IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.04.2025

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.10608 of 2025

M/s.LIC Housing Finance Ltd.,
Rep. by its Authorized Officer,
Mr.S.Nagarajan,
"Harrington Chamber"
Block No.C, No.30/1A, Abdul Razack
1st Street, Saidapet, Chennai- 600 015. ... Petitioner

Vs.

1. The Assistant Commissioner,
Tax Recovery Cell (HQ),
Office of the Commissioner of GST and Central Excise,
Chennai South Commissionerate,
No:692, MHU Complex,
Anna Salai, Nandanam,
Chennai- 600 035.

2. The Sub Registrar,
Virugambakkam Sub Registrar Office,
Chennai- 600 083.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to raise the order of attachment dated 10.04.2023 in Doc.No.16 of 2023, made by the 1st respondent reflecting in the encumbrance certificate based on the petitioner representation dated 23.07.2024 and consequently direct the 2nd respondent to delete the encumbrance attachment as against the mortgaged property bearing Block No.46, 12th sector, 76th Street, K.K.Nagar, comprised in Survey No.246 part, plot No.1022, Virugambakkam Village measuring an extent of 2400 sq.ft. together with residential house thereon executed a Memorandum of Deposit of Title Deeds dated 05.05.2017, confirming the creation of mortgage and the same was registered as Document No.2655 of 2017.

For Petitioner : Mr.Elayaraj Kumar P
for Ms.A.S.Neela Narayani

For Respondents : Mr.R.P.Prayadish (R1)
Senior Standing Counsel

<u>O R D E R</u>

The present Writ Petition is filed to direct the first respondent to raise the order of impugned attachment dated 10.04.2023 passed by the first respondent and the consequential direction to the second respondent to delete the encumbrance attachment as against the mortgaged property.

2. By consent of the parties, the main Writ Petition is taken up for disposal at the stage of admission itself.

3. The learned counsel for the petitioner submitted that the borrowers, namely Mr.Tushar Ranjan Sahu and Mrs.Avipsha Sahu borrowed money from the petitioner/Bank, for which the subject property were provided as security and the Memorandum of Deposit of Title Deed dated 05.05.2017 was also executed in favour of the petitioner. On account of the default committed by the said borrowers, the loan account maintained by them with the petitioner has become Non-performing Asset. Thereafter, the petitioner being the first charge holder, through the authorized officer initiated measures under the SARFAESI Act and brought the subject property for sale in public auction, however, the petitioner was not able to sell the subject property, since none of the buyers would come for the auction due to the reason that the first respondent issued an attachment order dated 10.04.2023 and

the same were registered with the second respondent. Further, he would submit that unless the said attachment order of the first respondent is raised, the petitioner cannot bring the subject property for sale in public auction and the petitioner, being the first charge holder, has priority over the aforesaid property and therefore, the learned counsel seeks for appropriate orders to be passed in the Writ Petition by lifting the attachments.

4. The learned counsel for the petitioner also placed reliance upon the order of this Court dated 22.08.2024 in W.P.No.36486 of 2023. In view of the above judgment, he would submit that this Court may direct the first respondent to raise the order of impugned attachment dated 10.04.2023 with the condition that if anything is left over and above after the settlement of the dues of the petitioner, the same shall be transferred directly by the petitioner to the first respondent.

5. Mr.RP.Pragadish, learned Senior Standing Counsel appearing for the first respondent would fairly accede to the submissions

made by the learned counsel for the petitioner and also submit that as per Section 83 of the Goods and Services Act, 2017, the interest of the 1st respondent has to be protected as they are entitled to get amount out of the sale proceeds of the asset mortgaged with the petitioner. He therefore requested this Court may pass appropriate orders.

6. Heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the first respondent.

7. Now the issue that arises for consideration is whether the attachment order dated 10.04.2023 passed by the first respondent who is the second charge holder, are liable to be raised?

8. Admittedly, there is no dispute on the fact that the petitioner is the first charge holder, the first respondent is the second charge holder, and the subject properties were attached vide attachment order dated 10.04.2023 by the first respondent and registered with the second respondent. It is pertinent to note that although the 1st respondent is

second charge holder, ordered attachment of the subject properties, by virtue of this, the petitioner who is the first charge holder, is unable to sell away the properties since no buyer is coming forward to participate in the public auction and though the petitioner brought the properties in public auction twice, they could not succeed because of attachment orders.

9. It is contented by the learned counsel for the petitioner that unless the attachment orders passed by the first respondent, which were registered with the second respondent, are removed, the petitioner cannot bring the aforesaid properties to sell in public auction and recover their dues. It is also submitted by the learned counsel for the petitioner that in the event, if anything is left over and above after the realisation of their dues from and out of the sale proceeds, the same shall be directly transferred to the first respondent's account and the same can be adjusted towards their dues.

10. Considering the facts and circumstances and the

submissions made by the learned counsel for the parties, this Court is inclined to pass the following orders:

(i) The petitioner is, hereby, declared as the first charge holder by way of Memorandum of Deposit of Title Deed dated 05.05.2017 and the first respondent is declared as the second charge holder being registered the charges on 10.04.2023 with the second respondent.

(ii) As far as the charges created by the first respondent with the second respondent dated 10.04.2023, the second respondent is directed to remove the said charge within two weeks from the date of receipt of a copy of this order either from the petitioner or from the first respondent, from their records.

(iii) The petitioner can bring the subject properties for sale, for which the first respondent has no objection and out of the sale proceeds, the outstanding dues of the petitioner may first be settled and thereafter, the balance has to be paid to the first respondent;

(iv) It is made clear that the first respondent will be entitled to hold charge, only after the entire dues of the petitioner are settled from and out of the sale proceeds of the aforesaid properties.

(v) The petitioner is directed to transfer the remaining sale proceeds after adjusting their dues, to the 1st respondent's account which shall be adjusted towards their dues.

11. With the aforesaid directions, this Writ Petition is disposed of. No costs.

07.04.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

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   Tax Recovery Cell (HQ),
   Office of the Commissioner of GST and Central Excise,
   Chennai South Commissionerate,
   No:692, MHU Complex,
   Anna Salai, Nandanam,
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KRISHNAN RAMASAMY.J.,

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