

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.05.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN  
and  
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.14591 of 2019 and  
W.M.P. No.14568 and 14569 of 2019

1.Semalaiappan

2.S.Kamalam

... Petitioners

Vs

- 1.The Reserve Bank of India,  
Fort Glacier, Chennai - 600 009.
- 2.The Chief Manager & Authorized Officer,  
Andhra Bank, Coimbatore Main Branch,  
17, Mill Road, Coimbatore 641 002.
- 3.The Chief Manager & Authorized Officer,  
Punjab National Bank, A G M Branch,  
774, Oppanakara Street, Coimbatore 641 001.
- 4.Loganathan,  
Managing Partner of A K R Textiles,  
No.3/1, Park Avenue, Kumar Nagar,  
Avinashi Road, Tirupur 641 603 and  
Also at No.2/385 G, P N Road,  
Mummoorthy Nagar, Tirupur 641 602.

- 5.M/s.Rohini Textiles Industry Pvt.Ltd.,  
Unit-II, Plot No.FF2, 2<sup>nd</sup> Cross,  
SIPCOT Industrial Growth Center,  
Perumdurai, rep.by its Managing Director  
Mrs.S.Kavitha.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to consider the written representations and including the joint representations made through the Advocates dated 24.04.2019.

For Petitioners : Mr.N.L.Rajah,  
Senior Counsel for  
M/s.V.Jayachandran and Associates

O R D E R

[Order of the Court was delivered by C.V.KARTHIKEYAN,J.]

The writ petitioners are aggrieved by the issuance of notice under Section 13 (4) of the SARFAESI Act (hereinafter referred to as 'the Act'), in which, conspicuously the property which is described below and which had been included in the notice issued under Section 13 (2) of the Act was omitted.

2.It is the claim of the learned Senior Counsel for the writ petitioners that the said property is a valuable property, worth more than Hundred Crores and it would certainly, if brought in auction, to a large extent, clear the outstanding of the principal borrowers, namely, the fifth respondent in the writ petition.

3.Our attention is also drawn to the observation in Civil Appeal No.4776 of 2019 dated 08.05.2019 (State Bank of India vs. M/s.JAH Developers Pvt. Ltd. & others) by the Hon'ble Supreme Court wherein it has been stated in para 21:

"21... However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company..."

4.We are not examining the facts in details because prima facie comparison of the schedule of properties given under, the notice issued under 13 (2) of the Act and provides under Section 13(4) of the Act, show that the property, which is now described, had been omitted in the notice under Section 13 (4) of the Act. The said property is as follows:

| No. | Property Owner Name                 | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Extent of land                                      |
|-----|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| 1.  | M/s Rohini Textile Industry Pvt Ltd | <p>All that piece and parcel of land known as Plot No.FF2 in the SIPCOT Industrial Growth Centre, Perundarai, Taluk of Perundarai, Sub Registration district of Perundarai in Revenue district of Erode bearing Revenue Survey Nos.236 (pt), 237(pt), 239(pt), 247(pt), 276(pt), 277(pt) &amp; 278 (pt) of Perundarai and bounded</p> <p>On the North by: Plot No.FF3<br/>On the South by: Village Road<br/>On the East by: Plot No.FF4<br/>On the West by: Plot No.FF1</p> <p>Linear Measurements<br/>East to West on the North :<br/>334.45+52.00 = 386.45 M<br/>East to West on the South<br/>31.51+59.99+108.01+80.01+56.38+24.54+52.00=412.44 M<br/>North to South on the East:<br/>330.00 M<br/>North to South on the West:<br/>203.97 M</p> <p>An extent of 25.23 Acres of land with industrial buildings constructed thereon in entirety with all rights of way and all other appurtenances attached thereto.</p> | 25.23 Acres of land & buildings constructed thereon |

5.In this connection, raising the above, a detailed representation has been given on behalf of the writ petitioners by the counsel which is dated 24.04.2019. The respondents herein have not yet replied to the said representation. In view of the fact that there is a glaring omission of the schedule mentioned property stated above in the notice issued under Section 13 (4) of the Act, we are of the opinion that an obligation is cast on the respondents to give a specific reply to the representation dated 24.04.2019, as to the reason why the said property was omitted and was not brought on auction. In this connection, the respondents are to pass a detailed order, specifically adverting to the above aspect and other issues raised in the

representation, within a period of four weeks from the date of receipt of a copy of this order. Till such time, the respondents are injuncted from taking possession to proceed further with the properties of the writ petitioners. The writ petitioners have to serve copies of the notice to the respondents.

6. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pns/vga

To

1. The Reserve Bank of India,  
Fort Glacier, Chennai - 600 009.
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Punjab National Bank, A G M Branch,  
774, Oppanakara Street, Coimbatore 641 001.

+2cc to Mr.V.Jayachandran, Advocate, Sr.No.44130

सत्यमेव जयते

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mp(21/05/2019)

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