



WEB COPY



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

**Writ Petition Nos.30320 of 2022, 2672, 3828, 4307 and 4308 of 2023
and WMP.Nos.4348 and 4349 of 2023**

W.P.No.30320 of 2022

M/s.Cholamandalam Investment and Finance Co., Ltd.,
Registered Office at No.2,
1st Floor, Dare House, N.S.C.Bose Road,
Parry's, Chennai – 600 001.
Rep. by its Authorised Signatory,
Mr.Thiyagarajan.K.

... Petitioner

-Vs-

1. Inspector General of Registration,
Government of Tamil Nadu,
Santhome High Road, Chennai – 600 004.

2. The Joint Sub-Registrar II,
Thousand Lights, Chennai Central.

3. Mr.S.Palaniswamy
4. Mr.S.Sundar

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India
praying for the issuance of a Writ of Certiorarified Mandamus, to call for
the record of the orders passed by the 2nd respondent in



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

RFL/Chennai/Central Joint II/7/2022 dated 20.10.2022 and quash the same as devoid of merits and consequently direct the 2nd respondent to register the sale certificate issued by the petitioner dated 30.08.2022 in favour of the 4th respondent within the time stipulated by this Court.

W.P.No.2672 of 2023

A.Raja Deepak

... Petitioner

-Vs-

1. Inspector General of Registration,
Government of Tamil Nadu,
Santhome High Road, Chennai – 600 004.

2. The Deputy Inspector of Registration,
Coimbatore.

3. The Sub-Registrar,
Gandhipuram, Coimbatore.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent by his proceeding in pending Document No.6 of 2022 dated 07.01.2023 quash the same and direct the third respondent to register the sale certificate without insisting upon payment of Stamp duty of Rs.5,79,000/-.



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

W.P.No.3828 of 2023

WEB COPY

Edelweiss Asset Reconstruction Company Limited,
Rep. by its Authorised Officer,
Mr.S.Haresh Kumar,
Having their Regd. Office At
EHFL/ECLFL: Edelweiss House,
Off CST Road, Kalina,
Mumbai – 400 098.

... Petitioner

-Vs-

1. The Sub-Registrar,
Sub-Registrar Office,
Sowcarpet, Armenian Street,
Chennai – 600 001.
2. M/s.Pavan Financiers,
Represented by Mr.Prasatharao,
No.177, Govindappa Naicken Street,
Sowcarpet, Chennai - 600 079.
3. Mr.S.Jummakhan
4. Mr.Jennathul Firthous
5. Mr.Syed Abuthahir K S
6. Mr.Mumtaj S
7. Mr.Abdur Rasheed Abdul Hameed
8. Mr.Mohamed Yusuf
9. Mrs.Savuriyath Beevi Mohamed
10. Mr.Abdul Rawoof
11. Mrs.Jasmin

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India
praying for the issuance of a Writ of Mandamus, directing the 1st
respondent herein to consider the request and register the sale certificate
dated 22.09.2022 issued by the petitioner in accordance with law.



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

W.P.Nos.4307 and 4308 of 2023

WEB COPY

The Authorized Officer,
South Indian Bank Limited,
Regional Office, No.43,
Ground Floor, Hameedia Centre,
Haddows Road,
Nungambakkam, Chennai.

... Petitioner

-Vs-

1. The Sub-Registrar,
Uthiramerur,
Kancheepuram District.

2. Mr.T.Jagadeesan
3. Mr.D.Mittalal
4. Mrs.M.Taradevi
5. Mr.R.Pandiaraj

... Respondents

Prayer : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to quash the impugned order vide RFL/Uthiramerur/2/2023 and RFL/Uthiramerur/1/2023 respectively dated 12.01.2023 passed by the first respondent and consequently direct the 1st respondent to register the sale certificate dated 11.01.2023 or amended date as presented by the petitioner bank in favour of the 5th respondent.

