

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.25244 of 2018 and

W.M.P.No.29348 of 2018

S.Anitha ... Petitioner

v.

- 1 The Manager  
Indian Overseas Bank  
Ekkattuthangal Branch  
No.32, Defence Officer's Colony  
Ekkattuthanga  
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.
- 4 M/s.Arul Constructions  
Rep. by its Proprietrix  
Mrs.Deepika Vinohar  
W/o.Mr.A.Bright Vinohar  
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  
J.Prabhu  
AE 79, I Floor, 7th Street  
10th Main Road, Anna Nagar  
Chennai - 600 040

7 M.Veerasekar

8 M.Palaniappan

.. 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.210, 2nd Floor, Sapphire Block. measuring 1033 square feet along with undivided share of 475 square feet covered by sale deed dated 13.12.2012 bearing Document No.9805/2012 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 respondents 1 and 2 to exclude Flat No.210, 2nd Floor, Sapphire Block, measuring 1033 square feet along with undivided share of 475 square feet, covered by sale deed dated 13.12.2012 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 4th respondent 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 of the 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 the Debts Recovery Tribunal.

6. Since the petitioner has filed the writ petition without challenging the e-auction sale notice dated 28.08.2017 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 28.08.2018, before the Debts Recovery Tribunal, in accordance with law. The Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rj

To

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

+1cc to Mr.T.Gandhi, Advocate Sr.66702

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ks[co]  
srg 10/10/2018