IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**Pronounced on**
12.06.2023	**16.06.2023**

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.27415 OF 2018

1. L.Lakshmana Perumal
2. M.V.G.Srinivasan
3. M.Kanagaraj
4. G.Ramakrishnan
5. S.Senthil Marison .. Petitioners

- Vs -

1. Bank of India, Mumbai
Having Regd. Office at
Star House, T-5, 'G' Block
Bandrakurla Complex
Bandrakurla East, Mumbai 400 051.

2. The Chief Manager
Bank of India
Having its Branch Office at
MNo.328, DB Road, R.S. Puram
Coimbatore 641 002.

3. M/s.Spring Field Shelters (P) Ltd.
Door No.101, Renga Vilas
New Dhamu Nagar

Coimbatore 641 037. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing respondents 1 and 2 to return/hand over the original title deeds relating to the property comprised in S.F. Nos.569, 547/1, 548/2A in Chinnavedampatti Village, Coimbatore North Taluk and District deposited by the erstwhile Power Agent of the petitioners viz., M/s.Spring Field Shelters (P) Ltd., the 3rd respondent to the petitioners herein within the time to be stipulated by this Hon'ble Court.

For Petitioner : Mr. Om Prakash, SC, for
M/s.R.Bharath Kumar

For Respondents : Mr. F.B.Benjamin George for RR-1 & 2
Mr. B.Dhanaraj for R-3

ORDER

Seeking return of the original title deeds, which have been deposited by the 3rd respondent with the 1st respondent, while acting as the power agent of the petitioners, and there being no due payable by the petitioners or its erstwhile power agent with regard to the said term loans, the present petition is filed.

2. It is the case of the petitioners that they are the absolute owners of the lands comprised in SF Nos.547/1, 548/2A and 569 measuring 4.61 acres in Chinnavedampatti, Coimbatore North Taluk. Believing the sugar coated words of the 3rd respondent as to their past experience in the construction of multi storied residential apartments and villas, the petitioners entered into a joint venture agreement (for short 'JVA') for developing the aforesaid lands vide agreement dated 10.2.2011 in which the petitioners would be entitled for 36% of the total constructed area and the 3rd respondent would be entiled for the remaining 64% of the constructed area, which is to be constructed at the cost of the 3rd respondent.

3. It is the further case of the petitioners that the JVA provided for completion of construction within a period of 24 months from the date of plan approval and in fact the 3rd respondent had promised that they would obtain the plan approval from all the authorities within a period of 10 months. It is the further averment of the petitioners that under the bona fide belief, the JVA was entered into and based on the request of the 3rd respondent, an unregistered power of attorney dated 10.2.2011 was also executed, enabling

the 3rd respondent to prepare the plan and for other related developmental activities.

4. It is the further averment of the petitioner that during June, 2013, while the 3rd respondent obtained part of the approval from the Director of Town and Country Planning, Chennai and also informed that they would obtain the remaining approval from the local planning authority within a short span of time and, further requested the petitioners to execute a registered power of attorney with regard to 64% in favour of the 3rd respondent to obtain funds from financial institutions for commencing the construction and believing the said words, the petitioners executed and registered the deed of general power of attorney on 21.10.2013 and it was promised by the 3rd respondent that no encumbrance would be created with respect to the undivided share of 64% until the commencement of the constructions. Further, supplemental agreement dated 2.12.2013 was also entered into between the petitioners and the 3rd respondent.

4. It is the further averment of the petitioner that not only the 3rd respondent failed to obtain plan approval from the local planning authority, but in fact, had created encumbrance in respect of the 64% undivided portion as also in respect of the 36% undivided share of the petitioners, which came to light when the petitioners approached the registration authorities. It is the further averment of the petitioners that the 3rd respondent, through its confidante, by name Sudhir Sankar filed a suit in O.S. No.1787 of 2017 against the petitioners for injunction, which act resulted in the petitioners taking steps to cancel the general power of attorney (for short 'GPA'), on 23.11.2017. At the time of the said cancellation, the 3rd respondent undertook to furnish the accounts with vouchers and supporting documents, including the amount realized in respect of the sale of the properties, which they did not adhere to.

6. It is the further averment of the petitioners that the non-compliance with the terms of the JVA inspite of a lapse of six years, the petitioners issued a legal notice dated 30.11.2017 terminating the JVA as well as the supplemental agreement. It is the further averment of the petitioners that the 3rd respondent, at the time of cancellation of the GPA had informed the

petitioners that they had deposited the original title deeds and connected documents with regard to the said lands with respondents 1 and 2 for the purpose of securing loan facility and that they had also executed a registered memorandum on 11.3.2014 in favour of the 1st respondent.

