THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NOs.37200, 37258, 37268 AND 37289 OF 2018

COMMON ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The petitioners claim to have purchased flats from the fourth respondent by way of registered sale deeds in the year 2014. They are aggrieved by a notice issued by the Tahsildar, Bhimavaram dated 25.09.2018 informing that the Authorised Officer, IDBI Bank was directed to approach the office of the Tahsildar to take possession of the mortgaged scheduled property by the Revenue Inspector, Bhimavaram who was already authorised to take possession of the mortgaged scheduled property, and to hand over the same to the Bank authorities. By the said notice, the fourth respondent was directed to give possession of the mortgaged property immediately after receipt of the notice, failing which possession would be taken in accordance with the provisions of law to be handed over to the Bank authorities, besides initiating action for prosecution under Section 29 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity).

While Smt. D.Naga Madhavi, learned counsel for the petitioners, would submit that the petitioners are bonafide purchasers, the fact remains that, in terms of Section 13(13) of the SARFAESI Act, no borrower shall, after receipt of the notice referred to in Section 13(2) of the SARFAESI Act, transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor. If the petitioners had purchased the subject property after the notice was issued to the borrower under Section 13(2) of the SARFAESI Act, they cannot claim any right over the said property as against the Bank.

In any event, the petitioners would also fall within the definition of a "person aggrieved" under Section 17 of the SARFAESI Act and can, therefore, approach the Debts Recovery Tribunal under Section 17 thereof questioning the action of the respondents in seeking to dispossess them. Smt. D.Naga Madhavi, learned counsel for the petitioners, would submit that the Tahsildar has given them time only till today and the petitioners be protected for a period of two weeks to enable them to approach the Debts Recovery Tribunal. While we see no reason to grant the petitioners two weeks' time, suffice it to direct the respondents not to take coercive measures to evict the petitioners for a period of one(1) week from today.

Leaving it open to the petitioners to approach the Debts Recovery Tribunal, Visakhapatnam, and subject to the aforesaid observations, all the four Writ Petitions fail and are, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

11th October 2018
NOTE: Issue CC today
B/O RRB