



W.P.(MD)No.5984 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS. JUSTICE L.VICTORIA GOWRI

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State Bank of India,
Stressed Assets Recovery Branch,
No.377, Dr.Nanjappa Road,
Behind N.S.Palaniappa Nursing Home,
Coimbatore – 641 018,
Rep. by its Authorized Officer,
N.Jayarajan

: Petitioner

Vs.

1.The Inspector General of Registration,
Santhome High Road,
Chennai.

2.The Assistant Chits Registrar,
North & South Chennai Chit Funds,
Court, Chennai.

3.Sub Registrar,
Karur West, Karur.

: Respondents



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PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus to direct the third respondent to remove the charge created by document No.2 of 2019 as per the order of the 2nd respondent herein within time frame fixed by this Court.

For Petitioner : Mr.K.P.S.Palanivelrajan
Senior Counsel for
M/s K.R.Raajhavel

For Respondents : Mr.M.Prakash
Addl. Govt. Pleader for R1 and R2

Mr.S.P.Maharajan
Spl. Govt. Pleader for R3

ORDER

(Order of the Court was made by R.SUBRAMANIAN, J)

The secured creditor, namely, State Bank of India seeks a Writ of Mandamus to direct the Sub Registrar, Karur West, Karur, to remove the charge created pursuant to the order of the Assistant Registrar of Chits, North & South Chennai Chit funds Court, Chennai passed under Section 68 of the Chit Fund Act, 1982.



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2.The owners of the subject property, namely, Mr.C.Mahendran and others appear to have borrowed money from the petitioner bank on the strength of the security of the property and in exercise of its right as a secured creditor, the bank had sold the property under the SARFAESI Act. After the said sale, the bank found an entry recorded in the form of order of attachment passed by the Arbitrator under the provisions of the Chit fund Act, 1982. The bank is before this Court seeking a direction to remove the attachment. We do not think such a prayer could be granted. It is open to the Registrar of Chit funds under the Chit fund Act to effect attachment of immovable properties. Such attachment will be subject to the right of the bank to recover the dues since the mortgage is prior to the order of attachment. If the bank had already sold the property and realized the debts, if there is any surplus out of the sale proceedings, the Chit fund Company which has obtained the order of attachment, can claim such surplus. If there is no surplus, the Chit fund Company cannot claim anything based on the said attachment. We, therefore, do not think that the Sub Registrar could be directed to remove the entries in the encumbrance certificate. Section 26(E) of the SARFAESI Act gives priority to the secured creditor/bank the same



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cannot be relied upon to undo the attachment made by another authority in exercise of its statutory power. We therefore, see no reason to entertain this writ petition.

3.Hence, this writ petition fails and the same is dismissed. No costs.

[R.S.M., J.] & [L.V.G., J.]
20.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
skn

To

- 1.The Inspector General of Registration,
Santhome High Road,
Chennai.
- 2.The Assistant Chits Registrar,
North & South Chennai Chit Funds,
Court, Chennai.
- 3.Sub Registrar,
Karur West, Karur.



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