IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.MANI KUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10625 of 2017
and W.M.P.No.11562 of 2017

G.Palani Doss ... Petitioner

Vs.

1. The District Magistrate and
District Collector,
Coimbatore District,
Coimbatore.

2. The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore - 641 037. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in Ref.No.1035/2017/E3 dated 30.03.2017, quash the same and consequently, direct the first respondent to take and handover the physical possession of the property purchased by the petitioner under the Sale Certificate issued by the second respondent dated 29.06.2016.

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mr.Kanmani Annamalai
For R1
Mr.Omprakash
For R2

Judgment
(Judgment of the Court was delivered by V.BHAVANI SUBBAROYAN,J.,)

This Writ Petition has been filed to call for the records relating to the order passed by the first respondent in Ref.No.1035/2017/E3 dated 30.03.2017, quash the same and to direct the first respondent to take and handover the physical possession of the property purchased by the petitioner under the Sale Certificate issued by the second respondent dated 29.06.2016.

2. The auction purchaser is the Writ petitioner herein, who had purchased the house property situated at Coimbatore, Ganapathy Village, G.S.No.237/A, Lakshmipuram Layout, measuring an extent of 2800 sq.ft under SARFAESI Act, 2002 from the second respondent, for sale consideration of Rs.96,00,000/- after becoming successful in the bid. Consequently, a Sale Certificate dated 29.06.2016 was issued by the second respondent in favour of the petitioner and thus, the petitioner has claimed that sale has become final and he is entitled for physical possession of the property purchased by him, for the purpose of absolute enjoyment of ownership.

3. The petitioner would submit that the second respondent herein, had filed a petition dated 23.06.2016 under Section 14 of the SARFAESI Act, 2002 and the same was rejected for want of some necessary particulars and documents. Therefore, the said order was challenged by the second respondent in W.P.No.35951 of 2016 on the file of this Court, and the petition was allowed. A direction was given to the first respondent to pass orders on the petition within the statutory period.

4. It is seen that the first respondent has issued a notice of enquiry to the bank and the borrower on 20.02.2017 and it was contended by the bank that there were no tenants in the subject property, but the borrower seemed to have contended that there were tenants in all the four mortgaged properties. The borrower has also filed a petition before Debt Recovery Tribunal in S.A.No.265 of 2016 and S.A.No.33 of 2017 to set aside the auction sale and that the same is also pending for disposal.

5. The first respondent, after enquiry, held that the mortgaged properties are in occupation of tenants and any dispute in tenancy can be settled only by Debt Recovery Tribunal as per Section 17A of the Act. The first respondent rejected the petition on the ground that, in the light of the Judgment given by the Honorable Supreme Court reported in the case of [Vishal N Kalsaria Vs Bank of India & Others], wherein, it is held that SARFAESI Act, 2002 cannot over ride Rent Control Act, and hence, the first respondent has ordered that physical possession of the properties mentioned above cannot be taken and hand over to the petitioner, since there are tenant in the mortgaged properties. Aggrieved by the said order, dated 30.03.2017, the petitioner has come before this Court with the present Writ Petition, contending that the orders passed by the first respondent is not in consonance with the SARFAESI Act, 2002 as the role of the first respondent under Section 14 of SARFAESI Act is only

executory in nature and not adjudicatory, and the first respondent has exceeded the jurisdiction while passing the order dated 30.03.2017. Apart from that, the petitioner has also averred that merely because the property is in occupation of some tenants who have submitted their objections along with the representation to the Tahsildar, the first respondent cannot refrain himself from exercising his statutory duties under Section 14 of the SARFAESI Act.

6. The petitioner has further contended that he is a bonafide purchaser having invested a sum of Rs.96,00,000/- and not able to enjoy the property, even though he had purchased the same, as early as on 29.06.2016.

7. Heard the learned counsel for the petitioner and learned counsel for the respondents, and perused the materials available on record.

8. What is the questioned before this Court is, the order passed by the first respondent under Section 14 of the SARFAESI Act, 2002 dated 30.03.2017.

9. It is seen from the records and the submissions made by the petitioner's counsel that, no doubt, the petitioner is the successful bidder in the said auction, paid a sum of Rs.96,00,000/- and having conferred with the sale certificate, the issue to be decided is whether the petitioner has got any right to question the order passed by the first respondent. It is seen from the records that the property which petitioner purchased through auction, after bidding for the highest amount belongs to a Private Limited Company, in the name of M/s. Sri Padmabalaji Steels Private Limited, who after having availed the Cash Credit facilities from the bank to an extent of Rs.126,78,00,000/- by mortgaging properties situated in various places including the four properties, had subsequently defaulted in repayment.

