

**HON'BLE SRI JUSTICE R.SUBHASH REDDY**  
**AND**  
**HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

**WRIT PETITION No.31858 of 2015**

**ORDER:** *(Per Hon'ble Sri Justice R.Subhash Reddy)*

This writ petition is filed seeking a Writ of Mandamus to declare the action of the respondents in issuing advertisement of e-auction sale notification in respect of the property covered by Survey No.7 of Moosapet Village, Balanagar Mandal, Ranga Reddy District, by showing the extent of land to be sold in the auction as 1621 sq. yards along with a building therein, which is published in the newspaper, as illegal and arbitrary.

The 4<sup>th</sup> respondent is the borrower of huge loan amount from the 2<sup>nd</sup> respondent-Indian Overseas Bank. The 5<sup>th</sup> respondent is the guarantor and the respondents 6 to 9 are the Directors of the Board of the 4<sup>th</sup> respondent Company. In view of the default committed by the 4<sup>th</sup> and 5<sup>th</sup> respondents in repayment of loan amount, the 2<sup>nd</sup> respondent initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). One of the items given as secured asset is a site admeasuring 1621 sq., along with a building constructed over an extent of 6252 sq. feet, in Sy.No.7 of Moosapet Village, Balanagar Mandal, Ranga Reddy District, which is the subject matter of the impugned e-auction sale notification.

In this writ petition, it is the grievance of the petitioner that he is the neighbouring land owner and though there is no physical availability of the site to an extent of 1621 sq. yards in Sy.No.7, which

is shown as secured asset, the 2<sup>nd</sup> respondent is taking steps to sell the same.

Heard learned counsel for the petitioner and Sri M.V.K.Viswanadham, learned counsel for the 2<sup>nd</sup> respondent-Bank.

Learned counsel for the petitioner submitted that if sale is allowed and sale certificate is issued by mentioning the extent of the site as 1621 sq. yards, the petitioner apprehends that the auction purchaser may encroach upon his land, as he is the neighbour to the property covered by the secured asset.

Counter affidavit is filed disputing the allegations. Further the 2<sup>nd</sup> respondent has placed material on record showing the dismissal of a writ petition filed by the borrower and also another writ petition filed by the tenant, in which, this Court has granted time upto 30.09.2015 to the tenant to vacate the premises. It is the contention of the 2<sup>nd</sup> respondent that, at the instance of guarantor, to make one more attempt to stall the proceedings under the Act, the present writ petition is filed.

In any event, on mere apprehension of the petitioner that after conducting sale and issuing sale certificate for total extent of the subject property, the auction purchaser may encroach upon his land, this writ petition cannot be maintained. In any event, it is not possible for this Court to decide the factual dispute involved in this writ petition. If any steps are taken by the 2<sup>nd</sup> respondent by issuing sale certificate for the site which is not available, it is always open to the petitioner to question the same by filing Securitisation Application, under Section 17 of the Act, but on mere apprehension, this writ petition cannot be maintained. More so, in view of the stand of the 2<sup>nd</sup> respondent-Bank, as stated in the detailed counter affidavit filed by

them, the writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. However, if the petitioner is aggrieved of issuance of sale certificate, it is open to him to approach the Debts Recovery Tribunal.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

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**JUSTICE R. SUBHASH REDDY**

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**JUSTICE A.SHANKAR NARAYANA**

08.10.2015

v v