IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2024
Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.32168 of 2024

The Authorized Officer,
M/s.LIC Housing Finance Ltd.,
"Harrington Chamber",
Block No.C, No.30/1A, AbadulRazack 1st Street,
Saidapet, Chennai 600 015. ...Petitioner

Vs.

1. The Tax Recovery Officer,
   Office of the Tax Recovery Officer,
   Income Tax Office,
   Room No.221, BSNL Building Tower, 2nd Floor,
   BSNL Tower, No.16, Greams Road,
   Chennai 600 006.
2. The Sub Registrar
   Neelankarai Sub Registrar Office,
   Chennai-600 041. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to raise the order of impugned attachments dated 23.04.2021 in Doc No. 15 of 2021 and 05.08.2021 in Doc No. 39 of 2021 made by the first respondent reflecting in the encumbrance certificate and consequentially direct the second respondent to delete the encumbrance attachment entry dated 23.04.2021 in Doc No 15 of 2021 and encumbrance attachment entry dated 05.08.2021 in Doc No. 39 of

2021 as against the mortgaged properties bearing (1) Door No.6, VOC Nagar Extension, Injambakkam, Chennai - 600 115, Plot No. 6 measuring an extent of 2400 sq.feet comprised in Old Survey No. 13/8, as per Patta New Survey No. 13/8B, of Injambakkam Village, formerly Tambaram Taluk presently Sholinganallur Taluk, Kancheepuram District, (ii) Door No 7 VOC Nagar Extension Injambakkam, Chennai - 600 115, Plot No.7, measuring an extent of 4800 sq.feet comprised in Old Survey No. 13/8, as per Patta New Survey Number 13/8C of Injambakkam Village, formerly Tambaram Taluk presently Sholinganallur Taluk, Kancheepuram District, (iii) Door No.8, VOC Nagar Extension, Injambakkam, Chennai - 600 115, Plot No 8 measuring an extent of 4800 sq.feet comprised in Old Survey No. 13/8 as per Patta New Survey Number 13/8D, Injambakkam Village, formerly Tambaram Taluk presently Sholinganallur Taluk, Kancheepuram District, thus all the three items totally measuring an extent of 12000 sq.feet.

For Petitioner	:	Mr.P.Elayaraj Kumar for Ramalingam and Associates
For R1	:	Mr.V.Mahalingam Senior Standing Counsel Assisted by Mrs.S.Premalatha, Junior Standing Counsel
For R2	:	Mr.P.Harish Government Advocate

ORDER

The present Writ Petition is filed to direct the first respondent to raise the order of impugned attachments dated 23.04.2021 and 05.08.2021 passed by the first respondent and the consequential direction to the second respondent to delete the encumbrance attachment entry dated 23.04.2021 and 05.08.2021 as against the mortgaged properties.

2. By consent of the parties, the main Writ Petition is taken up for disposal at the stage of admission itself.

3. The learned counsel for the petitioner submitted that the borrowers, namely Mr.D.Sathish and Mr.S.Jayakrishnan and co-borrowers M/s.Noble Shipping and Logistics Private Ltd., & M/s.Yes Jay Exports borrowed money from the petitioner/Bank, for which the subject properties were provided as security and the Memorandum of Deposit of Title Deed dated 31.01.2017 was also executed in favour of the petitioner. On account of the default committed by the said borrowers and co-borrowers, the loan account maintained by them with the petitioner has become Non-performing Asset. Thereafter, the petitioner being the first charge holder brought the subject properties two times for sale in public auction, however, the petitioner was not able to sell the subject

properties, since none of the buyers would come for the auction due to the reason that the first respondent issued an attachment orders dated 23.04.2021 and 05.08.2021 and the same were registered with the second respondent. Further, he would submit that unless the said attachment orders of the first respondent are raised, the petitioner cannot bring the subject properties for sale in public auction and the petitioner, being the first charge holder, has priority over the aforesaid properties and therefore, the learned counsel seeks for appropriate orders to be passed in the Writ Petition by lifting the attachments.

4. The learned counsel for the petitioner also placed reliance upon the order of this Court dated 22.08.2024 in W.P.No.36486 of 2023. In view of the above judgment, he would submit that this Court may direct the first respondent to raise the order of impugned attachments dated 23.04.2021 and 05.08.2021 with the condition that if anything is left over and above after the settlement of the dues of the petitioner, the same shall be transferred directly by the petitioner to the first respondent.

5. Mr.V.Mahalingam, learned Senior Standing Counsel appearing for the first respondent would fairly accede to the submissions made by the learned counsel for the petitioner and also submit that since the charge was created by

virtue of the attachment orders dated 23.04.2021 and 05.08.2021 by the first respondent subsequent to the mortgage of the subject properties with the petitioner on 30.01.2017, this Court may pass appropriate orders.

6. Heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the first respondent and learned Government Advocate and also perused the materials available on record.

7. Admittedly, there is no dispute on the fact that the petitioner is the first charge holder, the first respondent is the second charge holder, and the subject properties were attached vide attachment orders dated 23.04.2021 and 05.08.2021 by the first respondent and registered with the second respondent. It is pertinent to note that although the 1st respondent is second charge holder, ordered attachment of the subject properties, by virtue of this, the petitioner who is the first charge holder, is unable to sell away the properties since no buyer is coming forward to participate in the public auction and though the petitioner brought the properties in public auction twice, they could not succeed because of attachment orders.

8. Now the issue that arises for consideration is whether the

attachment orders dated 23.04.2021 and 05.08.2021 passed by the first respondent who is the second charge holder, are liable to be raised?

9. It is contented by the learned counsel for the petitioner that unless the attachment orders passed by the first respondent, which were registered with the second respondent, are removed, the petitioner cannot bring the aforesaid properties to sell in public auction and recover their dues. It is also submitted by the learned counsel for the petitioner that in the event, if anything is left over and above after the realisation of their dues from and out of the sale proceeds, the same shall be directly transferred to the first respondent's account and the same can be adjusted towards their dues.

10. Considering the facts and circumstances and the submissions made by the learned counsel for the parties, this Court is inclined to pass the following orders:

> (i) The petitioner is, hereby, declared as the first charge holder by way of Memorandum of Deposit of Title Deed dated 30.01.2017 and the first respondent is declared as the second charge holder being registered the charges on 23.04.2021 and 05.08.2021 with the second respondent.

(ii) As far as the charges created by the first respondent with the second respondent dated 23.04.2021 and 05.08.2021, the second respondent is directed to remove the said charge within two weeks from the date of receipt of a copy of this order either from the petitioner or from the first respondent, from their records.

(iii) The petitioner can bring the subject properties for sale, for which the first respondent has no objection and out of the sale proceeds, the outstanding dues of the petitioner may first be settled and thereafter, the balance has to be paid to the first respondent;

(iv) It is made clear that the first respondent will be entitled to hold charge, only after the entire dues of the petitioner are settled from and out of the sale proceeds of the aforesaid properties.

(v) The petitioner is directed to transfer the remaining sale proceeds after adjusting their dues, to the 1st respondent's account which shall be adjusted towards their dues.

11. With the aforesaid directions, this Writ Petition is disposed of. No costs.

29.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
jd

To

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Krishnan Ramasamy,J.,

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