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W.P.(MD)No.21970 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.21970 of 2025

V.Ganesan

...Petitioner

vs.

1.The Sub Registrar,
Thiruthangal Sub-Registrar Office,
Thiruthangal,
Sivakasi Taluk,
Virudhunagar District.

2.The Superintendent,
Madurai Central Prison,
Madurai District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the respondents 1 and 2 to consider the petitioner's representation dated 16.07.2025 and consequently direct the first respondent to cancel the Mortgage document nO.3438/2022 Thiruthangal Sub Registrar Office, Sivakasi Taluk, Virudhunagar District.

For Petitioner : Mr.S.Ponsaravanan

For Respondents : Mr.D.Gandhiraj,
Special Government Pleader for R1

Mr.A.Albert James,
Government Advocate (crl.side) for R2

**ORDER**

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The petitioner had availed a loan from one Irulappan. It was a mortgage loan. The mortgage was registered as Document No.3438 of 2022 on the file of the first respondent. The petitioner claims to have settled the loan in full. He had also taken back the sale deed as well as the mortgage deed. But the discharge of the mortgage has to be duly registered. Unfortunately, the mortgagee is in confinement at Central Prison, Madurai as he was convicted by the Special Court for POCSO Act Cases, Srivilliputhur in Spl SC No.1 of 2021.

2.When the matter was taken up for hearing, the learned Special Government Pleader submitted that as per Rule 524 of the Tamil Nadu Prison Rules, 1983, the petitioner can very well get power of attorney from the said Irulappan and the based on the same, he can very well register the discharge of the mortgage. No doubt, this course of action is open to the petitioner. But then, we cannot lose sight of the statutory mandate set out in Section 38 of the Registration Act, 1908. It reads as follows :



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“38. Persons exempt from appearance at registration-office.

—(1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) person exempt by law from personal appearance in Court, and who would but for the provisions next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.”

The rule employs the expression “shall”. There is an obligation cast on the on the registering authority. He also has a choice. He may either himself go to the house of such person or to the jail in which he is confined, and examine him or issue a commission for his examination. But he has a duty to adopt either one of the courses of action.



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3.The learned counsel for the petitioner also draws my attention to the order dated 21.07.2023 in WP(MD)No.7281 of 2023 passed by the Hon'ble Division Bench of this Court. The Hon'ble Division Bench while considering the request made by the petitioner therein for release of her husband for the purpose of presenting a document before the registering authority, disposed of the writ petition in the following terms :

"3.Section 524 of the Tamil Nadu Prison Rules, 1983, grants permission to every convict prisoner, at the discretion of the Superintendent, to sign and attest a Power of Attorney or other statements concerning his properties. Likewise, Section 38 of the Tamil Nadu Registration Act, 1908, exempts certain prisoners from appearing at the Registration Office, for the purpose of Registration. Sub Section (2) of Section 38 of the Tamil Nadu Registration Act, 1908, empowers the Registering Officer, to himself go to the Jail in which the prisoner is confined and examine him or issue a commission for his examination.

4. In view of the Rule 524 of the Tamil Nadu Prison Rules, 1983 and Section 38 of the Tamil Nadu Registration Act, the execution and consequential registration, need not necessarily be done outside the



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prison. In view of these provisions, the request of the petitioner for release of her husband on leave, does not require consideration

5. In this background, the petitioner is granted liberty to make a fresh representation to the first respondent herein as well as the concerned Sub Registrar, before whom she intends to have the execution and registration of sale deed and on receipt of the same, the first respondent as well as the concerned Sub Registrar shall take further course of action in accordance with Section 524 of the Tamil Nadu Prison Rules, 1983 and Section 38 of the Tamil Nadu Registration Act, 1908. Such action, shall be completed within a period of four weeks from the date of receipt of a copy of this order.”

4.I, therefore, direct the first respondent herein to act in terms of the statutory mandate set out in Section 38 of the Tamil Nadu Registration Act, 1908 on the petitioner's representation dated 16.07.2025. This shall be done as expeditiously as possible. This writ petition is allowed.

03.09.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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WEB COPY **To:**

- 1.The Sub Registrar,
Thiruthangal Sub-Registrar Office,
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Virudhunagar District.
- 2.The Superintendent,
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G.R.SWAMINATHAN, J.

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