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W.P.No.19015 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19015 of 2021

1.J.Khaja Mohideen
2.Jameela Begum
3.S.A.Jhan Mohamed

... Petitioners

-Vs-

1.The Punjab National Bank,
(formerly Oriental Bank of Commerce),
Rep.by its General Manager,
No.63, Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

2.Union Bank of India,
(formerly Corporation Bank),
Rep.by its Senior Manager,
213/214 Chellaperumal Nagar,
Sriperumbudur-602 105

3.M/s.Maana Sarovar Properties Development Pvt.Ltd.,
Rep.by its Director Naveen Jain,
E25, No.8, 16th Cross Street,
Besant Nagar, Chennai-600 090

... Respondents



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Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the 1st respondent to release the original title deeds and related documents under its custody in respect to the property bearing No.248/4, Semmenchery village, Tambaram Taluk, Kanchipuram District, comprised in Survey Nos.247, 248/1, 248/2, 248/3 & 248/4 measuring an extent of 2 acres and 95 cents by issuing a Receipt, declaring that the bank dues have been cleared to enable the petitioner to register the same in the office of the Sub Registrar, Neelankarai.

For Petitioner	: Mr.M.K.Kabir, Senior Counsel for M/s.Akhil Akbar Ali
For R1	: Mr.M.L.Ganesh
For R2	: Mr.N.Venkateswaran
For R3	: Mr.N.Ramakrishnan for M/s.Waraon and Sai Rams

ORDER

This Writ Petition has been filed for a direction directing the first respondent to release the original title deeds in respect of the property to an extent of 2 acres 95 cents comprised in Survey Nos.247, 248/1, 248/2, 248/3 & 248/4 situated at No.248/4, Semmenchery Village, Tambaram Taluk, Kanchipuram District.



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2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioners are the owners of the subject property. They had entered into a Joint Development Agreement with the third respondent for the purpose of developing the said property by constructing a multi-storeyed commercial complex. As per the agreement, the third respondent agreed to construct 2,50,000 sq.ft. of super built-up area and out of the total construction, the third respondent shall construct, allot and deliver to the petitioners 25% of the super built-up area and the balance 75% shall be ear marked for the exclusive use of the third respondent or their/its nominees. Further, as per the terms and conditions of the agreement, the third respondent would pay a sum of Rs.50 lakh as refundable security deposit to the petitioner. Accordingly, a General Power of Attorney was executed in favour of the third respondent on 21.04.2004 empowering the third respondent to do all works in pursuant to the Joint Development Agreement. The original title deeds were handed over to the third respondent in order to avail loan for construction.



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4. As per the Power of Attorney, the third respondent approached the first respondent by depositing the title deeds and availed loan. The first respondent had created a charge over the property in respect of the share of the third respondent. The third respondent availed a term loan of Rs.10 crore on 03.12.2005 by depositing the title deeds. That apart, the first respondent granted an additional loan of Rs.7 crore. Further, the third respondent had deposited the title deeds with the first respondent and also executed the memorandum of deposit of title deeds on 18.12.2007 registered vide document No.825 of 2008. Now the petitioner claimed release of all original title deeds, which were deposited by the third respondent with the first respondent. The petitioner also produced a communication from the first respondent dated 06.11.2007 stating that the term loan amounting to Rs.10 crore and Rs.7 crore sanctioned on 03.12.2005 and 15.11.2006 respectively have been adjusted in full in normal course and there are no dues outstanding as on date from the third respondent herein.

5. A perusal of the counter and the submission made by the second respondent reveals that the third respondent availed further loan of Rs.12.50 crore on 07.11.2008 on the basis of creation of first mortgage



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charge by way of creation of equitable mortgage by constructive deposit of title deeds as well as registered simple mortgage deed dated 10.11.2008 vide document No.2099/2009 executed by the third respondent in its capacity as lawful general power of attorney agent of the petitioners as well as in its own capacity as a borrower upon the 67,750 sq.ft of the building consisting of 16,500 sq.ft. in the second floor and 51,250 sq.ft in the third floor along with undivided share of land of 20,104 sq.ft in the IT Commercial Office Space at 'Maan Sarovar Techno Park' situated at Old No.156, Nw No.140, Semmancherry Village, Tambaram Taluk, Kancheepuram District.

6. The petitioners are the principal or mortgagor and the second respondent is the mortgagee in respect of the subject property. Thereafter, the third respondent committed default and as such, the second respondent initiated the proceedings under SURFAESI Act and the second respondent was issued recovery certificate in DRC No.206 of 2013 dated 07.10.2013 by the Debts Recovery Tribunal – III, Chennai for discharging the amount of Rs.18,47,22,138.91p together with interest at the rate of 12% per annum. Now, the petitioner sought for release of



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documents, which were already mortgaged with the second respondent.

The execution proceedings is pending as against the subject property.

7. That apart, the reply notice dated 10.08.2020 sent by the first respondent also reveals that the third respondent deposited the title deeds in the year 2005 to secure the term loan. The said term loan was discharged on 13.10.2007. During the subsistence of over drawn facility, the third respondent also availed another loan of Rs.12.50 crore in the year 2008 from the second respondent. As requested by the second respondent, the first respondent had extended the mortgage over the property for the due repayment of loan amount to the third respondent. Accordingly, the first respondent is empowered to retain the original title deeds. As per the direction issued by the second respondent on 05.11.2008, the first respondent continues to hold the title deeds on behalf of the second respondent till the repayment of the entire loan amount.

8. In view of the above, the direction sought for in this writ petition cannot be considered and the writ petition itself is devoid of



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merits and is liable to be dismissed. Accordingly, this Writ Petition

stands dismissed. No costs.

24.04.2024

Internet : Yes

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

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To

1.The General Manager,
Punjab National Bank,
No.63, Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

2.The Senior Manager,
Union Bank of India,
213/214 Chellaperumal Nagar,
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G.K.ILANTHIRAIYAN, J.

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