

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.16227/2020 & WMP.Nos.20266 & 20268/2020

M.Subramani

.. Petitioner

Versus

1.The Authorised Officer
Kotak Mahindra Bank
No.5-330, Sonia Plaza
First Floor, State Bank Colony
Near AVR Circle,
Salem 636 004.

2.The Branch Manager
Kotak Mahindra Bank
No.219, First Floor
Arunachalam Road
DB Road, Coimbatore 641 002.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of declaration, declaring the e-auction sale Notice dated 13.10.2020, which was published in the thina Mani by the 1st respondent in respect of the schedule mentioned property as null and void since the property mentioned is exempted from proceeding under SARFAESI Act.

For Petitioner : Mr.P.Tamilavel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN]

(1)The petitioner claims that he was doing business in poultry and became friendly with one Jagannathan and both of them had purchased agricultural lands in S.No.29/3E at Thummankurichi Village, Namakkal Taluk and District through a registered Sale Deed bearing Doc.No.3989 of 2009 dated 13.11.2009. The petitioner would further aver that his friend, viz., Jagannathan, took him to the 2nd respondent - Bank and made him to sign some papers on the pretext that he

is the surety of the loan borrowed by him and the property jointly purchased, was also mortgaged for the due repayment of the loan. Since the principal borrower, viz., Jagannathan, had committed default of payment of dues, action was initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'SARFAESI Act'].

- (2) The petitioner also filed a civil suit in OS.No.346 of 2019 on the file of the Court of Subordinate Judge at Namakkal against the Principal borrower, viz., Jagannathan, J.Vijaya, M/s.Kandhaian Poultry Farm, M/s.Kandhaian Feeds and Kotak Mahindra Bank-respondents herein, for partition and separate possession of the said property, wherein he also took a stand that the suit property is an agricultural land and therefore, it cannot be proceeded with under the provisions of the SARFAESI Act and the said suit is still pending. The 5th defendant who is arrayed as the respondents herein, also filed a written statement, denying the nature of the land as agricultural land.
- (3) The learned counsel for the petitioner would submit that the respondents had issued a Sale Notice dated 13.10.2020, stating among other things, that they have taken physical possession of the immovable property on 03.01.2019 and bringing the said property for sale by means of an E-Auction on 25.11.2020 and in the light of Section 31[i] of the SARFAESI Act, in respect of agricultural land, proceedings under SARFAESI Act cannot take place and therefore, prays for appropriate orders. The learned counsel also drawn the attention of this Court to the judgment reported in 2012 [5] CTC 257 [Eshwar Purushothaman Gardens rep.by its Partner P.E.Purushothaman V. Authorised Officer, Indian Bank Zonal Office, Coimbatore 641 018].
- (4) This Court has considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.
- (5) The petitioner did not respond to the notice issued under the provisions of the SARFAESI Act by the respondents. Be that as it may, the petitioner relies upon the registered Sale Deed dated 13.11.2009, Adangal dated 27.10.2020 issued by the Village Administrative Officer, of Thummankurichi Village as well as the Patta to sustain his claim that the land which is the subject matter of E-Auction Sale on 25.11.2020 is having the characteristic of agricultural land and as such, the provisions of the SARFAESI Act have no application. In the considered opinion of the Court, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot adjudicate the said factual aspect, especially, in the light of the stand taken by the respondent-Bank who is also one of the defendants in OS.NO.346 of 2009 and their written statement dated

19.03.2020 and that apart, the petitioner is also having an effective alternative remedy under Section 17 of the SARFAESI Act and as such, the writ petition is not maintainable. It is also made clear that this Court has not gone into the merits or otherwise of the claim projected by the petitioner in support of his claim.

(6) In the result, the writ petition stands dismissed at the admission stage itself. However, if the petitioner is so advised, he is always at liberty to work out his remedy in accordance with law before the competent Forum. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AP

To

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NRL (CO)
CB(11/12/2020)

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