



WEB COPY



W.P.No.1538 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18..04..2024
Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.1538 of 2023

T.Balasubramaniyan

..... Petitioner

-Versus-

1.The Sub Registrar,
Purasaiyakkam,
Chennai – 600 023.

2.The Authorized Officer,
Canara Bank, ARM Branch,
1st Floor, Spencer Tower II,
770A, Anna Salai,
Chennai – 600 002.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a *Writ of Certiorarified Mandamus* calling for the records of the 1st respondent in Refusal Check Slip No.RFL/Purasaiyakkam/69/2022 dated 05.09.2022 and quash the same and consequently direct the 1st respondent to register the sale certificate dated 05.09.2022.

For Petitioner : *Mr.P.Raghunathan*
for Mr.K.Rajesh

For Respondent (s) : *Mr.B.Vijay, AGP for R1*
R2 – No appearance



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ORDER

This writ petition has been filed challenging the Refusal Check Slip issued by the 1st respondent in Ref.No.RFL/Purasaivakkam/69/2022 dated 05.09.2022 and seeking a consequential direction to the 1st respondent to register the sale certificate dated 05.09.2022.

2. It is the case of the petitioner that the property situated at Old No.16, New No.49, Selva Vinayagar Koil Street, measuring 1440 square feet and building thereon and comprised in S.R.S.No.465, Block No.24, Perambur Revenue Village was originally belonged to one Jayaraj. He created a mortgage in respect of the said property by way of deposit of title deeds on 24.03.2015. He committed default in repayment of loan and therefore, proceedings under under The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) was initiated and said property was brought under public auction. The petitioner and his wife- B.Veeralakshmi who participated in the public auction held on 09.05.2022 were declared as successful bidders. They paid the entire sale price and accordingly, they were issued with a sale certificate. The grievance of the petitioner is that when the sale certificate dated 05.09.2022 was produced before the 1st respondent on 05.09.2022 for registration, the 1st respondent



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refused to register the same on the ground that there was an attachment made in

A.R.C.No.277 of 2016 in favour of Margadarashi Chit Funds. Hence, the present writ petition.

3. Heard both sides.

4. In the case of **Federal Bank vs. Sub Registrar and 2 others [W.P.No.2758 of 2023 Order dated 08.02.2023]** after having elaborately dealt with the law on the subject, this court has held that proviso to Rule 55-A of the Tamil Nadu Registration Rules is invalid and unconstitutional as it goes against the scope of its parent Act. This court in para 19 of the said order has held that, even if an order of attachment is made, any sale deed registered thereafter would be automatically void only against all claims enforceable under the attachment under the provisions of Section 64 of CPC.

5. In the given case, the mortgage was created prior to the attachment. Attachment was in 2017 whereas the mortgage was registered on 24.03.2015. Even if priority right is applied, only the mortgagee will have the first right over the property for the dues. In such view of the matter, the writ petition succeeds and the refusal check slip impugned in the writ petition stands quashed.



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In the result, the writ petition is allowed. The impugned refusal check slip is set aside. The 1st respondent is directed to register the sale certificate within one week from the date of receipt of a copy of this order. No costs.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

- 1.The Sub Registrar, Purasaivakkam, Chennai – 600 023.
- 2.The Authorized Officer, Canara Bank, ARM Branch, 1st Floor, Spencer Tower II, 770A, Anna Salai, Chennai – 600 002.



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