

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 8265 of 2014 (G)

PETITIONER(S):

- 1. C.V. RAVEENDRAN, AGED 62 YEARS,
S/O. BHARGAVI AMMA, PULARI,
AMBALAPPARA II VILLAGE, AMBALAPPARA POST,
VADAKKUMBRAM AMSOM, OTTAPALAM,
REPRESENTED BY POWER OF ATTORNEY HOLDER
A.T. VIJAYAKUMAR, AGED 47 YEARS,
S/O.LATE KUNNATH NARAYANAN, MUNDAMUKA AMSOM,
PARUTHIPARA DESOM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.**
- 2. A.T. VIJAYAKUMAR, AGED 47 YEARS,
S/O. LATE KUNNATH NARAYANAN,
MUNDAMUKA AMSOM, PARUTHIPRA DESOM,
OTTAPALAM TALUK, PALAKKAD DISTRICT.**

**BY SRI.T.M.SREEDHARAN, SENIOR ADVOCATE.
ADVS. SRI.L.RAJESH NARAYAN,
SMT.PRABHA R.MENON.**

RESPONDENT(S):

- 1. THE AUTHORISED OFFICER,
PUNJAB NATIONAL BANK,
ASSET RECOVERY MANAGEMENT BRANCH,
2ND FLOOR, 40/1461, MARKET ROAD, ERNAKULAM - 682 011.**
- 2. R. KASI VISWANATHAN & BROTHERS,
VEERAMANI BUILDINGS, MAIN ROAD, PATTAMBI - 679 303.**
- 3. SMT. GIRIJA KASIVISWANATHAN,
W/O. LATE R. KASI VISWANATHAN, NO. 4/265, BAZAR,
PATTAMBI P.O., OTTAPALAM, PALAKKAD- 679 303.**
- 4. KALYANI VEERAMANI,
W/O.VEERAMANI, NO. 4/265, BAZAR,
PATTAMBI P.O., OTTAPALAM, PALAKKAD- 679 303.**
- 5. R. KRISHNAN, S/O. LATE S.K. RAMA IYER,
VEERAMANI BUILDINGS, NETHIRIMANGALAM AMSOM,
OTTAPALAM, PALAKKAD - 679 101.**

6. RAMANATHAN,
S/O. LATE R. KASIVISWANATHAN, NO. 4/265, BAZAR,
PATTAMBI P.O., OTTAPALAM, PALAKKAD.

7. RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL, 8TH FLOOR, KSHB BUILDING,
PANAMPILLY NAGAR, KOCHI-682 030.

* ADDL. R8 IMPEADED

8. THE DISTRICT COLLECTOR,
PALAKKAD.

* IS IMPEADED SUO MOTU AS PER ORDER DATED 14/08/2014.

** ADDL. R9 IMPEADED

9. M.A.ASHRAF, S/O.M.B.ABOOBACKER,
'MANAYIL HOUSE', NAYARANGADI,
KUNNAMKULAM - 679 563.

** ADDL.R9 IS IMPEADED AS PER ORDER DATED 26.11.2014 IN
IA. NO. 15612/2014.

R1 BY SRI.P.K.SURESH KUMAR, SENIOR ADVOCATE.

ADV. SRI.SANTHEEP ANKARATH.

R5 BY SRI.K.ANAND, SENIOR ADVOCATE.

ADV. SMT.LATHA KRISHNAN.

R7 BY ADV. SRI.N.NAGARESH, ASST. S.G. OF INDIA.

ADDL. R8 BY SR. GOVT. PLEADER SRI.S. JAMAL.

ADDL. R9 BY SRI.G.SHRIKUMAR, SENIOR ADVOCATE.

