



W.P(MD)No.113 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.113 of 2023

Muthu

... Petitioner

Vs

- 1.The District Collector,
Madurai District.
- 2.The Authorized Officer cum Secretary,
A.2248 Pandiyan Nagar Co-operative
Building Association Limited,
F/4 Ethga Building,
Pandiyan Nagar,
Kalavasal,
Madurai – 16.
- 3.The Sub-Registrar,
No.1, Joint Sub-Registrar Office,
Madurai South,
Madurai District.
- 4.The Managing Director,
Tamil Nadu Co-operative Housing
Federation Limited,
48, Ritherdon Road,
Vepery,
Chennai – 600 007.
***(R.4 is suo motu impleaded vide order
of this Court dated 04.01.2023)***

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to revoke the Mortgage deed dated 27.03.2001 in Document No. 2673 of 2001 from the third respondent and consequently directing the second respondent to return the original title deed dated 16.08.2000 in Document No. 7433 of 2000 to the petitioner, on the basis of the petitioner's representation dated 18.10.2021.

For Petitioner : Mr.R.Udhayakumar

For Respondents : Mr.A.Baskaran
Additional Government Pleader
for R.1 to R.3

Mr.S.Kanmani Annamalai for R.4

ORDER

Heard the learned counsel on either side.

2.The writ petitioner had availed mortgage loan to the tune of Rs.2,00,000/- (Rupees Two Lakhs only) from the second respondent. The said mortgage transaction was also duly registered. The petitioner has since cleared the mortgage liability. He now wants two things:

- a) Return of the original document
- b) Discharge of the mortgage transactions

Even though the petitioner has been knocking the doors of the second respondent, both these prayers have not been conceded by the mortgagee. That led to the filing of this writ petition.



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3.It now transpires that the second respondent has entered into several re-financing transactions with the federation. The practice of the federation is to make available the requisite funds after collecting the relevant documents. The stand of the fourth respondent is that a sum of Rs.3,00,000/- was extended on the strength of the subject mortgage deed. The second respondent would claim that only a sum of Rs.2,00,000/- was paid. The stand of the federation is that if this liability is cleared in full, the document will be returned and the transaction can also be cancelled.

4.The learned counsel appearing for the federation also relied on the order dated 28.01.2022 made in W.A(MD)No.22215 of 2021 (C.Ramesh & Others Vs The Housing Registrar & Others). A detailed counter affidavit has also filed by the fourth respondent. The learned Standing Counsel took me through its contents.

5.After carefully considering the contentions on either side, I am of the view that the writ petition will have to be allowed. It is true that the money advanced by the fourth respondent to the second respondent has not been returned. But on this ground, the fourth respondent cannot withhold the petitioner's original title deed. This is primarily because the petitioner is not



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party to the contract between the second respondent and the fourth respondent.

The fourth respondent will have to independently proceed against the second respondent for recovering their dues. The petitioner cannot be made casualty or victim in the crossfire between the respondents 2 and 4. In this view of the matter, this writ petition is allowed with the following directions:

a)The fourth respondent is directed to return the petition mentioned title document to the second respondent within a period of three weeks from the date of receipt of a copy of this order. The petitioner is entitled to collect the same from the second respondent after giving due acknowledgment.

b)The second respondent will depute an authorized representative for registering the discharge receipt already issued by the second respondent. This shall be done within a period of four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

13.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA



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G.R.SWAMINATHAN, J.

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