



WP No.20512 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM :

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

AND

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

WP No.20512 of 2023

M.S.K. Rameshraj

... Petitioner

versus

1.Indian Overseas Bank
rep. by its Assistant General Manager,
Asset Recovery Management Branch,
Ground Floor, Central Office Building,
763, Anna Salai, Chennai 600 002.

2.The Authorised Officer,
Indian Overseas Bank
Asset Recovery Management Branch,
Ground Floor, Central Office Building,
763, Anna Salai,
Chennai 600 002.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the file the 2nd respondent dated 22.06.2023 pertaining to e-auction sale of the subject property and quash the same

For the Petitioner : Mr.S.R.Rajagopal,
Senior Counsel,
for Ms.Selvi George



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ORDER

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

We have heard Mr.S.R.Rajagopal, learned Senior Counsel for the petitioner.

2. Learned Senior Counsel for the petitioner submits that the sale notice issued by the respondent bank is ex-facie, without jurisdiction. Earlier sale notice was challenged by the petitioner before the Debts Recovery Tribunal (in short, 'the Tribunal') by filing SA No.536 of 2022. The Presiding Officer of the Tribunal, allowed the securitisation application observing that the bank has not furnished any evidence to establish service of demand notice on the present petitioner, service of possession notice, affixture of possession notice and service of the impugned sale notice nor its affixture thereon. On that premise, the sale was set aside.

3. Learned Senior Counsel further submits that the only option for the bank was to issue a fresh notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act of 2002') before proceeding further. The respondent bank did not adhere to the same and has again issued a sale notice.

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According to the learned Senior Counsel, the same is not permissible, being without jurisdiction and also by not adhering to the principles of natural justice.

Learned Senior Counsel submits that in such an event, alternate remedy is, no bar for this court to invoke jurisdiction under Article 226 of the Constitution of India.

4. Learned Senior Counsel relies upon the judgment of the Supreme Court in *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others*, (1998) 8 SCC 1.

5. Learned Senior Counsel further submits that the loan is an agricultural loan and the land is an agricultural land. The same is exempted under Section 31(i) of the Act of 2002.

6. We have considered the submissions of learned Senior Counsel for the petitioner. All these contentions can be raised before the Tribunal in an application under Section 17 of the Act of 2002. Whether the land in question is an agricultural land or not would be gone into by the Tribunal. Whether the respondent bank proves about the service of notice or otherwise would also be considered by the Tribunal.

7. It is also required to be considered that the petitioner is not required to



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pre-deposit any amount in an application under Section 17 of the Act of 2002.

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8. The substantive remedy under the statute is available to the petitioner.

In view of the substantive remedy available to the petitioner, we are not inclined to exercise our writ jurisdiction. For all the aforesaid reasons, we are not inclined to consider the Writ Petition.

9. Learned Senior Counsel further submits that the auction is scheduled on 15.07.2023. The petitioner can file the proceedings immediately. Naturally, considering the exigency in the matter, the Tribunal can be requested to consider the application of the petitioner on priority basis. All contentions are kept open.

10. The Writ Petition stands disposed of. There will be no order as to costs. Consequently, WMP No.19911 of 2023 is closed.

(S.V.G., CJ.)

(P.D.A., J.)

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Index : yes/no

Neutral Citation : Yes/No

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THE HON'BLE CHIEF JUSTICE
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