For Petitioners : Mr. Om Prakash
Senior Counsel
for Mr.M.Arunachalam
(in W.P.No.30320 of 2022)



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

Mr.K.P.S.Palanivel Rajan
Senior Counsel
for Mr.B.Ramesh Babu
(in W.P.No.2672 of 2023)

Mr.V.Balasubramani
(in W.P.No.3828 of 2023)

Mr.M.L.Ganesh
(in W.P.Nos. 4307 & 4308 of
2023)

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader
[R1 and R2 in W.P.No.30320 of
2022, for all respondents in
W.P.No.2672 of 2023, for R1 in
W.P.No.3828 of 2023, 4307 of
2023 and 4308 of 2023]

COMMON ORDER

Since the prayer sought for in these writ petitions pertaining to the issue involved therein is one and the same, with the consent of learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2. In each of the cases, the respective petitioners filed sale certificates, issued in this regard, before the concerned Registering Authority, who are shown as respondents in each of the writ petitions



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

WEB COPY

respectively, for registration. The same has been refused to be taken into account for the purpose of registering the same merely on the ground that in respect of those properties, which are covered under the sale certificates respectively, there are encumbrances like mortgage or attachment and as against the said attachment or mortgage, since the time is not lapsed to prefer case before the Civil Court, without exhausting the same or even during the existence of the said mortgage or attachment, since these petitioners approached the Registering Authority for registering the document i.e., sale certificates, each of the said request were rejected by the Registering Authority through their respective orders, which are impugned herein on the ground that as per Rule 55-A of the Registration Rules [in short, 'the said Rules'], especially under first proviso to Rule 55-A (i), the Registering Officer shall not register such documents if the time limit for filing of suit is not lapsed or NOC is not granted by the appropriate authority or raising of the attachment is not done as the case may be and in that case, if an encumbrance as to mortgage, the orders on attachment of property, sale agreement or lease agreement existing over the property, that kind of sale certificate cannot be registered.



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

3. Aggrieved over the said rejection orders passed by the Registering Authority in all these cases, this batch of writ petitions have been filed.

4. Heard the learned counsel appearing for the petitioners, who would submit that, insofar as the legal position as to whether the attachment or the mortgage even if still exists whether that would be an impeding effect to the Registering Authority from entertaining a sale certificate issued by the competent authority for registration is the question, to be answered.

5. In this context, the issue has already been decided by an order of the Division Bench of this Court in the matter of ***Ramayee vs. Sub-Registrar*** reported in ***2020 6 CTC 697***.

6. Learned counsel would further contend that, considering the said Division Bench judgment as well as the various other decisions of the Hon'ble Supreme Court as well as this Court, the very validity of the first proviso to Rule 55-A(i) of the said Rules was considered by a



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

WEB COPY

learned judge of this Court in W.P.No.2758 of 2023 in the matter of ***The Federal Bank Ltd., Vs.The Sub-Registrar and Otrs.*** Dated 08.02.2023 wherein, the learned Judge has ultimately held that the very first proviso to Rule 55-A itself is an ultra vires to the constitution and therefore, based on the Rule, no refusal can be made by the Registering Authority to entertain the registration of the sale certificate.

7. In this context, learned counsel appearing for the petitioners has also relied upon a judgment of this Court already been made in W.P.No.14068 of 2021 in the matter of ***M/s. Bank of Baroda Vs. The Sub-Registrar***, where I had an occasion to consider the similar issue.

8. Relying upon those decisions, the learned counsel appearing for the petitioners would canvass the point that, even though the Rule 55-A has been brought into the Rule Book that would not take away the conferment of the right on the parties to encumber the properties, provided, if they have the marketable title and in this case, sale certificates issued by the competent authority cannot be said to be infirm or not capable of being registered by citing the Rule viz., Rule 55-A,



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

WEB COPY

especially first proviso to Rule 55-A(i) as that cannot override or run contra to the main provisions of the Registration Act as well as the right of the parties, which flow from the provisions of the Transfer of Property Act. Therefore, the learned counsel would contend that, the reasons cited by the Registering Authority in each of these cases, which are shown as impugned orders in the respective writ petitions are untenable and would not be sustained in the eye of law, hence, the learned counsel appearing for the petitioners seek indulgence of this Court.

