

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM

THE HON'BLE Mr. JUSTICE SATISH K.AGNIHOTRI
and

THE HON'BLE Dr. JUSTICE P.DEVADASS

W.P.No.22157 of 2009
and

M.P.Nos.1 to 3 of 2010

1.Futnani Dairy Farm,
rep. by its Managing Partner
a partnership firm carrying on business at
No.1/115, Old Mahabalipuram Road,
Semmencherry Village,
Chennai-600 119.

2.Madhusudan Futnani

..Petitioners

Vs.

1.Union of India
rep. by the Secretary to Government,
Ministry of Finance,
Department of Economic Affairs
(Banking Division),
North Block, New Delhi.

2.Ind Bank Housing Ltd., सत्यमेव जयते
rep. by its Manager,
480, Anna Salai, Chennai-600 002.

3.The Company Secretary/
Authorised Officer,
Ind Bank Housing Ltd.,
480, Anna Salai, Chennai - 2.

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4.M/s.New ERA Urban Amenities Ltd.,
rep. by its Managing Director
S.Thiyagaraja Chettiar,
Regd. Office at No.44, Pantheon Road,
Thiru Complex, Egmore,
Chennai-600 008.

5.S.Thiyagaraja Chettiar

6.The Governor,
The Reserve Bank of India,
Central Office, Mumbai - 400 001. .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of declaration declaring that the impugned Notification issued by the first respondent notifying the second respondent as a bank or financial institution under the provisions of the SARFAESI Act bearing S.O.No.1083 dated 16.03.2006 as published in Part II - Section 3 - Sub Section II in the Weekly Gazette of India bearing date March 19 - March 25 of 2006 as illegal and unconstitutional and consequently forbear the second and third respondents from continuing the proceedings initiated under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as against the petitioners herein with reference to the subject lands more specifically set out in the petition schedule.

For Petitioner .. Mr.AR.L.Sundaresan, Sr. Counsel
for M/s.G.Ethirajulu

For Respondents... Mr.Krishna Srinivasan
for M/s.Ramasubramanian & Associates
for R2 and R3
R1 - No appearance
R4 & R5 - Not ready in notice

ORDER

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

The instant writ petition is filed seeking a declaration to the effect that the impugned Notification issued by the first respondent notifying the second respondent as a bank or financial institution under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") bearing

S.O.No.1083 dated 16.03.2006 as published in Part II - Section 3 - Sub Section II in the Weekly Gazette of India bearing date March 19 - March 25 of 2006 as illegal and unconstitutional. The same relief came up for consideration in W.P.No.10594 of 2008 wherein the petitioners therein sought for the following relief:

"Writ Petition filed under Article 226 of The Constitution of India, praying to issue a writ of declaration declaring that the Notification issued by the second respondent bearing S.O.No.1083 dated 16.03.2006 as published in Part II - Section 3 - Sub Section (ii) in the Weekly Gazette of India bearing date March 19 - March 25 of 2006 as illegal and unconstitutional and consequently issue a Mandamus by directing the first respondent not to invoke the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as against the petitioners herein."

2 A coordinate Division Bench, having examined all the issues, upheld the validity of the Notification by order dated 1st October, 2010 and held as under:

"24.The entire materials placed on record would depict the dilatory tactics being adopted on the part of the petitioners, knowing fully well their obligation as a defaulter towards the first respondent/Bank and if such pleas urged and tactics adopted by the defaulters solely with a view to delay the recovery process are encouraged, it would lead not only to docket explosion but also to financial crunch in the country.

For all the above reasons, there is no merit in the writ petition and the same is, accordingly, dismissed. No costs. The first respondent is directed to issue sale certificate and deliver vacant possession of the auctioned property to the impleaded party/the fourth respondent within two weeks from the date of receipt of a copy of this order and the fourth respondent/impleaded party/auction purchaser is directed to keep up his promise of remitting the entire balance sale consideration within a period of seven days thereafter. In case of default, the first respondent is at liberty to proceed further in accordance with law. Connected miscellaneous petitions are closed."

3 Thus, the issue of validity as sought for stands concluded. The learned counsel appearing for the petitioners submits that the present petitioners have raised some other grounds, which were not considered in the earlier petition. Thus, the decision rendered by the coordinate Division Bench requires a re-look.

