



W.P.No.5590 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.5590 of 2023

M.Kannan

.. Petitioner

Vs

1 M/s.Canara Bank
Rep. by its Authorized Person
Kannivadi Branch, Kannivadi
Dharapuram Taluk
Tirupur - 639 202.

2 V.S.Mani
3 M.Suseela
4 M.Nithya
5 C.Somasundaram
6 C.Chinnasamy
7 S.Chanidra Moorthy

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records relating to the impugned e-auction sale notice of the first respondent dated 07.02.2023.



W.P.No.5590 of 2023

WEB COPY

For the Petitioner : Mr.V.Vijayakumar
for M/s.Karan and Uday

For the Respondents : Mr.P.Raghunathan
for M/s.T.S.Gopalan and Co.
for first respondent

: No appearance
for respondents 2 to 7

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.V.Vijayakumar, learned counsel for the petitioner, and Mr.P.Raghunathan, learned counsel for the first respondent.

2. The petitioner has assailed an e-auction sale notice issued by the first respondent/bank in respect of the writ property.

3. Learned counsel for the petitioner submits that the petitioner has purchased the writ property under a registered sale deed dated 3.7.2000. The said property is mortgaged to the first



W.P.No.5590 of 2023

respondent/bank by the borrower/guarantor in the year 2019. The petitioner is neither the borrower nor the guarantor. The petitioner is a stranger to the loan transaction between the bank and the borrower/guarantor. The petitioner was not aware of the unilateral cancellation of the sale deed by the second respondent in the year 2002. The petitioner has challenged the same by filing a civil suit bearing O.S.No.293 of 2022. The said suit is pending. The first respondent/bank is also a party to the suit. After receiving notice of the suit, the first respondent/bank has indulged in the activity of issuing the e-auction sale notice.

4. According to learned counsel for the petitioner, the property is owned by the petitioner. The first respondent/bank cannot issue e-auction sale notice in respect of the property owned by the petitioner, who is neither the borrower/guarantor nor has created any security interest in favour of the first respondent/bank.

5. Learned counsel for the first respondent/bank submits that the writ petition is not maintainable. The action is taken by the



W.P.No.5590 of 2023

bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The only remedy to the petitioner is before the Debts Recovery Tribunal by filing a securitisation application. Learned counsel for the first respondent/bank refers to the judgment of the Apex Court in the case of *Jagdish Singh v. Heeralal and others*, (2014) 1 SCC 479.

6. According to learned counsel for the first respondent/bank, the writ petition is collusive action of the writ petitioner and the borrower/guarantor.

7. Learned counsel for the first respondent/bank further submits that the e-auction sale notice could not materialize as there were no bidders and the bank will have to resort to fresh auction notice.

8. Whether the action of the petitioner is collusive or whether the cancellation of the sale deed of the petitioner is illegal are the



W.P.No.5590 of 2023

issues which cannot be gone into by this court in the writ jurisdiction. The petitioner has already filed a suit challenging the cancellation of the sale deed and the same is pending. The parties will have to adduce evidence with regard to the sale deed in favour of the petitioner and its alleged cancellation. The same is *sub judice* before the civil court. The parties may prosecute the same. If an action under the SARFAESI Act is undertaken, the party has a remedy before the Debts Recovery Tribunal by invoking the provisions of the SARFAESI Act.

9. As it is submitted by learned counsel for the first respondent/bank that pursuant to the e-auction sale notice challenged in the present writ petition no bids have been received and the said auction sale has not materialized, the imminent apprehension of the petitioner also does not survive.

In the light of the above, we dispose of the writ petition with liberty to the petitioner to avail the alternative remedy as may be permissible under law. In that event, all contentions are kept open.



W.P.No.5590 of 2023

There will be no order as to costs. Consequently, W.M.P.Nos.5610 and 5611 of 2023 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

09.06.2023

Index : Yes/No
Neutral Citation : Yes/No
sasi

To:

The Authorized Person
Canara Bank
Kannivadi Branch, Kannivadi
Dharapuram Taluk
Tirupur - 639 202.



WEB COPY



W.P.No.5590 of 2023

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi)

W.P.No.5590 of 2023

09.06.2023