



W.P(MD)No.8393 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2023

CORAM :

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN**

**W.P(MD)No.8393 of 2023
and
W.M.P(MD)No.7718 of 2023**

R.Shanmugapriya

... Petitioner

Vs.

- 1.The Deputy Registrar of Co-operative Societies,
O/o.The Deputy Registrar of Co-operative Societies,
Srivilliputtur,
Virudhunagar District.
- 2.The Secretary,
W.Pudupatti Primary Agricultural Co-operative Credit Society,
W.Pudupatti, Watrap Taluk,
Virudhunagar District.
- 3.The Sub Registrar,
O/o.The Sub-Registrar,
Vathirayiruppu,
Virudhunagar District.
- 4.The Authorized Officer,
City Union Bank,
Credit Recovery and Management Department,
“NARAYANA” Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam – 612 001.



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5.The Branch Manager,
City Union Bank,
Srivilliputhur Branch,
Srivilliputhur,
Virudhunagar District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the first respondent to lift and withdraw the attachment made against the property in S.No. 693/1 situated at W.Pudupatti Village, Watrap Taluk, Virudhunagar District by considering the petitioner's representation dated 16.03.2023.

For Petitioner : Mr.R.Aravindraaj

For R1 : Mr.R.Baskaran,
Additional Advocate General,
assisted by
Mr.T.Amjad Khan,
Government Advocate

For R3 : Mr.D.Sasikumar,
Additional Government Pleader

For R4 & R5 : Mr.V.S.Karthick



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ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

Heard the learned counsel appearing on either side.

2. The petitioner is the auction purchaser. The property was sold by respondents 4 and 5 by invoking the provisions of the SARFAESI Act, 2002. The sale certificate issued in favour of the petitioner was also registered. However, when the petitioner wanted to mortgage the property for availing a loan, the mortgage is not registered on the basis of an order of attachment made by the first respondent on an application made by the second respondent. The order of attachment is dated 25.05.2018.

3. The learned Additional Advocate General submits that when the attachment is in force, the petitioner cannot execute a mortgage relying upon a circular issued by the Inspector General of Registration.

4. The circular relied by the learned Additional Advocate General cannot override the statutory provisions. Section 26-E of the SARFAESI Act, 2002, states that the charge of the secured-creditor would have precedence over all other charges.



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5. This Court has consistently held that if the property is sold under the SARFAESI Act, 2002, by the secured-creditor and the charge is registered, then the orders of attachment would not come in the way of the said sale. Reference can be had to the order dated 31.08.2023 issued by this Court in W.P(MD)No.674 of 2023.

6. In light of that, the order of attachment passed by the first respondent would not be an impediment for registration of the mortgage of the property purchased by the petitioner under the SARFAESI Act, 2002, in case there is no other impediment.

7. The writ petition is accordingly allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.G., C.J.]

[K.K.R.K, J.]

29.11.2023

Index : Yes / No
Neutral Citation : Yes / No
PM



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