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W.P.No.28406 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

WP No.28406 of 2024
and WMP No.30971 of 2024

G.Sekar
S/o.Gopal,
No.1/48B, Giri Nagar,
Kulathupudur, Andipalayam,
Iduvampalayam Post,
Tirupur - 641 687.

Petitioner(s)

Vs

1. The Union of India
Rep by its Secretary to Government,
Ministry of Finance
(Department of Financial Services),
New Delhi.
2. Aptus Value Housing Finance India Ltd
Rep by its Authorized Officer,
8B, 8th Floor, Doshi Towers, 205,
Poonamallee High Road, Kilpauk,
Chennai-600 010.

Respondent(s)



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PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring that the entire action taken by the second respondent as against the petitioner and his property situated at No.1/48B, Giri Nagar, Kulathupudur, Andipalayam, Iduvampalayam Post, Tirupur - 641 687, by invoking provisions of SARFAESI Act, 2002 and alleged sale conducted on 10.09.2024 pursuant to the sale notice dated 3.8.2024 as being illegal and void ab-initio and consequently direct the second respondent to restore the possession of the property at No.1/48B, Giri Nagar, Kulathupudur, Andipalayam, Iduvampalayam Post, Tirupur - 641 687, to the petitioner.

For Petitioner(s): Mr.T.Saikrishnan

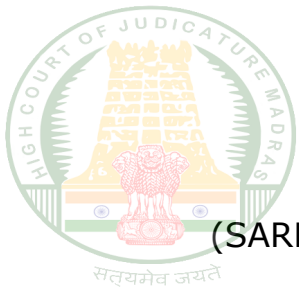
For Respondent(s): Mr.V.Chandrasekaran
Senior Panel Counsel for R1

Mr.R.Srinivasan and
Mr.V.P.Parivallal for R2

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner has approached this court invoking Article 226 of the Constitution of India seeking a declaration to declare the entire action taken by the second respondent/Financial Institution under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002



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(SARFAESI Act) as illegal and *void ab initio*. The petitioner specifically challenges the auction sale conducted on 10.09.2024 pursuant to a sale notice dated 03.08.2024 concerning his residential house property situated at No. 1/48B, Giri Nagar, Kulathupudur, Andipalayam, Tirupur.

2.1. Learned counsel for the petitioner heavily relies upon the Ministry of Finance Notification S.O. 856(E) dated 24.02.2020 [as modified vide notification dated 12.2.2021] to contend that Non-Banking Financial Companies (NBFCs) are entitled to enforce security interests under the SARFAESI Act only where the secured debt is Rs.20 Lakhs and above. In the instant case, since the outstanding loan amount is admittedly less than Rs.20 Lakhs, the second respondent lacks absolute statutory jurisdiction to trigger SARFAESI proceedings.

2.2. Learned counsel further submits that the procedure contemplated under the Security Interest (Enforcement) Rules, 2002, was completely bypassed, alleging that the Demand Notice under Section 13(2) of the SARFAESI Act, Possession Notice under



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Section 13(4) of the SARFAESI Act, and the Sale Notice were never served upon him, keeping him entirely in the dark.

3. At the outset, we must address a fundamental jurisdictional issue that goes to the root of the maintainability of this writ petition. The second respondent herein, Aptus Value Housing Finance India Limited, is a private financial institution. It is not an instrumentality of the State as defined under Article 12 of the Constitution of India. The dispute between the petitioner and the second respondent arises out of a loan agreement and the subsequent enforcement of security interest under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act].

4. It is a well-settled proposition of law that a writ petition under Article 226 of the Constitution of India can only be issued against a State, its instrumentalities, or a private body discharging a public function or statutory public duty. The second respondent, in initiating proceedings under the SARFAESI Act, is merely enforcing a private contractual right and security interest created by the



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borrower. It is not discharging any public function or sovereign duty. Therefore, a writ petition against a private Financial Institution is not maintainable under Article 226 of the Constitution of India. The said view of ours is fortified by a decision of the Supreme Court in *S.Shobha v. Muthoot Finance Ltd*¹, wherein it was held thus:

"9. We may sum up thus:

(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

¹ 2025 SCC OnLine SC 177



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(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.



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(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

[emphasis supplied]

5. From the law enunciated by the Supreme Court, it is lucid that a private entity cannot be subjected to writ jurisdiction unless there is a clear violation of public law duties or statutory obligations imposed by the State. In the present case, the grievance is essentially contractual and financial in nature, relating to the recovery of dues and enforcement of mortgage and the remedy of



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the petitioner lies before specialized forums empowered to adjudicate such disputes.

6. The SARFAESI Act is a complete code in itself. Section 17 of the SARFAESI Act provides a comprehensive mechanism for any person aggrieved by the measures referred to in Section 13(4) of the SARFAESI Act to approach the Debts Recovery Tribunal (DRT). All the grievances highlighted by the petitioner, including the question of the applicability of the threshold limit of Rs.20 Lakhs under the notifications, valuation irregularities, and non-service of mandatory statutory notices, fall squarely within the adjudicatory domain of the DRT.

7. Although the petitioner previously approached the DRT, Coimbatore, in a delay condonation application (I.A.No.3008 of 2024 in S.A. Diary No.1610 of 2024) arising out of the order passed under Section 14 of the SARFAESI Act, which was dismissed on 30.08.2024, the subsequent development of the auction sale on 10.09.2024 creates a fresh cause of action, for which the petitioner can approach the DRT.



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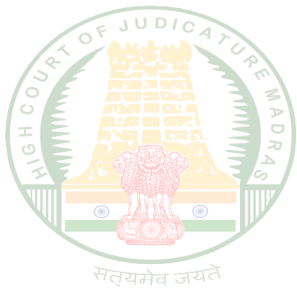
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8. This court is not inclined to circumvent the statutory forum prescribed by the Legislature to parallelly adjudicate upon questions of fact and law under extraordinary writ jurisdiction.

9. Accordingly, this writ petition stands dismissed on the grounds of availability of an alternative remedy, with the following observations:

(a) Liberty is granted to the petitioner to approach the DRT under Section 17 of the SARFAESI Act within a period of thirty (30) days from the date of receipt of a copy of this order, challenging the entire recovery actions and the auction sale conducted by the second respondent.

(b) All the grounds raised by the petitioner in this writ petition, including the primary jurisdictional challenge regarding the Rs.20 Lakh threshold for Financial Institutions under the Ministry of Finance notification and the alleged infractions of natural justice, may be freely raised before the DRT.



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(c) If the petitioner approaches the DRT within the time frame stipulated above, the DRT, while considering the question of condoning delay, shall exclude the period during which the petitioner was bona fide pursuing the present writ petition before this Court.

There shall be no order as to costs. Consequently, connected interim application stands closed.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)
13.07.2026

Index : Yes/No
Neutral Citation : Yes/No
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To:

1. The Union of India
Rep by its Secretary to Government,
Ministry of Finance
(Department of Financial Services),
New Delhi.



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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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