



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (MD)No.18922 of 2019

and

W.M.P. (MD)No.15280 of 2019

P.Suresh

... Petitioner

- Vs. -

1.The Zonal Manager,
Zonal Office,
Indian Overseas Bank,
Trichy.

2.The Branch Manager,
Indian Overseas Bank,
Iruthayapauram Branch,
Plot No.63, V.M.Pettai,
Edatheru, Palakarai,
Trichy - 8.

3.Nandhakumar

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus forbearing the respondent Nos.1 and 2 from conducting sale and any further proceedings with respect to property comprised in Old S.F.No.27, New S.F.No 19 situated in Sangiliyandapuram, Sengulam village, Trichy Taluk and District and consequently direct the respondent Nos.1 and 2 to conduct fresh enquiry with respect to said property after affording opportunity to the petitioner based on his representation dated 21.08.2019.

For Petitioner

: Mr.K.Arunraj

For R-1 and R-2

: Mr.N.Dilip Kumar



O R D E R

[Order of the Court was made by
SENTHILKUMAR RAMAMOORTHY, J.]

WEB COPY This writ petition is filed for a Mandamus to restrain the first and second respondents from conducting a sale or any further proceedings with respect to the property comprised in Old S.F.No.27, New S.F.No.19 situated in Sangiliyandapuram, Sengulam village, Trichy Taluk and District and to consequently direct the first and second respondents to conduct a fresh enquiry with respect to the said property based on the petitioner's representation, dated 21.08.2019.

2.We heard the learned counsel appearing for the petitioner. Mr.N.Dilip Kumar, learned counsel took notice on behalf of the first and second respondents. In view of the nature of the order that we propose to pass, notice to the third respondent is dispensed with.

3.The case of the petitioner is that he is entitled to a share in the subject matter property and that on account of the refusal of his mother and brother to allot to him a share in the said property, he filed a suit for partition in O.S.No.186 of 2013 on the file of the III Additional District Judge, Trichirappalli and obtained a preliminary decree on 10.02.2014 for a 1/3 share in his favour. He submits that his mother and brother sold their shares in the above property by a registered sale deed dated 25.02.2015 to the third respondent, who thereafter, mortgaged the property in favour of the respondent bank. On account of non-repayment of the loan by the said third respondent, the property was declared as Non Performing Assets (NPA) and proceedings were initiated under the SARFAESI Act. He further submits that he sent a detailed representation dated 21.08.2019 on receipt of the E-auction sale notice, dated 19.08.2019, but the second respondent bank has not taken any action to redress his grievance. On this basis, the present writ petition is filed.

4.The learned counsel for the petitioner reiterated the said submissions and contended that in the light of the preliminary decree in his favour, the respondent bank is not entitled to bring the entire property to sale as per the impugned auction sale notice.

5.The learned counsel appearing for the respondent bank on the other hand submitted that the auction was scheduled on 19.08.2019 and that the said auction sale was unsuccessful. Accordingly, he submitted that nothing survives in this writ petition wherein the said auction sale notice is challenged.

6.We perused the records and considered the oral submissions carefully.



7.The petitioner has an effective alternative remedy before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. More over, as submitted by the learned counsel for the respondent bank, the auction sale, which was scheduled on 19.08.2019, was not successful and therefore, nothing survives for adjudication herein.

8.Accordingly, this writ petition is disposed of without expressing any opinion on the merits of the case, by granting leave to the petitioner to file appropriate proceedings before the Debts Recovery Tribunal concerned, if measures are taken by the respondent bank in respect of the subject matter property. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CrI.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Zonal Manager,
Zonal Office,
Indian Overseas Bank,
Trichy.

2.The Branch Manager,
Indian Overseas Bank,
Iruthayapauram Branch,
Plot No.63, V.M.Pettai,
Edatheru, Palakarai,
Trichy - 8.

+1 CC to Mr.K.ARUNRAJ, Advocate SR-84494.

+1 CC to Mr.N.DILIP KUMAR, Advocate SR-84630.

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