

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.33756,18872 & 32394 of 2019

W.P.No.33756 of 2019

The Authorized Officer/Chief Manager,
Indian Bank, Asset Recovery,
Management Branch - II,
No.55, Ethiraj Salai, Egmore,
Chennai. Petitioner

Vs

1.The Tahsildar,
O/o. Tahsildar,
SH 57, Ramanujar Nagar,
Sriperumbudur - 602 105.

2.J.Sadique Batcha

3.T.S.Mathivanan

4.E.Sridharan

.... Respondents

W.P.No.32394 of 2019

The Authorized Officer/Chief Manager,
Indian Bank, Asset Recovery,
Management Branch - II,
No.55, Ethiraj Salai, Egmore,
Chennai. ... Petitioner

Vs

1.The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, No.55, Ethiraj Salai,
Egmore, Chennai - 600 008.

2.J.Sadique Batcha

3.T.S.Mathivanan

... Respondents

W.P.No.18872 of 2019

1.J.Sadique Batcha

2.T.S.Mathivanan

... Petitioners

Vs

1. The Authorized Officer/Chief Manager,
Indian Bank, Asset Recovery,
Management Branch - II,
No.55, Ethiraj Salai, Egmore,
Chennai.
2. The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, No.55, Ethiraj Salai,
Egmore, Chennai - 600 008.
3. The Registrar,
Debt Recovery Tribunal -3,
Dewa Towers, 5th Floor,
No.770-A, Anna Salai, Chennai - 600 002.

... Respondents

Prayer in WP No.33756 of 2019 : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus or any other appropriate writ, order or direction of like nature calling for the records relating to the proceedings bearing Na.Ka.4197/2013/A2 dated 03.09.2013 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to issue patta in respect of land comprised in Survey No.13/1 situated in No.74, Kundrathur Village, Mathura Karima Nagar, Saidapet Taluk, Chengai MGR District.

Prayer in WP No. 32394 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari or any other appropriate writ or direction of like nature calling for the records relating to the order dated 22.03.2019 passed by the Debts Recovery Appellate Tribunal, Chennai made in RA (SA) No.149 of 2018 and quash that portion of order directing the petitioner Bank to refund 50% of the sale amount to the 2nd and the 3rd respondent.

Prayer in WP No.18872 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus or any other appropriate writ or direction in the nature of writ calling for the records relating to the proceedings of the 2nd respondent dated 22.03.2019 in RA (SA) No.149 of 2018, quash the same and direct the 1st respondent to comply with the order passed by the 3rd respondent in S.A.No.121 of 2014 within the time stipulated.

For Petitioner : Mr.Jayesh B.Dolia
for M/s. Aiyar and Dolia in
W.P.Nos.33756 & 32394/2019

For Respondents : Mr.M.Devaraj
in W.P.No.18872/2019
Mr.R.Vijayakumar, AGP for R1
in W.P.No.33756/19
Mr.M.Devaraj for R2, R3
in WP Nos. 33756,32394/19
: R1 - Tribunal in WP 32394/19

M/s.Jayesh B.Dolia
for M/s. Aiyar and Dolia in
W.P.No.18872/2019

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH,J)

W.P.No.18872 of 2019 has been filed challenging the order passed by DRAT. The very same order has been challenged by the respondents in W.P.No.18872 of 2019 in W.P.No.32394 of 2019. W.P.No.33756 of 2019 has been filed challenging the order passed by the respondent therein, namely, The Tahsildar, Sriperumbudhur in declining the grant of patta.

2. The petitioners in W.P.No.18872 of 2019 are the successful auction purchasers in whose favour the sale of the property in question has been confirmed for a sum of Rs.30,15,000/-. Accordingly, the sale certificate was issued on 04.06.2012 which was registered in Doc.No.7131 of 2012 on the file of Sub-Registrar, Kundrathur.

3. The property was originally owned by one Devan. He executed the power deed for an extent of 0.84 cent in S.No.13/1 in favour of one E.Sridharan in Doc.No.385/90 dated 13.12.1990. Using the said power deed, the said Sridharan executed the sale deed in favour of M/s.U.S.Engineering Enterprises Limited on 26.05.1983 in Doc.No.1378/1993. The original owner Devan cancelled the power deed executed by him in cancellation

Document No.31/2000 dated 31.01.2000 and executed the settlement deed in favour of his daughter in Document No.3252/2010 dated 26.03.2010 for an extent of 14 cents in S.No.13/A1.

4. M/s.U.S.Engineering Enterprises Limited mortgaged the property purchased by the bidders as aforesaid in favour of the petitioner in W.P.Nos.32394 and 33756 of 2019, namely, the Indian Bank on 10.08.1993. The borrower defaulted. The Bank initiated the proceedings under SARFESI Act. A notice under Section 13(2) was issued on 23.10.2009. The Bank had issued possession notice on 25.08.2010 on the failure of the borrower to pay the amount.

