



W.P(MD)No.4553 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4553 of 2024

and

W.M.P.(MD)No.4387 of 2024

Tamil Nadu Mercantile Bank Ltd.,
Represented by its Authorised Officer,
Palliyadi Branch,
No.24/14F, Sugantham Building,
Kanyakumari District-629 169.

... Petitioner

Vs.

1.The Sub Registrar,
Office of the Sub-Registrar,
Boothapandi, Kanyakumari District.

2.M/s.Palliyadi Retna Chit Fund Ltd.,
Rep. by its Managing Director,
V.S.Retnakumari, No.21/23B, Rajendra Bhavan,
Palliyadi Post, Kanyakumari District.

3.V.S.Retnakumari

4.K.Benger Shamalin

5.K.Asker Shakesgon

6.K.Helton Gold Rimolot

7.K.Kniter Cordink Kamik

8.K.Joneska Shibilad Rally



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9.Jeya Chandra Sekhar

10.S.Ponnaiyan

11.T.Azhagamperumal Pillai

12.R.Thambi Jayakumar

13.G.Jayachandran

14.S.Jaffar

15.A.Viagulamuthu

16.R.Parthasarathy

17.The Income Tax Department,
Office of the Tax Recovery Officer,
6T, North Cotton Road,
Tuticorin-628 001.

18.L.Charles

19.K.Thulasimani Marbhan

20.V.John Justus

21.C.Rajesh

22.C.Raj

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records related to the impugned order issued by the 1st respondent in Na.Ka.No.376/2023 dated 16.10.2023 and quash the same and consequently direct the 1st respondent, Sub-Registrar,Boothapandi, Kanyakumari District, to efface/delete the attachment entry dated 06.04.2010/07.04.2010,



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28.04.2011/29.04.2011, 05.11.2011/12.11.2011, 07.12.2011,
02.12.2011/07.12.2011, 02.12.2011/07.12.2011, 02.12.2011/07.12.2011,
05.10.2012, 18.02.2013, 05.11.2013, 06.11.2014, 29.01.2016, made in
Documents Nos. 3 of 2010, 3 of 2011, 6 of 2011, 8 of 2011, 10 of 2011, 11 of
2011, 12 of 2011, 20 of 2012, 02 of 2013, 08 of 2013, 07 of 2014 and 02 of
2016 and to register the sale certificate executed by the petitioner bank in
favour of the 9th respondent in respect of the scheduled mentioned property.

For Petitioner : Mr.R.M.Ajay Parthiban

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.S.Shanmugavel
Additional Government Pleader for R1

: Mr.R.Gowrishankar for R9

: Mr.J.Parekh Kumar for R17

: Mr.D.Saravanan for R12 & R19

: R2 to R4, R6 to R8 & R10,
R11, R14 & R16 -Tapal returned

: R10-deceased

: no appearance for
R5, R13, R15, R18, R20 to R22

ORDER

Heard the learned counsel for the petitioner and the learned Additional
Advocate General assisted by Additional Government Pleader for the first



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respondent and the learned counsel for the 9th respondent and the learned standing counsel for R12 & R19 and the learned standing counsel for R17.

2. The only question that calls for consideration is whether the sale certificate issued by the Debt Recovery Tribunal in an auction held at the instance of the petitioner herein should be directed to be registered. R2 to R8 availed mortgage loan from the petitioner bank in the year 2005 and 2007. They committed default. The petitioner therefore filed O.A.Nos.126 & 127 of 2011 on the file of the DRT, Madurai for recovering their dues. O.As were allowed on 27.09.2021. The mortgage property was brought to sale on 14.07.2023. The 9th respondent turned out to be the highest bidder. The sale certificate was also issued in his favour on 17.08.2023. The DRT wrote to the first respondent for acceptance of the sale certificate for registration. The registering authority took the stand that since the property had been attached at the instance of the various statutory authorities as well as the courts, it is not possible to register the sale certificate. Communication to this effect was issued on 16.10.2023. Challenging the same, the writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He



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pointed out that the petitioner / bank will obviously have the first charge.

All the other liabilities in respect of which attachments had been made arose subsequently. Therefore, the petitioner's right cannot be defeated at any cost. The contentions advanced by the petitioner's counsel are undoubtedly attractive. It also has considerable merit. But then, the hands of the registering authority are tied.

4. The respondents have filed counter affidavit and the learned Additional Advocate General took me through its contents.

5. I carefully considered the rival contentions and went through the materials on record. Section 22 (b)(III) of the Registration Act, 1908 is as follows.

“Section 22-B. Refusal to register forged documents and other documents prohibited by law:- Notwithstanding anything contained in this Act, the registering officer shall refused to register the following documents namely:-

- (1) forged document;
- (2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;
- (3) document relating to transfer of immovable property by way of sale, gift, lease, or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;
- (4) any other document as the State Government may by notification, specify.



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In this case, admittedly, an attachment had been made by the Income Tax Department, Civil Courts as well as the special Courts constituted under the TNPID Act. Unless the petitioner or the buyer succeeds in raising the attachment, the registering authority cannot be called upon to register the sale certificate. If I accept the petitioner's counsel's argument, I will be issuing a writ of mandamus contrary to law. It is well settled that no writ Court can issue mandamus contrary to law. **Section 22-B(3)** of the Registration Act cannot be lost sight of. Therefore, this writ petition is disposed of by sustaining the impugned communication issued by the first respondent and granting liberty to the petitioner and R9 to re-present the sale certificate after the attachments are raised. Once the impediments contemplated under Section 22-B(3) of the Registration Act, 1908 are removed, there cannot be any defect. The question of limitation also will not arise after the attachments are raised or vacated in the manner known to law. The petition mentioned sale certificate can be re-presented for registration and the first respondent will be obliged to register the same.

5. The Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To
The Sub Registrar,
Office of the Sub-Registrar,
Boothapandi, Kanyakumari District.



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G.R.SWAMINATHAN, J.

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