IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24581 of 2023

K.Kumarappan ... Petitioner

Vs.

1.The District Registrar,
Cuddalore,
Cuddalore District.

2.The Sub Registrar,
Sub Registrar Office,
Panruti, Cuddalore District.

3.The Deputy Commercial Tax Officer,
Panruti Town,
Cuddalore District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to register the sale deed dated 19.01.2015 executed by the Learned Subordinate Judge Panruti.

For Petitioner : Mr.B.Sundarapandiyan

For Respondent : Mr.T.Venkatesh Kumar
Special Government Pleader

ORDER

The relief sought for in the present writ petition is to direct the respondents 1 and 2 to register the sale deed dated 19.01.2015 executed by the Learned Subordinate Judge, Panruti.

2. The Sub Court, Panruti conducted public auction on 23.04.2014 in respect of the property situated in Cuddalore District, Punruti Sub Registration, Andikuppam Madura, Lingareddipalayam Village, Kandasamy Street, Gramanathanm Survey No.143/A1, Ward-A, Block No.1, T.S.No.53 with land and building in E.P.No.59 of 2011 in O.S.No.30 of 2015.

3. The petitioner was the highest bidder in the public auction and paid a sum of Rs.9,03,000/-. A sale certificate was issued by the learned Subordinate Judge, Panruti and accordingly, the petitioner presented a sale deed for registration. The Registering Authority refused to register the sale deed on the ground that the subject property has been attached by the

Commercial Tax Department in view of non-payment of tax amount of Rs,6,46,293 to the Government of Tamil Nadu.

4. In view of the said attachment under the State enactment, the document is not registrable under Section 22-B (3) of the Registration Act.

5. The learned counsel for the petitioner made a submission that the petitioner is the bonafide auction purchaser and he was the successful bidder. He paid the auction sale price and therefore, the sale deed presented by him is to be registered.

6. Question arises, whether the attachment made under the provisions of the State enactment can be waived by the Registering Authority or not.

7. Section 22-B(3) of the Registration Act stipulates that the Registering Officer shall refuse to register the document relating to the transfer of immovable properties by way of sale deed or otherwise which is attached permanently or provisionally by competent authority under the Central Act or State Act or any Court or Tribunal is bound by the provisions

of the Registration Act. Therefore, the encumbrances made by way of an attachment under the State enactment are to be discharged and thereafter, the document is to be presented for registration.

8. As far as the petitioner is concerned, the principles of caveat emptor would apply and the petitioner has to ascertain the other encumbrances at the time of participating in the auction purchase. Having participated the petitioner now cannot turn around and say that the attachment made by the Commercial Tax Department under the state enactment is to be waived .

9. The principles in this regard are considered by this Court in the case of ***Indian Overseas Bank Vs. The Assistant Commissioner of Central Excise and Service Tax and Others*** in ***W.P.No.15014 of 2022*** dated 05.09.2023. In the said case, the secured creditors / Bank had failed to follow the procedures as contemplated under the Rules framed under the SARFAESI Act.

10. In such circumstances, this Court held that the auction purchaser was aware of the other encumbrances and knowing the encumbrances he

purchased the subject property through auction sale. That being the factum, the petitioner has to discharge the encumbrances and present the document for registration.

11. In the present case, the said principles would apply and more so, there is a bar for registering a document, when the attachment is in force. When Section 22-B of the Registration Act prohibits such a registration, the Registering Authority is bound by the said provisions and therefore, they cannot register the same.

12. Thus, the reasons stated in the order impugned is in consonance with the Registration Act. It is for the petitioner to take steps either to discharge the encumbrances or other issues and thereafter, present the document for registration.

13. The learned counsel for the petitioner states that the petitioner is ready to discharge the encumbrances by lifting the attachment made by the Commercial Tax Department. The petitioner is at liberty to approach the Commercial Tax Department Authorities seeking waiver of penal interest /

interest as the case may be. If the attachment is lifted by discharging the encumbrances and thereafter, the document is presented for registration, the Registering Authority has to register the same by following the procedure and by ascertaining the fact that the attachment has been lifted. If the attachment is lifted and encumbrance is discharged the petitioner is at liberty to present the document for registration and in such circumstances, the Registering Authority shall verify the records and proceed with the registration by following the procedures as contemplated.

14. Accordingly, this Writ Petition stands disposed of. No costs.

11.09.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

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Cuddalore District.

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Panruti, Cuddalore District.

3.The Deputy Commercial Tax Officer,
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S.M.SUBRAMANIAM, J.

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