ADV. SRI.ANIL VINCENT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-02-2015, ALONG WITH WP(C).NO.8570 OF 2014, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT-P1- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT AS WELL AS THE CHEQUE DATED 29/06/2010.
- EXHIBIT-P2- TRUE COPY OF THE DECREE OF THE SUB COURT, OTTAPALAM IN O.S 298/2008 DATED 21/03/2009.
- EXHIBIT-P3- TRUE COPY OF THE STATEMENT DATED 06/07/2008 SUBMITTED TO THE BANK.
- EXHIBIT-P4- TRUE COPY OF THE MINUTES OF THE MEETING DATED 31/05/2008.
- EXHIBIT-P5- TRUE COPY OF THE AGREEMENT DATED 25/09/2008.
- EXHIBIT-P6- TRUE COPY OF THE NOTICE INVITING TENDER DATED 23/05/2009.
- EXHIBIT-P7- TRUE COPY OF THE NOTICE DATED 14/01/2012.
- EXHIBIT-P8- TRUE COPY OF THE INSOLVENCY PETITION DATED 28/11/2010.
- EXHIBIT-P9- TRUE COPY OF THE ORDER DATED 29/01/2014 IN I.A 3438/2012 IN I.P 1/2010 ON THE FILE OF THE HONOURABLE SUB COURT, OTTAPALAM.
- EXHIBIT-P10- TRUE COPY OF THE JUDGMENT DATED 05/09/2013 IN O.P(C)2937/2013.
- EXHIBIT-P11- TRUE COPY OF THE ONE SUCH POWER OF ATTORNEY.
- EXHIBIT-P12- TRUE COPY OF THE SALE PROCLAMATION DATED 21/02/2014.
- EXHIBIT-P13- TRUE COPY OF THE LIST OF CREDITORS.
- EXHIBIT P14- TRUE COPY OF THE NOTIFICATION DATED 13/09/2014.
- EXHIBIT P15- TRUE COPY OF THE NOTICE DATED 13/09/2014.
- EXHIBIT P16- TRUE COPY OF THE COMMUNICATION.
- EXHIBIT P17- TRUE COPY OF THE FAX CONFIRMATION RECEIPT DATED 21/10/2014.
- EXHIBIT P18- TRUE COPY OF THE RECEIPT OF REGISTRATION DATED 21/10/2014.
- EXHIBIT P19- TRUE COPY OF THE REQUEST DATED 14/11/2014.
- EXHIBIT P20- TRUE COPY OF THE GOOGLE MAP SHOWING THE LOCATION OF THE PROPERTY BY THE SIDE OF 'BHARATHAPUZHA'.

EXHIBIT P21- TRUE COPY OF THE SKETCH TO SCALE SHOWING THE RESPECTIVE PROPERTY.

RESPONDENT'S EXHIBITS:-

- EXT.R1A COPY OF THE VALUATION REPORT DATED 28/08/2014 REGARDING 13 CENTS (5.26 ARES) OF LAND IN SY. NO.142/1 OF PATTAMBI VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT WITH SHOP BUILDING, IN THE NAME OF SRI.R. KRISHNAN.**
- EXT.R1B COPY OF THE VALUATION REPORT DATED 28/08/2014 REGARDING 56.750 CENTS (22.97 ARES) OF LAND IN SY. NO.142/3 OF PATTAMBI VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT WITH BUILDING, IN THE NAME OF SRI.VEERAMANI.**
- EXT.R1C COPY OF THE E-AUCTION SALE NOTICE DATED 13/09/2014 PUBLISHED IN INDIAN EXPRESS DAILY DATED 13/09/2014.**
- EXT.R1D COPY OF THE E-AUCTION SALE NOTICE DATED 13/09/2014 PUBLISHED IN KERALA KAUMUDI DATED 13/09/2014.**
- EXT.R1E COPY OF THE PAGE OF THE E-TENDER FROM THE TENDERS INFORMATION SYSTEM.**
- EXT.R1F COPY OF THE PRINT OUTS OF E-TENDER DOCUMENTS REGARDING 13 CENTS (5.26 ARES) OF LAND IN SY. NO.142/1 OF PATTAMBI VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT WITH SHOP BUILDING.**
- EXT.R1G TRUE PRINT OUTS OF E-TENDER DOCUMENTS REGARDING 56.750 CENTS (22.97 ARES) OF LAND IN SY. NO.142/3 OF PATTAMBI VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT WITH BUILDING.**
- EXT.R1H COPY OF THE LETTER BY FAX DATED 20/10/2014 SENT BY A.T.VIJAYAKUMAR TO THE AUTHORISED OFFICER OF THE RESPONDENT BANK.**
- EXT.R1I STATEMENT SHOWING THE OUTSTANDING AMOUNT DUE TO THE BANK AS ON 30/06/2014.**
- EXT.R1J STATEMENT SHOWING THE TOTAL AMOUNT DUE INCLUDING INTEREST UPTO 30/11/2014 AND OTHER CHARGES.**
- EXT.R1K COPY OF THE FINAL ORDER DATED 07/12/2011 IN O.A.254/2009.**
- EXT.R5A COPY OF THE PAPER PUBLICATION DATED 22/11/2008.**

//TRUE COPY//

P.A. TO JUDGE

rs.