7. It is the further averment of the petitioners that the 1st respondent had sanctioned credit limit to the 3rd respondent on 16.2.2014 and that pre-disbursement would commence upon the 3rd respondent submitting all the requisite sanction/permission/approval from the appropriate authorities, including DTCP and that the 3rd respondent was to submit a stamped undertaking confirming receipt of all requisite approval for commencing and executing the project.

8. It is the further averment of the petitioners that the failure of the 3rd respondent to comply with the pre-disbursement condition resulted in the closure of the loan and information given by the Chief Manager of the 1st respondent dated 15.4.2016 to the Credit Monitoring Department about the closure of the loan. It is the further averment of the petitioner that vide

communication dated 5.8.2015, the Chief Manager of the 1st respondent had informed the closure of term loan accounts bearing Nos.821565410000010, 821565410000011 and 821565410000013 on 5.8.2015 by certifying that there is no due to the 1st respondent pertaining to these accounts and memorandum of satisfaction of charge was also filed before the Registrar of Companies.

9. It is the further averment of the petitioner that the 3rd respondent not having availed any loan and the term loan accounts were closed, had informed the petitioners that there would be no difficulty/impediment in getting back the original documents from respondents 1 and 2. In the wake of the 3rd respondent not having any due with the 1st respondent, the 1st respondent has no *locus standi* to retain the original title documents. Since the 3rd respondent failed to comply with the legal notice issued by the petitioner for return of the documents, the petitioners referred the disputes to arbitration in view of clause No.15 of the JVA and since the same was not acted upon by the 3rd respondent, the petitioner filed O.P. No.472 of 2018

before this Court u/s 11 of the Arbitration and Conciliation Act, 1996, which is pending adjudication and appointment of arbitrator.

10. It is the further averment of the petitioner that a legal notice was caused on the 1st respondent on 3.1.2018 to return the original title deeds, to which no reply was forthcoming and a second legal notice was issued on 30.1.18 to which a belated reply was issued on 2.4.18 in which certain allegations were made to the effect that agreements have been entered between the 3rd respondent third parties and that the 1st respondent had initiated proceedings before the Debts Recovery Tribunal and, therefore, refused to return the documents. Though the petitioners had called upon the respondents to provide the details of the case pending before the Debts Recovery Tribunal, however, no information was forthcoming. Therefore, the 3rd petitioner had filed an application with the 1st respondent under the Right to Information Act seeking certain details with regard to the case filed by the 1st respondent and also the loan availed by the 3rd respondent as power agent of the petitioner. To the said application, the 1st respondent, vide reply dated 28.5.18, citing fiduciary relationship, had refrained to divulge any details

sought for, though there existed no fiduciary relationship between the 1st and 3rd respondents. Further, it is the averment of the petitioners that the 3rd respondent, acting as power agent of the petitioners, the 1st respondent is bound to provide the details as sought for and cannot claim fiduciary relationship as the 3rd respondent is only acting as agent of the petitioner. The rejection was assailed before the Deputy Zonal Manager/Central Public Information Officer of the 1st respondent, but no reply was forth coming.

11. It is the further averment of the petitioners that notices were received from the Debts Recovery Tribunal, Coimbatore with regard to Application Nos.73 and 74 of 2018 filed by the 1st respondent, which applications have no legal basis, but has been filed only with an ulterior motive to usurp the property of the petitioners. It is the further averment of the petitioners that in the aforesaid applications, the petitioners have neither been shown as borrowers nor as guarantors and the 1st respondent has not relied on any mortgage executed by the petitioners. Since the above facts clearly reveal that the 1st respondent is holding the original title deeds pertaining to the property of the petitioners without any valid legal basis and

inspite of the demand to return the same, the same not having been complied with, the petitioners have come before this Court by filing the present petition.

12. Learned senior counsel appearing for the petitioners submit that once the loan account was closed by showing no due under the loan accounts through which credit facility was given to the 3rd respondent, the 1st respondent ought to have returned the original documents back to the petitioners. It is the further submission of the learned senior counsel that once the loan account has been closed by the 1st respondent showing no due with respect to the loan, the 1st respondent has no valid legal reason to hold the original documents pertaining to the petitioners.

13. It is the further submission of the learned senior counsel that the act of respondents 1 and 2 is nothing but a colourable exercise of power and they have acted in excess in withholding the original title deeds of the petitioner. Further, there being no contractual obligations between the

petitioners and the 1st respondent, the 1st respondent has no authority to withhold the title deeds.

14. It is the further submission of the learned senior counsel that the petitioners are neither borrowers nor guarantors for any loan with the 1st respondent. The 3rd respondent, though had taken credit facility with the 1st respondent, pre-disbursement condition having not been complied with by the 3rd respondent, the loan account itself was closed and the Chief Manager of the 1st respondent had addressed a communication stating that there was no due under the credit facility offered to the 3rd respondent. Such being the case, the 1st respondent has no authority to hold the title deeds of the petitioners.

