



W.P(MD)No.22506 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.08.2023

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE C.KUMARAPPAN**

W.P(MD)No.22506 of 2022

S.Mallika

... Petitioner

Vs.

1.The Authorized Officer,
M/s.Repco Home FinanceLtd.,
No.24, Ram Arcade,
B-14, II Floor, 11th Cross,
Main Road, Thillai Nagar,
Trichy – 620 008.

2.The Tahsildar,
Adidraavidar Welfare,
Tirucirapalli.

.. Respondents

(R-2 is suo motu impleaded vide Court order dated
21.04.2023 in W.P(MD)No.22506 of 2022 by
RSMJ & LVGJ)

PRAYER: Petition under Article 226 of the Constitution of India seeking
issuance of a Writ of Mandamus, directing the respondent to refund
forthwith the sale consideration of Rs.374,400/- and reimburse the
registration and other incidental charges of Rs.34,943/- totally a sum of

Page 1 of 7



W.P(MD)No.22506 of 2022

Rs.4,09,343/- along with interest at the rate of 12% per annum from 23.03.2009 till the date of realization.

For Petitioner : Mr.S.I.Muthiah
For R-1 : Mr.V.Veerapandian, for
M/s.Vast Law Associates
For R-2 : Mr.D.Sachikumar,
Additional Government Pleader

ORDER

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

We have heard Mr.S.I.Muthiah, learned counsel for the petitioner, Mr.V.Veerapandian, for M/s.Vast Law Associates, learned counsel for the first respondent and Mr.D.Sachikumar, learned Additional Government Pleader for the second respondent.

2. It is submitted that the petitioner had purchased the property in an auction conducted by the bank under the provisions of the SARFAESI Act, 2002. The sale was conducted on 31.03.2008. The petitioner paid the entire amount and the Sale Certificate was also issued to the petitioner on 23.03.2009. The grievance of the petitioner is that the petitioner is not placed in possession of the property in spite of repeated requests.



W.P(MD)No.22506 of 2022

3. The learned counsel for the bank submits that simple mortgage of the property was created by the borrower. No encumbrance was noted at that time. The mortgage was created in the year 2006. The two properties were sold in the auction to the petitioner ie., Survey Nos.288/1 and 288/2.

4. Admittedly, the possession of the property purchased by the petitioner is not delivered to the petitioner though the sale is of the year 2008.

5. The learned counsel for the bank submits that at the time of issuance of Sale Certificate, possession has been handed over to the petitioner, but it was a vacant site.

6. The learned Additional Government Pleader, on instructions from the concerned Tahsildar, submits that the land in Survey No.288/2 has been acquired by the Government and award has been passed on 14.02.1997, for providing house sites to poor Adi Dravidas and the plots have been laid.



W.P(MD)No.22506 of 2022

7. As such, since the year 1997, the property bearing Survey No.288/2 vests with the Government.

8. The land bearing Survey No.288/2 was admeasuring 1 acre 12 cents and the land bearing Survey No.288/1 was admeasuring 34 cents. The sale was a joint sale. The bank had invoked the provisions of the SARFAESI Act, 2002, to auction the property.

9. It appears that under the award, the land in Survey No.288/2 was acquired by the Government on 14.02.1997 and compensation was also paid to the land owner. The mortgage was created only in the year 2006 in favour of the bank. It was for the bank to take proper care for mortgaging the property. The borrower was not the owner of the land in Survey No.288/2 on the date of mortgage.

10. Even under the Sale Certificate, the plot Nos.15,16, 17 and 18 have been sold to the petitioner. The petitioner had purchased the properties in auction from the bank for a sale consideration of Rs.3,74,400/- and had to pay registration charges. The amount of sale consideration and registration charges is Rs.4,09,343/-.



W.P(MD)No.22506 of 2022

11. Now, the bank is not in a position to give possession to the petitioner. The petitioner is nowhere at fault. Even on the date when the property was mortgaged, the borrower was not the owner.

12. The petitioner cannot be at fault. The petitioner relied on the representation of the bank while purchasing the property. In light of that, the prayer sought for by the petitioner for the refund of the amount is legitimate.

13. In light of that, we pass the following order:

(i) The sale certificate issued in favour of the petitioner in respect of the land in Survey Nos.288/1 and 288/2 bearing Plot Nos.15, 16, 17, 18 situated at Chozhamaadevi Village, Thirvarambur Taluk, is set aside.

(ii) The parties may take further steps to cancel the registration as may be required. The charges for cancellation shall be borne by the petitioner.



W.P(MD)No.22506 of 2022

WEB COPY

(iii) The bank shall refund Rs.4,09,343/- to the petitioner with simple interest at the rate of 7% per annum from the date of registration of the Sale Certificate till the date of payment. The payment shall be made within two months from today.

14. With the above directions, the writ petition is disposed of.

No Costs.

(S.V.G., CJ.)

(C.K., J.)

30.08.2023

NCC : Yes/No
Index : Yes/No
PM

To:

The Tahsildar,
Adidraavidar Welfare,
Tirucirapalli.



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W.P.(MD)No.22506 of 2022

THE HON'BLE CHIEF JUSTICE
and
C.KUMARAPPAN, J.

PM

W.P.(MD)No.22506 of 2022

30.08.2023