

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.23855 of 2018 and
W.M.P.Nos.27808 to 27810 of 2018

1.N.Pon Nixon
2.N.Gold Pearlinmary ... Petitioners

Vs.

1.The Authorized Officer,
Indian Overseas Bank,
Regional Office,
No.20-21, Kamarajar Street,
Kancheepuram - 631 501.

2.Indian Overseas Bank
rep by its Branch Manager,
Perungalathur Branch,
No.14, Veera Raghavan Street,
NDP Complex New Perungalathur,
Chennai - 63. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records in connection with the impugned e-auction sale notice dated 26.08.2018 published in daily newspaper namely New Indian Express issued by the 1st respondent and to quash the same as illegal and without jurisdiction in so far as Sl.No.6 in Item No.1 to 3 concerned and for consequential orders to direct the respondents not to interfere with peaceful enjoyment of the petitioner's properties particularly contained in Sl.No.6 in Item No.1 to 3 of the e-auction notice in item no.1 commercial land and building admeasuring 285.25 sq.ft. at Door No.14 part, new no.28 part Srinivasa Raghavan Street, Srinivasa Nagar, New Perungalathur, Chennai - 63 in item no.2 commercial land and building admeasuring 3954 sq.ft., at Door No.14 in item no.3 commercial land and building admeasuring 2223 sq.ft., at Door No.14 part, Veera Raghavan Street, New Perungalathur, Chennai - 63.

For Petitioners : Mr.K.V.Subramanian, Senior Counsel
for Mr.P.Tamila Vel

O R D E R
(Order of the Court made by M.DURAISWAMY,J.)

The petitioners have filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records in connection with the impugned e-auction sale notice dated 26.08.2018 published in daily newspaper viz., New Indian Express issued by the 1st respondent and to quash the same in so far as Sl.No.6 in Item Nos.1 to 3 is concerned and for consequential orders to direct the respondents not to interfere with peaceful enjoyment of the petitioners' properties particularly contained at Sl.No.6 in Item Nos.1 to 3 of the e-auction notice.

2.It is the case of the petitioners that the petitioners' parents mortgaged the properties in favour of the 2nd respondent - Bank in the year 2007 and 2008. Since they have defaulted in repaying the loan to the 2nd respondent - Bank, a possession notice under Section 13 (4) of the SARFAESI Act dated 03.02.2018 was published in the daily newspaper for taking symbolic possession. The petitioners have filed a Civil Suit in O.S.No.31 of 2018 on the file of the District Munsif Court, Tambaram, for declaration to declare that (1) the Settlement Deed dated 30.11.1984 as null and void; (2) the mortgage made by the petitioners' parents in favour of the respondent - Bank as null and void and (3) the possession notice dated 10.02.2017 issued by the Bank as null and void.

3.So far as the 3rd prayer sought for in the suit is concerned, under Section 34 of the SARFAESI Act, the same is barred. Under Section 34 of the SARFAESI Act, the Civil Court cannot entertain a suit questioning the proceedings initiated under the SARFAESI Act. Thereafter, the respondent - Bank brought the properties for sale by way of e-auction, which is scheduled to be held on 29.09.2018. Challenging the said e-auction sale notice dated 26.08.2018, the petitioners have filed the Writ Petition.

4.Admittedly, the petitioners have not approached the Debts Recovery Tribunal challenging the e-auction sale notice issued under the provisions of the SARFAESI Act. When the petitioners have got alternative remedy before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, filing the Writ Petition under Article 226 of the Constitution of India cannot be entertained.

5.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 party cannot challenge the SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the

Constitution of India without exhausting the remedy available to them before the Debts Recovery Tribunal.

6.The ratio laid down by the Apex Court in the above referred judgments is applicable to the present case.

7.Since the petitioners have filed the Writ Petition without exhausting the alternative remedy available to them before the Debts Recovery Tribunal, the Writ Petition is liable to be rejected. However, it is open to the petitioners to challenge the auction sale notice dated 26.08.2018 before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act in accordance with law.

8.For the reasons stated above, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Authorized Officer,
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No.20-21, Kamarajar Street,
Kancheepuram - 631 501.

2.The Branch Manager,
Indian Overseas Bank,
Perungalathur Branch,
No.14, Veera Raghavan Street,
NDP Complex New Perungalathur,
Chennai - 63.

+1cc to M/s.P.Tamilavel, Advocate SR.NO.63598

AD(co)

sm:25.9.2018

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