

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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DATED : 22.07.2024**CORAM****THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN****W.P.(MD)No.10652 of 2024**

National Asset Reconstruction Company Ltd.,
Rep. By its Head Legal and
Authorised Representative Ms.Ishita V. Sharan,
Registered Office at Unit No.1, 8th Floor,
Birla Centurion, Wing B, Plot No.794,
Pandurang Budhkar Marg,
Worli, Mumbai – 400 030.

... Petitioner

Vs.

1. The Inspector General of Registration,
O/o.the Inspector General of Registration, No.100,
Santhome High Road, Mullima Nagar,
Raja Annamalai Puram, Chennai – 600 028.
2. The Sub Registrar,
O/o.the Sub Registrar,
Door No.25, 11th Main Road,
Thangapazam Nagar, Vasudevanallur – 627 758.
3. The Sub Registrar,
O/o.the Sub Registrar,
Kallakurichi Main Road, Thyagadurgam – 60 206.
4. The Sub Registrar,
O/o.the Sub Registrar,
Central Joint-II, Thousand Lights,
No.9, K.B.Dasan Road, Seetammal Colony, Alwarpet,
Chennai – 600 018.



5. The Sub Registrar, O/o.the No.1/183C, Main Road,
Kalasapakkam, Tiruvannamalai – 606 751.

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6. The Sub Registrar,
O/o.the Sub Registrar,
No.99, Railway Station Road,
Kalambur,
Thiruvannamalai – 606 903.

7. Indian Bank,
SAM Large Chennai Branch,
No.55, 2nd Floor,
Ethiraj Salai, Egmore, Chennai – 600 008.

8. State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, 2nd Floor,
No.32, Monttith Road,
Egmore, Chennai – 600 008.

9. Central Bank of India,
Stressed Assets Management Branch at No.48/49,
Monttith Road,
Egmore, Chennai – 600 008.

10. ICICI Bank Ltd.,
Branch Office at No.1, Cenotaph Road,
Teynampet, Chennai – 600 018.

11. Bank of India,
Chennai Asset Recovery Branch at No.30, 4th Floor,
Star House, Errabalu Street, Chennai – 600 001.

12. IDBI Bank Ltd.,
Branch Office at 2nd Floor, No.155, Anna Salai,
Post Box No.805, Saidapet, Chennai – 600 015.

13. Union Bank of India,
Branch Office at No.38 and 39,
Whites Road, Royapettah, Chennai – 600 014.



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14. The South Indian Bank Ltd.,
Corporate Branch at No.110 Raheja Towers,
Anna Salai, Chennai – 600 001.

15. Indian Overseas Bank,
Branch Office at 3rd Floor, Annexe Building,
Central Office, 763, Anna Salai,
Chennai – 600 001.

16. Federal Bank Ltd.,
LCRD Chennai Division at No.27, 5th Floor,
Akshaya Shanti, Anna Salai,
Chennai – 600 002.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the entire proceedings culminating in the impugned refusal check slip bearing RFL/Vasudevanallur/4 /2024 dated 24.01.2024 issued to the petitioner by the second respondent rejecting the registration of the Joint Assignment Agreement dated 30.09.2023 and to quash the same and consequently direct the respondents 1 to 6 to forthwith register the Joint Assignment Agreement dated 30.09.2023 executed in favour of the petitioner by respondents 7 to 16 within a stipulated time frame fixed by this Court.

For Petitioner : Mr.Om Prakash, Senior Counsel,
for Mr.V.Sivakumar

For R-1 to R-6 : Mr.Veerakathiravan,
Additional Advocate General,
assisted by Mr.R.Ragavendran,
Government Advocate.



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For R-7 to R-16 : Mr.T.Ravichandran

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Government Advocate appearing for the official respondents and the learned Standing Counsel appearing for respondent banks 7 to 16.

2.The petitioner is an Asset Reconstruction Company in terms of Section 3 of SARFAESI Act, 2002. Respondents 7 to 16 are financial institutions who had lent monies to M/s.Dharani Sugars and Chemicals Limited. The borrower had mortgaged several immovable properties with the lending banks by deposit of title deeds. The loan accounts turned to be Non Performing Assets(NPA). The lending institutions executed Joint Assignment Agreement dated 30.09.2023 with the petitioner herein. It was presented for registration on 24.01.2024 before the second respondent. The second respondent refused to register the agreement on the grounds set out in the impugned refusal check slip dated 30.09.2023. Challenging the same, this writ petition came to be filed.



