IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.36486 of 2023

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

... Petitioner

Vs.

1.The Tax Recovery Officer,
Income Tax Investigation Wing,
Room No.118, I Floor,
New No.46, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.

2.The Sub-Registrar,
T.Nagar, Sub Registrar Office,
Chennai 600 017.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 1st respondent to raise the order of impugned attachments dated 27.04.2018 in Doc.No.19 of 2018, 01.03.2019 in Doc.No.7 of 2019 and 13.09.2019 in Doc.No.38 of 2019 made by the 1st respondent reflecting in the Encumbrance Certificate and consequently direct the 2nd respondent to delete the encumbrance attachment entry dated 27.04.2018 in Doc.No.19 of 2018, encumbrance attachment entry dated 01.03.2019 in Doc.No.7 of 2019, encumbrance attachment entry dated 13.09.2019 in Doc.No.38 of 2019, as against the mortgaged property bearing Plot No.2, Old Door No.11, New Door No.25, Thanikachalam Road, T.Nagar, Chennai 600 017, comprised in Survey Nos. 119/1 and 119/2 part, T.S.No.6601 & 6602, as per the Extract from the Town Survey Land Register in C.A.No.1619/09-10, New T.S.No.6601/1 and 6602/1 and Block No.142 of Thygaraya Nagar Village, Guindy Taluk measuring an extent of 3 grounds.

For Petitioner : Mr.P.Elayarajkumar,
for M/s.Ramalingam and Associates

For Respondent : Mr.A.N.R.Jayaprathap,
Junior Standing counsel for R1

Mr.E.Sundaram,
Government Advocate for R2

ORDER

The writ petition is filed challenging the attachment order dated 27.04.2018 passed by the first respondent and consequently, to direct the second respondent to strike off the name of the first respondent from the Encumbrance Certificate with respect to the property as mentioned in the attachment order.

2. The learned counsel for the petitioner bank submits that the third respondent borrowed money from the petitioner bank for which the property of a 3rd party/Assessee was provided as security and the Memorandum of Deposit of title deeds dated 16.06.2017 was also registered in favour of the petitioner. The learned counsel submits that when enquired with the second respondent with regard to the encumbrance of the property, the petitioner came to know that there is an attachment by the 1st respondent, Income Tax Department as per the Encumbrance Certificate dated 27.04.2018.

3. The main grievance of the petitioner is that the petitioner is the first charge holder of the property since the property was mortgaged by way of deposit of title deeds on 16.06.2017, whereas the charge created by the first respondent was on 27.04.2018 and therefore, the petitioner is entitled as a priority mortgagor. The learned counsel submits that the petitioner bank is not in a position to bring the property for sale, since the Income Tax Department has passed the impugned order of attachment and unless the said attachment order of the first respondent is not raised, the property cannot be brought for sale under public auction and the petitioner, being the first charge holder, has priority over the property and therefore, the learned counsel seeks for appropriate orders to be passed in the writ petition by lifting the attachment.

4. Per contra, Mr.A.N.R.Jayaprathap, learned Junior Standing counsel appearing for the first respondent/Revenue would fairly submit the attachment order was issued against a 3rd party-Assessee on account of their default to pay the amount due to the Income Tax Department, however, before the charge was created in respect of the property by the

Department on 27.04.2018, it was mortgaged with the petitioner bank for the credit facilities extended by the said 3rd party on 16.06.2017 and therefore, only after the entire outstanding dues are settled to the petitioner bank out of the sale proceeds of the property, the Income Tax Department would be entitled to get their dues settled out of the remaining amount, if any. He, therefore, submits that appropriate orders may be passed for bringing the property for sale and after settling the dues of the petitioner bank, the balance amount is to be made available to the first respondent and to that extent, the charge created by the first respondent with the second respondent will be covered.

5. I have given due consideration to the submissions made by the learned counsel for the petitioner and the learned Junior Standing counsel for the first respondent.

6. The issue in the present case is that the petitioner is facing difficulties in selling the property in view of the charge that has been created by the Income Tax Department as appeared in the encumbrance

certificate and therefore, no one is willing to participate in the public auction. In view of the aforesaid submission of Mr.A.N.R.Jayaprathap, learned Junior standing counsel for the Revenue, this Court is inclined to pass the following order:

> (a) The petitioner is, hereby, declared as the first charge holder since the charge was created as early as on 16.06.2017 and the first respondent is declared as the second charge holder, since their charge was created as early as on 27.04.2018.
>
> (b)The petitioner can bring the property 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;
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> (c) It is made clear that the first respondent will be entitled to hold charge, only after the entire dues of the petitioner bank is settled out of the sale proceeds of the property.

7. With the aforesaid observations, the writ petition is disposed of.

No costs.

22.08.2024

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

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2.The Sub-Registrar,
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KRISHNAN RAMASAMY.J.,

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