



W.P(MD).No.12309 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 08.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD).No.12309 of 2021

and

W.M.P(MD).Nos.9664 and 13011 of 2021

P.Sadhasivam

... Petitioner

Vs.,

- 1.The Inspector General of Registration,
Santhome High Road,
Chennai 600028
- 2.The Deputy Inspector General of Registration,
O/o The DIG of Registration,
Rajagambeeram, Ya.Othakadai,
Madurai 625 107.
- 3.The District Registrar (Admin)
Madurai South
In the capacity as Asst.Registrar General
Madurai District.
- 4.The Sub Registrar,
Chozhavandan,
Madurai District.
- 5.The Branch Manager,
IDBI Bank Ltd.,
115, Anna Salai Saidapet,
Chennai 600 015.



W.P(MD).No.12309 of 2021

6.The Chairman/ Managing Director,
The Ratnakar Bank Ltd.,
One India Bulls Centre, Tower 2,
6th Floor, 841, Senapati Bapat Marg,
Lower Parel (W), Mumbai 400 013.

7.S.Ramachandran

8.K.Rethinam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Cerrarified Mandamus to call for records pertaining to the proceedings in Na.Ka.No.3208/B2/2020 dated 28.12.2020 of the third respondent and quash the same and consequently directing the respondents 3 and 4 to make appropriate entry in the relevant index with respect to the property comprising in Survey No. 92/5 of Thenur Bit 1 Village, Madurai North Taluk, Madurai District as per the circular dated 31.07.2018 in Letter No.41530/U1/2017 of the first respondent.

For Petitioner : Mr.Raja Jeyachandra Paul.S
For Respondents : Mr.C.Satheesh (For R1 to R4)
Government Advocate
No appearance (For R5)
M/s.Abithabanu (for R6)
Mr.S.Ilambharathi (For R7 & R8)

ORDER

The writ petition has been filed challenging the impugned order, rejecting the request of the petitioner to cancel the document subsequently registered.



W.P(MD).No.12309 of 2021

WEB COPY

2. The case of the writ petitioner is that arbitration proceedings has been initiated against one M/s.Sree Sivakami Mills Limited by the Deputy Registrar of Co-operative Societies, Madurai Circle, Madurai, vide proceedings C.E.P.No. 145/2001-2002 in A.R.C.No.90/2000-2001, for recovery of statutory dues payable to the Sree Meenakshi and Sivakami Mills Employees Co-operative Thrift and Credit Society Limited, Samayanallur Post, Madurai.

3. M/s.Sree Sivakami Mills Limited was ordered to be wound up by the Board for Industrial and Financial Reconstruction (BIFR) vide order dated 26.05.2000, against which, M/s.Sree Sivakami Mills Limited preferred an appeal with DRS (Draft Rehabilitation Scheme) based on the merger of the said Sree Sivakami Mills Limited with M/s.Sheela Rani Textiles Limited. Thereafter, M/s.Sheela Rani Textiles Limited came into picture. As the dues is not payable by the subsequent company also, the attachment order was passed on 05.03.2010 and the property was brought into public auction by Deputy Registrar. The auction was conducted on 05.05.2010. Since the petitioner became the successful bidder in the public auction, he purchased the property and a sale certificate was also issued in his favour on 16.07.2010, which has been registered on the file of the



W.P(MD).No.12309 of 2021

fourth respondent. The petitioner has been in possession of the subject property all these years. In the meanwhile, the fifth respondent, who was also a creditor listed in the proposal of DRS, assigned his rights to the sixth respondent. The sixth respondent, in turn conducted auction on 26.12.2014 and in the said auction, the respondents 7 and 8 purchased the property and sale deed was executed in their favour. According to the petitioner, the subsequent purchase cannot be valid in the eye of law, since two items out of the total properties have already been sold in the earlier auction. Hence, this petition.

4. It is the contention of the sixth respondent in the counter that the properties were already mortgaged in favour of the fifth respondent in the year 1990. Despite the mortgage, the Deputy Registrar of Co-operative Society passed an order of attachment on 05.03.2010. The fifth respondent has the first charge over the properties. They already invoked the rights by issuing the demand and possession notice. The sixth respondent, who is the assignee of the fifth respondent, have sold the properties under the provisions of SARFAESI (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act) Act, 2002. Hence, according to them, the attachment passed by the Deputy Registrar of Co-operative Society is not valid. The claim made by



W.P(MD).No.12309 of 2021

the society has already been negated by this Court in W.PNo.2629 of 2007, and also before the Deputy Registrar in I.A.Nos.220 and 221 of 2008 in S.A.No.140 of 2007 before the Debt Recovery Tribunal, Madurai. Therefore, according to them, the very attachment order passed by the Deputy Registrar is not valid in the eye of law.

5. It is the contention of the respondents 7 and 8 that the petition for winding up the company was filed in April-2008 and the order of winding up of the company shall be deemed to commence at the time of presentation of the petition for winding up the company i.e., April 2008. Therefore, any disposition of the property after the commencement of the winding up the company is void unless the Court otherwise orders. The sale in favour of the petitioner was held on 16.07.2010, after the commencement of the presentation of the petition for winding up the company and hence, it is hit by Section 536(2) of the Companies Act 1956.

6. Heard both sides.



W.P(MD).No.12309 of 2021

7. The contention of the petitioner that since he has purchased the property earlier, the subsequent sale is not valid, whereas it is the contention of the learned counsel for the private respondents that they are also brought to the notice of the winding up petition filed in the year 2008. That apart, he has also placed on record the SARFAESI proceedings initiated, based on the mortgage, which has already been executed much prior to passing of the attachment order passed by the Deputy Registrar and the respondents 7 and 8 have purchased the property under SARFAESI proceedings. As far as the charge created by way of mortgage is concerned, the first charge is the settled position of law. Such being the position, as a matter of right, in this writ petition, a direction cannot be issued to annul the document registered on the basis of the sale certificate issued under the SARFAESI proceedings. It is for the petitioner to workout his remedy in the manner known to law.

8. With the above direction, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.08.2024

NCC : Yes/No
Index : Yes/No
Rmk



W.P(MD).No.12309 of 2021

WEB COPY

To

- 1.The Inspector General of Registration,
Santhome High Road,
Chennai 600028
- 2.The Deputy Inspector General of Registration,
O/o The DIG of Registration,
Rajagambeeram, Ya.Othakadai,
Madurai 625 107.
- 3.The District Registrar (Admin)
Madurai South
In the capacity as Asst.Registrar General
Madurai District.
- 4.The Sub Registrar,
Chozhavandan,
Madurai District.



WEB COPY



W.P(MD).No.12309 of 2021

N.SATHISH KUMAR, J.

Rmk

W.P(MD).No.12309 of 2021

08.08.2024