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.22904 of 2012

1. Selvaraj Velusamy (died)

2. Tmt.Lathamani

3. Suchitra

4. Hemakousalya ... Petitioners
P2 to P4 substituted as LR as per order
dated 11.9.2014 in MP.1/2014 in
WP.No.22904/2012

Vs.

1. The Chairman cum Managing director,
M/s.Syndicate Bank,
Corporate Office,
II Cross, Gandhi Nagar,
Bangalore - 560 009.

2. The Deputy General Manager,
M/s.Syndicate Bank,
No.105/106, Ponnurangam Road (West)
R.S.Puram, Coimbatore - 641 002.

3. The Authorized Officer,
M/s.Syndicate Bank,
No.105/106, Ponnurangam Road (West)
R.S.Puram, Coimbatore - 641 002.

4. The Branch Manager,
M/s.Syndicate Bank,
Tatabad, Coimbatore - 641 012.

5. V.Nataraj

6. N.Rukmani

7. M/s.Mahalakshmi Silks,
Rep. by its Proprietor,P.Thirukumar,
Unit No.6, K.K.Block,
119, Raja Street,
Coimbatore - 641 001.

8. S.Srinivasan

9. Sowdamuthu ... Respondents
R8 & R9 impleaded as per order dated 7.9.2012 in MP.1/2012 in WP.No.22904/2012.

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein pertaining to the Sale Certificate dated 28.10.2011, executed under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act & Rules, 2002 and registered in Document No.11139/2011 dated 28.10.2011 in the office of Sub-Registrar, Avinashi, within the Registration District of Coimbatore (presently Registration District of Tirupur) and quash the same, and further direct the third respondent herein to pay back the entire sale amount with registration charges totaling Rs.49,06,210/- with interest @ 12% per annum from the date of the Sale Certificate till the date of the repayment to the petitioner.

For Petitioner : Mr.P.M.Duraiswamy

For Respondents : Mr.P.Sreenivasulu

Judgment

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

This Writ Petition has been filed to call for the records of the third respondent herein pertaining to the Sale Certificate dated 28.10.2011, executed under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act & Rules, 2002 and registered as Document No.11139/2011 dated 28.10.2011 in the office of Sub-Registrar, Avinashi, within the Registration District of Coimbatore (presently Registration District of Tirupur) and quash the same, and to direct the third respondent to pay back the entire sale amount with registration charges totaling Rs.49,06,210/- with interest @ 12% per annum from the date of the Sale Certificate till the date of the repayment to the petitioner.

2. The first petitioner herein, who was the original petitioner at the time of filing the Writ Petition, died on 26.10.2013. The brief facts of the case as per the petitioner's averments are that, the petitioner was a handicapped Ex-service

man and had lost his right hand below elbow when he was serving in the Indian Army. It is stated that the petitioner was leading his life by running a petrol bunk at Ganapathy, Coimbatore District, and at that time, he came across an auction sale notice published by the third respondent, in 'Daily Thanthi' and 'The New Indian Express' dated 29.08.2011, to sell the secured assets situated in S.F.Nos.116, 115/1 and 2, 116/1,2 & 3 with the total extent of 4.035 acres of land and Poultry Shed, located in Puthupalayam Village and Avinashi Taluk, within the Sub-Registration District of Avinashi and Registration District of Coimbatore. On seeing the said advertisement, the petitioner had approached the fourth respondent herein, to enquire about the details of the property. The Branch Manager of the fourth respondent M/s.Syndicate Bank, Tatabad, Coimbatore City, explained about the property and made the petitioner, to believe that the property under auction sale was a non-agricultural land and Poultry Shed situated in Puthupalayam Village, Avinashi Taluk, which had a common pathway access along with the other amenities.

3. When the petitioner sought for the documents of the property, the third and fourth respondents, stated that they are bank officials, and the petitioner can trust them. Further, the third respondent also furnished a copy of the photographs showing the auction sale property with a Poultry shed, and promised the petitioner to handover the parent documents and other connected documents of the property once the sale is over.

4. The petitioner had also stated that, on 28.09.2011, one day before the auction sale, the third respondent and fourth respondent had deputed Mr.Moorthy and Mr.Raja of M/s.Maha Associates as Bank Agents and subsequently, visited the property. The petitioner was made to believe that the auction sale property is having a clear title without any encumbrance. It is further submitted that the third respondent, utilizing the innocence of the petitioner, had induced the petitioner with dishonest and fraudulent intention by saying that there were many other buyers, willing to buy the property, and the property would fetch a good price in future. Therefore, the petitioner was lured by the Bank officials to buy the property without any verification of the documents.

