

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION NO.37013 of 2017

ORDER: (per SK,J)

The prayer of the petitioner in this case reads as under:

'For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to issue writ, order or direction, more particularly one in the nature of writ of mandamus declaring the action of respondent No.1 in issuing notice IB MSME HYD 2017-18 dated 15.09.2017 and pasting the same to house plot gate of the petitioner claiming possession over the property bearing Plot No.5, in Sy.Nos.305, 306 and 307 (part), Block No.4, Quthbullapur Village and Mandal, Medchal (formerly Ranga Reddy) District as illegal, arbitrary, violation of articles 21 and 300A of Constitution of India besides violation of principles of Natural justice and consequently direct respondent No.1 to withdraw the notice IB MSME HYD 2017-18 dated 15.09.2017 and not to proceed with further course of action against the petitioner's property bearing Plot No.5, in Sy.Nos.305, 306 and 307 (part), Block No.4, Quthbullapur Village and Mandal, Medchal (formerly Ranga Reddy) District and pass such other order or orders as deem fit and proper in the circumstances of the case.'

Upon obtaining instructions, Sri Ambadipudi Satyanarayana, learned counsel for the Indian Bank, would inform this Court that the total extent of land in Survey Nos.305, 306 and 307 of Quthbullapur Village and Mandal, Medchal District, is Acs.2.24 guntas and that there appear to have been two layouts in relation to this land. Learned counsel would therefore state that there is a possibility of Plot No.5 claimed by the petitioner in one layout in these survey numbers being altogether different from the Plot No.5 in relation to which measures were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), as it could be in the layout in the remaining extent in these survey numbers.

These disputed questions of fact are not amenable to resolution in a writ petition. Be it noted that this Court had occasion to deal with a similar issue in D.Ram Reddy v. M/s. Asset Reconstruction

Company (India) Private Limited¹. Taking note of the observations made by the Supreme Court in *Mardia Chemicals Limited v. Union of India*², this Court observed that when the status of the party being a 'borrower' and the property being a 'secured asset' was questioned, the bar under Section 34 of the SARFAESI Act would not apply at all. It may also be noted that the SARFAESI Act was amended in the year 2016, whereby the provisions of Section 17 thereof have been rewritten and even a third party to the transaction, being neither a borrower nor a tenant/lessee, can approach the jurisdictional Debts Recovery Tribunal thereunder for relief. It is therefore for the petitioner to seek redressal of her grievance before the appropriate forum.

Granting liberty to the petitioner to do so, the writ petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.
No order as to costs.



SANJAY KUMAR,J

J.UMA DEVI,J

Date:09.11.2017

GJ

¹ W.P.No.9412 of 2016 dated 11.07.2016

² (2004) 4 SCC 311