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3.The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He contended that none of the reasons set out in the impugned refusal check slip are sustainable. According to him, Section 22-A of the Registration Act, 1908 invoked by the registering authority is not applicable to the subject transaction. He would point out that there has been no transfer of immovable property. The transaction involves mere assignment of financial asset. Section 22-A of the Act will apply only to transfers such as sale, gift, mortgage, exchange or lease. The transfer under an assignment is not covered within the scope of the aforesaid provision. The learned Senior Counsel relied on the following decisions:-

(i) 2014 SCC OnLine Mad 6371 (M.Chitra V.The Sub Registrar, Vadamadurai, Dindigul District),

(ii) 2020 SCC OnLine Mad 5231 (N.Ramayee V. Sub Registrar, Registration Department),

(iii) 2023 SCC OnLine Mad 878 (Federal Bank Ltd., Rep. By its Senior Manager, LCRD V. Sub Registrar),

(iv) Manu/TN/2600/2021 (The South Indian Bank Ltd., V.



The Sub Registrar, Madurai South),

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(v) 2017 SCC OnLine Mad 19191 (Sudha Ravi Kumar V.

The Special Commissioner and Commissioner, HR&CE Department, Chennai),

(vi) W.P.(MD)No.1464 of 2020 vide order dated 12.02.2020

(P.Varadharajan V. The Special Commissioner and Commissioner, HR&CE Department, Chennai.) and

(vii) W.P.No.34332 of 2023 vide order dated 16.02.2024.

He placed heavy reliance on the decision of the Hon'ble First Bench in W.P.No.34332 of 2023. The Hon'ble First Bench had held that even if there is an order of attachment, it cannot operate as an impediment to register an assignment of debt. He called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned Additional Advocate General on the other hand submitted that if the lands covered in the joint assignment agreement were the absolute properties of the borrower, then there would not have been any hurdle. In this case, some of the lands happen to be endowed in favour of Hindu religious institutions. In respect of some of the lands,



acquisition proceedings are pending. In other cases, the lands are Government lands. The stand of the official respondents is that Section 22-A of the Registration Act will apply to the case on hand. The learned Additional Advocate General called upon this Court to sustain the impugned refusal check slip and dismiss the writ petition.

5.The learned Standing Counsel appearing for the banks endorsed the stand taken by the learned Senior Counsel appearing for the petitioner.

6.I carefully considered the rival contentions and went through the materials on record.

7.It is true that the nature of transaction is one of assignment. What has been assigned is a financial asset. But the fact remains that it pertains to immovable properties. Section 22-A of the Registration Act, 1908 is as follows:-

“22-A Refusal to register certain documents –
Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:-



(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,-

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under Section 9-! of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) ;

(ii) belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) is applicable;

iii) donated for Bhoodan Yagna and vested in the Tamil Nadu State Bhoodan Yagna Board established under section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958 (Tamil Nadu Act XV of 1958); or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995 (Central Act 43 of 1995), unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer.”



8.It is true that the aforesaid provision refers only to sale, gift, mortgage, exchange or lease. The expression “assignment” is not there. The question is whether this omission would make any difference. Section 22-A (1) of the Act is very much in the statute book. It has not been invalidated or declared as unconstitutional till date. I am therefore obliged to give effect to the same. An assignment may fall outside the scope of Section 22-A of the Act. Can I set aside the impugned refusal check slip on this sole ground?.

9.There is a legal maxim “*sublato fundamento cadit opus*”. It means that when the foundation has been removed (or demolished), the superstructure collapses. The assignment made in favour of the petitioner admittedly flows out of the original transaction which is a mortgage. It is well settled that lands endowed in favour of Hindu religious institutions cannot be alienated even by the trustee except with the sanction of the Commissioner under Section 34 of the Tamil Nadu Hindu Religious Endowments Act, 1959. Section 34(1) of the said Act is as follows :

“34.Alienation of immovable trust property.—

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any



religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by [the Commissioner]

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.”

The question of a third party not being a trustee dealing with the property does not arise at all. If an endowed land had been fraudulently mortgaged, it would be an illegal transaction. Such a transaction cannot give rise to a subsequent assignment. The original vice will affect what apparently is a lawful transaction. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order (vide (2011) 14 SCC 770). In



the refusal check slip, it has been mentioned that Survey Nos.550/2A, 550/2B and 550/2C, Naranapuram Village have been shown in the guideline register maintained by the registering authority as belonging to Chinthamaninatha Swami Kovil. The registering authority has only called upon the petitioner to obtain patta and chitta from the revenue department and re-submit the document. No exception can be taken to this. The Hon'ble Division Bench of this Court in the decision reported in ***2017 SCC OnLine Mad 19191 (Sudha Ravi Kumar V. The Special Commissioner and Commissioner, HR&CE Department, Chennai)*** had laid down the procedure to be followed by the registering authority in such cases.

