



W.P.(MD)No.17563 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**W.P.(MD)No.17563 of 2023**

**and**

**W.M.P.(MD)No.14661 of 2023**

S.P.Varadarajan

... Petitioner

versus

1. The Sub Registrar,  
Podumbu,  
Madurai.

2. The Sub-Registrar,  
Joint IV Sub-Registrar,  
Madurai.

3. Shri Ram Transport Finance  
Company Limited,  
No.29, 2<sup>nd</sup> Floor, Nataraja Complex,  
Melur Main Road,  
K.K.Nagar,  
Madurai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,  
seeking for the issuance of Writ of Certiorarified Mandamus, to call for



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the records relating to the impugned refusal check slip No.RFL/Podumbu/130/2023 of the Sub-Registrar, Podumbu dated 04.07.2023 and set aside the same and consequently issue a direction to the Sub Registrar, Podumbu to register the Memorandum of Title Deeds executed by the petitioner in favour of AXIS Bank, dated 29.07.2022 in respect of the schedule mentioned property and issue a further direction to the 2<sup>nd</sup> respondent to strike off/efface/delete the encumbrance entry in Doc.No.21/2020 on the file registered on 03.03.2020 in favour of the 3<sup>rd</sup> respondent in respect of Survey No. 65/2B, Milakaranai Village over an extent of 1.5 acres.

For Petitioner : Mr.N.Dilipkumar

For R1 and R2 : Ms.D.Farjana Ghoushia,  
Special Government Pleader

For R3 : Mr.Ananth C.Rajesh

### **ORDER**

This writ petition is filed as against the refusal check slip issued by the Sub-Registrar, Podumbu, dated 04.07.2023



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2. The learned counsel appearing for the petitioner submits that the petitioner has purchased properties from one Kumaravel, vide a registered sale deed dated 14.12.2017, based on the settlement deeds executed by one Banumathi and her children in favour of the said Kumaravel on 12.02.2016, 17.02.2016 and 17.02.2016. After the purchase, the petitioner has also executed three registered mortgage deeds in favour of the Axis Bank on 23.01.2020, 13.02.2020 and 31.08.2021. When the petitioner has approached the second respondent/the Sub Registrar, Joint IV Sub Registrar, Madurai, for registering the Memorandum of title deed dated 29.07.2022, the second respondent refused to register the same on the ground that encumbrance entry has been made in the petitioner's properties on 03.03.2020 as Document No.21/2020. This document appears to have been registered by the second respondent based on the arbitration award passed in I.A.No.1 of 2020 in Arbitration Case Nos.617 to 624 of 2020 and 650 to 655 of 2020 and this award has been passed on the presumption that the property belongs to the said Banumathi. Hence,



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the petitioner is before this Court.

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3. In support of his case, the learned counsel appearing for the petitioner has also relied on a Judgment of this Court in the case of ***Tamilnad Mercantile Bank Limited, Chainthamani Branch, 248-B, Rekha Towers, Kamarajar Salai, Madurai – 625 009 by the Chief Manager/Authorized Officer Mr.P.Ramesh vs. The Joint I Sub Registrar, O/o. The Joint I Sub Registrar, Madurai South, Madurai and others***, reported in ***2021 1 Writ L.R. 462***.

4. The learned Special Government Pleader appearing for the respondents 1 and 2 submits that the respondents have received an objection along with the award passed by the Arbitrator from the 3<sup>rd</sup> respondent and therefore, the respondents have refused to register the document submitted by the petitioner.

5. The learned counsel appearing for the 3<sup>rd</sup> respondent, by relying on the counter affidavit, submits that Mrs.Banumathi and



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K.Susella had already executed a Memorandum of Deposit of Title Deeds in favour of Karur Vysya Bank, Gnanaolivupuram, Madurai, on 13.03.2015 vide Doc.No.2483/2015 for the loan liabilities borrowed from Karur Vysya Bank with respect to the property in Survey No. 65/2B of Ward No.3, Madurai Corporation. Based on the above attachment, the property details were presented before the learned Arbitrator for attaching the same. He further submits that after the deposit of title deeds with the 3<sup>rd</sup> respondent, the said Banumathi has effected a settlement in favour of her husband vide Doc.No.1464/2016 dated 12.02.2016, who in turn has sold the same to the petitioner. The 3<sup>rd</sup> respondent was not aware of the subsequent encumbrance made by Mrs.Banumathi. He further submits that till now, the mortgage made in favour of Karur Vysya Bank, Gnanaolivupuram, Madurai has not been redeemed.

