



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED DATE: 28.03.2019

PRONOUNCED DATE : 30.04.2019

CORAM:

THE HONOURABLE Mr. JUSTICE K.KALYANASUNDARAM

AND

THE HONOURABLE Mrs. JUSTICE R.THARANI

W.P. (MD) .No.7457 of 2019

and

W.M.P. (MD) No.5966 and 5967 of 2019

Parent Teacher Association of
Holy Trinity International School,
Rep. By its President S.Suresh Jeya Raja ... Petitioner

Vs.

1.The Authorised Officer,
Central Bank of India,
Regional Officer, Rajamuthiah Mandram,
Dr.Ambedkar Road,
Madurai.

2.K.S.M. Eductional and Charitable Trust,
Rep. By its Managing Trustee, Mr.C. Bright,
Melpalai, Edaicode Post,
Edaicode Village, Vilanvancode Taluk,
Kanyakumari District.

3.C.Bright ... Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the sale notice dated 18.02.2019 published in the English Daily "The Hindu" on 23.02.2019 in respect of properties described as item Nos.1 to 5 measuring 75 cents of land and college building Old survey No.2149, A, C & E (R.S.No.445/7), 65 cents of land and school building in Old survey No.2149, A, C & E (R.S.NO.445/7), 1 Acre of land with school playground in Old Survey No.2149, A, C & E (R.S.No.445/7), 1 Acre 4 cents of agricultural land in Old survey No.2147, R.S.No.445/5 and 1 Acre and 57 cents of land and building in Old survey No.34551, 3455J & 3450 B, A, C & E (R.S.No.230/1) situated at Edaicode, Vilavancode taluk, Kanyakumari District and quash the same.

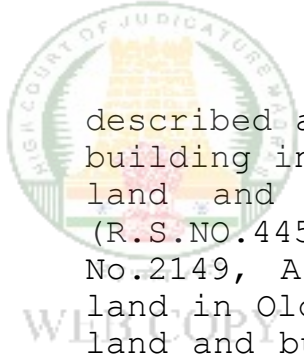
For Petitioner : Mr.Emilias for Mr.V.Malaiyendran

For Respondent No.1 : Mr.Rajesh Saravanan

ORDER

(Order of the Court was made by **R. THARANI, J**)

<https://hcservices.ecourts.gov.in/hcservices/> This Writ petition has been filed for issuance of a Writ of Certiorari to quash the sale notice dated 18.02.2019 published in the English Daily "The Hindu" on 23.02.2019 in respect of properties

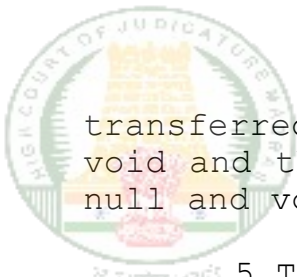


described as item Nos.1 to 5 measuring 75 cents of land and college building in Old survey No.2149, A, C & E (R.S.No.445/7), 65 cents of land and school building in Old survey No.2149, A, C & E (R.S.No.445/7), 1 Acre of land with school playground in Old Survey No.2149, A, C & E (R.S.No.445/7), 1 Acre 4 cents of agricultural land in Old survey No.2147, R.S.No.445/5 and 1 Acre and 57 cents of land and building in Old survey No.34551, 3455J & 3450 B, A, C & E (R.S.No.230/1) situated at Edaicode, Vilavancode taluk, Kanyakumari District.

2.The petitioner is the Parent Teacher Association of Holy Trinity International Society. The second respondent is the Trust running the Holy Trinity College of Education since 2007-2008 and the Holy Trinity International School since 2015-2016. For the construction of the School and College building, the trust has availed three loans to the tune of Rs.7,48,50,000/- and as a security the second respondent has mortgaged 75 cents of land and the college building, the 65 cents of land and school building, 1 Acre of land with school playground, 1 Acre 4 Cents of agricultural land and 1 Acre and 57 cents of land and building. Though the suit property stand in the name of the third respondent, the properties were leased to the School and the College by the third respondent and another 1 Acre 57 Cents in old survey no.3455I, 3455J, 3455B, R.S.No.230/1 is an agricultural land. The above said properties were given as security by the respondents 2 and 3 to the first respondent Bank by way of equitable mortgage.

3.The second respondent could not repay the agreed monthly instalments and there was some default in payment of loan. The first respondent Bank initiated proceedings under SARFAESI Act and notice was served to the second respondent Trust and another notice was served to the third respondent that the possession of mortgage assets was taken under Section 14 of SARFAESI Act. The sale notice dated 18.02.2019 was issued by the first respondent Bank. The College and School are being run in a peaceful manner in the said properties. If the physical possession of the building is taken from the Trust, the children of the School and College will be affected. Therefore, the petitioner filed W.P.(MD)No.1296 of 2019 and challenged the same and as there is no bidder on the scheduled date, the writ petition was dismissed. The first respondent issued a fresh sale notice on 18.02.2019 fixing the date of auction on 29.03.2019. Hence, the petitioner filed this Writ petition.