15. It is the further submission of the learned senior counsel that any agreement entered into by the 3rd respondent with any third party cannot be binding on the petitioners and the cancellation of the GPA divests the 3rd respondent of any relationship with the petitioners. Such being the case, the 1st respondent cannot hold the title deeds, which are covered by the JVA and

GPA, which have been subsequently cancelled by the petitioners, to which the petitioners are legally entitled to. Accordingly, learned senior counsel pray for a direction to the 1st respondent to release the original title deeds.

16. Learned standing counsel appearing for respondents 1 and 2, placing reliance on the counter affidavit filed by the respondents, submit that based on the GPA and JVA, the 3rd respondent availed credit facilities to the tune of Rs.34,77,00,000/- with the bank. The 3rd respondent also on the basis of the undivided share in the property had sold the apartment/villas to prospective purchasers, who had obtained loan from the 1st respondent bank by submitting the documents and a tripartite agreement was entered into between the borrower, the 1st respondent and the 3rd respondent. However, sale deeds conveying the property were not executed and some of the borrowers closed their loan accounts, while other accounts became Non-Performing Assets and, therefore, the bank was constrained to move the Debts Recovery Tribunal for recovery of the amounts.

17. It is the further submission of the learned standing counsel that the petitioners, in collusion of the 3rd respondent, to defeat the interest of respondents 1 and 2 is seeking the relief supra so as to scuttle the respondents 1 and 2 from realising the amounts due on the basis of the agreements entered into with the 3rd respondent and the prospective purchasers.

18. It is the further submission of the learned standing counsel that on the basis of Application No.74/2021 before the National Company Law Tribunal, with regard to the affairs of the 3rd respondent, Resolution Professional has been appointed by initiation of Corporate Insolvency Resolution Process, the original title deeds with respect to the petitioners property are sought for by one Shriram City Union Finance Ltd. in which the 1st respondent is contesting the said application. Therefore, any relief as prayed for, if granted, would cause grave prejudice to the respondents 1 and 2 and orders, if any, should await the outcome of the proceedings before the National Company Law Tribunal. Accordingly, he prays for dismissal of the writ petition.

19. Learned counsel appearing on behalf of the 3rd respondent, a company, which is under Corporate Insolvency Resolution Process for which Resolution Professional has been appointed, has placed before this Court a memo filed on behalf of the 3rd respondent by the Resolution Professional, wherein the Resolution Professional has stated that the Resolution Professional does not have any objection to the respondents 1 and 2 handing over the land document of the petitioners. Accordingly, it is pleaded that this Court may pass appropriate orders.

20. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

21. There is no dispute with regard to the entering into JVA and GPA between the petitioners and the 3rd respondent. There is equally no dispute with regard to the fact that the 3rd respondent had obtained credit facilities with respondents 1 and 2 based on the GPA and the JVA entered into with the

petitioners. It is equally not in dispute that only upon the 3rd respondent complying with the conditions with regard to pre-disbursement, disbursement of amount would take place. In the case on hand, the 3rd respondent had not fulfilled the pre-disbursement condition and resultantly, the credit facilities stood withdrawn by the Chief Manager. Further, the respondents 1 and 2 also admit that with regard to the said extension of credit facility to the 3rd respondent, there is no due with regard to the said term loan and that the term loan stood closed. Therefore, in essence, the credit facilities which have been given on the strength of the JVA and GPA stood withdrawn for non-compliance of the pre-disbursement condition and subsequently, due to certain misuse of the GPA by the 3rd respondent, the petitioners have also cancelled the GPA as well as the JVA entered into with the 3rd respondent.

22. Now the pivot on which the respondents 1 and 2 claim lien to hold the original title deeds of the petitioners is that based on the JVA and GPA as was existing then, the 3rd respondent had entered into certain sale transactions with third parties, who had, thereafter, borrowed loan from respondents 1 and 2, which borrowal has since become non-performing assets

and, therefore, debt recovery proceedings have been initiated by the respondent bank by filing O.A. No.290/2018. The respondents 1 and 2 claim that it was a tripartite agreement with the borrowers and the 3rd respondent and the 3rd respondent, being the GPA of the petitioners, the petitioners are equally liable for discharge of the dues, which has since been released based on the said tripartite agreement.

23. The contention advanced on the above lines by the respondents 1 and 2 is nothing but a fragile attempt to hold on to the original title deeds of the petitioners for realising the loan amounts which have been given to third parties by the respondent bank, to is not within the knowledge of the petitioners.

