



WEB COPY



W.P.No.43554 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.43554 of 2016
and
WMP.Nos.37377 and 37378 of 2016

K.Bharathi Petitioner

Vs

1.The Assistant Commissioner of Police,
Anti Land Grabbing Special Cell,
Office of The Commissioner of Police,
Coimbatore – 641 018.

2.S.Rajalakshmi Respondents

Prayer :- Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Mandamus, to call for the records of the first respondent pertaining to notice bearing C.No.244/ AC/ ALGSC/ CBE CITY/ 2016 dated 15.11.2016 and quash the same.

For Petitioner : Mr.T.Hemalatha
For R 1 : Mr.S.Rajakumar
Additional Public Prosecutor

ORDER

This Writ Petition has been filed challenging the notice issued by first respondent in C.No.244/ AC/ ALGSC/ CBE CITY/ 2016 dated



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15.11.2016 on the complaint lodged by the 2nd respondent.

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2. The perusal of the complaint revealed that 2nd respondent is claiming the subject property comprising 2.75 cents along with house, situated at Kurinji Housing Unit, Coimbatore and its Title Deed was mortgaged to the Bank. Thereafter, 2nd respondent continuously paid the interest and even then Banker auctioned the said property. Therefore, petitioner sought for a proper action as against the Banker.

3. It is seen that, the 2nd respondent availed loan to the tune of Rs.10,00,000/- on 10.06.2005 from M/s.Syndicate bank, Ponmeni branch, Madurai by mortgaging the subject property. Since 2nd respondent committed default, the account was classified as non performing asset (NPA) as per the RBI guidelines. Therefore, Bank had taken action under SARFAECI Act for recovery of money. Accordingly, 2nd respondent was served with demand notice under Section 13(2) of the SARFAESI Act and thereafter, possession notice was also issued on 02.02.2008. Even then 2nd respondent failed to repay the loan amount. Therefore, the subject property was brought for public auction on 12.10.2009. In the meanwhile, the 2nd respondent challenged the



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possession notice in S.A.No.62 of 2008 on the file of the Debt Recovery Tribunal (DRT), Coimbatore. In the said Application, a conditional interim stay order was passed on 09.10.2009 that the 2nd respondent shall pay a sum of Rs.5,00,000/- towards the loan amount in two installments and in the event of default of compliance of any one of the installments as per the order, the Stay will be automatically vacated and Bank will be at liberty to proceed further in the manner known to law.

4. As the 2nd respondent failed to comply the conditional order of Debt Recovery Tribunal, Coimbatore, the Bank proceeded with the Public Auction by the Authorised Officer by following procedure stipulated in SARFAESI Act. In the Public Auction, the petitioner has participated as one of the bidders and he succeeded in the Auction and purchased the subject property. Accordingly, the Sale Certificate has been issued in favour of the petitioner and possession was also handed over to the petitioner with the assistance of learned Chief Judicial Magistrate, Coimbatore.

5. Therefore, the complaint lodged by the 2nd respondent is nothing but a clear abuse of process of law. It is lodged with the ulterior



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motive, in order to grab the subject property from the petitioner. Without considering the same, 1st respondent issued an impugned notice to the petitioner to attend the enquiry. Therefore, the impugned notice cannot be sustained and liable to the set aside.

6. Therefore, the impugned notice of the 1st respondent in C.No.244/ AC/ ALGSC/ CBE CITY/ 2016 dated 15.11.2016 is set aside. Accordingly, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petition are closed. No costs.

13.04.2023

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The Assistant Commissioner of Police,
Anti Land Grabbing Special Cell,
Office of The Commissioner of Police,
Coimbatore – 641 018.



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G.K.ILANTHIRAIYAN, J.

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