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W.P.(MD)NO.16212 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16212 of 2024 AND

W.M.P.(MD)No.14090 of 2024

Murugan

... Petitioner

Vs.

1. The Inspector General of Registration,
Mandaveli, Chennai.

2. The District Registrar,
Dindigul District,
Dindigul.

3. The Sub Registrar,
Guiliamparai,
Dindigul District.

4. Chandra Sekaran

5. Abinesh

6. Angamuthu

7. Pandiyarajan

8. Nagarajan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in refusal check slip in refusal No.RFL/Guziliamparai/29/2024 dated 13.05.2024 quash the same and direct the third respondent to register the sale agreement in favour of the petitioner executed by respondents 4 to 7 dated 11.05.2024 within a time frame to be fixed by this Court.



For Petitioner : Mr.N.Shyllappakalyan
For R-1 to R-3 : Ms.D.Farjana Ghoushia,
Special Government Pleader.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for respondents 1 to 3.

2. The petitioner wants to purchase the petition-mentioned property. When the sale agreement was presented for registration, it was refused on the ground that the encumbrance certificate shows subsistence of an earlier sale agreement. Challenging the refusal check slip, the present writ petition came to be filed.

3. The issue raised in this writ petition is no longer *res integra*. The Hon'ble Division Bench of this Court in **2020 (6) CTC 697 (N.Ramayee V. Sub-Registrar, Registration Department)** had held as follows:-

“ 37. Section 56 of the Transfer of Property Act deals with marshalling by subsequent purchaser. The above provision also makes it clear that when the owner of two or



more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties. The above provision also makes it clear that though there were mortgages already created there is no bar for subsequent transfer of the property. But subsequent transfer is subject to the mortgage earlier created.

...

46. It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers Under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from mortgagee before registration



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is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300A of the Constitution.”

4. In this view of the matter, the impugned refusal check slip is quashed. The parties to the document are permitted to re-present the same. It shall be registered by the third respondent. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

22.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

1. The Inspector General of Registration,
Mandaveli, Chennai.
2. The District Registrar,
Dindigul District,
Dindigul.
3. The Sub Registrar,
Guziliamparai,
Dindigul District.



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G.R.SWAMINATHAN,J.

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