

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.23052 & 23053 of 2018 and

W.M.P.Nos.26938 to 26940 of 2018

1 P.N.Selvam
2 Devi
3 T.P.Logantahan .. Petitioners in W.P. Nos.23052/2018
T.P.Balu .. Petitioner in W.P. Nos.23053/2018

v.

- 1 State Bank of India
Represented by its Manager
Kancheepuram Branch
29, 30, 30-B, Annai Indira Gandhi Salai
Kancheepuram 603 502.
- 2 The Chairman
State Bank of India
Corporate Centre
State Bank Bhavan
Madam Road
Mumbai 400 021.
- 3 The Secretary to Government
Department of Financial Services
Ministry of Finance
Jeevan Deep Building
New Delhi.
- 4 The Secretary
Ministry of Personal Public Grievances and Pensions
(Department of Personal and Training)
North Block, New Delhi.

5 The Director

Central Bureau of Investigation
Plot No.5B, CGO Complex
Lodhi Road
New Delhi 110 003.

.. Respondents in both WPs

W.P. No.23052/2018 Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration, declaring that the action of the first respondent in proceeding under the SARFAESI Act (hereinafter referred to as 'the Act') in respect of the properties given as security for 1st petitioner, the Account No. 34984144372 and the 2nd petitioner in Account No.34984324490 is arbitrary illegal and void and consequently quash the E-Auction Sale Notice dated 14.08.2018 issued by the 1st respondent in respect of properties at Plot Nos.1 and 2, Haseena Garden and Plot No.6 at Sowntharam Quarters, Periyathottam Village, Kancheepuram.

W.P. No.23053/2018 Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records leading to pass the E-Auction Sale Notice dated 14.08.2018 issued by the 1st respondent at 311/1, 2, 3, 5, 317/1B, 317/2, 3 and 5 and 310 Thozhuvur Village, Thiruvallur District and quash the same.

For Petitioners : Mr.T.V.Ramanujam, Senior Counsel
(in both WPs) for Mr.C.Jagadish

For Respondents : Mr.S.R.Sumathy - for R1
(in both WPs)

COMMON ORDER

(Order of the Court made by M.DURAI SWAMY, J.)

Since the subject matter in both the writ petitions are one and the same, i.e., E-Auction Sale Notice dated 14.08.2018, the above writ petitions are disposed of by this common order.

2. Writ Petition No.23052 of 2018 has been filed by the petitioners to issue a Writ of Declaration to declare the action of the first respondent Bank in proceeding under the SARFAESI Act in respect of the properties given as security for the petitioners is arbitrary and illegal and to quash the E-Auction Sale Notice dated 14.08.2018 issued by the first respondent .

3. Writ Petition No.23053 of 2018 has been filed by the petitioner to issue a Writ of Certiorari, calling for the records leading to the E-Auction Sale Notice dated 14.08.2018 issued by the first respondent and to quash the same.

4. It is the case of the petitioners that the first respondent has initiated SARFAESI proceedings and brought the properties given as security for E-Auction and that the first respondent illegally issued sale certificates in respect of three properties out of six properties, without following the mandatory requirements. According to the petitioners, their properties were sold for the rate far below the market value. Further, the petitioners contended that there were serious irregularities in conducting the sale and that they have initiated proceedings challenging the sale certificates before the Debts Recovery Tribunal. The petitioners have filed S.A.No.33 of 2018, S.A.No.2 of 2018 and S.A.Sr.No.8680 of 2017 challenging the sale of the properties before the Debts Recovery Tribunal. The petitioners have also contended that the agricultural lands are also brought for sale and the same could not be sold under the SARFAESI proceedings.

5. For challenging the E-Auction Sale Notice dated 14.08.2018, the petitioners have got remedy by way of an appeal before the Debts Recovery Tribunal. Hence, this court cannot entertain the writ petitions filed under Article 226 of the Constitution of India challenging the E-Auction Sale Notice dated 14.08.2018, when the petitioners have got alternative remedy before the Debts Recovery Tribunal.

6. The Hon'ble Supreme Court of India, in the judgments reported in (2018) 3 Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and (2018) 1 Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] held that the aggrieved parties cannot challenge the proceedings initiated under the SARFAESI Act directly by filing a writ petition under Article 226 of the Constitution without exhausting the alternative remedy before the Debts Recovery Tribunal.

7. The ratio laid down by the Hon'ble Supreme Court squarely applies to the present case. Hence, we are not inclined to entertain the writ petitions. It is open to the petitioners to challenge the E-Auction Sale Notice dated 14.08.2018, before the Debts Recovery Tribunal in accordance with law.

With these observations, the writ petitions are dismissed.
No costs. Consequently, the connected miscellaneous petitions
are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rj

To

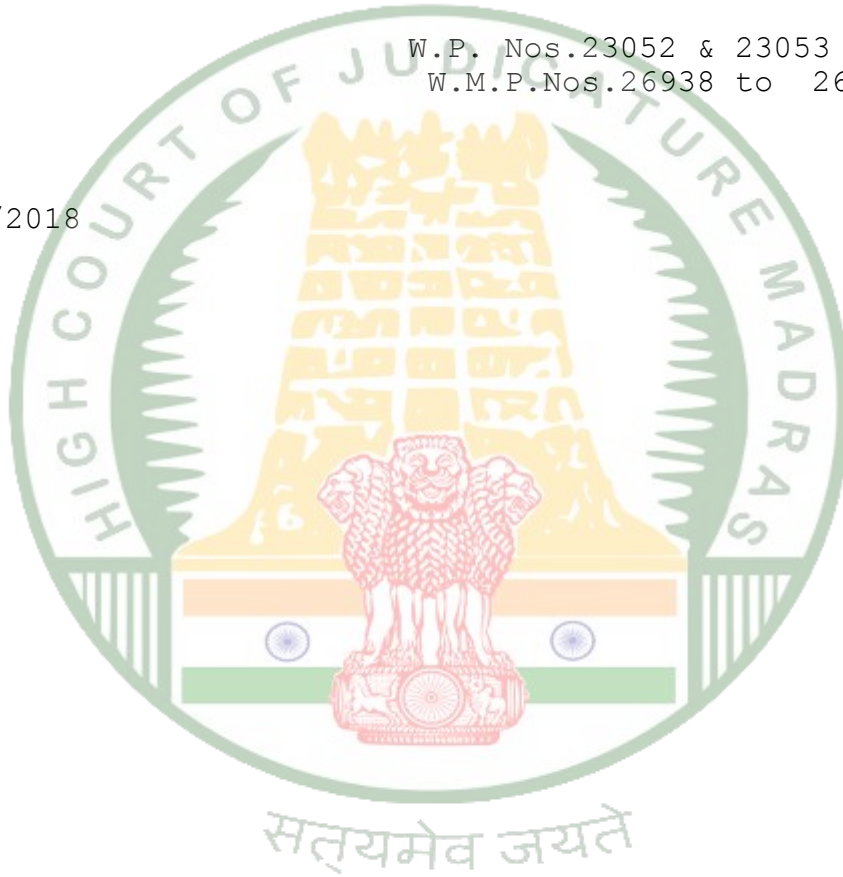
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+1cc to Mr.C.Jagadish, Advocate Sr.61505
+1cc to Mr.S.R.Sumathy, Advocate Sr.61384

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