10.It is true that when the borrower mortgaged the abovesaid lands, it was registered without any objection in the first instance. A doubt may arise if objection can be raised at the time of registering the assignment. This can be dispelled very easily. Quae ab initio non valent, ex post facto convalescere non possunt (Things invalid from the beginning cannot be made valid by a subsequent act). It is well settled that an illegality cannot be perpetuated (Sahadevan v. State of Tamil Nadu, (2012) 6 SCC 403). Section 34 of the Tamil Nadu HR&CE Act,



1959 states that an alienation made in breach of the statutory mandate is null and void. If the borrower had illegally mortgaged endowed lands, the illegality cannot be glossed over by permitting assignment of the mortgage. An assignment is not taken for the purpose of safe keeping of the secured asset. The petitioner obviously intends to sell the same. An endowed land cannot be sold by a third party. Thus, the assignment stands sandwiched between a past mortgage and a prospective sale. If the past and future transactions are impermissible in law, the present one also cannot pass muster.

11. Another reason set out in the impugned refusal check slip is that the lands comprised in Survey Nos.536, 535/3, 534/1, 883/1, 885, 1012, 1032/1, 913/1A, 913/1C, 913/3, 918/1, 918/2, 918/3, Naranapuram Village and S.Nos.198/1, 197/1, 216/2, 216/5A, 216/1, 152/3B, 333/3, Thirumalapuram Village are government lands. Section 22-A(1) of the Registration Act forbids transfer of lands belonging to the State government by way of sale, gift, mortgage, exchange or lease. The reasons set out in the foregoing paragraphs in respect of endowed lands would apply with equal vigour in respect of government lands also.



12. In respect of lands comprised in several Survey Numbers in Naranapuram Village, it is stated that land acquisition proceedings are pending and therefore, the petitioner has been called upon to obtain NOC from the Special Tahsildar, Land Acquisition, NH-744. It is true that pendency of land acquisition proceedings cannot be a ground for refusal of registration. It is however a settled law that any person who purchases land after publication of the acquisition notification does so at his / her own peril. Any alienation after the publication of the first notification would not bind the government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interest in the land stand vested in the State (*Sneh Prabha v. State of UP (1996) 7 SCC 426*). The petitioner should in fact thank the registering authority for the forewarning. We do come across cases in which the gullible purchasers are saddled with lands that are subject matter of acquisition proceedings. To obviate such situations, there is a provision forbidding transfer in Delhi Lands (Restriction on Transfer) Act, 1972. Parliament can consider incorporating similar provision forbidding transfers as well as registrations in the Registration Act to protect innocent purchasers of lands subject to acquisition proceedings.



13. We cannot dissect the deed of assignment nor the refusal check slip. The doctrine of severability cannot be applied. A deed of assignment may pertain to ten items. One may not be able to take exception to nine items. If, however, one item cannot be the subject matter of transaction, the registering authority will have to refuse registration of the document as a whole. There cannot be partial acceptance of a document presented for registration. Out of the three reasons given by the registering authority for refusing registration, two would certainly hold good. Banks cannot execute a deed of assignment covering lands belonging to temples and lands belonging to government.

14. Quod contra legem fit, pro infecto habetur (what is done contrary to the law is considered as not done). If the foundational transactions are illegal, the subsequent transactions based thereon cannot be permitted. Even if Section 22-A of the Registration Act is not in the statute book, still, mortgage of endowed lands and government lands cannot be allowed. The registering authority has only lobbed the ball back to the hands of the petitioner. It is for the petitioner to satisfy the registering authority that the borrower very much had the title to mortgage the lands in question and that the original transaction was not



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initiated in any manner. Without doing so, the petitioner has rushed to this Court. I find no ground to interfere at this stage.

15.This writ petition is dismissed. No costs.

22.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/skm

To:

1. The Inspector General of Registration,
O/o.the Inspector General of Registration, No.100,
Santhome High Road, Mullima Nagar,
Raja Annamalai Puram, Chennai – 600 028.
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G.R.SWAMINATHAN,J.

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