IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.01.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.33799 of 2023

L.Mageswari, W/o (late) Lakshmanan .. Petitioner

Vs.

1. The Authorised Officer,
   Indian Bank,
   Virupatchipuram Branch,
   Vellore District.

2. The Income Tax Officer,
   Ward 1(1),
   Vellore,
   Vellore District.

3. The Sub-Registrar,
   Joint-I,
   Vellore,
   Vellore District.

4. R.Babu Rajaj, S/o B.Raman .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records in pursuant to the refusal slip in Refusal No.RFL/VLR/Joint-1/18/2023, dated

08.09.2023 issued by the third respondent, consequently, direct the third respondent to register the sale certificate issued by the first respondent.

For petitioner : Mr.Lokeshwaran for Mr.M.Sathish Kumar

For respondents: Dr.B.Ramaswamy, Senior Standing Counsel for Income Tax for R-2

Mr.R.Vigneshwaran, Govt. Advocate for R-3

Mr.R.Baskar for R-4

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records pursuant to the refusal slip in Refusal No.RFL/VLR/Joint-1/18/2023, dated 08.09.2023 issued by the third respondent-Sub-Registrar, to register the sale certificate issued by the first respondent, dated 08.08.2023.

2. The fourth respondent, along with his wife Vimala, availed loan of Rs.20 lakhs for establishing a Mini Dairy in Sozhavaram Village, and the application for the same was submitted on 20.06.2014. The fourth respondent stood as

guarantor and necessary documents were submitted on 01.07.2014. The first respondent - Indian Bank, sanctioned the said loan to the fourth respondent with 12.55% interest, payable in 84 instalments with EMI of Rs.35,000/-.

3. Since the payment of loan amount was defaulted, steps were taken to attach the property(ies) with the aid of the Income Tax Department, which sent communication on 16.09.2014 to the third respondent. The title deeds were deposited by the fourth respondent as early as on 01.07.2014 itself. The demand notice was issued by the first respondent/Indian Bank on 04.11.2016 under Section 13(2) of the SARFAESI Act and possession notice was sent on 24.05.2017. In the meantime, the loan account was declared as "non-performing assets (NPA)". Further, e-Auction sale was proceeded and property(ies) were attached. On 25.08.2023, sale confirmation letter was issued by the first respondent-Indian Bank, in correspondence with the second respondent-Income Tax Officer. On 04.09.2023, the first respondent-Bank issued sale certificate. The petitioner participated in the E-auction sale and had bid the sale price at Rs.37,50,000/-, which was declared as the highest bid and the petitioner was declared as the highest bidder. The petitioner deposited the balance amount of sale in the e-Auction sale on 30.08.2023. The second respondent-Income Tax Officer sent communication to the third respondent-Sub-Registrar to attach the

property(ies) in respect of the present SARFAESI Act proceedings and the property(ies) of the fourth respondent was sought to be attached. The assessment of value of the property(ies) exceeded beyond Rs.50 lakhs. As stated above, steps were taken to attach the property(ies) and the third respondent-Sub-Registrar as early as on 19.11.2014, sent communication to the second respondent-Income Tax Department and in the meantime, the Sub-Registrar called for a copy of the encumbrance certificate. Ultimately, the refusal slip dated 08.09.2023 was issued by the third respondent-Sub-Registrar, which is under challenge in this Writ Petition, as the third respondent took recourse to Section 22-B of the Registration Act.

4. Learned Senior Standing Counsel appearing for the second respondent-Income Tax Officer submitted that the dues payable to the Income Tax Department, are only "Revenue" to the Government, which will have over-riding effect than the other dues. In support of his contentions, the learned Senior Standing Counsel appearing for the second respondent relied on the following decisions:

(i) 2010 (8) SCC 110 (United Bank of India Vs. Satyawati Tondon);

(ii) 2023 DHC 5750 (Diamond Entertainment Technologies Pvt. Ltd. Vs. L.B.Electronics Limited;

(iii) 2023 HHC 8739 (M/s.Dynamic Sales Vs. District Magistrate, Solan and others);

(iv) 2007 (161) Taxman 316 (SC) = 2007 (291) ITR 500 (SC) = 2007 (210) CTR 30 (SC) (Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers (P) Ltd);

(v) 2021 (130) Taxmann.com 321 (SC) = 2021 (283) Taxman 9 (SC) (Deputy Commissioner of Income Tax Vs. Travel Designer India (P) Ltd;

(vi) 2019 (110) Taxmann.com 33 (Gujarat High Court) = 2019 Taxman 224 (Gujarat) = 2019 (419) ITR 227 (Gujarat); (Gauravbhai Hargovindhai Dave Vs. Tax Recovery Officer);

(vii) 2009 (182) Taxman 26 (Gujarat) = 2009 (226) CTR 165 (Gujarat) (UCO Bank Vs. Regional Office Vs. Union of India);

(viii) 2014 (46) Taxmann.com 315 (Allahabad High Court) = 2014 (270) CTR 91 (Allahabad) (Sahara Credit Cooperative Society Ltd., Vs. Commissioner of Income Tax-I, Lucknow);

(ix) 2001 (119) Taxman 289 (Andhra Pradesh) = 2001 (252) ITR 642 (Andhra Pradesh) = 2002 (172) CTR 77 (Andhra Pradesh) (Society for Integrated Development in Urban and Rural Areas Vs. Commissioner of Income-tax);

(x) 2022 (145) Taxmann.com 6 (Madras High Court) = 2023 (450) ITR 188; Chandran Somasundaram Vs. Principle Director of Income Tax) and

(xi) 1999 (104) Taxman 651 (Madras High Court) (NEPC India Ltd. Vs. Assistant Commissioner of Income-tax)

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the petitioner mainly highlighted that when once the sale certificate is sought to be registered, the Sub-Registrar has to register the documents if the document is otherwise in order and he has no power to refuse the same, and therefore, the learned counsel for the petitioner submitted that a direction may be issued to register the sale certificate,.

7. It is seen that the petitioner presented the sale certificate issued by the first respondent-Indian Bank, and the sale certificate is sought to be registered before the third respondent-Sub-Registrar and ultimately, the refusal slip was issued by the third respondent, as according to the third respondent, there are defects in presenting the sale certificate for registration.

8. Though the learned Senior Standing Counsel appearing for the Income Tax Department, relied on various decisions of the High Courts and Supreme Court, the same are distinguishable on facts, and hence, they are not applicable

to the facts of the present case, even though there is no quarrel over the law laid down by the Apex Court, whereas, in this case, the attachment of the property(ies) by the Income Tax Department is subsequent to the date of the secured credit/mortgage, and therefore, the SARFAESI Act (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act) will prevail over the any other debt.

9. It is the foremost contention of the learned counsel for the petitioner that the Sub-Registrar has no role to play while the document in question is sought to be registered in the manner known to law and it is beyond the jurisdiction of the Sub-Registrar.

10. Hence, the third respondent-Sub-Registrar is directed to register the sale certificate in question, if it is otherwise in order and it is always open for the third respondent to pass necessary orders with regard to the registration of the document, in accordance with law.

11. With the above observations and direction, this Writ Petition is allowed, setting aside the impugned refusal slip. There shall be no order as to costs.

09.01.2024

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P. VELMURUGAN, J

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