

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA
WRIT PETITION No.18613 of 2022

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Ms. Hamsa Durga Ponnam, learned counsel for the petitioner and Mr. Krishnam Raju, learned counsel appearing on behalf of Mr. K.Sandeep, learned counsel for respondent No.1.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeking quashing of sale notice dated 07.03.2022 issued by the 1st respondent proposing to hold auction sale of eight numbers of schedule properties on 18.04.2022.

3. It is submitted that petitioner as the guarantor to the loan availed of by respondent No.2 from respondent No.1 had mortgaged property No.3 in terms of the sale notice to respondent No.1. For default in repayment, 1st respondent has invoked provisions of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly referred to hereinafter as the 'SARFAESI Act'). As a consequence, the impugned sale notice has been issued, wherefrom it is seen that outstanding dues of the 2nd respondent has been quantified by the 1st respondent at Rs.42,74,08,238.62 as on 28.02.2022. Insofar property No.3 of the petitioner is concerned, the Reserve Price has been fixed at Rs.1,59,00,000.00.

4. Aggrieved by the sale notice, petitioner has filed securitisation application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal-II, Hyderabad (Tribunal), which has been numbered as S.A(I.R).No.410 of 2022. With the grievance that there is no Presiding Officer in the Tribunal rendering the same non-functional, present writ petition has been filed.

5. After hearing learned counsel for the parties and on due consideration, we are of the view that since petitioner has availed his statutory remedy before the

Tribunal, he may pursue the said remedy. That apart, if the petitioner deposits 15% of the Reserve Price of property No.3 within a period of 30 days from today, respondent No.1 shall not take further steps pursuant to the sale notice dated 07.03.2022 in respect of the said property No.3, the details of which are as under:

“Property 3:

Residential land measuring 0.65 cents & Building in S.No.137/1F with D No.1-2594, Dr.Ambedkar Main Road, Attanthangal, Ponneri Taluk, Tiruvallur District, Chennai, Tamilnadu in the name of Shri V.R.Munuswamy Naidu and SmtK.Amudha w/o Shri.Kesavulu Naidu vide Document No.4600/1989 dated 22.11.1989 and Document No.5112/2004 dated 09.12.2004 and bounded by:

North	:	Land owned by Dr. Ansari
South	:	Common passage leads from Attan Thangal Village To Tiruvanlluru main road
East	:	Road leads to Attan Thangal
West	:	Land owned by Gurunath Chettiar”

6. In any event, the said sale notice would be subject to outcome of S.A(I.R).No.410 of 2022. We make it clear that upon such deposit, it would be open to

respondent No.1 to appropriate the said amount towards the loan account. However, if there is any default in making the payment as above by the petitioner, respondent No.1 would be at liberty to take such steps as is permissible in law for recovery of dues.

7. We further clarify that the stay order passed by this Court is only confined to the schedule property No.3. Respondent No.1 would be at liberty to proceed with the proposed auction sale on 18.04.2022 with respect to the other schedule properties.

8. This disposes of the Writ Petition. However, there shall be no order as to costs.

9. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

UJJAL BHUYAN,J

SUREPALLI NANDA, J

Date: 13.04.2022
KL