5. It is also submitted by the petitioner that the respondent bank was a Nationalized Bank and the bank officials were public servants, hence, he had honestly believed their versions and agreed to purchase the property for Rs.45,01,000/- and paid a sum of Rs.14,40,000/- at the time of auction sale i.e., on 29.09.2011, and the balance sale amount of Rs.30,61,000/- was to be paid on or before 13.10.2011. On receipt of Rs.14,40,000/- towards the sale amount paid by the

petitioner, The third respondent, issued an interim sale certificate in the petitioner's name, in Ref:6132: REC: 2011:F dated 29.09.2011. The said certificate disclosed the petitioner, that the above property was purchased by him under SARFEASI Act, 2002 and which is a non-agricultural land with common pathway and also with all amenities. While issuing the interim sale certificate, the third respondent wanted the petitioner to sign in the blank sheets for enabling the bank to issue a letter for registration of the sale certificate and accordingly, the petitioner also signed in the blank papers (Blank sheets) as asked by the bank officials. Thereafter, on payment of the balance sale amount of Rs.30,61,000, the sale certificate dated 28.10.2011 was also executed by the third respondent in the name of the petitioner and the same was presented for registration on the same day before the Sub-Registrar, Avinashi, and registered as Document No.11139 of 2011.

6. It is further submitted by the petitioner that, on 14.02.2012, when he went to measure the property with the assistance of a Taluk surveyor and the Village Administrative Officer, they were prevented by the erstwhile owners of the property, namely, the fifth and sixth respondents herein, saying that the property was under litigation and there was no pathway for the said property. Further, the petitioner was also shocked to find that the Poultry Shed which was shown in the auction sale property, actually belonged to the neighboring land owner and the petitioner was not permitted to enter into the property purchased by him. Thereafter, on verification of the revenue records, it was found that the property sold to the petitioner, was purely a landlocked agricultural land and there was no Poultry Shed in existence in the said auction sale property.

7. The petitioner has also made allegation in his affidavit that the third and fourth respondents in collusion with the respondents 5 to 7 herein, have intentionally suppressed the actual description of the auction sale property and misled the petitioner by making false advertisement that the property auctioned was a non-agricultural land and Poultry Shed in existence, having all pathway access and other amenities, and thereby, induced the petitioner to purchase the same for a huge amount of Rs.45,01,000/-. It is further submitted by the petitioner that the property is purely a landlocked agricultural land and it would not fetch even Rs.20,00,000/- in the open market. Apart from the sale price, the petitioner had spent Rs.4,05,210/- (Rs.3,60,100/- for stamp duty and Rs.45,110/- for Registration fee) towards registering the property, which is not even worth for Rs.20,00,000/- in open market.

8. It is also submitted by the petitioner that when he was running short of money to pay the balance amount, the bank officials in no time provided mortgage loan of Rs.19,50,000/- on receiving his gold jewels and coins weighing 1,115 gms in Tatabad Branch of the Bank. The petitioner also came to know that the fourth respondent bank had advanced loan twice the actual value of the collateral security, namely, the secured assets to favour the borrower i.e., the seventh respondent herein, in order to help and to save the concerned bank officials. The third and fourth respondents taking advantage of the petitioner's innocence, intentionally misrepresented the nature and description of the property, and further made the petitioner to buy the property for such a huge amount of Rs.49,06,210/-.

9. It is further stated by the petitioner that he tried to contact the third and fourth respondents and he was not given any audience by them, and hence, he made a representation to the second respondent herein on 22.02.2012. Though he promised the petitioner that he will look into the matter, the respondent has never sent any reply. Therefore, he preferred a written representation dated 05.03.2012 and sent through speed post to the first respondent herein, requesting appropriate action against the third and fourth respondents regarding the conspiracy and cheating and to cancel the impugned sale certificate dated 28.10.2011. The Manager of the M/s.Syndicate Bank regional office, Coimbatore, sent a reply to the petitioner on 02.04.2012, wherein, it has been stated that the property was sold in 'as is where is condition' and the question of cancellation of the impugned sale certificate and refund of the sale amount will not arise. Therefore, the petitioner submitted that the first and second respondents, have not paid serious attention on the complaint made against their own officials, and hence, he has approached this Court with the present Writ Petition, seeking to quash the Sale Certificate dated 28.10.2011 and to direct the third respondent herein to pay back the entire sale amount with registration charges totaling Rs.49,06,210/- along with interest @ 12% per annum from the date of the Sale Certificate till the date of the repayment to the petitioner.