24. It is to be pointed out that the very JVA and GPA was the basis of approval of credit facilities to the 3rd respondent, which had not even taken off, as the pre-disbursement conditions were not fulfilled by the 3rd respondent. Such being the case, when the project itself had not taken off by the 3rd respondent utilising the credit given by respondents 1 and 2, this Court

is at a loss to understand as to how the respondents 1 and 2 had granted loan for the purchase of flats/villas in a project, which is financed by them, which had not even taken off. When a project which had been financed by respondents 1 and 2 had not even taken off and the 3rd respondent had not utilised the credit facilities offered to it resulting in the closure of the term loans, the grant of loan to third party borrowers for purchase of villas/flats in the said project is nothing but collusion between the officials of the respondent/bank and the borrowers and the hand of the petitioners in this deal, as alleged, is nothing but an attempt to drag the petitioners into the web so as to enable the respondents 1 and 2 to hold the said original title deeds.

25. One other aspect, which strengthens the finding of this Court above is the fact that when the credit facilities have not been utilised by the 3rd respondent, as the 3rd respondent had not fulfilled the pre-disbursement condition of submitting the relevant plans/approvals from the appropriate authorities, not only the sanction of loan to third party borrowers by the officials of the bank smacks of mala fide intent, but furthermore the credit of the loan amounts sanctioned to third party borrowers into the account of the

3rd respondent speaks large volumes about the collusion between the respondents 1 and 2, the 3rd respondent and the third party borrowers. To off-set the loss caused to the respondent bank by its officials by granting loans to third party borrowers in a project which has not even started, the properties of the petitioners are sought to be roped in and the original title deeds are sought to be retained by the respondent bank.

26. When the respondent bank, through its Chief Manager, had clearly certified that there is no due to the 1st respondent with regard to the term loan accounts pertaining to the 3rd respondent, this Court is at a loss to understand as to how the original title deeds of the petitioners could be held by respondents bank, which had granted the credit facilities on the basis of the JVA and GPA, which have since been cancelled and which credit facilities have not been utilised or acted upon by the 3rd respondent. When the respondent bank, in unequivocal terms have stated that there is no due on the term loan, which stood attached with the JVA and GPA between the petitioners and the 3rd respondent, any other loan granted by the respondent bank to any other third parties on the premise of purchasing of flat/villas in

the project to be executed by the 3rd respondent would not in any way bind the petitioners with the act of the 3rd respondent, more so when the JVA and GPA had been cancelled.

27. One other fact, which also comes in aid of the petitioners is the memo filed by the Resolution Professional appointed subsequent to the Corporate Insolvency Resolution Process initiated against the 3rd respondent firm by its financial creditors. Through the said memo, the Resolution Professional, in clear terms, has declared that there were no transactions between the corporate debtor and Bank of India with respect to the housing loan advanced to the prospective buyers and, therefore, the Resolution Professional did not have any objection to the respondent bank handing over the land documents to the petitioners. The relevant portion of the memo is quoted hereunder :-

> *"4. That the Respondent No.3 represented by the Resolution Professional states that the RP does not have any objection in the Bank of India handing over the land document to the applicant and the RP further states that the claims filed by the Bank of India, for the housing loan taken by some of the allottees were rejected by the RP, since as per the document*

made available, there were no transactions between the CD and the Bank of India, with respect to the Housing loan advanced to the prospective buyers."

28. The abovesaid finding recorded by the Resolution Professional based on the documents placed before him, stares writ large on the face of respondents 1 and 2 and gives a clean chit to the petitioners for seeking return of the original title deeds, which are entrusted with the respondent bank by the 3rd respondent consequent upon the credit facilities availed by it, which were not utilised resulting in closure of the term loan accounts.

29. When the petitioners have not availed any loan from the respondent bank, nor the GPA, viz., the 3rd respondent had availed any loan from the respondent bank and the credit facilities granted by the respondent bank stood withdrawn for non-compliance of the pre-disbursement conditions, any loans taken by other third parties would not bind the petitioners and, therefore, the respondent bank has to return the original title deeds back to the petitioners.

30. In view of the discussion made above, the relief of return of original title deeds of the petitioners, which are with the respondent bank, deserves to be answered in the affirmative and, accordingly, this writ petition is liable to be allowed.

31. For the reasons aforesaid, this writ petition is allowed and the respondent bank is directed to return the original title deeds pertaining to the properties in S.F. Nos.569, 547/1 and 548/2A of Chinnavedampatti Village, Coimbatore North Taluk, which were mortgaged by the 3rd respondent in lieu of grant of credit facilities on the term loan account, which has since been closed and no due is pending, within a period of two weeks from the date of receipt of a copy of this order. In the circumstances of the case there shall be no order as to costs.

16.06.2023

Index : Yes / No

GLN

To

1. Bank of India, Mumbai
Having Regd. Office at
Star House, T-5, ‘G’ Block
Bandrakurla Complex
Bandrakurla East, Mumbai 400 051.

2. The Chief Manager
Bank of India
Having its Branch Office at
MNo.328, DB Road, R.S. Puram
Coimbatore 641 002.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO.27415 OF 2018

Pronounced on
16.06.2023