



W.P.(MD)Nos.30484 to 30486 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **24.10.2024**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.30484, 30485 and 30486 of 2023

and

W.M.P(MD).No.26229, 26233, 26235, 26234 and 26236 of 2023

W.P(MD).No.30484 of 2023

Tamil nadu Mercantile Bank Ltd.,

rep., by its Authorised Officer,

Palliyadi Branch, No.24/14 F, Sugantham Building,

Kanyakumari District 629 169.

... Petitioner

Vs.

1.The Sub Registrar,
Office of the Sub Registrar,
Palliyadi, Kanyakumari District.

2.M/s.Palliyadi Retna Chit Fund Ltd.,
rep., by its Managing Director,
V.S.Retnakumari, No.21/23B,
Rajendra Bhavan, Palliyadi Post,
Kanyakumari District.

3.V.S.Retnakumari

4.K.Benger Shamalin

5.K.Asker Shakesgon



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6.K.Helton Gold Rimolot

7.K.Kniter Cordink Kamik

8.K.Joneska Shibilad Rally

9.John Manoharan

10.Ashwin Wilson Sobia Tenofer

... 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 related to the impugned order issued by the first respondent in NO.409/2023 dated 21.09.2023 and quash the same and consequently, direct the first respondent, Sub-Registrar, Palliyadi, Kanyakumari District, to efface/delete the attachment entry dated 01.08.2011 made in Doc.Nos.24 & 25 of 2011, Doc No.6 of 2013 dated 14.02.2013 and Doc No.12 of 2019 dated 07.06.2019 and to register the sale certificate executed by the petitioner bank in favour of the 10th respondent in respect of the schedule mentioned property.

For Petitioner : Mr.N.Dilipkumar

For Respondents : Mr.P.Veerakathiraven
Additional Advocate General III
assisted by Mr.C.Satheesh
Government Advocate (for R1)
Mr.M.P.Senthi (for R9)
No appearance (for R10)

W.P(MD).No.30485 of 2023

Tamil nadu Mercantile Bank Ltd.,
rep., by its Authorised Officer,



W.P.(MD)Nos.30484 to 30486 of 2023

Palliyadi Branch, No.24/14 F, Sugantham Building,
Kanyakumari District 629 169.

... Petitioner

Vs.

1.The Sub Registrar,
Office of the Sub Registrar,
Palliyadi, Kanyakumari District.

2.M/s.Palliyadi Retna Chit Fund Ltd.,
rep., by its Managing Director,
V.S.Retnakumari, No.21/23B,
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3.V.S.Retnakumari

4.K.Benger Shamalin

5.K.Asker Shakesgon

6.K.Helton Gold Rimolot

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Kanyakumari District, to efface/delete the attachment entry dated 01.08.2011 made in Doc.Nos.24 & 25 of 2011, Doc No.6 of 2013 dated 14.02.2013 and Doc No.12 of 2019 dated 07.06.2019 and to register the sale certificate executed by the petitioner bank in favour of the 10th respondent in respect of the schedule mentioned property.

For Petitioner : Mr.N.Dilipkumar

For Respondents : Mr.P.Veerakathiraven
Additional Advocate General III
assisted by Mr.C.Satheesh
Government Advocate (for R1)
Mr.M.P.Senthi (for R9)
Mr.K.Ragatheesh Kumar
for M/s.Issac chambers(for R10)

W.P(MD).No.30486 of 2023

Tamil nadu Mercantile Bank Ltd.,
rep., by its Authorised Officer,
Palliyadi Branch, No.24/14 F, Sugantham Building,
Kanyakumari District 629 169. ... Petitioner

Vs.

- 1.The Sub Registrar,
Office of the Sub Registrar,
Palliyadi, Kanyakumari District.
- 2.M/s.Palliyadi Retna Chit Fund Ltd.,
rep., by its Managing Director,
V.S.Retnakumari, No.21/23B,
Rajendra Bhavan, Palliyadi Post,
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3.V.S.Retnakumari

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6.K.Helton Gold Rimolot

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... 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 related to the impugned order issued by the first respondent in NO.409/2023 dated 21.09.2023 and quash the same and consequently, direct the first respondent, Sub-Registrar, Palliyadi, Kanyakumari District, to efface/delete the attachment entry dated 14.02.2013 made in Doc.No.6 of 2013 and to register the sale certificate executed by the petitioner bank in favour of the 9th respondent in respect of the schedule mentioned property.

For Petitioner : Mr.N.Dilipkumar

For Respondents : Mr.P.Veerakathiraven
Additional Advocate General III
assisted by Mr.C.Satheesh
Government Advocate (for R1)
No appearance (for R9)



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COMMON ORDER

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These writ petitions have been filed to quash the impugned order issued by the first respondent in No.409/2023, dated 21.09.2023.

2. When the petitioner presented the sale certificate for registration in respect of the subject property, the same was refused to be registered citing the attachment under G.O.Ms.No.872, Home (Police XIX) Department of Tamil Nadu Government, dated 12.11.2012 under the provisions of Tamil nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 (hereinafter referred to as TANPID Act for brevity). Challenging the the same, these writ petitions have been filed.