10. Heard learned counsel for the petitioners and learned counsel for the respondents, and perused the materials available on record.

11. From the perusal of the records, it is seen that the Writ Petitioner/Selvaraj Velusamy, died on 26.10.2013 and his legal heirs were impleaded as petitioners by an order dated 11.09.2014 in M.P.No.1 of 2014.

12. The learned counsel who appeared for the petitioners, would vehemently argue that the respondent bank, had misled the petitioner (Deceased) and made him to buy the property which is much more lesser than the value of Rs.20,00,000/- in open market. The officials of the respondent bank, using the innocence of the petitioner, made the petitioner to believe that the property is a non-agricultural land and made him to part with Rs.49,06,210/-, when the property is not even worth for Rs.20,00,000/- in the open market. The learned counsel for the petitioner has citied several Judgments.

13. Respondents 8 and 9, namely, S.Srinivasan, Recovery Officer - II, Debts Recovery Tribunal, Madurai, and Sowdamuthu, Senior Branch Manager, M/s.Syndicate Bank, Coimbatore, have been impleaded as per order dated 07.09.2012 in M.P.No.1 of 2012.

14. In the counter affidavit filed by the third respondent, it has been contended that the property in question was a non-agricultural land and poultry shed was there when the property was mortgaged with the respondent bank. However, the third respondent denied the allegations made by the petitioner that the 8th respondent, informed the petitioner that the property was a non-agricultural land and the Poultry Shed having common pathway access along with the other amenities. Infact, the third respondent in his counter affidavit, has submitted that the deceased petitioner, had demanded various documents including valuation report and the same was furnished by the third and fourth respondents, and only after satisfying himself about the nature of the property, the petitioner came forward to participate in the auction, held on 29.09.2011 to buy the property.

15. The third respondent has strongly denied in his counter affidavit that they promised to the deceased petitioner that he could trust the bank officials as they are public servants and assured the petitioner that he can purchase the property without any doubt. The third respondent has also denied that they had induced him with dishonest and fraudulent intention by saying that there were many other buyers willing to buy the said property and the property would fetch a good price in future within short time. It is also stated that only after inspecting the property, the deceased petitioner, had decided to buy the property and came forward to participate in the auction held on 29.09.2011. On the same day, the petitioner purchased the property for a total sum of Rs.45,01,000/-, and initially paid Rs.14,40,000 immediately. It is further stated that the petitioner has sent a letter dated 13.10.2011, requesting the fourth respondent to grant some more time to pay the balance

amount of Rs.19,60,000/- which was finally settled on 14.10.2011. Thereafter, the third respondent issued a sale certificate to the petitioner in favour of him and subsequently, which was registered as Document No.11139 of 2011 in the office of the Sub-Registrar, Avinashi.

16. The third respondent has denied in his counter affidavit that either on 29.09.2011 or any other day before or after the said date, the respondent did not obtain any signature from the petitioner in any of the blank sheets as alleged by him. It is also stated that the petitioner is a well educated person and he did not sign in any of the blank sheets, and the bank has no such kind of practice to obtain signature in blank sheets from its customers. The respondent bank has also stated that they did not know anything as what happened on 14.02.2012 as alleged by the petitioner that he was prevented by the respondents 5 and 6, from entering into the property saying that the property was under litigation and there was no pathway in the said property. It is stated by the third respondent in his counter that when the property was mortgaged to the bank, there was a thatched poultry shed in the said property, which was not a permanent one and was already in bad condition.

17. The respondents have also filed certain documents in the typedset, which would show that the proceedings of the President of Puthupalayam village, Avinashi, wherein, respondents 5 & 6, were sanctioned approval for construction of 1309.09 Sq.ft in the property in question, and certificate issued by the Village Administrative Officer, Pudhupalayam Village, Avinashi, to disprove the case of the petitioner that the property in question is a non-agricultural land and thus, supported the case of the respondents.

