

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Petition No.26309 of 2017

Order: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri V.R. Machavaram, learned counsel for the petitioner, and Sri N.V. Subba Raju, learned counsel for the respondent-bank and, with their consent, the writ petition is disposed of at the stage of admission.

The petitioner herein is the guarantor of a loan. On the ground that the borrower had defaulted in repayment of the loan, the respondent-bank initiated proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter called "the RDDB Act"). A decree was passed by the Debts Recovery Tribunal, Visakhapatnam in O.A. No. 1781 of 1999, and a recovery certificate dated 13.10.1999 was issued. Eventually the subject property was put to auction on 22.8.2017 for recovery of dues of Rs.1,50,94,969/-. The sale was confirmed in favour of the highest bidder, who paid a sum of Rs.44.50 lakhs.

Sri V.R. Machavaram, learned counsel for the petitioner, would submit that the subject lands are agricultural lands, and could not have been sold in view of Section 31(i) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called "the SARFAESI Act"); the petitioner is a visually challenged person, and the subject property is agricultural land on which he depends upon for his livelihood; and the petitioner is ready and willing to pay Rs.44.80 lakhs (Rs.30,000/- more than the highest bid received of Rs.44.50 lakhs) within two weeks from today, in case the tax recovery officer is ready to release the subject lands in his favour.

Sri N.V. Subba Raju, learned counsel for the respondent-bank, would submit that it is because the amounts due, pursuant to a decree passed in the year 1999, could not be recovered, was the subject property brought to sale; there is no prohibition against sale of agricultural lands under RDDB Act; and the petitioner's *bona fides*, in seeking two weeks time, is doubtful as the conditions stipulated on a similar request made, for one time settlement in the year 2016, was not adhered to by the petitioner.

Section 31(i) of the SARFAESI Act exempts agricultural lands from the provisions of the SARFAESI Act. However, in the present case, proceedings were initiated not under the SARFAESI Act, but under the RDDB Act. The decree, passed in the year 1999, is yet to be satisfied in its entirety. It is only because the bank was unable to recover the amount, was the subject lands brought to sale. While we find no illegality in the action of the Recovery Officer of the Debts Recovery Tribunal, in putting the subject agricultural lands to sale under the RDDB Act, as the petitioner is a visually challenged person and claims to be dependant on the subject lands for his livelihood, we consider it appropriate to permit the petitioner to deposit the sum of Rs.44.80 lakhs with the Recovery Officer within two weeks from today. In case, the petitioner deposits the said amount, the Recovery Officer shall consider the petitioner's request for release of the subject property in his favour and for refund of the amount already paid by the highest bidder in the auction, in accordance with law.

Suffice it to make it clear that, in case the petitioner fails to deposit the said amount within the aforesaid period of two weeks from today, the Recovery Officer may proceed to deliver possession of the subject lands to the highest bidder in the auction; and to have a registered sale deed executed in his favour.

The writ petition is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

30th August, 2017

Note:

Furnish c.c. in two days.

b/o

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Date: 30.08.2017

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