

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6402 of 2020

S.Balakrishnan

...Petitioner

Vs

1 The District Collector, Tiruppur

2 The Revenue Divisional Officer
Tiruppur

3 The Tahsildar, Palladam

4 The Authorized Officer
Bank of India, Avinashi Branch
3/45 Ward, No.3 Sreenivasapuram
Coimbatore Main Road
Avinashi Tiruppur-641 654.

5 The Manager
Bank of India, Avinashi Branch
3/45 Ward No.3 Sreenivasapuram
Coimbatore Main Road
Avinashi Tiruppur-641 654.

6 The Zonal Manager
Coimbatore Zone
Bank of India Ground Star
House 324 Oppanakara Street
Coimbatore 641 001.

7 E.Prabhu

8 R.Easwaran

9 C.Shanmugasundaram

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents herein to immediately hand over the physical possession of petitioner property in S.F. No.116, Pannickampetti Village, Palladam, measuring about 71 cents.

For Petitioner : Mr.G.R.Deepak

For Respondents : Mr.R.J.Radhika,
Government Advocate,
for Mr.B.Anand,
for respondents 1 to 3

Mr.F.B.Benjamin George,
for respondents 4 to 6

Mr.S.Senthil,
for respondents 7 and 8

Mr.V.Janaranjani,
for Mr.S.Prakash,
for 9th respondent

ORDER

(made by the Hon'ble Chief Justice)

The purchaser of a property at an auction sale conducted under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 seeks a direction on the revenue authorities for appropriate assistance to obtain the property.

2. The respondent nos.7 and 8 to the present proceedings had obtained credit facilities from Bank of India and defaulted in making re-payments. As a consequence, Bank of India proceeded against the secured asset and advertised for auction thereof.

3. The secured asset is in Panickampatti Village in Palladam Taluk of Tirupur District.

4. Pursuant to the sale notice issued by Bank of India, the writ petitioner has purchased the secured asset. It transpires that even after furnishing the immovable property as security, the borrowers obtained permission from the Bank to sell a part thereof to obtain money to repay the Bank. The Bank accorded permission on the basis of what was represented to the Bank in a letter of April 25, 2015. A portion of the property originally furnished by way of security was, thus, sold by the seventh and eighth respondent to the ninth respondent herein.

5. There is no doubt that the borrowers played foul and used the ninth respondent as the front to ward off the Bank. There is equally no doubt that some bank employee must have assisted in the borrowers' action.

6. However, what is undeniable is that upon the sale notice being issued, it was incumbent on any bidder, including the petitioning purchaser, to ascertain the ground realities before making a bid. As it is well known and must be judicially taken note of, there are cartels in operation at times and sales of properties under the Act of 2002 may not always fetch the best or the adequate price therefor. The secured creditor is not much interested as long as the bid covers the secured creditor's claim or a substantial part thereof. Further, in most cases where the secured creditor is a nationalised bank, there is hardly any accountability on the part of its authorised officer or any other employee.

7. The Writ Court is scarcely the forum that will go into the rival title claims or into the nitty-gritties pertaining to the measurement of the land for apportioning parts thereof. If it so happens that what was left after the partial sale by the seventh and eighth respondent to the ninth respondent was a landlocked plot, there is no doubt that the petitioner as a purchaser of the landlocked plot will have to be given access to the same, even if that means that a path has to be carved out of someone else's property. But those are activities which can be undertaken upon a protracted action by way of a suit. Before a final decision is made, a surveyor has to be appointed, measurements have to be taken and even a Commissioner may be engaged by Court to oversee the measurements and suggest modalities for finding a line of best fit.

8. There is no doubt that the petitioner in this case ought to have been more circumspect and should have conducted an inspection and ascertained the measurement and boundaries of the property that the petitioner was purchasing. There is equally no doubt that before the Bank of India accorded permission to the seventh and eighth respondents to sell off a part of the secured asset, there ought to have been complete clarity and the bank ought to have vetted the draft deed of conveyance before it was executed. The Bank may have either been careless or some palms may have been greased to obtain the permission.