18. The respondent bank has submitted that the petitioner, having inspected the property, perused the parent documents with full knowledge of the auctioned property, participated in the auction and became the successful bidder. Thereafter, the petitioner had paid the full sale consideration and subsequently, sale certificate was also issued. After completion of all these activities and having purchased the property in 2010 itself, the question of filing the Writ Petition in 2012, seeking this Court, to cancel the sale certificate dated 28.10.2011 issued in favour of deceased petitioner, and to direct the respondent bank to pay back the entire sale amount of Rs.49,06,210 along with interest @ 12% per annum, cannot be maintained.

19. The learned counsel for the respondent bank, submitted that Writ Petition with a prayer to cancel the registered document, is not maintainable under Article 226 of the Constitution of India. Learned counsel also submitted that the petitioner having knowledge, cannot seek for this prayer and the Writ Petition has to be dismissed.

20. It can be seen from the documents filed by the deceased petitioner, in support of this Writ Petition, that the petitioner had purchased an extent of 4.035 acres of land, comprised in S.F.Nos.116, 115/1 & 2, 116/1,2 & 3 in Puthupalayam Village, Avinashi Taluk, Coimbatore, and from the records, it is seen that originally the said property owned by 5th and 6th respondent herein and the bank had obtained a valuation report from an independent valuer on 26.01.2008, fixing the fair market value of the property as Rs.48,00,000/-. On 21.01.2008, when inspected the said property, the distress value of the property was Rs.38,00,000/- and the guideline value of the property was only Rs.15,61,800/-. The valuation report would clearly show that it is a agricultural cum poultry farm. However, the valuer did not include the poultry shed as a part of the report. Infact, in the entire statement none about the existence of the property. The bank officials had made a paper publication in "The New Indian Express' on 29.08.2011, and in the said publication also there was no specification about the nature of the land and it has been only stated that "All that piece and parcel of land and poultry shed in Coimbatore District, Avinashi Taluk, Pudupalayam village in SF.No.116, SF.115/1,2 116/1,2 & 3, total area of land : 4.035 acres)". Further, in the said publication, other than specifying the extent of land and Survey Nos, it has been also stated in the terms and conditions in Clause No.6 that, for inspection of the property and more particulars, the intending bidders may contact the Branch Manager of the Authorized officer at Regional office, Coimbatore, during the office hours, and telephone numbers of the concerned officials have been given in the said publication for the purpose of contacting the officers with regard to inspection of the property.

21. It is also not disputed that the deceased petitioner, was issued an interim sale certificate on 29.09.2011, wherein, it has been stated that the non agricultural land in Coimbatore District, Avinashi Taluk, Pudupalayam village in SF.No.116, SF.115/1,2 116/1,2 & 3, Area 4.035 acres, which has, all common pathway along with all amenities.

22. The deceased petitioner, made an application dated 14.10.2011 seeking a loan of Rs.19,50,000/- before the fourth

respondent bank, by pledging the Gold ornaments and Silver articles. The petitioner had also sent a letter dated 28.10.2011, addressed to the authorized officer of M/s.Syndicate Bank, Regional Office, which is as follows:

> 'I have purchased the above property in the public auction after satisfying myself about the property. I have taken possession of the property today i.e. 28.10.2011 after identifying the property with boundaries, extent etc. Since i am fully satisfied with the location and identification of the property, i will not make any dispute with the Bank in future regarding the above property'.

23. Thereafter, on the very same day i.e 28.10.2011, certificate of sale, was also issued under SARFEASI Act, 2002, Rule - 9(6) and registered in the office of the Sub-Registrar, Avinashi. It is seen from the documents filed by the deceased petitioner, on 05.03.2012 that the petitioner made a representation to the respondents alleging as follows:

> "After completion of sale, on 14.02.2012, when i went to measure the property with the assistance of a Taluk surveyor and the Village Administrative Officer, we were prevented by the erstwhile owner of the property Mr.V.Nataraj and Rukmani saying that the property was under litigation and there was no pathway for the said property. Further I was so shocked to find that the Poultry farm which was shown as a part of the auction property was actually belonged to the neighboring land owner and we were not permited to enter the Poultry farm. The revenue records, on verification, reveal that the property sold to me in the auction is purely an agricultural land and there was no poultry farm existing in the auctioned property.
>
> The authorized officer and the Branch Manager in collusion for the reason best known to them, with a fraudulent and dishonest criminal intention to cheat me has induced me to part with a huge amount of Rs.45,01,000/- to purchase the property on false representation in respect of the auction property. I spent Rs.3,60,100 for registration of the property. I found that the property sold to me in the auction may not even fetch Rs.20,00,000/- in the market. I was deceived and defrauded by Mr.S.Srinivasan, the Authorized Officer and Mr.Sowdamuthu, Branch Manager, M/s.Syndicate Bank, Tatabad of your Bank and made me to part with Rs.48,61,100/- for the property which was not

worthy for that amount".

