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W.P.(MD)NO.12968 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.12968 of 2023

M/s.Tata Capital Housing Finance Ltd.,
Plot No.1, Ground Floor,
Sivagangai Main Road,
K.K.Nagar, Madurai – 625 020,
Rep. by its authorized signatory
P.Ramalingam

... Petitioner

Vs.

1. The District Registrar,
Madurai North,
171, Palace Road, Madurai South,
Madurai – 625 001.

2. The Sub Registrar Office,
No.869, Melur Main Road,
Othakadai, Madurai – 625 107.
(Opp. To JPR Rice Mill)

3. J.Manickam

4. The Sub Registrar,
Registration Department,
Vilangudi, Madurai District.
(R-4 is *suo motu* impleaded
vide order dated 15.12.2023.)

... Respondents

Prayer: Writ petition filed under Article 226 of the
Constitution of India, to issue a Writ of Mandamus, directing
the first respondent to consider the representation dated



09.01.2023 and to direct the second respondent to register the sale certificate dated 07.10.2022 in respect of the secured property mentioned herein above in favour of the third respondent Mr.J.Manickam.

For Petitioner : Mr.M.Arunachalam

For R-1, R-2
& R-4 : Mr.S.Ra.Ramachandran,
Additional Government Pleader.

For R-3 : Mr.S.Selvakumar

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner is a non-banking finance company. It granted home loan in favour one Ananthi and Rajkumar. They mortgaged the petition-mentioned property. They committed default. The petitioner thereupon brought the property to sale under the provisions of SARFAESI Act. The third respondent purchased the property from the petitioner in the auction held on 25.08.2022. Sale certificate was also issued. When it was presented for registration, the registering authority noticed



that there was a discrepancy in the particulars set out in the Memorandum of Deposit of Title Deed and the sale certificate and declined to register the document. Thereupon, the present writ petition came to be filed.

3. When the matter was taken up for hearing, the following interim order was passed on 21.06.2023:-

“ A direction is given to the petitioner herein to present the sale certificate in the proper manner through on-line and also enclose the original sale deed and the document which is sought to be registered, which is a sale certificate.

2. The issue which has been raised by the second respondent is that the mortgagor while executing the mortgage deed has given a different plot number and the area also differs. He had handed over simultaneously the title deed of the property on the basis of which loan was extended to the petitioner herein.

3. Owing to default of the loan, the property as mentioned in the sale deed/title deed had been brought to auction and had been sold.



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Consequent to that, the sale certificate had been presented for registration. Since there is a difference in plot number and extent as found in the mortgage deed and as found in the sale certificate, the request of the petitioner to register the document had not been considered favourably by the second respondent.

4. Let the petitioner explain these facts to the second respondent. The second respondent shall take a decision to register or not to register in the manner of law. The second respondent shall keep in mind that the loan was secured on the title deed of the property. The mortgage deed is only incidental.

5. Post the matter once again on 21.07.2023. Within this time, let the document be presented before the second respondent."

4. But the registering authority is continuing to stick to their stand. The registering authority wants the petitioner to effect rectification of the Memorandum of Deposit of Title Deed(MODT). The stand of the second respondent is not



feasible of compliance. Now that the property has been sold to the third respondent, the original owner / borrower would obviously not be interested in facilitating the assurance of title.

5. As rightly pointed out by the learned counsel appearing for the petitioner, the loan was granted on the strength of the property. The sale certificate issued by the petitioner corresponds to the particulars set out in the parent document. There is no discrepancy regarding the survey number or even the extent of the property. It is true that in the MODT, there were two errors. Plot No.27 has been mentioned as plot No.27A. The extent of the property also varies. But there is correspondence between the particulars set out in the parent sale deed and the sale certificate. Therefore, the fourth respondent can very well be directed to register the document. What matters is the title document and not the MODT.

6. The petitioner is permitted to re-present the sale certificate before the fourth respondent. The fourth respondent shall register the same and release it subject to



fulfilment of the other usual formalities. This writ petition stands allowed. No costs.

15.12.2023

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

PMU

To:

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