

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P No. 14567 of 2015
and
M.P. No.1 & 2 of 2015

Gnanasoundari

...Petitioner

Vs.

1 The Chief Manager
State Bank of Bikaner & Jaipur
Veeras Arena
24, Municipal Office Road
Tiruppur 641 604

2 The Authorised Officer
State Bank of Bikaner & Jaipur
Veeras Arena
24, Municipal Office Road
Tiruppur 641 604

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration declaring that the SARFAESI proceedings initiated by the respondent bank and the consequential fraudulent auction sale of the petitioner's agricultural property measuring 2.86 acres of land in S.F. No.267/2, Vadugapalayam Village dated 27.03.2015 to the third parties without the petitioner's consent as null and void.

For petitioner : Mr.R.Subramanian for
Mr. A. Selvendhiran
For respondents : Mr. N. Kishore Kumar

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

This writ petition is filed seeking a writ of declaration declaring that the proceedings initiated by the respondent bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") and the consequential auction sale of the petitioner's agricultural property measuring 2.86 acres of land in S.F. No.267/2, Vadugapalayam Village dated 27.03.2015 to the third parties, without the petitioner's consent, is null and void.

2 The petitioner is stated to be a guarantor to the loan availed by her son from the respondent bank. According to the petitioner, the secured asset, which was given as a collateral security, was an agricultural land, against which loan was obtained by her son and as such, the respondent bank cannot recover the outstanding dues under the proceedings initiated under the SARFAESI Act. It is next contended that the second respondent issued a demand notice under Section 13(2) of the SARFAESI Act on 11.10.2010. Subsequently, a notice under Section 13(4) of the SARFAESI Act was issued on 14.12.2011. Consequently, the respondent bank has put the property on sale by issuing sale-cum-tender notice dated 25.02.2015, indicating the date of opening of tender as 27.03.2015. It is further contended that there is a bar under the provisions of the SARFAESI Act to proceed against an agricultural property and as such, the entire exercise initiated by the respondent bank is vitiated and deserves to be set aside.

3 It is a well settled principle of law that a person being aggrieved by any action or measure taken under Section 13(4) of the SARFAESI Act, is competent and entitled to prefer an appeal under Section 17, *ibid*, before the Debts Recovery Tribunal. Admittedly, the demand notice under Section 13(2) of the SARFAESI Act was issued on 11.10.2010. Thereafter, possession notice under Section 13(4), *ibid*, was issued on 14.12.2011. Seemingly, the petitioner has not taken any steps thereafter, till the sale-cum-tender notice was issued.

4 In view of the aforestated backdrop, at this stage, we are not inclined to interfere with the matter. If the petitioner is aggrieved by the sale-cum-tender notice issued by the respondent bank, she is at liberty to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, raising the appropriate contentions

available to her under the provisions of law, for an appropriate direction against the bank, if so advised.

5 Having regard to the fact situation, we grant 12 days' time to the petitioner to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. Status quo as obtained today, in respect of the property in question, shall be maintained for a period of 12 days. The petitioner is also at liberty to make a representation before the bank in response to the sale-cum-tender notice.

6 The writ petition stands disposed of with the above observations. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Chief Manager
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Veeras Arena
24, Municipal Office Road
Tiruppur 641 604

2 The Authorised Officer
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1 CC to Mr. A. Selvendhiran, Advocate SR.No.33887

1 CC to Mr. N. Kishore Kumar, Advocate SR.No. 33515

W.P. No.14567 of 2015

CNR (CO)

PSI (13.07.2015)