



W.P.No.21947 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.21947 of 2023
and
W.M.P.No.21297 of 2023

R.Sakthivel Raman

... Petitioner

versus

- 1.The Sub Registrar,
Office of the Sub Registrar,
Hosur, Krishnagiri District.
- 2.The District Registrar (Administration),
Krishnagiri, Krishnagiri District.
- 3.The Recovery Officer,
Office of the Employees Provident
Fund Organisation Department,
Chennai.
- 4.The Authorised Officer,
Shriram Finance Limited,
Legal Department,
No.12, Ramasamy Road,
T.Nagar, Chennai – 600 017.

.....Respondents



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Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent dated 18.05.2023 made in refusal cheque slip No.P 72/2022, quash the same and direct the first respondent to make an entry as per Section 89(4) of the Registration Act, the sale certificate issued in favour of the writ petitioner.

For Petitioner : Mr.M.Devaraj

For Respondents : Mr.P.Gurunathan
Additional Government Pleader
for R1 and R2

Mr.R.Vishnu
Standing Counsel for EPFO
for R3

M/s.Uma Shankar
for M/s.Sri and Shankar Associates
for R4

ORDER

The petitioner in this Writ Petition seeks for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the first respondent dated 18.05.2023 made in refusal cheque slip No.P 72/2022, and to direct



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the first respondent to make an entry as per Section 89(4) of the Registration Act, 1908 in respect of the Sale Certificate issued in favour of the writ petitioner.

2. It is the claim of the petitioner that the petitioner emerged as a successful bidder in the auction conducted by the Shriram Finance Limited/ fourth respondent herein under the SARFAESI Act and was favoured with a Sale Certificate for the property purchased by the petitioner in the said auction. The petitioner also paid proper stamp duty and registration fees, at the time of presenting the sale certificate and the said document was admitted as pending Document No.72 of 2023. While that be so, the first respondent without registering the said document, had issued an impugned refusal check slip dated 18.05.2023, on the ground that the subject properties were attached by the third respondent vide proceedings dated 17.01.2019 and also stating that the fourth respondent is a non-banking institution and it would not come under the definition of secured creditor and as such returned the document.



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3. It is the further claim of the petitioner that originally, the subject property was mortgaged by the guarantor on 26.06.2015 and the same was registered as Doc.No.10265 of 2015. Subsequently, the proceedings under SARFAESI Act was initiated by the fourth respondent and the possession of the property was taken on 29.12.2020. While so, the property was brought to auction on 18.01.2023. At that time, the Encumbrance Certificate does not disclose any attachment. The alleged attachment is subsequent to the creation of the mortgage in favour of the fourth respondent and in such event, the fourth respondent has first claim over the property and that the attachment is invalid. If at all the third respondent should have any claim, he should have approach the fourth respondent and the property cannot be attached. Hence, impugned proceedings passed by the first respondent is arbitrary perverse and in total violation of the provisions of the Registration Act and Rules. Hence, the petitioner is before this Court.

4. The learned Additional Government Pleader appearing for respondents 1 and 2 submitted that as the subject property is already under attachment on the file of the third respondent, the first respondent/



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registering authority has refused to register the Sale Certificate invoking Section 22 B of the Registration Act, 1908.

5. Heard both sides and perused the materials available on record.

6. The Hon'ble Supreme Court and this Court also in W.P.No.13282 of 2021 in the case of Tamil Nadu Mercantile Bank Ltd., vs. The Sub Registrar, Tiruchengode Taluk, Namakkal District and others, has held that the secured creditor will have a priority to realize the debt over all the other Government dues and unsecured creditors and it also observed that if any Registering Authority_refuses to register the sale, it would be deemed to be violation of Court's order amounting to contempt and the aggrieved parties can always initiate contempt proceedings before this Court. Even after passing this order, so many writ petitions are filed, since almost all the Registering Authority again and again either neglect to register the sale certificate or evading to register the same, and made the auction purchasers, who obtained the sale certificate to run pillar to post to register the



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document. Therefore, the impugned refusal check slip issued by the first respondent is erroneous, which is liable to be quashed.

7. Accordingly, the impugned refusal check slip vide No.P 72/2022 dated 18.05.2023, is hereby quashed and the first respondent is directed to register the Sale Certificate issued by the fourth respondent in favour of the petitioner, if it is otherwise in order, within a period of one month from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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

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To

- 1.The Sub Registrar,
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