10. The second respondent has initiated SARFAESI proceedings as early as on 02.01.2015 by issuing a demand notice under Section 13(2) of SARFAESI Act, and in continuation of the same, when there was no repayment of the dues by the first respondent, the respondent bank issued possession notice under Section 13(4) of the Act, by following necessary procedures. The second respondent finally approached the first respondent by filing an affidavit under Section 14 of the SARFAESI Act on 23.06.2016 requesting to take and hand over possession of the mortgaged properties, secured assets. Since the first respondent has not passed any orders on the petition filed by the second respondent dated 16.06.2016, the second respondent approached this Court by

filing W.P.No.35951 of 2016, seeking for a mandamus, directing the first respondent to take necessary action under Section 14 of the SARFAESI Act. This Court by order dated 25.10.2016, directed the first respondent to pass orders within the statutory period prescribed under the Act.

11. It is seen from the records that pursuant to the order passed by this Court in W.P.No.35951 of 2016, dated 25.10.2016, the first respondent, after calling for the records and report from the Tahsildar, has passed an order on 30.03.2017 which is impugned in this Writ Petition. The first respondent, after considering the report of the Tahsildar, Coimbatore, North, wherein, it has been submitted that the properties sought for physical possession under Section 14 of the SARFAESI Act by the second respondent are in occupation of tenants. Further, the tenants have submitted their objections along with their representation and lease deeds and also represented that they can only be evicted by following due process of law under Rent Control Act and not by any other means. It has been categorically submitted that the tenants are in occupation of the property, sought for physical possession under Section 14 of the SARFAESI Act.

12. Considering the above facts, the first respondent has passed an order that the physical possession of the property cannot be taken and handed over to the petitioner, since there are tenants occupying the properties.

13. The Writ petitioner herein, has come forward with the prayer, directing the first respondent to take and hand over physical possession of the property purchased by the petitioner under the Sale Certificate issued by the second respondent dated 29.06.2016. It is clear from the impugned order passed by the first respondent that the first respondent has directed the Tahsildar to submit a report, and thus, the Tahsidar has submitted a report on 06.02.2017, wherein, it has been stated that the possession of the property purported to be taken under Section 14, is said to be in occupation of tenants.

14.In [Vishal N Kalsaria Vs Bank of India & Others], the Honorable Supreme Court of India, held as follows:-

> "When we understand the factual matrix in the backdrop of the objectives of the above two legislations, the controversy in the instant case assumes immense significance. There is an interest of the bank in recovering the Non Performing Asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be

construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so when the two legislations, that is the SARFAESI Act and the Rent Control Act operate in completely different fields. While SARFAESI Act is concerned with Non Performing Assets of the Banks, the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to such tenants. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act. If the contentions of the learned counsel for the respondent banks are to be accepted, it would render the entire scheme of all Rent Control Acts operating in the country as useless and nugatory. Tenants would be left wholly to the mercy of their landlords and in the fear that the landlord may use the tenanted premises as a security interest while taking a loan from a bank and subsequently default on it. Conversely, a landlord would simply have to give up the tenanted premises as a security interest to the creditor banks while he is still getting rent for the same. In case of default of the loan, the maximum brunt will be borne by the unsuspecting tenant, who would be evicted from the possession of the tenanted property by the Bank under the provisions of the SARFAESI Act. Under no circumstances can this be permitted, more so in view of the statutory protections to the tenants under the Rent Control Act and also in respect of contractual tenants along with the possession of their properties which shall be obtained with due process of law."

"It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act."

15. As admitted in his affidavit, one M/s.Subam Traders is in occupation of the property purchased by the petitioner. Section 14 of the SARFAESI Act, 2002, which reads as follows :-

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

16. Section enables only the secured creditor, to seek for assistance. No right is conferred on the auction purchaser to seek for assistance. The petitioner, being an auction purchaser, cannot challenge the order passed under Section 14 of the SARFAESI Act. Law has not conferred any right on the auction purchaser and hence mandamus cannot be granted. The petitioner cannot seek for a mandamus, directing the first respondent to take physical possession of the property and hand over the same to the petitioner.

17. In view of the above Judgment, the District Magistrate/District Collector, Coimbatore, has rightly rejected the said application filed by the petitioner, and that the

petitioner has no right to question the Act of the Collector by filing this Writ Petition. Considering all the facts, this Court is of the view that there is no infirmity in the order passed by the District Magistrate/District Collector. Hence, this Writ petition is liable to be dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

raja

To

1. The District Magistrate and District Collector,
   Coimbatore District,
   Coimbatore.

2. The Authorised Officer,
   State Bank of India,
   Stressed Assets Management Branch,
   1112, Raja Plaza, Avinashi Road,
   Coimbatore - 641 037

+ 1 cc to Mr.Ramalingam & Associates SR.27756
+ 1 cc to Mr.V. Chandrasekaran, Advocate Sr.27515
+ 1 cc to Government Pleader Sr.28449

W.P.No.10625 of 2017
and
W.M.P.No.11562 of 2017

VBA(CO)
EU(25/04/2018)