4.On the side of the petitioner, it is stated that the school and College are functioning in the scheduled property and the properties of educational institutions cannot be brought for sale. It is stated that under Sections 27 of the Tamil Nadu Private Colleges Regulation Act, 1976 and 31 of Tamil Nadu Private Schools Regulations Act, 1973, no property of a private school and a college shall except with the previous permission in writing of the competent authority be transferred by way of sale, exchange, mortgage, change, pledge, lease, gift and if any such property is



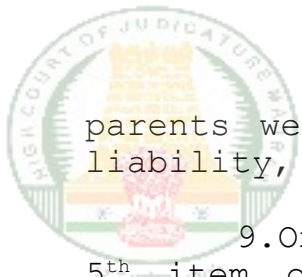
transferred without such permission, the transfer shall be null and void and the impugned notice of sale based on such mortgage is also null and void.

5. The school is owned only by the second respondent Trust and the other properties are already leased out to the educational institutions under Section 34 of SARFEASI Act. The Bank can take the management of the secured assets and sell the same. If the Bank want to proceed against the borrowers, the Bank has to take up the management along with the buildings so that the students will not be affected. It is stated that above 500 students are studying from K.G. To 9th standard and 104 students are studying B.Ed, M.Ed and M.Phil in the college and taking over physical possession will be a hindrance to their education and prayed no prejudiced to be caused to the students and prayed to grant interim stay for all proceedings pursuant to the sale notice dated 18.02.2019.

6. On the side of the petitioner, it is stated that the first respondent Bank has brought four properties that contain school and college building for auction. One property is an agricultural land which belonged to the third respondent. It is stated that as per Sections 27 and 29 of the Tamil Nadu Private Colleges Regulations Act and as per Section 31 of the Tamil Nadu Private Schools Regulations Act, the mortgage created by the third respondent is invalid, since no prior permission from the authorities was obtained by third respondent before creating the mortgage. It is stated that under Section 13(4) (b) of the SARFAESI Act, the first respondent Bank has to take possession of the building along with Management and the Bank can brought for the auction the Management of the school.

7. On the side of the petitioner, it is stated that the petitioner is concerned about the education of the students in the school and college and by taking physical possession, the education of the students should not be affected. The petitioner can negotiate with the first respondent Bank and with the third respondent and will try to settle the matter amicably. It is stated that the Collector has passed an order for taking over the physical possession of the property and if physical possession is taken away, the education of the children will be spoiled.

8. On the side of the first respondent, it is stated that the petitioner has no locus standi to question the first respondent Bank. It is stated that since the first respondent Bank issued a sale notice on 14.12.2018, only for the purpose of filing Writ petition, this petitioner association was constituted. The Association was constituted on 07.01.2019 and the purpose of constitution of the Association is to use the same as a mask for the borrowers. When the second sale notice was issued on 25.01.2019, the same Association has filed a writ petition. There is no averments in the petition that the children of the members of the Association are studying in the school and who are the Teachers and who are the



parents were not stated in the petition. Just to escape from the liability, this association is constituted.

9. On the side of the first respondent, it is stated that the 5th item of the property is not an agricultural land and that property is only used as a playground for the educational institutions and if the Collector passed an order for taking physical possession then that the order has to be challenged but no such order was challenged in the writ petition. If at all the Collector passed an order for taking physical possession, the Collector must have considered all the points that are raised by the petitioner in this petition. It is stated that the proper forum for the petitioner is to approach the Debts Recovery Tribunal and the petitioner cannot file a writ petition before this forum.

10. It is seen that the petitioner Association is constituted on 07.01.2019 and it is stated that the third respondent leased out the said properties to the Trust. The petitioner is the Parent Teacher Association of Holy Trinity International School not an association related to the college. But this petition was filed for the property of the college also. Though a number of persons have signed as the members of the association, there is no clarification as to who are the parents of the students and who are the Teachers working in the School. There is no averments that the children of the members are studying in the school.

11. The learned counsel appearing for the petitioner vehemently argued against the taking over of physical possession, but there is no specific prayer in the writ petition. The respondents have filed this writ only challenging the sale notice. The petitioner is not a borrower nor guarantor nor the owner of the property and the petitioner has no locus standi to file this writ petition.

12. Even if the petition was filed on the interest of the students, the academic year is almost over and there may not be a chance for the education to be spoiled. If the petitioner is aggrieved, the forum is Debts Recovery Tribunal and not this Court.

13. In the recent Judgment of the Honourable 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**, it is held as follows:

"Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and keep granting interim orders in favour of persons who are Non-



Performing Assets (NPAs).

The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. And Another, (1997) 6 SCC 450, observing:-

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside."

14. With the above said reasons, there is no merits in the writ petition. This writ petition is dismissed. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to M/s.V.MALAIYENDRAN, Advocate SR-64424.

W.P. (MD) .No.7457 of 2019
30.04.2019

CS: (03/06/2019) 5P 2C