



W.P.No.6336 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.6336 of 2023

1.M/s.Sundaram Home Finance Limited
(formerly Sundaram BNP Paribas Home
Finance Limited), rep.by its Authorised
Officer, Y.Kishore Varma, No.23, 2nd Floor
Cathedral Garden Road, Nungambakkam
Chennai 600 034.

2.Samuel S.

.... Petitioners

-Vs-

1.Inspector General of Registration
100, Santhome High Road
Chennai 600 039.

2.The Sub Registrar
Office of the Sub Registrar-Purasawalkam
Purasawalkam, Chennai 600 023.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent herein vide RFL/Purasavakkam/2/2023 dated 09.01.2023, quash the same and consequently direct the 2nd respondent to register the sale certificate dated 30.12.2022 issued by the 1st petitioner in favour of the 2nd petitioner Mr.Samuel S.



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For Petitioner : Mr.K.J.Parthasarathy

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent herein vide RFL/Purasavakkam/2/2023 dated 09.01.2023, quash the same and consequently direct the 2nd respondent to register the sale certificate dated 30.12.2022 issued by the 1st petitioner in favour of the 2nd petitioner Mr.Samuel S.

2. The first petitioner / Finance Company has issued a sale certificate in favour of the 2nd petitioner on 30.12.2022 and when this was presented by the petitioners before the 2nd respondent SRO for registration, the same has been refused for registration by the 2nd respondent through the refusal check slip dated 09.01.2023, where, the reason cited by the 2nd respondent was that, there was no document to prove that loan has been advanced by the 1st petitioner to the 2nd petitioner without which the document ie., the sale certificate filed by the petitioners cannot be registered.

3. Challenging the said order, the learned counsel for the petitioner has submitted that, insofar as the sale certificate is concerned, the law has been well



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settled in number of cases that if the authority concerned has issued a sale certificate the same when presented for registration, shall be registered. When that being so, the present reason stated by the 2nd respondent in the impugned refusal check slip would not be sustained, he contended.

4. Learned Special Government Pleader would submit that, in view of the latest judgments that have been passed by this Court, the issue raised in this writ petition would be looked into and the needful would be undertaken by the 2nd respondent on merits and in accordance with law.

5. Taking note of this development, especially the stand taken by the learned Special Government Pleader, as many number of orders have been passed by this Court following the judgment of the Hon'ble Supreme Court and the recent order passed by this Court in a batch of writ petitions in W.P.Nos.30320 of 2022 etc. batch dated 20.02.2023, in a similar matter where I had an occasion to consider the similar issue, wherein I have passed the following order.

“.... 21. By making all these reliance of the earlier judgments of the Division Bench of this Court in *Ramayee's* case (cited supra) and also various other orders passed by the Hon'ble Supreme Court, the learned Judge has held that the first



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proviso to Rule 55-A(i) since been found to be invalid and ultra vires the respondent (therein) cannot refuse to register the documents placing reliance on the aforesaid proviso.

22. Thereby, the learned Judge not only has declared that first proviso to Rule 55-A(i) is ultra vires, has further declared that in view of the declaration having been made, the Registering Authority cannot refuse to register the documents placing reliance on the said proviso.

23. Though it was argued by the learned Special Government Pleader that the State is preferring or taking steps to prefer intra-court appeal against the said judgment of the learned Judge, as on date the prevailing law would be that first proviso to Rule 55-A(i) has been struck down as it has been declared as ultravires and therefore, the reliance cannot be placed by the respondents side on the said proviso i.e., first proviso to Rule 55-A(i) and that cannot be the reason for refusing the registration of the sale certificates respectively filed by these writ petitioners.

24. Insofar as the **Bank of Baroda's** case as stated supra is concerned, it was rendered on 07.07.2021 and in this context though argument was advanced by the learned Special



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Government Pleader that it was rendered prior to the amendment made in this regard i.e., before the first proviso to 55-A(i) was brought into the statute book, the import of the said order stated in paragraph 12 can be usefully referred hereunder:

“12. In the said judgment, the learned Judge, having considered the earlier decisions of this Court, has held in unequivocal terms that, the issue raised therein was no longer res integra. The learned Judge has further held that, consistently it has been held by this Court that the order of attachment is not a ground to refuse the registration of sale certificate. The learned Judge has further stated that, the Court need not once again undertake an exercise and it is enough if the settled law is once again reiterated.”

25. Therefore, even prior to amendment made to the Rule, the law has been settled to that extent for more than one occasion, where it has been held that the attachment is not a ground to refuse the registration of the sale certificate.

26. Exactly what has been held by this Court, now by way of plugging the hole the State thought it to bring this amendment to the Rule book by inserting the Rule 55-A(i) with so many provisos including the first provisos, thereby,



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the law already been declared by this Court was sought to be negated.

27. Even though making of such a scheme of Registration Act is permissible to the Competent legislature whether the authority, who is empowered to make subordinate legislation can make provisions of law taking away the right or abrogating the same, which has already been vested with the authority/citizen of this country, this in fact has been dealt with by the learned Judge in ***Federal Bank's*** case cited supra.

28. Such a right of the party to transfer the property by issuance of sale certificate by the competent authority cannot be denuded or taken away by merely bringing a sub-ordinate legislation like Rule 55-A(i) and therefore, I am in agreement with the learned Judge, who has declared that the first proviso to Rule 55-A(i) is ultra vires to the Constitution. Following the said judgment of the learned Judge, I have no hesitation to hold that the reasons stated by the Registering Authority for refusing to register the respective sale certificates are concerned, is totally untenable and therefore, those reasons, in the impugned order, in the eye of law would not be sustained. In the result, the following orders are passed in these writ



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petitions:

- ◆ That the impugned orders in these writ petitions are set aside and as a sequel, there shall be a direction to the respondents i.e., corresponding Registering Authority in each of the cases, to accept the sale certificate presented by the respective petitioners for registration and in this context, without insisting upon any NOC or clearance of attachment as provided under first proviso to Rule 55-A(i) as stated supra, the respective Registering Authority shall proceed to register the documents if it is otherwise in order that too without insisting any stamp duty in view of the law already been declared by the Hon'ble Supreme Court as discussed herein above.
- ◆ The needful as indicated above shall be undertaken by the respondents/Registering Authority in each of the writ petitions within a period of six(6) weeks from the date of receipt of a copy of this order.

With these directions and observations, these writ petitions are ordered accordingly. No costs. Connected miscellaneous petitions are closed.”



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6. The issue raised in this writ petition since is covered by the said decision, I am inclined to dispose of this writ petition with the following order.

- That the impugned refusal check slip in RFL/Purasaivakkam / 2 / 2023 dated 09.01.2023 is liable to be set aside and it is accordingly set aside.
- As a sequel, the matter is remitted back to the 2nd respondent with a direction to accept the sale certificate submitted by the petitioners and register the same if it is otherwise in order, within a period of four weeks from the date of receipt of a copy of this order.

7. With the above directions, this writ petition is disposed of. No costs.

02.03.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order

KST
To

1. Inspector General of Registration
100, Santhome High Road
Chennai 600 039.

2. The Sub Registrar
Office of the Sub Registrar-Purasawalkam
Purasawalkam, Chennai 600 023.



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R. SURESH KUMAR, J.

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