6. In response to this contention made by the learned counsel for the 3<sup>rd</sup> respondent, the learned counsel appearing for the petitioner



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submits that the mortgage made before the Karur Vysya Bank has already been discharged by the said Banumathi in the year 2017 and he has also enclosed the discharge receipt issued by the Karur Vysya Bank.

7. This Court considered the rival submissions made.

8. The 3<sup>rd</sup> respondent appears to have initiated an arbitration proceedings as against the petitioner's predecessor in title, namely, one Banumathi in the year 2020 and passed an award. Based on that award, encumbrance entry has been made in the petitioner's properties on 03.03.2020 registered as Document No.21/2020. Therefore, the respondents 1 and 2 have refused to register the document submitted by the petitioner.

9. In a Judgment of this Court in the case of ***Tamilnad Mercantile Bank Limited, Chainthamani Branch, 248-B, Rekha Towers, Kamarajar Salai, Madurai – 625 009 by the Chief***



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***Manager/Authorized Officer Mr.P.Ramesh vs. The Joint I Sub***

***Registrar, O/o. The Joint I Sub Registrar, Madurai South, Madurai***

***and others***, reported in ***2021 1 Writ L.R. 462***, relied upon by the learned counsel appearing for the petitioner, it has been observed as follows:

*10. In the case on hand also, the registered mortgage was admittedly prior. The 9th respondent in W.P.(MD)No. 6976 of 2020 / 8th respondent in W.P.(MD)No.1101 of 2021 sought for an attachment in an arbitration proceedings, in which, the petitioners Bank was obviously not a party, as the transaction has got nothing to do with it. The said order was also subsequent to the mortgage created in favour of the petitioner. Now, a third party right has also been created through the sale certificate issued in favour of the auction purchasers, viz., respondents 7 & 8 in W.P.(MD)No.6976 of 2020 and the 7th respondent in W.P. (MD)No.1101 of 2021. If the 1st respondent raise a contention that in view of the recording of the attachment order by it already, the subsequent sale deed cannot be registered, then the very act of recording the said interim order of attachment passed by the Tribunal itself ought not to have been done, as there was a subsisting mortgage on*



that date.

11. *The learned Counsel appearing for the 9th respondent in W.P.(MD)No. 6976 of 2020 / 8th respondent in W.P.(MD)No.1101 of 2021 submitted that there is a procedure violation. We are not concerned with the said issue. The question for consideration is as to whether the earlier mortgage would prevail as against the subsequent interim attachment. The question of procedural violation can only be raised by the borrower, who did not do so. Therefore, the said contention has got no relevance to the case on hand.*

12. *The submission made on the maintainability of the writ petitions is also rejected. We are not on the merits of the order passed by the Arbitration Tribunal, which is by way of an interim measure. The question is with regard to the upholding of one's own existing right, which is prior to the loan given by the 9th respondent in W.P.(MD)No. 6976 of 2020 / 8th respondent in W.P.(MD)No.1101 of 2021, in favour of the borrowers. Certainly, a mortgage deed creates right over the properties mentioned thereunder in favour of the mortgagee.*

13. *Therefore, looking from any perspective, we are of the view that the petitioner Bank cannot be denied the*



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*relief as sought for. In such view of the matter, both the writ petitions stand allowed. The first respondent in both the writ petitions are directed to register the sale certificates issued by the petitioner Bank in favour of the respondents 7 & 8 in W.P.(MD)No.6976 of 2020 and the 7th respondent in W.P.(MD)No.1101 of 2021. Consequently, the encumbrance / attachment entry made on the file of the first respondent with respect to the properties, which are subject matter of the two mortgage deeds and the subject matter of these writ petitions, are directed to be deleted by the first respondent....”*

10. The petitioner has purchased the property in the year 2017, i.e., even before the initiation of the arbitration award. Therefore, in view of the decision rendered by this Court as *cited supra*, this writ petition is allowed. The impugned refusal check slip No.RFL/Podumbu/130/2023 of the Sub-Registrar, Podumbu dated 04.07.2023 is set aside. The Sub Registrar, Podumbu, is directed to register the Memorandum of Title Deeds executed by the petitioner in favour of AXIS Bank, dated 29.07.2022. The second respondent is



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directed to strike off the encumbrance entry made in favour of the 3<sup>rd</sup> respondent on 03.03.2020 in Doc.No.21/2020. No costs.

Consequently, connected miscellaneous petition is closed.

**29.08.2023**

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

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**B.PUGALENDHI, J.**

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