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W.P.(MD) No.24378 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.(MD) No.24378 of 2024

and

W.M.P.(MD) No.20700 of 2024

ICICI Bank Limited
Plot No.24, South Phase
Ambattur Industrial Estate
Block No.1, Ambattur
Chennai-600 058
Tamil Nadu
rep.by the Authorized Signatory
Vinothkumar Munusamy

... Petitioner

-vs-

- 1.The Sub Registrar
Joint 1 Kumbakonam
Kumbakonam-612 001
- 2.The Deputy Superintendent of Police
Economic Offences Wing
Tanjore Department
No.53, Rajappa Nagar
1st Cross
Thanjavur-613 001



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3.The Director of Enforcement
Office of the Joint Director
Chennai Zone-II
rep.by its The Assistant Director
Sasthiri Bhavan
B-Wing, 3rd Floor, 3rd Block
No.26, Haddows Road
Chennai-600 006

4.Balamurugan Kirubasankar

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus directing the first respondent to receive and register the Sale Certificate dated 14.02.2024 executed on behalf of the petitioner and in favour of the fourth respondent, on receipt of required stamp duty and registration fees in accordance with law and not refuse any registration acting on communications in Na.Kaa.No. 429/DSP/EOW/TAN/Gen1/2023 and F.No.ECIR/CEZO-II/13/2023 dated 05.09.2023 and 27.03.2024 on the file of the second respondent and third respondent respectively.



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For Petitioner : Mr.Om Prakash, Senior Advocate
assisted by Mr.V.Veerapandian
for M/s.Vast Law Associates

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.M.Sarangan
Additional Government Pleader for R1
Ms.M.Aasha
Government Advocate (Criminal Side) for R2
Mr.K.Govindarajan
Deputy Solicitor General of India for R3

ORDER

This writ petition has been filed for a direction to the first respondent to receive and register the sale certificate dated 14.02.2024, executed by the petitioner – Bank in favour of the fourth respondent.

2. One Mr.M.R.Ganesh along with the co-applicant approached the petitioner – Bank for housing loan. He mortgaged the property comprised old T.S.No.2212, new T.S.No.22/12/1B2 and old T.S.No.2212/1B2, new T.S.No.2212/1B4, situated at Sri Nagar, Moorthy Garden, Municipal Ward No. 6, Kumbakonam Town and availed loan to the tune of Rs.1,30,00,000.00 with an insurance to the tune of Rs.1,62,670.00. Subsequently, he committed default and the property, which was mortgaged, was brought for auction



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under the SARFAESI Act. During auction sale, the fourth respondent was the highest bidder and the property was sold to the fourth respondent for a total sale consideration of Rs.4,59,10,000/-. After adjusting the total outstanding amount of Rs.1,79,39,570/-, the balance amount of Rs.2,75,11,330/- is still available with the petitioner – Bank. Thereafter, the fourth respondent was issued with a sale certificate and the same was presented before the first respondent for registration. However, the first respondent refused to register the sale certificate, since the subject property was purchased from crime proceeds and the auction purchaser is also a relative of one of the accused in Crime No.3 of 2021, on the file of the second respondent. Hence, this writ petition.

3. The counter affidavit filed by the third respondent reveals that the original borrower, namely, M.R.Ganesh had purchased the suit property from crime proceeds. Therefore, the second respondent requested the first respondent to furnish a copy of the latest registered deed and encumbrance certificate in respect of the subject property. However, it is only a requisition to the first respondent to bring the subject property to the notice of the third respondent in order to avoid any leakage of proceeds of crime.



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4. The counter affidavit filed by the second respondent shows that after registration of the case as against the original borrower and others and during the course of investigation, it was found that the subject property was purchased out of crime proceeds. Therefore, the subject property is now proposed to be attached under the TNPID Act.

5. In view of the above, sofar, the subject property has not been attached by the Government under the TNPID Act, pursuant to the registration of a case as against the borrower. Admittedly, the borrower availed a housing loan. The subject property was mortgaged in favour of the petitioner – Bank and thereafter, he committed default in making the repayment. Therefore, the petitioner – Bank being the secured creditor is entitled to bring the subject property for auction to realise the loan amount under Section 26(C) of the SARFAESI Act, whereby any property registered by a secured creditor with CERSAI, the claim of such secured creditor shall have priority over any subsequent interest created upon such property. Therefore, the petitioner, has rightly brought the subject property for sale, wherein the fourth respondent has purchased the same. Therefore, the first respondent



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ought not to have refused to register the sale certificate presented by the petitioner – Bank.

6. Hence, the petitioner – Bank is directed to re-present the sale certificate, dated 14.02.2024, before the first respondent, for registration and release the same to the fourth respondent forthwith, if it is otherwise in order. Further, the petitioner – Bank is directed to deposit the balance sale consideration of Rs.2,75,11,330/- to the credit of the case in Crime No.3 of 2021, on the file of the second respondent, forthwith.

7. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.11.2024

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

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To:

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Joint 1 Kumbakonam,
Kumbakonam-612 001.
- 2.The Deputy Superintendent of Police,
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Tanjore Department,
No.53, Rajappa Nagar,
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- 3.The Director of Enforcement,
Office of the Joint Director,
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