

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION NO.5649 OF 2015

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition is filed questioning the action of the respondent invoking the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Surfaesi Act') and in issuing a notice under Section 13(4) of the Act on 08.12.2010. The order of the Chief Judicial Magistrate, Mahabubnagar, in CrI.M.P. No.21 of 2014 dated 28.01.2014, is also questioned as being illegal and without jurisdiction.

The facts, to the limited extent necessary, are that the petitioner herein is a Government of India public sector undertaking, was granted lease of the subject property, for a period of 30 years, by the 6th respondent on 01.04.1999. A registered lease deed was executed on 25.01.2000. The subject property was mortgaged by the 6th respondent with the 1st respondent bank more than seven years thereafter on 23.01.2007. The total extent of land, given on lease to the petitioner herein, is 2068.93 square yards out of the total extent of the securitized asset of Ac.68.27 guntas.

Sri O. Manohar Reddy, Learned Counsel for the petitioner, would submit that no notice was given to the petitioner under Section 14 of the Surfaesi Act. According to the terms of Section 2(Zf) "security interest" means the right, title and interest of any kind whatsoever upon the property created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31; and, in terms of Section 31(e), the provisions of the Surfaesi Act do not apply to a lease.

While fairly stating that no notice was issued to the petitioner by the Chief Judicial Magistrate, Mahabubnagar, before orders were passed in CrI.M.P. No.21 of 2014 dated 28.01.2015, Sri Deepak Bhattacharjee, Learned Standing Counsel for the 1st respondent bank, would contend that the extent of land, of which the petitioner was granted lease, is only 2068.93 square yards and, while this

of the land mortgaged by the 6th respondent cannot be put to auction unless petitioner is heard before an order is passed under Section 14, the respondent bank is entitled to proceed with the auction for the remaining extent of land from out of the mortgaged property of 68.27 acres.

In view of the submission now made by the Learned Standing Counsel, the notice issued both under Section 13(4) of the Surfaesi Act dated 08.12.2010, and the order of the Chief Judicial Magistrate, Mahabubnaga Crl.M.P. No.21 of 2014 dated 28.01.2015, to the extent it relates to the land given on lease to the petitioner of an extent 2068.93 square yards, is set aside. The 1st respondent is entitled to proceed and put the remaining extent of mortgaged property to sale in accordance with law. It is made clear that this order shall not preclude the 1st respondent from filing an application before the Chief Judicial Magistrate under Section 14 after impleading the petitioner as a party to the said application; and, thereafter, to take action in accordance with law. Needless to state that it is always open to the petitioner herein to raise all such contentions as are available to them in law, including that the land property given on lease to them cannot be put to sale in view of Section 2 read with Section 31(e) of the Surfaesi Act. The competent authority shall consider all such contentions, in accordance with law, uninfluenced by the observations in this order.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

Date: 10.03.2015

MRKR