



WP No.23974 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM

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

AND

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

WP No.23974 of 2022

D.Vel

... Petitioner

-VS-

Ind Bank Housing Ltd.
Rep. by its Authorised Officer,
No.480, Anna Salai, 3rd Floor,
Nandanam, Chennai 600 035.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondent to return the amount of Rs.10,51,000/- along with interest at 18% p.a. from the date of 07.09.2012.

For the Petitioner : Mr.K.U.Suresh

For the Respondent : Ms.Geethi Ara
for M/s.S.Ramasubramaniam &
Associates.

* * * * *



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ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.K.U.Suresh, learned counsel for the petitioner and Ms.Geethi Ara, learned counsel for the respondent bank.

2. The undisputed factual matrix is:

Pursuant to the auction notice dated 07.09.2012, the petitioner participated in the auction conducted by the respondent bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act'). The petitioner was the highest bidder at Rs.10,51,000/- (Rupees ten lakhs fifty one thousand only). The petitioner paid the entire amount by 17.09.2012. However, the sale certificate was issued only on 21.04.2014. It is the case of the petitioner that the bank till date has not been in a position to hand over possession of the subject property. The learned counsel for the petitioner as such submits that the petitioner is entitled for the refund of the amount paid along with interest at the mercantile rate.



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3. The learned counsel for the respondent submits that it is because the third party was litigating the subject property, the possession could not be handed over and the sale certificate could not be registered. The learned counsel submits that the bank has taken and is taking efforts to deliver possession of the subject property and has also time and again moved the competent authority under Section 14 of the SARFAESI Act.

4. We have considered the submission.

5. The bank resorted to the provisions of the SARFAESI Act and auctioned the property. The petitioner is the auction purchaser. The entire amount has been paid in September 2012 by the petitioner. The bank has also received the said amount. However, till date, the bank could not register the sale certificate nor is in a position to deliver possession of the property under auction to the petitioner. The petitioner cannot be faulted with. The bank has also not put the blame on the petitioner, however, the contention of the bank is that the property was a subject matter of various litigations and it is because the property was embroiled in litigation, the possession could not be



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handed over. However, the fact remains that the bank could not hand over the possession of the property under auction to the petitioner even after 11 years of the auction. The petitioner cannot be allowed to wait in perpetuity. Equity stands in favour of the petitioner. It is also not clear how much further time would be required for handing over the possession of the property to the petitioner.

6. For all the aforesaid reasons, we are inclined to accept the prayer of the petitioner for refund of the amount under auction with a reasonable rate of interest. In the result, we pass the following order:

- (i) The respondent bank shall refund the amount of Rs.10,51,000/- (Rupees ten lakhs fifty one thousand only) to the petitioner with interest at the rate of 7% p.a. (simple interest) from 21.04.2014 till the date of repayment.
- (ii) The petitioner shall surrender the original sale certificate to the bank.
- (iii) The said payment shall be made within a period of three months from today.



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The writ petition is, accordingly, disposed of. There will be no order as to costs.

(S.V.G., CJ.)

(P.D.A., J.)

07.09.2023

Index : Yes/No

Neutral Citation : Yes/No

sra

To

The Authorised Officer,
Ind Bank Housing Ltd.
No.480, Anna Salai, 3rd Floor,
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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU, J.

(sra)

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