BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9823 of 2024

M/s.Jum Jum Traders,
Rep. by its Sole Proprietor,
Mr.Syed Abbas,
No.52, Anupparpalayam,
Tirupur-641 652. ... Petitioner

Vs.

1.The Sub-Registrar,
Rajapalayam,
Virudhunagar-626 127.

2.The Assistant Commissioner (CT-I),
Commercial Tax,
Rajapalayam,
Virudhunagar District.

3.The Assistant General Manager,
State Bank of India,
SAMB,
No.1112, Raja Plaza,
Avinashi Road,
Coimbatore-641 037.

4.M/s.Amaravathy Spinning Mills Private Limited,
Sankaran Koil Road,
Cholapuram,
Rajapalayam,
Virudhunagar-626 139.

5.U.S.Sanjeevi,
Proprietor of M/s.Balaji Traders,
No.50, Nadutheru,
Samusigapuram, Rajapalayam,
Virudhunagar-626 139. ... 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 of the 1^{st} respondent culminating in passing the impugned letter vide Na.Ka.No. 29/2024 dated 05.02.2024 and quash the same as perse illegal, unlawful and rule of law and consequently, direct the 1^{st} respondent to register the sale deed in respect of property situate at Cholapuram village, Rajapalayam Taluk, Virudhunagar - 626139, comprised in Survey Nos. 1264/2B2, 1264/3B, 1264/2B1 and 1264/3A2 admeasuring an extent of 3.75 acres in terms of the request letter dated 19.01.2024 given by the petitioner notwithstanding the attachment effected by the 2^{nd} respondent.

For Petitioner : Mr.M.L.Ganesh

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mrs.D.Farjana Ghoushia
Special Government Pleader for R1 & R2

: Mr.N.Dilipkumar
Standing Counsel for R3

ORDER

Hear the learned counsel for the petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader for the official respondents and Thiru.N.Dilip Kumar, learned standing counsel for the State Bank of India.

2. The basic facts are not in dispute. On 28.03.2016, the fourth respondent herein mortgaged the petition mentioned property in favour of the State Bank of India and obtained credit facilities to the tune of Rs.15.33 Crores. The borrower committed default. The State Bank of India initiated proceedings under SARFAESI Act and brought the property to sale. The petitioner herein purchased the property in the e-auction sale conducted under the relevant provision of the SARFAESI Act and Security Interest (Enforcement) Rules, 2002 on 27.06.2022. Subsequently, the certificate of sale was also issued by the secured creditor in favour of the petitioner herein and the same was also registered on 30.11.2022. The purchaser now wants to further alienate the property. When the petitioner informed the first respondent by submitting a representation on 19.01.2024, the registering authority issued the impugned communication dated 05.02.2024 stating that in view of the subsisting attachment at the instance of the commercial tax department, even if the sale deed is presented for registration, the same will not be entertained. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the bank submitted that the stand of the

registering authority is illegal and runs counter to Section 26E of the SARFAESI Act, 2002. They would point out that when the sale certificate issued by the secured creditor under the provisions of the SARFAESI Act could be filed and registered, objection cannot be orally registered by the registering authority, when the auction purchaser subsequently wants to transfer the property. They called upon this Court to set aside the impugned communication and grant relief as prayed for.

4. The learned Additional Advocate General on the other hand submitted that Section 22(B) of the Registration Act, 1908 will come in the way. He points out that the property had been provisionally attached by the competent authority of the commercial tax department. So long as the said attachment is holding good, the registering authority is barred statutorily and obliged to refuse registration. According to the learned Additional Advocate General, Section 26E of the Act will facilitate the transaction at the instance of the secured creditor and it cannot come to the rescue of the subsequent purchaser. He also submitted that when the Hon'ble Full Bench of the Madras High Court in the decision reported in ***2016 (6) CTC 769 (The Assistant Commissioner Vs. Indian Overseas Bank)*** held in favour of the secured creditor, State filed an appeal before the Hon'ble Supreme Court of India which

granted an order of *status quo* as early as on 16.03.2018. He submitted that the said status quo has not been vacated till date. He therefore called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. Section 22(B) of the Registration Act 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 refuse 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.

6. Sub Section (2) of 22-B is relevant for the present purposes. It states that if the competent authority under any Central Act or State Act or any Court or Tribunal had permanently or provisionally attached the property, the registering authority has to refuse registration of any document relating to transfer of such properties by way of sale, gift lease or otherwise. It is true that

Section 22-B of the Registration Act was inserted by TN Act 41 of 2022 with effect from 16.08.2022. The contention of the learned Additional Advocate General is that Registration Act is also a Central Act and since Section 22B was inserted subsequently, it will prevail over any other contra provision.

7. The expression "attachment" occurring in Section 22-B of the Registration Act, 1908 will have to be meaningfully and purposively construed. It can only refer to those attachments that are valid and sustainable. In this case, the petitioner had purchased the property in e-auction sale conducted by the State Bank of India under the provisions of SARFAESI Act and the Rules framed thereunder on 27.06.2022. It is true that the property was attached by the commercial tax department in the year 2018. But the mortgage in favour of the secured creditor took place in the year 2016 itself. In other words, the security interest was created prior to the attachment by the commercial tax department. Section 26E of the SARFAESI Act was introduced in the statute book vide Act 44 of 2016. It came into force on 24.01.2020. In view of Section 26E of the SARFAESI Act, the secured creditor is entitled to dispose of the security interest, notwithstanding any attachment made by any statutory authority subsequent to the creation of the security interest. That is why, when the sale certificate was presented on 30.11.2022, the registering authority

rightly registered the same. Having permitted registration of the sale certificate, the question that arises for consideration is whether the subsequent purchaser can be prevented from dealing with the property by citing the antecedent attachment. My attention is drawn to Section 13(6) of the SARFAESI Act and also the statutory scheme underlying the Transfer of Property Act, 1882. Section 13(6) clearly states that once the security asset is transferred by the secured creditor, the rights of the secured creditor will vest in the transferee. In other words, the purchaser will step into the shoes of the secured creditor. If attachment cannot stand in the way of the secured creditor, it cannot come in the way of the subsequent purchaser also. I therefore have no hesitation in rejecting the stand taken by the learned Additional Advocate General. The impugned communication is set aside. The petitioner is at liberty to present any document for transfer of the petition mentioned property. It shall be received and registered subject to fulfilment of other usual formalities.

8. The Writ Petition is allowed. No costs.

13.06.2024

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To

1.The Sub-Registrar,
Rajapalayam,
Virudhunagar-626 127.

2.The Assistant Commissioner (CT-I),
Commercial Tax,
Rajapalayam,
Virudhunagar District.

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