IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2021
DELIVERED ON : 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.19433 of 2020
and W.M.P.No.24018 of 2020

M/s.V.K.S.Agro Foods Hi Tech Rice Industry,
Represented by its Partner, S.Dhanavel,
Vellottamparapu, Nadupalayam,
Erode-648 154. .. Petitioner

Vs.

1. The Tahsildar,
Erode Taluk,
Erode District - 638 011.

2. IDBI Bank Ltd.,
Represented by its Authorized Officer,
No.66, Aanoor Amman Complex,
Sathy Main Road, Erode - 638 003.

3. SKM Animal Feeds and Foods (India) Private Limited,
Represented by its Managing Director Dr.M.Chandrasekar,
SKM Corporate Office,
No.101, Inarniyan Street,
Karur Bypass Road, Erode - 638 002.

4. Mr.D.Arun Sakthi
(R4 impleaded vide order of this Court
dated 23.06.2021 made in W.M.P.No.10965/2021)
.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the first respondent to consider any patta application in respect to the property situate at Old S.F.No.1232 & 1229-E, Patta Nos.3258, 3253 & 1518 for this R.S.No.1363/2C, Punja hector No.0.12.0 for this kist Rs.0.58, R.S.No.1363/3, Punja hector 0.43.0, R.S.No.1363/4, Punja hector 0.05.5 R.S.No.1363/5, punja hector 0.44.0 R.S.No.1363/6, punja hector 0.08.0, totally admeasuring punja hector 1.12.5, Erode village, only after adjudication of S.A.No.250/2020, pending on the file of the Debts Recovery Tribunal, Coimbatore and for consequential orders.

For Petitioner : Mr.V.Raghavachari

For Respondent 1 : Mr.K.M.D.Muhilan, Government Advocate

For Respondent 2 : Mr.Shivakumar

For Respondent 3 : Mr.S.Thangavel

For Respondent 4 : Mr.Srinath Sridevan

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ORDER

(The case has been heard through video conference)

The writ petition has been filed seeking to restrain the first respondent Tahsildar from considering the third respondent application seeking transfer of patta till final adjudication in S.A.No.250 of 2020, pending on the file of the Debts Recovery Tribunal, Coimbatore, is over.

2. The grievance of the petitioner is that, the petitioner availed loan from the second respondent Bank and created a secured interest by way of deposit of title deeds. Thereafter, the petitioner committed default in payment and hence notice under Section 13(2) of the SARFAESI Act (hereinafter referred to as 'the Act') was issued by the second respondent on 18.02.2016. Thereafter, possession notice was also issued under Section 13 (4) of the Act on 14.07.2016. Challenging these notices, the petitioner filed applications under Section 17 of the Act in S.A.Nos.259 and 498 of 2018 before the Debts Recovery Tribunal (hereinafter referred to as 'DRT'), Madurai, and the DRT also granted interim order with certain conditions. As the conditions were not complied with, the property was brought for auction sale and the third respondent was the successful bidder and auction was also confirmed in its favour. Challenging the auction sale proceedings, petitioner filed another application under Section 17 of the Act in S.A.No.250 of 2020 on the file of the DRT, Coimbatore and the same is pending. Thereafter, in a writ petition seeking a direction to desist the bank from confirming the same pursuant to the notice dated 19.06.2020, this Court directed the DRT, Coimbatore, to dispose of the application within a period of eight weeks and the said application is also still pending. In the meantime, based on the sale certificate issued by the second respondent, the third respondent approached the first respondent Tahsildar seeking mutation of revenue records in its favour and the first respondent is also taking steps to pass an order in favour of the third respondent. In such circumstance, the present writ petition has been filed with the above said prayer.

3. According to the petitioner, the application filed by the petitioner under Section 17 of the Act is yet to reach finality and the second respondent has only taken symbolic possession and actual possession is with the petitioner. It is further stated that if mutation in the revenue records is permitted before the disposal of the application filed by the petitioner to set aside the auction sale, serious prejudice will be caused to the petitioner. It is further stated that serious irregularities have been committed in the conduct of the auction sale, and the petitioner is having valid grounds to set aside the auction sale before the DRT, the petitioner also has a fair chance in succeeding in the proceedings before the DRT. In such circumstance, it is prayed that till the applications of the petitioner is disposed of by the DRT, the proceedings before the first respondent Tahsildar, seeking mutation of revenue records, should be kept pending.

