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W.P.No.9880 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.12.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 9880 of 2023

S. Surekha

...Petitioner

Vs.

1. The Sub Registrar Saidapet,
Chennai South Joint-I,
537, Fanepet, Nandanam,
Chennai- 600 035
2. M/s. Tata Capital Financial Services Ltd,
Represented by its Authorized Officer,
Branch office at: No.1st Floor, Centennial Square,
No.6, Dr.Ambedkar Salai, Kodambakkam,
Chennai 600 024.
3. M/s. Kotak Mahindra Bank Ltd.,
Rep by its Authorized Officer,
Registered Office at
27, BKC C-27 G-Block,
Bandra Kurla Complex Bandra(E)
Also branch Office at
No.39, Ceebros Centre, 1st Floor,
Montieth Road, Egmore, Chennai 600 008.

4. Vijay Frankin

...Respondents



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Prayer: Writ Petition is filed under Article 226 of the constitution of India to issue a Writ of Mandamus directing the 1st respondent to consider the representation dated 14.12.2022 and to efface/delete the attachment entry reflected in the encumbrance certificate relating to the land cum building property at Block No.3, Door No 18/1, Indira Street, Sardar Colony, 5th Street, Ekkatuthangal, Chennai- 600 032 comprised in Old TS No. 102 Part, land measuring to an extent of 2.65 cents , registered as Document No. 20/2017 dated 13.09.2017 registered on the file of the 1st respondent within reasonable time period fixed by this Court.

For Petitioner : Mr.T. Muthukrishnan

For Respondent 1: Mr. P. Harish
Government Advocate

For Respondent 2: Mr. M. Arunachalam

For Respondent 3 : Served – No appearance

For Respondent 4: Not ready in notice

ORDER

The petitioner has approached this Court seeking a mandamus directing the 1st respondent to consider her representation dated



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14.12.2022 and to efface/delete the attachment entry reflected in the encumbrance certificate relating to the land cum building property at Block No.3, Door No 18/1, Indira Street, Sardar Colony, 5th Street, Ekkatuthangal, Chennai- 600 032 comprised in Old TS No. 102 Part, land measuring to an extent of 2.65 cents , registered as Document No. 20/2017 dated 13.09.2017 registered on the file of the 1st respondent within a reasonable time period fixed by this Court.

2. The petitioner had purchased a land cum building at Block No.3, Door No.18/1, Indira Street, Sardar Colony, 5th Street, Ekkatuthangal, Chennai 600 032 comprised in Old T.S.No.102 Part, land measuring an extent of 2.65 cents from the 2nd respondent through a public auction under SARFAESI Act. The petitioner would further submit that the 4th respondent had availed a loan from the 2nd respondent and mortgaged the petition property as security. Since the 4th respondent failed to repay the said loan dues, the 2nd respondent had initiated SARFAESI proceedings against the 4th respondent and brought the property for sale through which the petitioner had



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purchased the same and paid the entire consideration of Rs.86,00,000/-.

Pursuant to which, the 2nd respondent had executed a Sale Certificate dated 21.09.2022 in favour of the petitioner and the same was registered as Doc.No.14354 of 2022 on the file of the Sub Registrar Office, Saidapet, South Chennai Joint-I.

3. After purchase of the said property, the petitioner took necessary steps to mutate the revenue records in her name. During the said process, she was shocked to know that there was an order of attachment over the property made by the 3rd respondent based upon an arbitration proceedings initiated by the 3rd respondent.

4. On perusal of the encumbrance certificate, the petitioner came to learn that there was an order of attachment made by the 3rd respondent dated 13.09.2017 before the 1st respondent herein. The said attachment was made after the Memorandum of Deposit of Title Deed dated 17.07.2015 in favour of the 2nd respondent and also the sale amount does not cover the entire loan outstanding. In such



circumstances, the second charge over the said property is invalid and the same will not be binding on the petitioner. Hence, she made a representation dated 14.12.2022 before the 1st respondent to take necessary steps to cancel the order of attachment and also to remove the entry relating to the attachment from the encumbrance certificate. However, there was no response from the 1st respondent to date. Hence, this writ petition.

5. A counter affidavit has been filed by the 1st respondent wherein it is stated that the respondent has no authority to cancel the interim order made by the Sole Arbitrator and therefore, the representation of the petitioner has been rejected directing the petitioner to seek remedy before the appropriate Court in the manner known to law. Therefore, he sought to have the writ petition dismissed.

6. Heard the learned counsels on either side and perused the materials available on record.



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7. In the light of the order passed by this Court in W.P.No.22794 of 2023 filed by the Bank for the very same relief, no orders are required to be passed in this Writ Petition. Accordingly, this Writ Petition is disposed of. No costs.

03.12.2024

Index : Yes/No
Internet : Yes/No
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To,

The Sub Registrar Saidapet,
Chennai South Joint-I,
537, Fanepet, Nandanam,
Chennai- 600 035



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P.T. ASHA, J,

srn

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