



W.P.No.30706 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.30706 of 2008

1. Smt.Pushpathal

2. Kamalathal

...Petitioners

-Vs-

1. The Tamilnadu Industrial Investment Corporation Ltd.,
Coimbatore Branch,
By Its Branch Manager,
United Shopping Complex,
1st Floor, No.94,
Dr.Nanjappa Road, Coimbatore.

2. Smt. Soundaram

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration, declaring the auction sale conducted and confirmed by the 1st respondent in favour of the 2nd respondent in respect of the petitioners' absolute property, namely agricultural lands admeasuring 4.65 acres comprised in survey No.337 of Thonguttipalayam village in Tiruppur taluk, Coimbatore district, being the



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guarantors' property, as illegal, non-est in law as it is contrary to the provisions of section 29 and 31 of the State Financial Corporations Act, 1951 and also the settled decision of the Honourable Supreme Court of India, and consequently direct the respondents to jointly execute a Re-conveyance Deed in favour of the Petitioners herein in respect of the aforesaid property on the Petitioners herein incurring the actual expenses for such re-conveyance, within a time to be stipulated by this Hon'ble Court.

For Petitioners : Ms.J.Ramakrishnan for
Mr.P.S.KothandaRaman

For Respondents :
(for R1) : Mr.K.V.Sundara Rajan
(for R2) : No Appearance

ORDER

The writ of declaration has been filed to declare the auction sale conducted and confirmed by the first respondents in favour of the 2nd respondent in respect of the petitioners' absolute property, namely agricultural lands admeasuring 4.65 acres comprised in survey No.337 of Thonguttipalayam village in Tiruppur taluk, Coimbatore district, being the guarantors' property, as illegal, non-est in law as it is contrary to the provisions of section 29 and 31 of the State Financial Corporations Act,



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1951 and also the settled decision of the Honourable Supreme Court of India, and consequently direct the respondents to jointly execute a Re-conveyance Deed in favour of the Petitioners herein in respect of the aforesaid property on the Petitioners herein incurring the actual expenses for such re-conveyance, within a time to be stipulated by this Hon'ble Court.

2.The grievances of the writ petitioners are that they stood as guarantors in respect of the loan availed by the son of the first petitioner. The son of the first petitioner committed default in repayment of loan to the first respondent which is the Tamil Nadu Industrial Investment Corporation limited. Since the principal had not settled the loan amount, the first respondent initiated action against the son of the first petitioner who was the proprietor of the industry.

3.The learned counsel for the first respondent made a submission that the machineries were also missing in the premises and they could not realise the loan dues and consequently, criminal cases were registered against the son of the first petitioner. In view of the fact that the principal borrower evaded repayment of loan and the machineries were also taken



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away from the premises, the first respondent invoked their right against the guarantor who has mortgaged the property in view of the loan amount as security. Since the efforts taken by the first respondent to realise the loan amount from the principle borrower went in vain, they took possession of the agricultural land of the petitioners' which was given as a security and the possession was taken on 27.09.1999. After taking possession, the first respondent had taken efforts to conduct public auction and there was no potential buyers and subsequently, issued a publication on 04.11.2004 and the auction was completed on 25.11.2004 and consequently, the sale deed was also executed on 15.01.2005 in favour of the successful auction purchaser.

4.The possession was taken in the year 1999 and almost after 23 years the sale deed was executed in favour of the auction purchaser in the year 2005 and now 17 years lapsed.

5.The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Karnataka State Financial Corporation Vs N.Narasimahaiah and others (2008)5 SCC 176***, which was followed by the Judgment of Division Bench of this Court in Review



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Application No.42 of 2010 dated 06.03.2020. The Apex Court held that the property mortgaged by the guarantor cannot be auctioned directly by the Finance Corporation under Section 29 of the Financial Corporation Act, 1951, and therefore, the auction conducted by the first respondent is in violation of the principles laid down by the Hon'ble Supreme Court of India with reference to Section 29 of the Finance Corporation Act.

6.However, the legal proposition in this regard is not in dispute and the first respondent brought to the notice of this Court that the judgment was delivered by the Hon'ble Supreme Court of India in the year 2008 and by the Division Bench of Madras High Court in the year 2020 and the first respondent had taken possession of the petitioners' property in the year 1999 and the auction was conducted in the year 2004 and the sale deed was executed in the year 2005 and therefore, now the said auction, conducted long back, if overturned, would cause prejudice to all the subsequent purchasers who all are not parties in the present writ petition.

7.The legal principles with reference to Section 29 as laid down by the Hon'ble Supreme Court of India is binding. However, in the present case the possession was taken over by the first respondent in the year 1999



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and the auction was conducted thereafter, and the sale deed was also executed. Setting aside the auction at this length of time would be of no avail to the petitioners and further, it would cause prejudice to the subsequent purchasers of the property. The petitioners also had not initiated action immediately and filed the present writ petition in the year 2008, which is pending before this Court for the past about 14 years.

8.Considering the facts and circumstances, this Court is of the considered opinion that any relief if granted cannot be implemented properly since the property was already sold in favour of the second respondent and the present status is also not brought to the notice of this Court.

9.Taking note of all these factors, no relief needs to be granted in the favour of the petitioners and accordingly the writ petition stands **dismissed**. No costs.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

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To
WEB COPY

The Tamilnadu Industrial Investment Corporation Ltd.,
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By Its Branch Manager,
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1st Floor, No.94,
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WEB COPY



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S.M.SUBRAMANIAM. J.,

(*sha*)

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