IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :23.01.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 988 of 2025

S.Annamalai Prabu ...Petitioner

Vs

1. The Government of Union Territory of Puducherry
   Represented by its Chief Secretary,
   Goubert Avenue, Puducherry 605 001.

2. The Sub Registrar,
   Registration Department,
   Villianur, Puducherry 605 110.

3. The Tax Recovery Officer,
   Income Tax Department,
   Puducherry 605 001 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd respondent to remove the entries of attachment made by the third respondent vide registered Document No.25676 of 2015 dated 16.12.2015 in respect of the immovable property in R.S.No.243 Villianur Commune Panchayat, Odiampet Revenue Village Puducherry purchased by the petitioner as per sale certificate dated 03.7.2024 issued by JM Financial Asset Reconstruction company Limited.

For Petitioner : Ms. Gopika Nambiar

For Respondents -1 to 3 : Mr.Nirmal Kumar
Government Advocate(Puducherry)

ORDER

This writ petition has been filed for a mandamus, directing the 2nd respondent to remove the entries of attachment made by the third respondent vide registered Document No.25676 of 2015 dated 16.12.2015 in respect of the immovable property in R.S.No.243 Villianur Commune Panchayat, Odiampet Revenue Village, Puducherry purchased by the petitioner as per the sale certificate dated 03.7.2024 issued by JM Financial Asset Reconstruction Company Limited.

2. It is the case of the writ petitioner that the subject property was originally mortgaged to UCO Bank by one S.Vijayalakshmi on 16.11.2011. Since she had defaulted in payment of the loan, the Bank had initiated a proceedings under the SARFAESI Act and later assigned the debt to JM Financial Asset Reconstruction Company under a registered agreement dated 26.03.2014.

3. The petitioner was the highest bidder in the auction conducted by the secured creditor on 24.06.2024. A sale certificate dated

03.07.2024 was issued and possession was also delivered to the petitioner. He would submit that the said Re-construction Company had forwarded a copy of the Sale Certificate dated 03.07.2024 to the 2nd respondent along with a covering letter dated 04.07.2024 requesting the authority to record the sale certificate in the register.

4. The petitioner would submit that when he had approached the 2nd respondent in connection with the registration of the sale certificate, he was informed that the 3rd respondent had attached the subject property on 05.10.2015 and registered the attachment on 16.12.2015 and therefore, he could not register the sale certificate. The Secured Creditor, namely, the Re-construction Company vide letter dated 06.11.2024 informed the 2nd respondent that the creation of charge in favour of UCO Bank was much prior in time to the order of attachment and that it is the Secured Creditor who has the first and charge-in-priority over the mortgaged properties above all other debts including crown debts. That apart, the charge in favour of UCO Bank had been created as early as on 16.11.2011 whereas the attachment by the 3rd respondent was on 05.10.2015. Therefore, the petitioner had filed W.P.No.36100 of 2024 seeking a mandamus to direct

the 2nd respondent to register the sale certificate. This writ petition was allowed by order dated 29.11.2024 and the sale certificate was registered on 13.12.2024. The petitioner had requested the 2nd respondent that the entry regarding the attachment should be removed in his representation dated 12.11.2024 and after the registration of the sale certificate had once again reiterated the said request. However, the entry was not removed and therefore, the petitioner has come forward with the writ in question.

5. Mr.Nirmal Kumar, learned Government Advocate (Puducherry) who takes notice on behalf of respondents 1 to 3 would submit that they cannot remove the entry but could make necessary entries in the remarks column.

6. However, the learned counsel for the petitioner would submit that a Division Bench of this Court has in similar circumstances directed that the entries be removed where a purchaser from the secured creditor has a superior right in W.P(Md)No.23338 of 2023 ***[M/s.Boss Enterprises, Rep by its Partner Vs The Sub Registrar, Theni District and others].*** In the said judgment, the Bench had referred to an earlier

judgment reported in ***2023 (5) CTC 470 [M.Karpagam Vs.. Assistant Commissioner of Commercial Taxes, Gandhipuram Circle, Gandhipuram, Coimbatore and another*** where the Bench had held that a purchaser in an auction purchase gets a superior right than that of the arrears of tax revenue. The same principle has been reiterated in the decision in W.P(Md)No.23338 of 2023 wherein in paragraph 5 the Bench had observed as follows:

> *"5. Though this argument is very attractive, a careful reading of Rule 143 shows that a certificate of encumbrance should contain complete list of all encumbrances 'affecting the property in question'. Once the right of the secured creditor is placed higher than that of the 2nd respondent, who claims arrears of tax revenue and when the 3 respondent, while bringing the property for SARFAESI sale, if there is an excess, should also settle other statutory creditors by following the procedures contemplated under Rule 9 of SARFAESI Rules, then the question of arrears of revenue affecting the title of the property does not arise. Consequently, once the property is sold under SARFAESI, prior encumbrances, which are lesser in priority than that of the Bank, will have to be removed."*

Ultimately, the learned Judges have proceeded to allow the said writ petition and directed the 1st respondent to remove the encumbrance, reflecting the attachment made by the 2nd respondent.

7. The above judgment will apply on all fours to the case on hand. Accordingly, this Writ Petition is allowed and a direction is issued to the 2nd respondent to remove the entry relating to the attachment made by the 3rd respondent from the encumbrance certificate within a period of 3 weeks from the date of receipt of a copy of this order. No costs.

23.01.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,

1. The Chief Secretary,
   Government of Union Territory
   of Puducherry
   Goubert Avenue, Puducherry 605 001.

2. The Sub Registrar,
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   Villianur, Puducherry 605 110.

3. The Tax Recovery Officer,
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P.T.ASHA, J.,

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