

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.25503 of 2018

and W.M.P.No.29676 of 2018

G.Menaka,
rep. by her Power of Attorney Agent
R.Gunavalan,
No.10/672, Plot No.74,
VGP Baby Nagar II Street,
Mambakkam High Road,
Medavakkam, Chennai-600 100. .. Petitioner

vs.

- 1.The Manager,
Indian Overseas Bank,
Ekkattuthangal Branch,
No.32, Defence Officer's Colony,
Ekkattuthangal, Chennai.
- 2.The Authorised Officer,
Indian Overseas Bank,
No.32, Defence Officers Colony,
Ekkattuthangal, Chennai - 600 032.
- 3.The Sub-Registrar,
Office of the Sub-Registrar,
Selaiyur, Chennai.
- 4.M/s.Arul Constructions,
rep. by its Proprietrix Mrs.Deepika Vinohar,
Having office at Old No.25, New No.69,
Railway Colony, 3rd Street,
Aminjikarai, Chennai-600 029.
- 5.A.Bright Vinohar
- 6.M/s.Prabhu Estates,
rep. by its Proprietor Mr.J.Prabhu,
AE 79, 1st Floor, 7th Street,
10th Main Road, Anna Nagar,
Chennai - 600 040.

7.M.Veerasekar,
Partner of M/s.Land Marvel Homes,
45-47, 3rd Floor, I Main Road,
Gandhi Nagar, Adyar,
Chennai-600 020.

8.M.Palaniappan,
Partner of M/s.Land Marvel Homes,
45-47, 3rd Floor, I Main Road,
Gandhi Nagar, Adyar,
Chennai-600 020.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the 1st and 2nd respondents to exclude Flat No.313, 3rd Floor, "Ruby" Block, measuring 923 square feet along with undivided share of 433 square feet covered by sale deed dated 13.12.2012 bearing Document No.9801/2012 on the file of SRO, Selaiyur from the schedule of property mentioned in the e-auction sale notice dated 28.08.2018 on the file of 2nd respondent.

For Petitioner : Mr.R.Rajarajan

O R D E R

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

The above Writ Petition has been filed by the petitioner to issue a Writ of Mandamus, directing the 1st and 2nd respondents to exclude Flat No.313, 3rd Floor, "Ruby" Block, measuring 923 square feet along with undivided share of 433 square feet covered by sale deed dated 13.12.2012 bearing Document No.9801/2012 on the file of SRO, Selaiyur from the schedule of property mentioned in the e-auction sale notice dated 28.08.2018 on the file of 2nd respondent.

2. It is the case of the petitioner that the 1st respondent-bank issued e-auction sale notice in respect of the mortgaged property. According to the petitioner, the 5th respondent executed a registered sale deed in her favour in respect of the above mentioned property, therefore, the property mortgaged with the 1st respondent-bank by the respondents 4 to 6 cannot be brought to sale. According to the petitioner, her property should be excluded in the e-auction sale notice dated 28.08.2018.

3. If the petitioner is aggrieved over the e-auction sale notice dated 28.08.2018, the remedy open to her to challenge the sale notice is only before the Debts Recovery Tribunal under Section 17 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act')

4. In the case on hand, the petitioner has directly filed the Writ Petition without exhausting the alternative remedy available under Section 17 of the SARFAESI Act.

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 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.

6. Since the petitioner has filed the writ petition without challenging the e-auction sale notice dated 28.08.2018 before the Debts Recovery Tribunal, we are not inclined to entertain the Writ Petition. However, it is open to the petitioner to challenge the e-auction sale notice dated 28.08.2018, before the Debts Recovery Tribunal, in accordance with law. The Writ Petition is dismissed. No costs. Consequently, W.M.P.No.29676 of 2018 is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1 The Manager,
Indian Overseas Bank,
Ekkattuthangal Branch,
No.32, Defence Officer's Colony,
Ekkattuthangal, Chennai - 600 032.

2 The Authorised Officer,
Indian Overseas Bank,
No.32, Defence Officers Colony,
Ekkattuthangal, Chennai - 600 032.

3 The Sub Registrar,
O/o. the Sub Registrar,
Selaiyur, Chennai.

W.P. No.25503 of 2018

SV(CO)
EU(25/10/2018)