5. Under those circumstances, the sale notice was issued followed by auction sale. It was for an extent of 6450 sq.ft in S.No.13/1 situated at No.74, Kundrathur Village, Saidapet Taluk. To be noted, the mortgage was made by way of deposit of title deeds. The petitioners in W.P. 18872 of 2019 have also paid the bid amount and got the sale confirmed in their favour.

6. It was found out by the petitioners in W.P.No.18872 of 2019 that property purchased by them has been shown as the road to the other plots sold in favour of 13 individuals ranging from the year 1990-91 by registered sale deeds. The Tahsildar, Sriperumpudhur also rejected the request of the petitioner in W.P.No.32394 of 2019 being the Bank stating that the properties have been shown as the road by the earlier sale deeds and copy of the same was communicated to the petitioners in W.P.No.18872 of 2019. This was put into challenge in W.P.No.33756 of 2019.

7. Under those circumstances, the petitioners in W.P.No.18772 of 2019 have filed a petition before the DRAT seeking to set aside the sale with the consequential relief to refund all the amount paid by them. Having found that the property purchased by them was already shown as road in the earlier sale deeds, the application filed was allowed. On the appeal filed by the Bank, the order was modified to refund 50% of the sale amount on the premise that the purchaser also ought to have been careful. Challenging the said order, the parties have come forward to file W.P.Nos.18872 of 2019 and 32394 of 2019 and challenging the rejection of grant of patta by the Tahsildar, the Bank has filed W.P.No.33756 of 2019.

8. The learned counsel appearing for the petitioners in W.P.No.18872 of 2019 submitted that the property purchased by them was earmarked as a road. They were not aware of the same. A factual finding has been given to that effect is not in dispute. Therefore, the order passed by DRAT requires to be interfered with.

9. The learned counsel appearing for the Bank submitted that the borrower ought to have been careful while participating in the auction. The Bank cannot be stated to be at fault in effecting the sale. In any case, the interest awarded is very high.

10. We are quite conscious about the law governing that when a property is sold in as is where is condition, the purchaser cannot question the defects at a later point of time. However, we are dealing with a case where there is no title at all either in favour of the borrower or in favour of the Bank. Wayback in the year 1990 - 1991, the other flats have been sold and the property in question has been shown as road. When that is the position, there is no title when the property was purchased by the purchaser. Resultantly, the property auctioned by the Bank was the one without any title in its favour as the borrower himself did not have the title. The sale deed in favour of the borrower was on 26.05.1993 as against the earlier sale deeds showing the said property as road were between in the year 1990 - 1991 respectively. Therefore, it is not a question of effecting the sale in as is where is condition. The issue goes to the very root of the matter. In such view of the matter, we are of the view that the order passed by the DRAT cannot be sustained in the eye of law. The petitioners in W.P.No.18872 of 2019 are innocents and gullible purchasers in the auction sale. Therefore, it is not a case where the existence of the defects can be factored into sale. In such view of the matter, we are constrained to hold that the petitioners in W.P.No.18872 of 2019 are entitled for repayment of the entire amount paid by them as ordered by the DRAT. It is one thing to say that the Bank can proceed against the person, who committed fraud and the other to recovery it from the bonafide purchaser of value pursuant to the auction sale conducted. May be, it can be stated that the if purchaser verified the facts, the situation could have been avoided. But the said fact will not enure to the benefit of the Bank to recover the amount without even having a valid title. However, in view of the above, we are of the view that while the petitioners in W.P.No.18872 of 2019 are entitled for refund of the amount paid by them as the sale consideration, the interest can be pegged down to 7.5% per annum.

11. We also note that we do not find any error in the order passed by The Thasildar, Sriperambadthur, which is the subject matter of W.P.No.33756 of 2019. We make it clear that the amount as ordered will have to be paid by the Bank within a period of six weeks from the date of receipt of a copy of this order. On such receipt, the petitioners in W.P.No.18872 of 2019 will have to execute the necessary documents. We are not disturbing the other findings rendered by DRAT and, therefore, any order passed to the benefit of the Bank is not disturbed.

12. Accordingly, W.P.No. 18872 of 2019 stands allowed and W.P.Nos. 33756 and 32394 of 2014 are dismissed. No Costs. Consequently, connected W.M.P.Nos.18241,18244,34242 & 34243 of 2019 are closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ssm

To

1.The Tahsildar,
O/o. Tahsildar,
SH 57, Ramanujar Nagar,
Sriperumbudur - 602 105.

2.The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, No.55, Ethiraj Salai,
Egmore, Chennai - 600 008.

3.The Registrar,
Debt Recovery Tribunal -III,
Dewa Towers, 5th Floor,
No.770-A, Anna Salai, Chennai - 600 002.

+1 CC to M/s. Aiyar and Dolia, Advocate sr 18178

+1 CC to Mr.M.Devaraj, Advocate sr 18134.

+1 CC to Govt. Pleader sr 18755.

W.P.Nos.33756,18872 & 32394 of 2019

सत्यमेव जयते

BP(CO)
SP(04/06/2020)

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