



W.P.(MD) No.29194 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.29194 of 2022
and
W.M.P(MD) No.23129 of 2022

The General Manager,
Paramakudi Co-operative Urban Bank N 45,
Paramakudi,
Ramanathapuram District.

... Petitioner

Vs.

1.The State Tax Officer,
Paramakudi,
Ramanathapuram District.

2.The Sub Registrar,
Paramakudi,
Ramanathapuram District.

3.Jagadeeswari
(R3 is impleaded vide court order dated 04.01.2023
in W.M.P(MD) No.164 of 2023)

4.The Official Receiver,
The District Court,
Ramanathapuram.

(R4 is impleaded vide Court order dated 24.01.2023
in W.M.P(MD) No.1348 of 2023)



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Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the first respondent in Na.Ka.No.A3/3146/2001, dated 18.12.2013 and Na.Ka.No.A3/3146/2001, dated 31.01.2022 and quash the same and consequently, directing the second respondent to remove the Encumbrance entries dated 27.12.2022 in respect of the property in Survey No.46/1A to an extent of 1264 sq feet situated at Shed No.8A, SIPCOT industrial Estate Thelicahtanallur, Paramakudi, Ramanathapuram District registered in his office within the time stipulated by this Court.

For Petitioner : Mr.C.Jeganathan
For R1 and R2 : Mr.J.John Rajadurai
Government Advocate
For R4 : No appearance

ORDER

The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned proceeding of the first respondent in Na.Ka.No.A3/3146/2001, dated



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18.12.2013 and Na.Ka.No.A3/3146/2001, dated 31.01.2022 and quash the same and consequently, directing the second respondent to remove the encumbrance entries dated 27.12.2022 in respect of the property in Survey No.46/1A to an extent of 1264 sq. feet situated at Shed No.8A, SIPCOT Industrial Estate Thelicaathanallur, Paramakudi, Ramanathapuram District, registered in his office within the time stipulated by this Court.

2. The petitioner co-operative bank has filed the above writ petition stating that one Jagatheeshwari had borrowed money from the Bank on 10.08.1998 for the purpose of developing her business and the said Jagatheeshwari had availed a loan of Rs.3,00,000/- for the purpose of putting up an industrial shed. At the time of such borrowal, she had mortgaged the property in Survey No.46/1A to an extent of 1,264 sq. ft. situated at shed No.8A. After availing the loan, she had failed to repay the amount. Hence, the petitioner has initiated the steps to the auction under the SARFAESI Act and the properties were brought to sale. In the meantime, the said Jagadeeshwari had also filed an insolvency petition in



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I.P.No.4 of 2014 before the Additional District Munsif Court, Ramanathapuram. The 3rd respondent had shown the liability to the Bank for a sum of Rs.6,64,600/-. When the Bank had brought the property for public auction on 23.03.2010, no one came forward to purchase the property. The property and its documents are in the custody of the respondent Bank. While so, when they had examined the encumbrance certificate, they came to learn that there was a charge for Rs.38,431/- as the sales tax due. In the light of these entries, the petitioner was unable to sell the property and therefore, the above writ petition.

3.On 08.03.2023, this Court had directed the petitioner to give an undertaking affidavit stating that he would clear the sales tax due at the first instance and on such payment being made, the respondents 1 to 3 would have no objection to the endorsement in the encumbrance certificate being removed.

4. Today, when the matter was called, an undertaking affidavit has been filed, in which in paragraph No.6, it is stated as follows:-



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6. I further submit that during the pendency of the writ petition, the first respondent had filed the counter affidavit wherein he is claiming his dues if the said dues cleared by the petitioner Bank, they have no objection to proceed with the sale of the property. In the said circumstances, I had filed the present undertaking affidavit that I hereby undertake that I will clear the dues of the first respondent payable by the third respondent immediately after the sale of the petition mentioned property. I further submit that the petitioner requesting the first respondent to clear the above said dues without penal interest.

5. In the view of the above undertaking, the second respondent shall therefore remove the endorsement in the encumbrance certificate relating to the sale tax due within a period of one week from the date of receipt of a copy of this order. Thereafter, the petitioner shall clear the sales tax due with interest. On the due being cleared, the second respondent shall register the sale deed subject to the petitioner showing



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proof that the sale tax due has been cleared. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1.The State Tax Officer,
Paramakudi,
Ramanathapuram District.

2.The Sub Registrar,
Paramakudi,
Ramanathapuram District.



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P.T.ASHA, J.

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