

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.7168 of 2019 and  
W.M.P.Nos.7889 & 7892 of 2019

- 1 Rajkumar Rangachari  
2 Vrindalakshmi Rajkumar
- 3 Real Value Systems (P) ltd  
39/38, Besant Avenue  
Adyar, Chennai-600 020
- 4 R.Gopalan ... Petitioners
- vs
- 1 The Chief Metropolitan Magistrate  
Egmore, Chennai
- 2 Mr.P.K.Premkumar  
Advocate Commissioner  
Egmore Bar Association, Chennai
- 3 The Inspector of Police  
E-5 Police Station, Foreshore Estate  
Chennai-600 028
- 4 Pridhvi Asset Reconstruction and  
Securitisation Company Ltd  
1-155 Raja Praasadam, 4th Floor  
Wing I, Masjid Banda Road  
Hyderabad- 500084
- 5 Branch Manager  
Andhra Bank  
Besant Nagar Branch  
7th Ave, GOCHS Colony  
Besant Nagar  
Chennai-600 090 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the issuance of Notice No.316/2016/532, dated 23.8.2016 under section 13(2) of the SARFAESI Act addressed to the (1) to (4) and notice No.316/2016/533, dated 23.8.2016 under section 13(2) of the SARFAESI Act addressed to the 1st and 3rd petitioners and the subsequent sale notice in Ref.No.316/2019/83, dated 30.1.2019 by the 4th respondent herein and quash the same as illegal, defective, non est in law and not issued as per the mandatory requirements of SARFAESI Act 2002 consequently direct them to hand over the physical possession of the property, namely, residential flat admeasuring 4141 sq.ft. bearing at Flat Nos. VII/I and VII/II No.2A/38 and 2A/39 on 7th Floor with open terrace area admeasuring 1645 sq.ft. and car parking Nos. 1, 2, 3 & 4 and undivided share of land measuring 1999.28 sq.ft. in R.S.No.4274/1, 4274/31, 4274/30, part of Door No.2/1, 3. New No.2/3 in Rams Block, Swathi Towers, Durgabai Deshmukh Road, R.A.Puram, Chennai - 28.

For Petitioner : Mr.C.Uma Shankar  
for Mr.R.Mangaimanan

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 pertaining to the issuance of Notice dated 23.8.2016 under section 13(2) of the SARFAESI Act and the subsequent sale notice dated 30.1.2019 issued by the 4th respondent and to quash the same.

2. It is the case of the petitioners that a notice under section 13(2) of the SARFAESI Act was issued to them and subsequently, section 13(4) notice dated 28.12.2016 was also issued. Thereafter, the sale notice dated 30.1.2019 was issued to bring the property for sale. Challenging section 13(2) notice dated 23.8.2016 and the sale notice dated 30.1.2019, the petitioners have filed the above Writ Petition.

3. It is settled position that notice issued section 13 (2) of the SARFAESI Act cannot be challenged.

4. So far as the sale notice is concerned, the petitioners should have approached the Debts Recovery Tribunal under section 17 of the SARFAESI Act.

5.1. 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 SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

5.2 In a recent decision of the Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, and has observed that despite several judgments, including the decision of Mathew K.C., supra, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex Court held that Writ Petition filed by the aggrieved party without exhausting the statutory remedy available under the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable.

6. The ratio laid down by the Hon'ble 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 alternate remedy available to them under section 17 of the SARFAESI Act, we are not inclined to entertain the Writ Petition. However, it is open to the petitioners to challenge the sale notice dated 30.1.2019, in accordance with law.

With these observations, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Rj

To

- 1 The Chief Metropolitan Magistrate  
Egmore, Chennai
- 2 Mr.P.K.Premkumar  
Advocate Commissioner  
Egmore Bar Association, Chennai
- 3 The Inspector of Police  
E-5 Police Station, Foreshore Estate  
Chennai-600 028.
- 4 Branch Manager  
Andhra Bank  
Besant Nagar Branch  
7th Ave, GOCHS Colony  
Besant Nagar  
Chennai-600 090 .

+1 cc to Mr.R.Mangaimannan, Advocate Sr.No.23779

+1 cc to The Government Pleader, SR.No.24178

W.P. No.7168 of 2019 and  
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VGII (CO)  
CSL/29.03.2019



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