4. The first respondent Tahsildar filed a counter affidavit stating that based on the sale certificate issued by the second respondent, the third respondent approached the first respondent seeking transfer of patta and considering the pendency of the application filed by the petitioner before the DRT, Coimbatore, the application filed by the third respondent was not considered and it is still pending with the first respondent.

5. The third respondent auction purchaser filed a counter affidavit stating that after following the procedure contemplated under the Act, the property was brought for auction sale by the second respondent and the third respondent was declared as the successful bidder and paid the entire sale consideration of Rs.4,80,10,000/- on 08.07.2020 and the sale was also confirmed in its favour. Subsequently the sale certificate was also issued on 09.07.2020, which was also duly registered on the file of the Sub Registrar, Erode, on 13.07.2020, and the second respondent Authorized Officer also handed over a request letter to the first respondent to change the revenue records in the name of the third respondent. While registering the sale certificate, necessary charges were paid for sub-division and also for transfer of patta, out of abundant caution, the third respondent also filed an application before the first respondent on 23.11.2020, for transfer of patta and the said application was not considered. In the meantime, the petitioner also filed a writ petition and obtained an interim order of status quo. Due to the above said order, mutation proceedings is still pending.

6. It is further stated that earlier in the application filed by the petitioner before the DRT, interim stay was granted with condition to deposit some amount, since the petitioner failed to comply with the condition, interim order was vacated and as on date, there is no order staying the auction sale,

therefore the petitioner cannot prevent the statutory authorities from discharging their duties only on the ground of pendency of proceedings before the DRT.

7. I have heard the learned counsel appearing for the petitioner and the respondents and also considered the entire materials.

8. Admitted facts in the writ petition are that, the petitioner's property was brought for sale under the SARFAESI Act by the second respondent bank and after issuance of notice under Sections 13(2) and 13(4) of the Act. The third respondent was declared as successful bidder, and sale certificate was also issued in its favour, the same was also duly registered with the Sub Registrar, Erode, however there is a dispute regarding actual possession of the property between the parties. Challenging the auction sale notice and subsequent auction, the petitioner has filed two applications under Section 17 of the Act before the DRT and the same is pending and as on today, auction sale was not stayed by DRT.

9. On the strength of the sale certificate issued by the second respondent, now the third respondent auction purchaser approached the first respondent Tahsildar seeking for transfer of patta, which was resisted by the petitioner on the ground that, applications filed under Section 17 of the Act are pending and till its disposal by the DRT, the application of the third respondent should not be considered by the first respondent.

10. The law is well settled in this aspect that, unless any interim order is passed by the DRT, the secured creditor can take recourse to any measure to recover its secured debts and the borrower or any other person may file an application under Section 17 of the Act, at any stage including the management of business is taken over or possession of the secured asset of the borrower, including right to transfer is taken over by the secured creditor. Further, the DRT also has power to restore possession to the borrower in the event the DRT finds that the secured creditor has not acted in accordance with the Act and the Rules framed thereunder and consequently declare the auction as invalid. A Full Bench of this Court in Lakshmi Shankar Mills (P) Ltd. and Ors Vs. The Authorised Officer/Chief Manager, Indian Bank and Ors reported in 2008-2-L.W-381 has held that there will not be any automatic stay of proceedings on filing of an application under Section 17 of the Act.

11. Merely on the ground that an application filed by the petitioner under Section 17 of the Act challenging the auction sale is pending, it cannot be a ground to stay all further proceedings pursuant to the sale certificate issued by the

second respondent. The transfer of patta is dealt with under the Tamil Nadu Patta Pass Book Act, 1983. The first respondent Tahsildar is bound by the above said Act, and there is no prohibition under the Tamil Nadu Patta Pass Book Act restraining the Revenue Authorities from transferring the patta based on the pendency of proceedings before a Civil Court or Tribunal.

12. In such circumstance, this Court cannot issue a Mandamus restraining the first respondent Tahsildar from processing the application filed by the third respondent for transfer of patta. Hence I find no merit in the writ petition filed by the petitioner and the writ petition is liable to be dismissed and accordingly dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
The Tahsildar,
Erode Taluk,
Erode District - 638 011.

+1cc to M/s.V.Ragavachari, Advocate, S.R.No.36810
+1cc to M/s.Srinath Sridevan, Advocate, S.R.No.37035
+1cc to Mr.S.Thangavel, Advocate, S.R.No.36818
+1cc to the Government Pleader, S.R.No.37391

W.P.No.19433 of 2020 and
and W.M.P.No.24018 of 2020

PM (CO)
B.VC (18/08/2021)