9. *Per contra*, Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the official respondents in each of these writ petitions would contend that, insofar as the legal position is concerned that might have occurred or available prior to the amendment made to the said Rule, under which, Rule 55-A has been brought in with effect from 05.09.2022, therefore, what was the legal position that was prevailing prior to 05.09.2022 cannot be required to be taken note of in view of the subsequent developments taken place, where Rule 55-A has been brought in.



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

WEB COPY

10. Since the Rule making power is already vested with the State under the main Act, by exercising such Rule making power, such Rule viz., Rule 55-A was inserted, under which, there are five provisos and each proviso would deal with special circumstances.

11. The relevant *proviso* to the facts of these cases is first proviso to Rule 55-A(i), which deals with, encumbrance as mortgage, orders of attachment of property, sale agreement or lease agreement etc. If these kind of encumbrances are still exists, the Registering Authority has been directed not to register the documents unless the person, who presented the document, obtained a No Objection Certificate from the appropriate Authority or raising the attachment is done as the case may be.

12. When such a statutory Rule is available in the statute and that has not been questioned, through the statutory provision, of-course being a sub-ordinate legislation, a direction can be given to the Registration Department not to register the document, therefore, the reasons cited by the Registering Authority in each of the cases as shown in the impugned orders are strictly in consonance with the first proviso to Rule 55-A(i) of the Rules.



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

WEB COPY

13. Insofar as the judgment dated 07.07.2021 cited *supra* is concerned, the learned Special Government Pleader would submit that judgment was rendered prior to amendment dated 05.09.2022.

14. Insofar as the judgment dated 08.02.2023 made in W.P. No.2758 of 2023 is concerned, the learned Special Government Pleader would submit that, as against the said judgment of the learned judge, the State is taking all steps to prefer intra-court appeal.

15. By making all these submissions, the learned Special Government Pleader would contend that, the reasons cited in the impugned orders, which are challenged in all these writ petitions respectively are to be sustained as the said reasons have been given strictly in consonance with the first proviso to Rule 55-A(i) of the Rules. Hence, the learned Special Government Pleader wants to sustain all these orders impugned in this batch of writ petitions.

16. I have given my anxious consideration to the rival submissions made by the respective counsels and have perused the materials placed before this Court.



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

WEB COPY

17. Insofar as Rule 55-A(i) is concerned, no doubt it has been a new insertion and has been brought into the Rule book only from 05.09.2022. Once the Rule has come into force, certainly the officers like the Registering Authorities have to abide by the said Rule and therefore, they imposed them to get NOC or clearance to remove the encumbrance like mortgage, attachment etc., otherwise the document i.e., the sale certificate presented by each of the petitioners would not be considered for registration.

18. No doubt, Rule 55-A under the various provisos deals with several circumstances. In the first proviso, it deals with an encumbrance as to mortgage, orders on attachment of property, sale agreement or lease agreement, which exists over the property, in that case, Registering Officer shall not register such documents if the time limit for filing of suit is not lapsed or NOC is not granted by the appropriate authority or raising of the attachment is not done as the case may be.

19. In all these cases, either attachment or mortgage still existing therefore, that has to be removed by approaching the competent Court or



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

NOC must have been obtained and produced before the Registering Authority by the presenter of the document concerned and in the absence of the same, the sale certificate produced by or presented by the petitioners for registration need not be considered, that is the stand taken by the Registering Authority, of-course inconsonance with the first proviso to Rule 55-A(i) as stated supra.

20. However, if we look at the latest judgment of the learned Judge in ***Federal Bank's*** case as cited supra in W.P. No. 2758 of 2023 dated 08.02.2023 is concerned, the learned Judge exhaustively has dealt with this issue, therefore, the following portions of the said order are usefully referred hereunder:

“ 19. The effect of the first proviso, is to virtually nullify the aforesaid statement of law by the Supreme Court which is binding law under Article 141. That apart, even if an order of attachment is made, any sale deed registered thereafter would be automatically void only against all claims enforceable under the attachment under the provisions of Section 64 of the Code of Civil Procedure. For example, if the attachment is made for recovery of sum of Rupees One lakh and the property value is more than



WEB COPY



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

One Crore, it cannot be said that entire property cannot be dealt. Such case sale is void only against claim of Rupees One Lakh and its interest and not in entirety.

