



W.P(MD)No.5946 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5946 of 2022

Sasikala Dharmaraj

... Petitioner

Vs.

1.The Inspector of Police,
Economic Offences Wing - II,
Namakkal.

2.The Sub Registrar,
Vadamadurai,
Dindigul District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 2nd respondent to delete the endorsement / attachment made at the instance of the 1st respondent in respect of petitioner's property situated at Survey No.141/1A Thamaraipadi Village, Dindigul District in which Plot No.42 measuring to an extent of 1750 Square feet relating to petitioner sale deed in document No.4211 of 2016 dated 09.12.2016 registered on the file of the 2nd respondent.



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For Petitioner : Mr.V.Sukumar

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader for R2.
Mr.A.Albert James,
Govt. Advocate (Crl. Side) for R1.

ORDER

Heard both sides.

2.The issue raised in this writ petition is squarely covered by the decision reported in ***2020 SCC Online Mad 12514 (R.G.N.Velayudhan Vs. Superintendent of Police and Others)***. Paragraph Nos.9, 10 and 11 of the said decision read as follows:-

“(9)Article 300A of the Constitution of India guarantees that no person can be deprived of his property save by the authority of law. A right which was a Fundamental Right, has now become a Constitutional Right.

(10)In view of the above guarantee given to every owner of a property by the Constitution, the right to deal with the property cannot be deprived unless otherwise by the authority of



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law. An Investigation Officer cannot merely write a letter to the Sub Registrar and create an entry in the Encumbrance Certificate. The Code of Criminal Procedure does not provide for such a right to the Investigation Officer and even the power of attachment of property under Section 102 of the Code of Criminal Procedure is limited only to movable property. The law on the issue has been settled by the Hon'ble Supreme Court of India in the recent judgment reported in 2019 [4] MLJ [Crl.] 456 [Nevada Properties Private Limited V. State of Maharashtra and Others].

(11)In view of the above, it is clear that the 3rd respondent is not vested with the power to give a letter to the Sub Registrar and create an encumbrance over the property. In this case, the First Information Report was registered in the year 2011 and the Investigation Officer could have easily adopted the procedure given in the relevant Enactment and got the property attached, if he was able to prima facie establish that the sale itself was done to defraud the depositors. Unfortunately, the 3rd respondent has not resorted to this procedure till date. Even now, it is not too late and the 3rd respondent can always proceed further and act in accordance with law”

3.In this case also based on the letter written by the first respondent, the impugned encumbrance was created. Creating of said



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encumbrance is illegal. The second respondent is directed to delete the same from the encumbrance register. It is of course open to the authorities to proceed in accordance with law. The second respondent will carry out the deletion within a period of five weeks from the date of receipt of a copy of this order.

4. With this liberty to the authorities, this writ petition is allowed.

No costs.

04.10.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1. The Inspector of Police,
Economic Offences Wing - II,
Namakkal.
2. The Sub Registrar,
Vadamadurai,
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G.R.SWAMINATHAN, J.

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