4 We have examined all the facts of the case. During the pendency of the writ petition, the petitioners have preferred M.P.Nos.4 and 5 of 2010. In M.P.No.4 of 2010, the petitioners have sought to raise additional ground to the effect that the security interest was created allegedly in the year 1992 and the second respondent was notified as financial institution on 16th March, 2006. Thus, in the facts of the case, the second respondent was not competent to take recourse to the provisions of the SARFAESI Act and as such, the notice issued under Section 13(2) of the SARFAESI Act on 24th January, 2008 was illegal and unsustainable.

5 The instant ground does not make out a case for reconsideration or relook into the decision rendered by the coordinate Division Bench on 1st October, 2010. In the event the issuance of Section 13(2) notice is illegal, it is a fresh cause of action, which cannot be agitated in the instant petition.

6 In M.P.No.5 of 2010, the petitioners have sought for declaration to the effect that Section 2(1)(m)(iv) of the SARFAESI Act itself is illegal, unconstitutional and as such, the impugned notification, notifying the second respondent as financial institution be declared as bad.

7 The petitioner has questioned the validity of the provisions of Section 2(1)(m)(iv) of the SARFAESI Act for the first time by way of this miscellaneous petition. It is a new challenge, questioning the provisions of the Act and as such, it raises a new cause of action.

8 It is beneficial to refer to the observations made by the Supreme Court in T.Govindaraja Mudaliar Vs. The State of Tamil Nadu and others¹, as under :

"10. The argument of the appellants is that prior to the decision in Rustom Cavasjee Cooper case, it was not possible to challenge Chapter IV-A of the Act as violation of Article 19(1)(f) owing to the decision of this Court that Article 19(1)(f)

1 (1973) 1 SCC 336

could not be invoked when a case fell within Article 31 and that was the reason why this Court in all the previous decisions relating to the validity of Chapter IV-A proceeded on an examination of the argument whether there was infringement of Article 19(1)(g), and clause (f) of that article could not possibly be invoked. We are unable to hold that there is much substance in this argument. Bhanji Munji case, and other decisions which followed it were based mainly on an examination of the inter-relationship between Article 19(1)(f) and Article 31 (2). There is no question of any acquisition or requisition in Chapter IV-A of the Act. The relevant decision for the purpose of these cases was only the one given in Kochuni case, after which no doubt was left that the authority of law seeking to deprive a person of his property otherwise than by way of acquisition or requisition was open to challenge on the ground that it constituted infringement of the fundamental rights guaranteed by Article 19(1)(f). It was, therefore, open to those effected by the provisions of Chapter IV-A to have agitated before this Court the question which is being raised now based on the guarantee embodied in Article 19(1)(f) which was never done. It is apparently too late in the day now to pursue this line of argument. In this connection we may refer to the observations of this Court in Mohd. Ayub Khan v. Commissioner of Police, Madras¹⁰ according to which even if certain aspects of a question were not brought to the notice of the court it would decline to enter upon re-examination of the question since the decision had been followed in other cases. In Smt Somavanti v. The State of Punjab¹¹ a contention was raised that in none of the decisions the argument advanced in that case that a law may be protected from an attack under Article 31 (2) but it would be still open to challenge under Article 19(1)(f), had been examined or considered. Therefore, the decision of the Court was invited in the light of that argument. This contention, however, was repelled by the following observations at p. 794.

"The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided."

9 Thus, the additional grounds, which are sought to be incorporated in the proceedings after pronouncement of the judgment by the coordinate Division Bench on 1st October, 2010, will not alter the position of validity of the notification.

10 In view of the foregoing, the writ petition is dismissed in terms of the earlier order passed by the coordinate Division Bench in W.P.No.10594 of 2008 dated 1st October, 2010. No costs. Consequently, connected miscellaneous petitions are closed.

sd/
ASSISTANT REGISTRAR (CS-III)

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SUB-ASSISTANT REGISTRAR

mmi/vvk

To

1.The Secretary to Government,
Ministry of Finance,
Department of Economic Affairs
(Banking Division),
North Block, New Delhi.

2.The Manager,
Ind Bank Housing Ltd.
480, Anna Salai, Chennai-2.

3.The Company Secretary/
Authorised Officer,
Ind Bank Housing Ltd.,
480, Anna Salai, Chennai - 2.

4.The Governor,
The Reserve Bank of India,
Central Office, Mumbai - 400 001.

+2 CC to MR.Venkatesh Mohanraj Advocate. SR.NO. 60305

+1 CC to M/s.Su.Srinivasan Advocate. SR.NO. 60593

+1 CC to M/s.Ramasubramanian & Associates Advocate. SR.NO. 60439

W.P.No.22157 of 2009

CO-VSN

JD 24/11/2015