



WEB COPY



W.P.No.484 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2023

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

**W.P.No.484 of 2023 and
W.M.P.No.435 of 2023**

State Bank of India,
ARMB,
No.44, Eldams Road,
1st Floor, Teynampet,
Chennai – 18
Rep. by its Chief Manager.

.. Petitioner

Versus.

1. The Sub Registrar,
Avadi.

2. S.Hari

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the first resettlement and quash the impugned order vide refusal check slip No.RFL/AVADI/6/2022 dated 21.11.2022 as contrary to the rule of law and principles of natural justice and consequently direct the first respondent to register the sale certificate dated 09.09.2022 executed in favour of auction purchaser pertaining to the secured property situate at residential flat bearing No.S2, 2nd floor, Sapthagiri Enclave Plot No.1 Patel Street, Avadi, Chennai – 71, having an undivided share of land measuring an extent of 283



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sq.ft. and flat having a built up area of 900 sq.ft. comprised in Old S.No.95/1A part, Vilingimbakkam Village, Poonamallee Taluk, Thiruvallur District.

For Petitioner : Mr.M.L.Ganesh

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

ORDER

The writ petitioner has challenged the order passed by the first respondent refusing to register the sale certificate issued by the petitioner Bank in favour of the successful bidder in the auction.

2 Learned counsel for the writ petitioner submitted the petitioner is a Bank and the second respondent availed housing loan by depositing original title deeds of the subject property. Thereafter since the second respondent committed default in repaying the payment for the said loan, the petitioner Bank initiated proceedings under the SARFAESI Act and the property was brought for auction. One M.Baskar was the successful bidder and subsequent to the remittance of entire sale price, the petitioner Bank issued sale certificate on 09.09.2022 in favour of the successful bidder and when the same was presented for registration, the first respondent refused to register the same and passed the impugned refusal slip, which is liable to be set aside.



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Learned Additional Government Pleader for the first respondent would submit that the title deed has not been registered and hence the first respondent refused to register the sale certificate presented by the petitioner Bank.

4 Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the first respondent and perused the materials available on record.

5 Admittedly the sale certificate presented by the petitioner Bank, which has been issued to the successful bidder in the auction conducted in pursuance to the SARFAESI proceedings, has been rejected by the first respondent to register. This Court in numerous judgments, 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. Therefore the impugned order passed by the first respondent is liable to be quashed.



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Accordingly, the writ petition is allowed and the impugned order vide refusal check slip No.RFL/AVADI/6/2022 dated 21.11.2022 is hereby quashed and the first respondent is directed to register the sale certificate presented by the petitioner Bank, if it is otherwise in order. Consequently connected miscellaneous petition is closed. No costs.

09.11.2023

Index: Yes/No
cgi

To

The Sub Registrar, Avadi.



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P.VELMURUGAN, J.,

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