IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 26TH DAY OF JUNE 2020 / 5TH ASHADHA, 1942

WP(C).No.12738 OF 2020(N)

PETITIONER/S:

HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED. (HDFC LTD. IN SHORT), RAMON HOSE, 169 BACK BAY RECLAMATION, MUMBAI 400 020, REPRESENTED BY THE AUTHORISED OFFICER MR. SACHIN A.S. S/O. SHANAVAS, AGED 39 YEARS, HDFC HOSUE ,3RD FLOOR, RAVIPURAM JUCNTION, M.G. ROAD, KOCHI 682 015.

BY ADV. SRI.C.P.SAJI

RESPONDENT/S:

1 **IRINJALAKUDA TOWN CO OPERATIVE BANK TANA SOUTH, IRINJALAKUDA P.O. THRISSUR 680 121, REPRESENTED BY ITS GENERAL MANAGER.**

2 **AUTHORISED OFFICER, IRINJALAKUDA TOWN COOPERATIVE BANK TANA SOUTH, IRINJALAKUDA P.O. THRISSUR 680 121**

3 **AKSHAYA PROPERTIES AND DEVELOPERS , VARIYATHU PLAZA MAERAR ROAD, PROUD WEST, THRISSUR REPRESENTED BY ITS PROPRIETOR JOJU K.V. S/O. VASUDEVAN, KUNDOLIL HOUSE, SANTHI NAGAR, AYYANTHOLE P.O. THRISSUR.**

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 26th day of June 2020

Petitioner, a Housing Development Financial Corporation Limited (hereinafter called HDFC Ltd. in short) has approached this Court under Article 226 of the Constitution of India with a prayer of issuance of writ in the nature of certiorari quashing the sale of the properties covered by Ext.P1, agreement for sale and construction, conducted by the 2nd respondent under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) and writ in the nature of mandamus directing the 2nd respondent not to confirm the sale of the property covered by Ext.P1 with a further prayer of mandamus directing 1st and 2nd respondent to furnish documents relating to loan transaction of 1st respondent and 3rd respondent and of the proceedings under the SARFAESI Act.

2. Smt.Deepa Mohan, learned counsel appearing on behalf of the petitioner submits that as it would be evidenced

from the facts petitioner and the 1st respondent are the financial institutions defined under the SARFAESI Act. The 3rd respondent owned a land as described in para 3 of the writ petition. Several persons entered into agreement for sale and construction with the 3rd respondent for purchasing undivided share in the land to construct the apartment. On security of the sale and construction agreement and guarantee offered by the 3rd respondent these purchases availed home loan from various financial institutions including petitioner. Out of various purchasers 14 purchasers have availed the housing loan from petitioner on security of the apartment to be constructed in the complex of the 3rd respondent. The aforementioned loan was granted on security of the apartment to be constructed and the undivided share in the land by producing the originals of their agreement for sale and construction along with original receipts for the contribution of the sale consideration given to the builders. Undivided share and apartment was equitable mortgage. Builder also gave undertaking dated 03.12.2015 Ext.P2 to the petitioner stating through letter that the land and

apartment were not subject to any encumbrance charge or liability. But, intriguingly, the 1st respondent allegedly given loan to the 3rd respondent and on default had taken steps under the SARFAESI Act. Even the property was also sold and about to confirm the sale, indulgence of this Court with the aforementioned prayer has been sought.

3. I have heard the learned counsel for the parties and appraised the paper book. I am of the view that the first and second prayer in the absence of the information as sought cannot be granted, third prayer writ would not lie. Petitioner had other remedy instead of invoking the jurisdiction of this Court by seeking information under the Right to Information Act or by inspecting the record of the concerned Registrar, where the property is situated, to ascertain situation of encumbrance. On inspection would have been able to ascertain information regarding creation of charge at whose instance. It is only thereafter the first and second prayer of setting aside and confirmation of sale would arise.

4. With the aforementioned observation, I am of the

view that the first and second prayers cannot be granted until and unless the petitioner obtains the information under the Right to Information Act and this Court will refrain itself from holding an enquiry as it is the prime duty of the petitioner to establish on record on the basis of the information to be taken in accordance with law.

The writ petition stands disposed of with aforementioned observation.

Sd/-

AMIT RAWAL

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE AGREEMENT ENTERED BY THE ONE OF THE BORROWERS OF THE PETITIONER AND THE 3RD RESPONDENT DATED 24.01.2013.
EXHIBIT P2	TRUE COPY OF THE UNDERTAKING LETTER DATED 03.12.2015 OF THE 3RD RESPONDENT TO THE PETITIONER.
EXHIBIT P3	TRUE COPY OF THE TRIPARTITE AGREEMENT DATED 03.02.2015 ENTERED BETWEEN ONE OF THE BORROWERS OF THE PETITIONER ALONG WITH THE 3RD RESPONDENT AND THE PETITIONER.
EXHIBIT P4	TRUE COPY OF THE LETTER OF THE PETITIONER TO THE 2ND RESPONDENT DATED 17.03.2020.