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W.P.(MD)NO.28693 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.28693 of 2022

K.Athiban Kuthalingam

... Petitioner

Vs.

1. The Sub Registrar,
Alangulam,
Tenkasi District.

2. The Secretary to Government,
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
Chennai.

3. Sri Lakshminarayana Finance,
No.96, West Cart Street, Ambasamudram,
Tirunelveli District,
Through its Partner S.A.Kanna.
(R-2 & R-3 are suo motu impleaded vide
Order dated 20.01.2023 in
W.P.(MD)No.28693 of 2022)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned refusal check slip No.RFL/Alankulam/22/2022 dated 16.12.2022 and quash the same and further directing the respondent to receive and register the sale deed dated 16/11/22 executed by the petitioner in favour of one R.Ravichandran.



For Petitioner : Mr.G.Prabhu Rajadurai

For R-1 & R-2 : Mr.S.Shanmugavel,
Additional Government Pleader.

For R-3 : Mr.V.S.Kishok Kumar

* * *

ORDER

Heard the learned counsel on either side.

2. The petition mentioned property originally belonged to the petitioner's mother. She executed a deed of mortgage in favour of one Sri Lakshminarayana Finance on 24.03.2017 vide document No.1139 of 2017 on the file of the Sub Registrar, Alangulam. The petitioner's mother has filed O.S.No.85 of 2022 on the file of the Additional District Court, Tenkasi, seeking return of documents on the premise that she never availed any mortgage loan from the financier and that it was only an agreement for availing the mortgage loan. Be that as it may during the pendency of the suit, the petitioner's mother executed the petition mentioned settlement deed



dated 11.10.2021. The registering authority declined to register the document. The petitioner therefore came before this Court by filing W.P.(MD)Nos.19054 and 19062 of 2021 for directing the registering authority to register the settlement deed. This Court disposed of the writ petition vide order dated 27.10.2021 by directing the registering authority to issue notice to the financier to ascertain, if there is any clause in the mortgage agreement restraining creation of further encumbrance. It was noted that there was no such clause in the mortgage agreement. Therefore, the settlement deed executed in favour of the writ petitioner was registered as document No.279 of 2022.

3. The petitioner now wants to sell the property in favour of a third party. When the said sale deed was presented before the registering authority, an objection was taken in the light of the recently amended Rule 55A of the Registration Rules. The stand of the registering authority is that unless the earlier encumbrance in the form of mortgage agreement is removed, he cannot present the document. In the alternative, the petitioner must get NOC from the financier. Unless one of the



courses of action is taken, the document will not be registered.

Questioning the stand of the registering authority, the present writ petition came to be filed.

4. During the pendency of the writ petition, the Principal Seat of the Madras High Court vide order dated 08.02.2023 made in ***W.P.No.2758 of 2023 (The Federal Bank Ltd., Rep. By its Senior Manager, Coimbatore V. The Sub Registrar, Pollachi and others)*** has struck down the first proviso to Rule 55A of the Registration Rules. Paragraph No.26 of the aforesaid judgment reads as follows:-

“ 26. In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso. ”

5. Therefore, the objections raised by the respondents can no longer survive. That apart, when the settlement deed earlier executed in favour of the petitioner was allowed to be



registered, it is not open to the financier or the registering authority to once again raise the very same issue though in a different form.

6. Looked at from any angle, the impugned refusal check slip cannot be sustained and it is quashed. The petitioner is permitted to re-present the document in question before the first respondent. The first respondent will receive the same and register the document and release it subject to fulfilment of the other usual formalities.

7. This writ petition stands allowed. No costs.

16.02.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

Note : Issue order copy on 21.02.2023.

To:

1. The Sub Registrar,
Alangulam, Tenkasi District.
2. The Secretary to Government,
Commercial Taxes and Registration Department,
Government of Tamil Nadu, Chennai.



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6

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G.R.SWAMINATHAN,J.

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