A.M.SHAFFIQUE, J

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W.P.C.Nos.8265 & 8570 of 2014

Dated this the 23rd day of February 2015

J U D G M E N T

These writ petitions have been filed by separate writ petitioners challenging the action taken by the respondent bank for sale of mortgaged properties.

2. Petitioners in W.P.C.No.8265/2014 are the creditors of the borrower having formed a committee to recover the amounts from the properties available with the borrower. They have already obtained a sale deed in their favour subsequent to the mortgage which was later declared to be not binding on the respondent bank on a decree passed by the Civil court.

3. This writ petition is filed challenging Ext.P12 notice issued by the respondent bank for sale of mortgaged property. The main ground alleged by the petitioners is gross undervaluation of the property. According to them, the borrower owes substantial amounts to various creditors

whom the petitioners represent and if the property could be sold at market value, then the bank as well as the other creditors of the borrowers will be able to recover the amounts from the sale proceeds.

4. W.P.C.No.8570/2014 is filed by a guarantor who has mortgaged his property having an extent of 13 cents for the financial assistance given to the borrower by the respondent bank. He also challenges the action of the bank in effecting sale of property.

5. During the pendency of the above writ petitions, this Court had issued several interim orders. Sale published in terms of Ext.P12 did not take place as there were no bidders. Later, this Court, by an interim order, permitted the bank to proceed with sale of property and ultimately property has been sold in favour of additional 10th respondent for an amount of Rs.6,35,50,000/-. The petitioners in W.P.C.No.8265/2014 were also permitted to participate in the said auction. Subsequently, this Court

passed another interim order on 09/12/2014 by which the contentions urged by the petitioners were considered and ultimately a direction was issued permitting the petitioners to deposit Rs.8,45,90,529.46/-, which was the amount due to the bank as on 01/12/2014, within a period of three days. Apparently, the said amount has not been deposited. The main contention urged by the petitioners in W.P.C.No.8265/2014 is that, by virtue of a judgment of this Court, 30% of the property cannot be utilised for construction of any building on account of Coastal Regulations Zone Rules and therefore the purchaser who had agreed to purchase the property is not interested to invest the amount and therefore the petitioners were unable to deposit the amount in time. It is, inter alia contended that the property has to be valued properly and the sale now conducted by the bank without proper valuation is liable to be set aside.

6. Petitioner in W.P.C.No.8570/2014 also contends

that the property is grossly undervalued and that he is only a guarantor for Rs.25 lakhs.

7. It is apparent that the bank had effected sale of property by invoking the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as 'SARFAESI Act'. It is held by the Supreme Court in **Union Bank of India v. Satyawati Tondon [(2010) 8 SCC 110]** that a writ court shall not interfere with SARFAESI proceedings. However, taking into consideration the fact that sufficient time can be granted to certain persons who were affected by the sale of property, this Court passed several interim orders granting sufficient opportunity to the petitioners to bring appropriate purchasers for participating in the auction or to even participate in the auction conducted by the respondent bank. Over and above that, this Court cannot interfere in the matter relating to under valuation or even any irregularity in the procedure adopted by the bank. If at all

the petitioners have any locus to challenge the same, the remedy is to approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. This Court cannot sit in judgment over the valuation of the property or any irregularity being committed in the manner in which the sale is conducted by an authorised officer invoking power under the SARFAESI Act.

Under such circumstances, I am of the view that these writ petitions are not maintainable and are dismissed. It is made clear that the respondent bank is entitled to take all further steps pursuant to the sale, in accordance with law.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

W.P.C.No.8265/2014
& 8570/2014

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