24. Thereby, the deceased petitioner had requested the authority to initiate appropriate proceedings against the 8th and 9th respondents and sought for cancellation of the sale certificate and pay back the entire sale amount with registration charges within 15 days.

25. The learned counsel for the respondents submitted that the deceased person sought some information, under Right to Information Act, 2005 dated 28.03.2012, regarding the property which was auctioned by the bank, situated at Puthupalayam Village. However, with regard to the sale certificate issued by the bank and as well as the promise made by the bank officials, the respondent bank by letter dated 02.04.2012 sent a reply stating that at the time of conducting auction, there was no Poultry farm, there was no cultivation in the land and no agricultural activities were going on in the said land. Apart from that, the respondent has also stated that as per the document, mamool common pathway is available to the property and there was no super structure available in the auctioned property.

26. The learned counsel for the petitioner would also submit that the bank is duty-bound to return the sale amount along with the registration charges, and relied on the Judgment reported in 2010 (4) CTC 627, in the case of [Jai Logistics Vs. The Authorized Officer, Syndicate Bank]. Learned counsel for the petitioner, pointed out paragraph 5 of the said Judgment, wherein, the property belonged to one M/s.Sowmya Textiles, who availed loan from the Syndicate Bank and committed default in repayment. Thereafter, the bank initiated SARFEASI proceedings and made a paper publication of sale notice, in which, the petitioner therein, had participated in the sale auction and paid the earnest money deposit of Rs.2,63,000/-. Thereafter, when the petitioner came to know that there was encumbrance over the property, did not pay the balance sale amount and approached the bank seeking as to why the encumbrance was not notified in the sale notice, and further sought for refund of the earnest money deposited. A Honorable Division bench of this Court, has concluded as follows:

> "We have considered the submissions. Of course, in the aforesaid Judgment, the Supreme Court, while considering a sale by the Official Liquidator, has held that it is the duty of the intending purchaser to satisfy himself as to the encumbrance before participating in the bid. Having participated in the

bid, the intending purchaser cannot later on turn around and question the Official Liquidator on the ground that the encumbrance was not notified. In that case, the provisions of the Rules as applicable in the present case are not applicable to the Official Liquidator. But in the case on hand, once possession is taken over under Section 13(4) or under Section 14 of the SARFAESI Act, whenever the secured creditor contemplates a sale of immovable property, they will have to follow Rule 8 of the Security Interest (Enforcement) Rules, 2002. Rule 8(6)(f) mandates the secured creditors to set out in the terms of sale notice any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property. A reading of the said Rule, in our opinion, would also include the encumbrance relating to the property. We are inclined to read the rule in that way keeping in mind the interest of the intending purchaser to be put on notice as to the encumbrance, as otherwise he/she will be purchasing the property and simultaneously buying the litigation as well and an intending purchaser may not bid in the event he/she came to know of any encumbrance over the property. That is why the Rule specifically contemplates a provision for the Authorised Officer, while notifying the sale, to specifically state as to the encumbrance. It will be a different issue in the event the auction notice indicated that it is the duty of the intending purchaser to verify not only the encumbrance by way of alienation of the property, but also the other statutory liabilities and in that case, the intending purchaser cannot later on turn around and seek for either the refund of the earnest money deposited or insist the Bank to clear the encumbrance. In the absence of such indication in the sale notice, in our considered view, the Respondent bank would not be justified in compelling a purchaser to go ahead with the sale by depositing the balance sale consideration together with the encumbrance.

27. The aforesaid Judgment relied on by the petitioner, would not be applicable to the present case on hand, since the Honorable Division Bench of this Court, held that when encumbrance is not notified in the sale notice, then the sale notice itself is vitiated in law and unjustifiable. However, in the present case, there is no such plea taken by the deceased petitioner, that the respondent bank has failed to specify the encumbrance attached to it.

