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W.P.No.14612 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.05.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE M.NIRMAL KUMAR**

W.P.No.14612 of 2023 and
WMP.Nos.14092, 14093 & 14094 of 2023

1. Mohamed Khalif
2. A.Mohamed Irfan
3. A.Fabitha Begum

... Petitioners

Vs

- 1.The Authorised Officer
M/s. State Bank of India
Assets Recovery Management Branch
No.44, Eldams Road, 1st Floor
Teynampet, Chennai – 600 018
2. The District Registrar
O/o. The District Registrar
Villupuram
3. The Sub-Registrar Joint I
O/o. The District Registrar
Villupuram
4. M/s.Phoenix Samraj
No.80/135, Habibullah Road
T.Nagar, Chennai – 600 017
5. M/s.Phoenix Samraj
Branch Office
No.F-1, D-4,
No.10, Muralitharan Street

<https://www.mhc.tn.gov.in/judis>



Ayyavoo Naidu Colony
Aminjikarai, Chennai – 600 029

6. Samraj Pandian

7. D.Somasundaram

8. Abdul Majeed

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned E-auction sale notice dated 28.04.2023 issued by the 1st respondent and quash the same and further restrain the first respondent from interfering / alienating the property situated in Old Door No.4/485, New Door No.1, Trichy Main Road, Aalamedu Village, Near Thanthai Periyar Nagar, Villupuram comprised in New Sub Division No.303/8, Old No.303/2 A1A and measuring a total extent of 2.4 acre.

For Petitioners : Mr.S.Saravanakumar

For Respondents : Mr.K.Chandrasekaran (for R1)

Mrs.S.Mythraye Chandru (for R2 & R3)
Special Government Pleader

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

This matter had come up for admission on 04.05.2023 when notice was directed to the respondents. Today, Mr.K.Chandrasekaran, learned counsel appears on behalf of R1 being the Authorized Officer of the State Bank of India, Assets Recovery Management Branch and Mrs.S.Mythraye Chandru, learned Special Government Pleader appears on behalf of R2 and R3. Notice



has not been issued thus far to R4 to R8.

2. Based on the submissions of the petitioners, it appears that R4 and R5 had approached the State Bank of India for financial facilities and availed certain loans, the details of which are not necessary for purposes of deciding this writ petition. R6 to R8 had stood guarantee for the debt and offered immovable properties as collateral for the loans.

3. There appear to have been defaults in repayment leading to the present impugned proposed auction of the collaterals offered as security. The properties described are as follows:

*'Name of the Title Deed Holder: Mr. Abdul Majeed,
S/o. K.M. Abdul Rahim*

All that piece and parcel of land together with building bearing Old Door No. 4/485, New Door No. 1, Trichy Main Road, Salamedu Village, Near Thanthai Periyar Nagar, Villupuram, comprised in New Sub Division No. 303/8, Old No. 303/2 A1A and measuring 2.40 acres and bounded on the

North by: Wall of the hostel

South by: Land belonging to Devi and Sivakumar

East by: Road

West by: Trichy Trunk Road

In all admeasuring 2.40 acres thereabouts with building thereon within the Sub-Registration District of Villupuram and registration district of Villupuram.

hereinafter referred to as “Property” or “Property in question”.

4. None of the facts relating to the financial arrangements are available before the Court. It is the petitioner's case that the properties proposed to be auctioned under the impugned order were the subject matter of settlement



deed executed on 15.07.2008. The petitioners claim to have been under the impression that the settlement continued all along.

5. While this is so, the petitioners claim to have received, like a bolt from the blue, communication bearing reference No.SBI/ARMB/CHE/SARFAESI/EAUCTION/2022-23/CLO1/PRS1090-1090F dated 18.02.2023 along identical lines as the present impugned communication. They claim that it was only at this juncture that they came to be aware that their properties were the subject matter of encumbrance.

6. On receipt of communication dated 18.02.2023, the petitioners have addressed a representation dated 15.04.2023 to R3, being the Sub-Registrar Joint-I, Villupuram, seeking a clarification on the status of the property. It was only then that they came to be aware that the settlement executed on 15.07.2008 had been unilaterally cancelled by the settlor i.e., their father /R8 in December 2008 itself.

7. A legal issue is now raised as to the veracity or otherwise of the unilateral cancellation of settlement. Our attention is drawn to a judgement of the Hon'ble Supreme Court in *Thota Ganga Laxmi and Another vs. Government of Andhra Pradesh and Others* reported in (2010) 15 SCC 207.

8. That case had travelled to the Hon'ble Supreme Court from the Andhra Pradesh High Court. The Andhra Pradesh High Court had dismissed



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the Writ Petition filed by the appellants seeking relief in respect of a cancellation of settlement. Relying on a judgement of the Full Bench of the Andhra Pradesh High Court in *Yanala Malleshwari V. Ananthula Sayamma* reported in (2006) 6 An LT 523, the High Court dismissed the writ petition seeking declaration, relegating the appellants to the Civil Court.

9.The decision of the High Court came to be reversed and the appeal allowed, the Hon'ble Apex Court holding that there was no need for the High Court to have referred those appellants to the Civil Court as the cancellation and consequent registration was wholly void and non est and could be ignored altogether.

10. The petitioners rely on the above judgement to reiterate the settled proposition, according to them, that the unilateral cancellation of the settlement executed on 15.07.2008 should be ignored and they should be viewed as being owners of the property in question, as on date.

11. Having heard learned counsel we are of the considered view that the submissions that have been made before us turn on the appreciation of several factual aspects of the financial arrangements as well as the status of ownership or otherwise of the petitioners to the property in question. It would thus be appropriate for the petitioners to approach the Bank setting out the relevant facts and it is for the Bank to take a view in this regard.

12. The judgements on the question of law that the petitioners rely



upon may also be placed before the Bank for appreciation including the judgement in the case of *Thota Ganga Laxmi and Another* (supra).

13. Since the impugned auction is proposed to be held on 19.05.2023 and both parties being represented by counsel before us, a date is fixed for hearing and the petitioners are permitted to present themselves before the Authorised Officer, State Bank of India, Assets Recovery Management Branch of the State Bank of India/R1 at 10.30 am on Monday, the 15th of May, 2023 when they will be heard and their representation considered.

14. Let the Bank take a view in the matter prior to 17.05.2023 and communicate the same on the same date to the petitioners. It is made clear that if the petitioners do not present themselves before R1 as above, the respondents are at liberty to proceed with impugned recovery action, as proposed.

15. This writ petition is dismissed in terms of the order as above. No costs. Consequently, connected miscellaneous petitions are also dismissed.

(A.S.M.,J) (M.N.K.,J)

11.05.2023

vs/gpa

Index:Yes

Speaking order

Neutral Citation:Yes



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