20. These issues have been thoroughly deliberated and elaborately discussed in Ramayee's case, which has also been affirmed by the Supreme Court, this Court is of the view that the effect of the first proviso is to set at naught to the above declaration of law by the Supreme Court and the Division Bench and it nullifies the several provisions of the Transfer of Property Act, as stated above. The authorities under the Registration Act have no jurisdiction to make rules which have the direct and immediate effect of restraining transactions which are permitted under the Transfer of Property Act. Such a restriction would be clearly illegal and violative of a citizen's right to deal with his property and would clearly infringe Article 300-A of the Constitution. It does not bear repetition that Article 300-A has now been recognised as a human right [Vidya Devi v State of Himachal Pradesh, 2020 2 SCC 569].

21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, which was also a case concerning the provisions of the Registration Act, the Supreme Court held that a subordinate legislation under the said Act which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, was



WEB COPY



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

invalid. In this case also, Rule 55-A being a subordinate legislation does not have any statutory guideline (for instance like the transactions mentioned in Section 22-A&B) and is opposed to the enforcement of substantive legal rights under the Transfer of Property Act. The first proviso is, therefore, invalid as it goes beyond the powers conferred on the Inspector General of Registration and is clearly ultra vires and unconstitutional to the Parent Act as well as the substantive provisions of the Transfer of Property Act.

22. Similarly, the second proviso requires the executant to produce a revenue record to show his “right over the subject property” where the property is ancestral in character and there is no original deed available. Even a tax receipt can be produced under this proviso which is opposed to the fundamental principle of law that revenue records are not documents of title [State of A.P. v Star Bone Mill and Fertilizer Company, 2013 9 SCC 319]. Production of revenue documents to verify the source of title only demonstrates complete ignorance of the settled position of law.

23. Similarly, the third proviso also defies logic. If the original is lost, it is not understood as to why a certified



WEB COPY



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

copy of that document obtained from the file of the concerned SRO cannot be produced. When the best evidence is not available, the best course is to produce a certified copy which is the next best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication.

24. It is also well settled by the decision of the Supreme Court in J.K. Industries Ltd. v. Union of India, (2007) 13 SCC 673 that a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. Furthermore, Rule 55-A is a delegated legislation which cannot go beyond the scope of the Parent Act viz., the Registration Act as well the Transfer of Property Act which is the substantive law governing the transfer of immovable properties. Hence, the first proviso is clearly ultra vires and unconstitutional.

....

26. In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso.”



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

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 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



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

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 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



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

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, 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 sub-ordinate 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 *Federeal 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



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

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 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.



WEB COPY



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

- ◆ 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.

20.02.2023

Index : Yes
Speaking order: Yes
Neutral Citation: Yes
mp

To

1. Inspector General of Registration,
Government of Tamil Nadu,
Santhome High Road, Chennai – 600 004.
2. The Joint Sub-Registrar II,
Thousand Lights, Chennai Central.
3. Inspector General of Registration,
Government of Tamil Nadu,
Santhome High Road, Chennai – 600 004.



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

WEB COPY

4. The Deputy Inspector of Registration,
Coimbatore.

5. The Sub-Registrar,
Gandhipuram, Coimbatore.

6. The Sub-Registrar,
Sub-Registrar Office,
Sowcarpet, Armenian Street,
Chennai – 600 001.

7. The Sub-Registrar,
Uthiramerur,
Kancheepuram District.



WEB COPY



Writ Petition Nos.30320 of 2022, 2672,
3828, 4307 and 4308 of 2023

R. SURESH KUMAR, J.
mp

**Writ Petition Nos.30320 of 2022,
2672, 3828, 4307 and 4308 of 2023**

20.02.2023