28. A another Judgment relied on by the petitioner, is reported in 2012 (5) CTC 257, in the case of [Eshwar Purushothaman Gardens Vs. Authorised Officer, Indian Bank Zonal Officer]. The said Judgment also, is not appropriate and cannot applied to the present case on hand, because, the Honorable Division Bench held that "when dealing with the agricultural property being offered as security and interest created in the said property, which is a agricultural land for agricultural purpose, and Vice versa, the bar under Section 31 would operate. Accordingly, the said Judgment also would not be applicable to the present case on hand. Further, in the said Judgment, it has been held that bank has no authority to initiate proceedings under SARFEASI Act.

29. The petitioner has also relied on the Judgment rendered by this Court in W.A.(MD).No.1291 of 2012, in the case of [E.Muthuraj Vs. The Authorized Officer, Canara Bank], wherein, it has been held that the land in question was a Boothan land which was offered as security, and when there was default in payment, proceedings were initiated under SARFEASI Act. Thereafter, the auction purchaser, after making the entire sale consideration of Rs.4,25,000/-, and when he requested the registering authority to register the said deed, the same was refused by the said authority as the land involved in the document, was a Boodhan land. To clarify the same, the auction purchaser also made an application under the Right to Information Act, and later on, the Joint Commissioner also confirmed the same that it was a Boodhan land. Hence, the auction purchaser filed a Writ Petition seeking a Writ of Mandamus, directing the respondents to return back the amount of Rs.4,25,000/- which the auction purchaser paid. Thereafter, accepting the contention of the auction purchaser, a Division Bench of this Court, held as follows:

> "8. After considering the submissions made, we find that there is a considerable force in the submissions made by the learned counsel for the appellant. It is not a question of encumbrance involved, rather it is a question of title. To put it differently, the property involves is one belonging to a public authority or it is not meant to be alienated, in view of the rigour attached to the assignment made and the same also cannot be the subject matter of the mortgage.

9. Perhaps, the respondents ought to have vigilant in verifying the documents. The appellant is admittedly a bonafide purchaser for valuable consideration. The encumbrance as mentioned in Rule 8(6) is not with respect to the title but with respect to any activities attached to it. For example, if there is a subsequent sale or any encumbrance created, thereafter by way of mortgage list etc., then the rigour of Rule 8(6) will come. Further, Rule 8(6) is only a procedure in nature. What the appellant seeks is return of his money on the premise that there is no title available to the respondents and therefore, there is no enforcement of transfer of property.

10. In the absence of any contra material to the one produced by the appellant before us from a public authority holding that it is a Boodhan property, the condition attached would prevail with respect to mortgage lease or sale.

12. Infact, the Division Bench Judgment referred supra, which has been taken note of the learned Single Judge did not find the earlier Judgment rendered in Jai Logistics case (Supra) as a bad law but distinguished it on the ground that the same will not be applicable to the encumbrance created after the creation of security interest to an illegal alienation, which is not the situation before us."

30. In conclusion of the above Judgment, a Division Bench of this Court, directed the respondents to return a sum of Rs.4,25,000/- paid by the appellant in favour of the respondents without any interest.

31. Placing reliance on the above said Judgment to the present case on hand, the learned counsel for the petitioner would submit that, at the time of auction, the deceased petitioner was made to believe that land with the Poultry Shed was a non-agricultural land. However, after purchasing the same, the deceased petitioner came to know that the Poultry Shed was not at all in existence of the property and there was no any common pathway or an exclusive pathway attached to it.

32. The arguments raised by the petitioner’s counsel, are not acceptable to this court, since the deceased petitioner had participated in the auction only after perusing all the documents including the valuation report of the authorized valuer, and he had also inspected the property well in advance before the date of auction. Further, the petitioner had also perused the sale notice effected in the newspapers, wherein, it

can be seen there was only description of the property and there was no details about the nature of the land. However, nothing prevented the deceased petitioner from purchasing the said property before he participated in the auction. Hence, the above case referred by the petitioner, is applicable to the present case on hand.

