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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.7040 of 2023

and

W.M.P.(MD)No.6651 of 2023

S.Chandra Priya

... Petitioner

vs.

1.The District Registrar,
Karaikudi, Sivagangai District.

2.The Sub Registrar,
Tiruppathur, Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent Sub Registrar in refusal Number:RFL/Tiruppathur-Karaikudi/46/2022, dated 16.08.2022 and to quash the same and to further direct the second respondent herein to cancel the Memorandum of Deposit (MOD) of title deeds done in favour of the Indian Overseas Bank, Beema Nagar Branch, Trichy with regard to the loan against property – 091203453000006 availed by the petitioner.



For Petitioner :Ms.A.Amala
For Respondents :Mr.M.Prakash
Additional Government Pleader

ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to the proceedings of the second respondent/Sub Registrar, Thirupathur, Sivagangai District in Refusal No.RFL/Thirupathur-Karaikudi/46/2022, dated 16.08.2022 and consequently, to direct the said second respondent to cancel the Memorandum of Deposit of Title Deed executed in favour of the Indian Overseas Bank, Beema Nagar Branch, Trichy, relating to a loan against the property in Loan No.0912303453000006 availed by the petitioner herein.

2.Heard Ms.A.Amala, learned Counsel for the petitioner and Mr.M.Prakash, learned Additional Government Pleader for the respondents.

3.The petitioner had obtained loan from Indian Overseas Bank, Beema Nagar Branch, Trichy. For the purpose of release and sanction of



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loan, the said Indian Overseas Bank had called upon the petitioner to provide collateral security. The petitioner had accordingly provided as security, a property measuring 2765.75 sq.ft, in Plot No.RC-11 in S.No. 268/1 sub division G.R. Survey No.268/33 in 2-SMH Complex, Thiruppathur Town Panchayat, Sivagangai District.

4.The petitioner has been the beneficiary of the sale deed registered as Doc.No.2845/2015, dated 12.10.2015 in the office of the Sub Registrar, Thirupathur sofar as that property is concerned. The petitioner had then diligently repaid the loan. At the time when the loan was sanctioned and obtained, a Memorandum of Deposit of Title Deed had been executed by the petitioner.

5.After repayment of the loan, the petitioner sought to register the cancellation of the Memorandum of Deposit Title Deed. The second respondent however refused to register the cancellation deed claiming that the property is part of TELC (Tamil Evangelical Lutheran Church) property and that a litigation in that regard before a Division Bench of this Court in ***W.P.No.11679 of 2017*** is pending in ***E.A.Chandrasekaran***



vs Inspector General of Registration, Chennai and others, and by order

dated 04.05.2017, the Division Bench had stated that a circular must be issued by the said first respondent to all the Sub Registrars in the State of Tamil Nadu not to register any document relating to properties belonging to or owned by the fourth respondent therein/the Tamil Evangelical Lutheran Church.

6.The learned Counsel for the petitioner however claimed that the refusal check slip had been issued mechanically without examining the facts of this particular case. It had been stated that the petitioner is not conveying the property to any third party. The petitioner is not creating any charge or interest of the property to any third party. The petitioner is not creating any encumbrance over the said property. Rather, the petitioner is clearing an existing mortgage and that is a right vested with the petitioner having paid back the amount due to the bank from which loan was obtained by him.

7.The right of the petitioner is to ensure that cancellation of mortgage registered vests and goes along with the right to hold property



as guaranteed under Article 300A of Constitution of India. The right to hold property would also include right to hold property freely and without any curbs on the same.

8. In the instant case, a mortgage is created. The said document was registered by the very said respondent. Now the mortgage has been discharged. A document was presented to cancel the Memorandum of Deposit of Title Deed.

9. An obligation is cast on the second respondent to register the said document. It only ensures that the petitioner enjoys the property. Right to hold property may be a fundamental right, but it is a Constitutional right recognised by Courts and the second respondent cannot deny and should not deny registration of cancellation of Memorandum by Deposit of Title Deed.

10. A direction is given that if the document is otherwise in order, the second respondent should register the same within a period of ten working days from the date on which the said document is once again



presented for registration in appropriate manner.

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11.The Writ Petition stands allowed. No costs. Consequently,
connected miscellaneous petition is closed.

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

12.06.2023

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To

1.The District Registrar,
Karaikudi, Sivagangai District.

2.The Sub Registrar,
Tiruppathur, Sivagangai District.



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C.V.KARTHIKEYAN, J.

cmr

Order made in
W.P.(MD)No.7040 of 2023

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