9. In the present imbroglio, no appropriate direction can be issued under Section 14 when the precise location, measurements and boundaries of the secured asset are not well defined. Accordingly, W.P.No.6402 of 2020 is disposed of by relegating the petitioner to file a petition before the appropriate Debts

Recovery Tribunal or a civil suit before the civil Court, whichever is competent. It will be open to the petitioner to implead the Bank and the seventh, eighth and ninth respondent and, to seek appropriate reliefs. It will be equally open to the other parties hereto to take all available grounds in defence.

10. For a period of eight weeks from date, the respondents, 7, 8 and 9 will remain restrained from dealing with or disposing of or alienating or encumbering any part of the immovable properties held or owned by them in S.F.No.116 and lands contiguous thereto in the said Panickampatti Village in Palladam Taluk of Tirupur District. If the petitioner herein files the petition or suit within such time of eight weeks, the injunction will continue till the disposal of the relevant petition or suit and will be subject to the orders that may be passed in such petition or suit. There will be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tar
To:

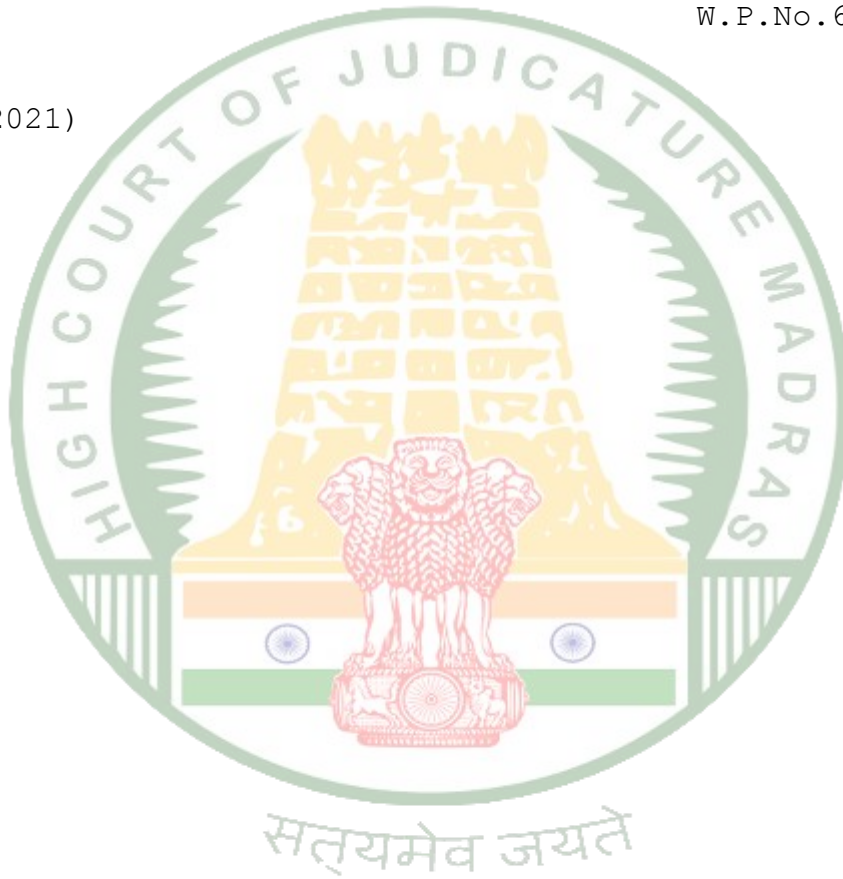
- 1 The District Collector
Tiruppur
- 2 The Revenue Divisional Officer
Tiruppur
- 3 The Tahsildar
Palladam
- 4 The Authorized Officer
Bank of India
Avinashi Branch 3/45 Ward
No.3 Sreenivasapuram
Coimbatore Main Road
Avinashi Tiruppur-641 654.
- 5 The Manager
Bank of India
Avinashi Branch 3/45 Ward
No.3 Sreenivasapuram
Coimbatore Main Road
Avinashi Tiruppur-641 654.

6 The Zonal Manager
Coimbatore Zone
Bank of India Ground Star
House 324 Oppanakara Street
Coimbatore 641 001.

+1 CC to Mr.F.B.Benjamin George, Advocate sr 22941.
+1 CC to The Government Pleader sr 23126.

W.P.No.6402 of 2020

KV(CO)
SP(29/04/2021)



WEB COPY