33. Another Judgment relied on by the petitioner, is reported in 2017 (2) CTC 186, in the case of [Sarala Bardia Vs The Authorised Officer, Syndicate Bank], wherein, the issue in that case, was the difference in the extent of land in question, is what was stated in the auction notification and the actual existence of land. This case was only with regard to the dispute in the extent of land, but what the petitioner has claimed in the present case on hand, is not with regard to the extent of land, but regarding the nature of the land. Hence, the above case referred by the petitioner, is also not applicable to the present case on hand.

34. After hearing the arguments of both the learned counsel, we are of the view that the deceased petitioner, having participated in the auction proceedings, having purchased the said property, and after having received the sale certificate, cannot question the sale certificate on the ground that the actual physical features of the property differs from the auction sale notification. Infact, on 28.10.2011, when the petitioner purchased the property, he had given a letter to the authorised officer of M/s.Syndicate Bank, stating that the above property was purchased by him only, after he was satisfied, and he had taken possession of the property on 28.10.2011 itself after identifying the property with boundaries, extent etc. Apart from that, he has also stated in his letter that he was satisfied with the location and identification of the property, and therefore, he would not make any dispute with the Bank, in future, regarding the above property. The said letter was produced by the deceased petitioner itself, and filed along with the Writ Petition. Further, the petitioner had submitted that the bank officials had obtained signature from him in blank sheets which was later on utilised by the bank, and by filling up the above stated contents, this allegation was disputed by the bank.

35. The petitioner had also pledged his jewels with the bank for raising loan, to pay the balance sale consideration which would show that the petitioner had voluntarily purchased the property. The petitioner, after purchasing the property under SARFEASI Act, cannot now complain that the market value of the property was much lesser than the money, he paid for purchasing

the said property.

36. Petitioner (since deceased) an Ex-service man, cannot contend that merely because the respondent bank was a nationalized bank and the bank officials were public servants, he honestly believed and agreed to purchase the above property. It would be appropriate to consider the explanation to the legal maxim "caveat emptor". Let the purchaser beware disclaimer of responsibilities for buyers disappointment. Purchaser is bound by actual as well as constructive knowledge of any defect in the property purchased which is obvious or which might have been known by proper diligence. This maxim is used with reference to the sale of the property with respect to which, the buyer must use proper diligence to inform himself as to the quality and in case of real estate as to the location of the property. The quality of the land, its value depends on various market standard and the purchaser can inspect the same. He must scrutinize the title papers of the property which he purchase.

37. Legal maxim "caveat emptor, quia ignorare non debuit quod jus alienum emit" is applicable to the case on hand.

38. In the present case, the petitioner's allegation is that the bank officials had persuaded and deceived him to purchase the land in the auction sale, cannot be accepted. Had there been any misrepresentation in the sale notice varying with the actual physical features attached to the land, this Court would have interfered as it did in other cases referred to by the petitioner.

39. The petitioner had obtained a valuation report from the respondent bank, wherein, the description of the auction sale property, was clearly stated. The said report is of the year 2008 and the property was auctioned only in the year 2011. Upon considering the entire materials, we are of the view that interference does not require in the present case, and sale certificate cannot be quashed. The petitioner had not acted prudently..

40. This Court is of the view that when the petitioner himself had inspected the property along with the bank agents, and sent a letter to the bank dated 28.10.2011 that he was fully satisfied with the auction sale property and that he would not make any dispute with the bank in future regarding the above property, belatedly alleged that believing the words of the bank officials, he did not verify the documents and agreed to

purchase the above property, cannot be accepted. On the above facts, we are of the view that the Writ Petition does not crave any interference and the Writ Petitioners have not made any ground for quashing the sale certificate and refund of the sale proceeds. Accordingly, the Writ Petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.
raja

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
1. The Chairman cum Managing director,
M/s.Syndicate Bank,
Corporate Office,
II Cross, Gandhi Nagar,
Bangalore - 560 009.

2. The Deputy General Manager,
M/s.Syndicate Bank,
No.105/106, Ponnurangam Road (West)
R.S.Puram, Coimbatore - 641 002.

3. The Authorized Officer,
M/s.Syndicate Bank,
No.105/106, Ponnurangam Road (West)
R.S.Puram, Coimbatore - 641 002.

4. The Branch Manager,
M/s.Syndicate Bank,
Tatabad, Coimbatore - 641 012.

+1cc to M/s.P.M.Duraisamy, Advocate Sr.No.27837
+1cc to M/s.P.Sreenivasulu, Advocate Sr.No.28385

KAN(CO)
sm:27.4.2018