3.It is the case of the petitioner that the second respondent company, represented by its then Managing Director S.Kanagaraj, who is now no more and the respondents 3 to 8 are the legal heirs of him, borrowed amount from the petitioner bank and executed a mortgage deed in favour of the petitioner bank. As they committed default, the proceedings has been initiated under the Securitisation and



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Reconstruction of Financial Assets and Enforcement of Securities

Interest Act, 2002, and the property brought to the public auction and the ninth respondent in W.P(MD).No.30486 of 2023 and the tenth respondent in W.P(MD).Nos.30484 and 30485 of 2023 became the successful bidder and sale certificate has also been issued in their favour. When the said sale certificate sought to be registered, the same has been refused by the registrar citing the order of attachment passed under G.O.Ms.No.872, dated 12.11.2012, in the proceedings initiated under TANPID Act, in respect of the schedule mentioned property.

4. It is also brought to the notice of this Court that order passed by the Special Court for TNPID Act Cases, Madurai, in I.A.No.61 of 2016 in O.A.No.4 of 2015, wherein order of attachment has been raised, after considering the application filed in this regard independently, since the petitioner is the first charge to hold and security interest created in favour of them in the year 2005.

5. In such view of the matter, the attachment reflected in the encumbrance on the basis of G.O.Ms.No.872 will not come in the way of



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registering the sale certificate. Hence, the petitioner is directed to produce the certified copy of the order passed by the Special Court in this regard, to the concerned registering authority. As far as the attachment of the civil Court, suit filed by the un-secured creditor, such attachment assumes insignificance, as the security interest was already created in the year 2005 in favour of the petitioner, which resulted in the proceeding in SARFAESI and culminated in the sale certificate. In such view of the matter, refusal check slip issued by the first respondent cannot be sustained in the eye of law.

6.The learned Additional Advocate General brought to the notice of this Court to the learned Single Judge order made in W.P(MD).No. 4553 of 2024, dated 18.03.2024, wherein it is held as follows:

“.....5. I carefully considered the rival contentions and went through the materials on record. Section 22 (b)(III) of the Registration Act, 1908 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 refused 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)



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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.

In this case, admittedly, an attachment had been made by the Income Tax Department, Civil Courts as well as the special Courts constituted under the TNPID Act. Unless the petitioner or the buyer succeeds in raising the attachment, the registering authority cannot be called upon to register the sale certificate. If I accept the petitioner's counsel's argument, I will be issuing a writ of mandamus contrary to law. It is well settled that no writ Court can issue mandamus contrary to law. Section 22-B(3) of the Registration Act cannot be lost sight of. Therefore, this writ petition is disposed of by sustaining the impugned communication issued by the first respondent and granting liberty to the petitioner and R9 to re-present the sale certificate after the attachments are raised. Once the impediments contemplated under Section 22-B(3) of the Registration Act, 1908 are removed, there cannot be any defect. The question of limitation also will not arise after the attachments are raised or vacated in the manner known to law. The petition mentioned sale certificate can be re-presented for registration and the first respondent will be obliged to register the same.

6. The Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.”



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7. There is no doubt in the proposal laid down by the learned Single Judge. As far as the attachment is concerned, this Court in several judgment elaborately dealt that the sale is void only against the claim enforceable under the attachment, not in entirety. It is relevant to note that in the case of **Subramani Vs., The Sub Registrar**, it has been held that as follows:

“....i. With regard to the attachment made by some department when the sale certificate issued under SARFAESI Act, 2002 is concerned, it is well settled that a Full Bench of this Court in the case of Assistant Commissioner (CT) v. I. O. B. reported in (Mad)[FB], 2017 1 MLJ 769 and two Division Benches in the case of Tamil Nadu Mercantile Bank Limited v. The Joint-I Sub Registrar Office, Madurai reported in [2021] 1 WLR 462 (DB) and State Bank of India v Sub Registrar, reported in 2023 SCC Online Mad 3179 (DB), have already held that the auction purchaser would get the property free from all encumbrances which includes the claim of any statutory authority like the Commercial Taxes Department. Such view of the matter, when the sale certificate sought to be registered, any attachment existing will have no significance. On that ground also, the document cannot be refused to be registered.....”



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8. Even the Division Bench of this Court in the case of *N.*

Ramayee v Sub-Registrar, reported in (2020) 6 CTC 697, in paragraphs

29 & 30 has held as follows:

“29. 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.

30. Section 57 of the Transfer of Property Act deals with the Provision by Court for encumbrances and sale freed therefrom. The Section also makes it clear that even the properties already encumbered can be brought under court sale and the encumbrance can be freed after issuance of notice to the encumberer.”



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9. Therefore, since the division bench has already dealt with this matter, the said finding is binding on this Court. Accordingly, the refusal check slip issued by the first respondent in No.409/2023 dated 21.09.2023 is hereby quashed and these Writ Petitions are allowed. The registering authorities concerned are directed to register the documents presented by the petitioners in all these writ petitions forthwith. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.10.2024

Index : Yes / No

NCC : Yes / No

Rmk

To

1.The Sub Registrar,
Office of the Sub Registrar,
Palliyadi, Kanyakumari District.



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N.SATHISH KUMAR, J.

Rmk

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