floor, DABC Aishwaryam PH II, Block E1, 62, DABC Avenue, 4th Main Road, Nolambur, Mugapper West, Chennai – 600 058 deposited with the 2nd respondent in loan account No.351551788 to the petitioner.

For Petitioner : M/s.L.Victoria Gowri

For Respondents : Mr.C.Mohan
for M/s.King and Partridge [R1]
No appearance [R2 & R3]

ORDER

The Writ Petition has been filed seeking for a Writ of Mandamus, to direct the respondents 2 and 3 to consider the petitioner's representation dated 19.09.2018 within a time frame that may be stipulated by this Court and consequently, to direct the respondents 2 and 3 bank to hand over the original title deeds of the petitioner's house property situated in Door No.15, Fourth Floor, DABC Aishwaryam PH II, Block E1, 62, DABC Avenue, 4th Main Road, Nolambur, Mugapper



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West, Chennai – 600 058 deposited with the second respondent in loan account No.351551788 to the petitioner.

2.The case of the petitioner is that the petitioner is the wife of the fourth respondent and the relationship of the fourth respondent and the petitioner is husband and wife. They availed a loan from the respondents 2 and 3 for purchase of the above said property. However, there was a matrimonial dispute between them and there are several cases are pending between them. Thereafter, the loan was completed in the year 2018 and the petitioner approached the respondents 2 and 3 for return of original title deeds. However, they have not returned the title deeds since they are having the power of attorney duly signed by her in favour of the father of the fourth respondent to receive those title deeds. Further, case of the petitioner is that, before the estrangement, the fourth respondent had forcibly obtained signatures in several blank papers from the petitioner and the fourth respondent misused one of such blank signed papers to execute a forged power of attorney in favour of his father for receiving the original title deeds of the said property. Therefore, the petitioner made a representation before the respondents 2 and 3 on



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19.09.2018 seeking to return all the original title deeds of the said property. Since the same was not considered by the respondents 2 and 3, the present writ petition is filed before this Court for appropriate directions.

3.The learned counsel for the petitioner would submit that, it would suffice, if this Court issues a direction to the respondents 2 and 3 to consider the petitioner's representation dated 19.09.2018 and pass appropriate orders within a time frame that may be stipulated by this Court.

4. Per contra, the learned counsel appearing for the first respondent-Reserve Bank of India (in short 'RBI') would submit that, it is purely a private contract between the petitioner as well as the fourth respondent and the respondents 2 and 3. By availing loan from the respondents 2 and 3, the first respondent-RBI has no role to play. Unnecessarily, the petitioner impleaded the Reserve Bank of India for ulterior motive, which cannot be entertained by this Court.



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5. In support of his contention, the learned counsel appearing for the first respondent has relied upon the decision of the Hon'ble Supreme Court, in the case of ***Federal Bank Ltd. Vs. Sagar Thomas and Ors.*** reported in ***(2003) 10 SCC 733*** and paragraphs Nos.32 and 33 of the said decision reads as follows:

“32. Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

33. For the discussion held above, in our view, a private company carrying on banking business as a



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scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed. ”

6.Further, the learned counsel appearing for the first respondent would submit that the petitioner and the fourth respondent jointly availed loan from the respondents 2 and 3-Bank. Unless the petitioner obtain No Objection Certificate from the fourth respondent, the original documents cannot be released in favour of the petitioner alone. He also relied upon the decision of the Hon'ble Supreme Court (cited supra), in support of his



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claim that the writ petition under Article 226 of the Constitution of India, cannot be maintainable against the respondents 2 and 3-Bank. Further, he relied upon the order of this Court made in W.P.No.8804 of 2014, reported in **2016 SCC OnLine Mad 19248**, in which, this Court by following the decision of the Hon'ble Supreme Court (cited supra) dismissed the said writ petition. Hence, he prays for dismissal of this writ petition.

7. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the first respondent and perused the materials available on record.

8. In view of the submissions made by the learned counsel appearing on behalf of the first respondent and in view of the decisions cited supra, this Court is of the considered view that the present writ petition filed by the petitioner is not maintainable.



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M.DHANDAPANI, J.,

sp

9.Accordingly, the Writ Petition is dismissed. However, liberty is granted to the petitioner to work out the remedy in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

16.03.2023

Index: Yes / No
Speaking Order / Non-Speaking Order
Neutral Citation Case : Yes / No
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To

The Chairman,
Reserve Bank of India,
Central Office Building, P.O. Box – 110 007,
Saheed Bhagat Singh Road,
Mumbai – 400 001.

W.P.No.2376 of 2019
and
W.M.P.No.2624 of 2019